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**BOARD OF EQUALIZATION**

**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) **HEARING SUMMARY<sup>2</sup>**  
) **CORPORATION FRANCHISE TAX APPEAL**  
) **URS CORPORATION<sup>1</sup>** ) Case No. 389145  
)  
)  
)  
)

IYE

Claim  
For Refund

10/31/1998  
10/31/1999  
10/31/2001

\$1.00 or more  
\$1.00 or more<sup>3</sup>  
\$1.00 or more<sup>3</sup>

Representing the Parties:

For Appellant:

Hal Kessler, Deloitte Tax LLP

For Franchise Tax Board:

Ann H. Hodges, Tax Counsel III

**QUESTION:** Whether appellant has demonstrated that it is entitled to the claimed Enterprise Zone

<sup>1</sup> Appellant's headquarters is located in San Francisco.

<sup>2</sup> This appeal was postponed on September 19, 2008, for 90 days to allow both parties time to resolve the matter without hearing. The matter was subsequently rescheduled for hearing on the April 15, 2009 calendar; and again rescheduled to the May 27-29 calendar to allow both parties time to resolve the issues on appeal.

<sup>3</sup> The actual amounts of the refunds claims appears to be indeterminate because appellant has conceded some of the EZ hiring credit claims disallowed by respondent. At the hearing, the parties should be prepared to specify the actual amount of the claims for refund for each year.

1 Hiring Credits.

2 HEARING SUMMARY

3 Background Regarding Enterprise Zone Hiring Credits

4 The California Legislature enacted the Enterprise Zone Act (EZA) to stimulate business  
5 and industrial growth in economically depressed areas of the state (Gov. Code, § 7071.) The EZA  
6 contains regulatory, tax, and other incentives to attract investment into those areas. Any city, county, or  
7 city and county with an eligible area within its jurisdiction may apply for designation as an enterprise  
8 zone. (EZ) (*Id.*, § 7073, subd. (a).)

9 The enterprise zone hiring credit provides a tax credit to employers operating in an  
10 enterprise zone that pay wages to employees who meet specified criteria. (Rev. & Tax. Code,  
11 § 23622.7.) One of the requirements of the credit is that the employer obtain a certificate (commonly  
12 referred to as a “voucher”) from one of the statutorily approved vouchering agencies certifying that the  
13 employee is a “qualified employee” for purposes of the hiring credit. (Rev. & Tax. Code, § 23622.7,  
14 subd. (c)(1).)

15 For the period in question, the former California Technology, Trade and Commerce  
16 Agency (TTCA) was responsible for administering the vouchering program, and was specifically tasked  
17 with conducting compliance audits of the EZs.<sup>4</sup> All of the vouchers at issue in this appeal were issued  
18 by the Oakland EZ on either August 14, 2002, or October 14, 2002. (Resp. Reply Br., p. 2.) Prior to  
19 2003, TTCA received information that the Oakland EZ’s vouchering practices were inconsistent with  
20 established procedures. (Resp. Reply Br., p. 2.) At TTCA’s request, respondent performed an audit of  
21 the vouchering practices and procedures of the Oakland EZ, as an adjunct audit to TTCA’s compliance  
22 audit of the Oakland EZ. (Resp. Reply Br., exhibit A.)

23 The TTCA audit states that the City of Oakland provided a list of 46,718 vouchers issued  
24 during the period from January 1, 2001, through September 1, 2003, and that respondent selected a  
25 sample of 2,742 vouchers from the list. The audit also determined that Oakland had issued an additional  
26 300 vouchers, which were identified from tax returns filed with respondent, but that those vouchers were  
27

28 <sup>4</sup> On January 1, 2004, the Housing and Community Development Department (HCD) took over the responsibility for  
administering the vouchering program.

1 not on the list. (Resp. Reply Br., exhibit A, p. 2.) The audit found the following problems with  
2 Oakland's vouchering practices: records were inadequately maintained, insufficiently documented or  
3 missing, supporting source documents were not independently verified by the vouchering agent, and  
4 vouchers were erroneously issued for ineligible employees. (Resp. Reply Br., exhibit A, p. 1.) In view  
5 of these problems, respondent has reviewed vouchers issued by the Oakland EZ, including the vouchers  
6 at issue in this appeal. (Resp. Reply Br., p. 2.)

#### 7 Factual Background

8 Appellant claimed no EZ hiring credits on its original returns for income years ending  
9 (IYE's) 10/31/1998, 10/31/1999, 10/31/2000, and 10/31/2001. (Resp. Reply Br., p. 2.) Appellant filed  
10 amended returns for the four IYE's in issue on February 13, 2003, which reported changes in additions  
11 to net income for each year and claimed EZ hiring credits for each year. (Resp. Reply Br., exhibits B, C,  
12 D, and E.) The amended returns claimed refunds of taxes paid. Respondent audited the amended tax  
13 returns and disallowed a substantial portion of the hiring credits claimed for each year. For IYE  
14 10/31/1998, appellant generated \$239,639 credits, of which respondent disallowed \$117,391; for IYE  
15 10/31/1999, appellant generated \$349,399 credits, of which respondent disallowed \$234,313; for IYE  
16 10/31/2000, appellant generated \$401,770 credits, of which respondent disallowed \$225,889; and for  
17 IYE 10/31/2001, appellant generated \$695,438 credits, of which respondent disallowed \$335,786.  
18 Respondent disallowed the hiring credits because, in its view, appellant did not show that each of the  
19 employees met a required eligibility category. (Resp. Reply Br., p. 13.)

20 On September 29, 2006, respondent issued a Notice of Action on Cancellation, Credit or  
21 Refund (NOA) for each of the IYEs in issue. Each NOA partially denied appellant's claims for refund  
22 with respect to the vouchers at issue. Appellant filed this timely appeal. (Appeal Letter, exhibit A.)

#### 23 Applicable Law

##### 24 Definition of Qualified Employee

##### 25 Eligible to Receive JTPA Services

26 In relevant part, Revenue and Taxation Code (R&TC) section 23622.7, subd.  
27 (b)(4)(A)(iv)(I), defines a "qualified employee," for purposes of the EZ hiring credit, as including an  
28 individual who:

1 Immediately preceding the qualified employee's commencement of employment with the  
2 taxpayer, was a person eligible for services under the federal Job Training Partnership  
3 Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to  
4 receive, subsidized employment, training, or services funded by the federal Job Training  
5 Partnership Act, or its successor<sup>5</sup>.<sup>6</sup>

6 Thus, for purposes of this discussion, R&TC section 23622.7 requires, as a condition to  
7 the availability of the hiring credit, that an employee either receive services funded by the JTPA (or its  
8 successor) or be "eligible" for such services or that the employee meet the conditions specified for a  
9 "dislocated worker".

10 Section 1603 of the federal Job Training Partnership Act (JTPA), which addresses  
11 whether an individual is "eligible" for services under the JTPA, is set forth in full below.

12 **"§ 1603. Eligibility for services**

13 **(a) In general.** Except as provided in subsection (c), an individual shall be  
14 eligible to participate in the program under this part only if such individual is--

- 15 (1) 22 years of age or older; and
- 16 (2) economically disadvantaged.

17 **(b) Hard-to-serve individuals.** Not less than 65 percent of the participants in the  
18 program under this part [29 USCS §§ 1601 et seq.], other than participants served under  
19 section 204(d) [29 USCS § 1604(d)], in each service delivery area shall be individuals  
20 who are included in 1 or more of the following categories:

- 21 (1) Individuals who are basic skills deficient.
- 22 (2) Individuals who are school dropouts.
- 23 (3) Individuals who are recipients of cash welfare payments.
- 24 (4) Individuals who are offenders.
- 25 (5) Individuals with disabilities.
- 26 (6) Individuals who are homeless.
- 27 (7) Individuals who are in a category established under subsection (d).

28 **(c) Special rule.** Not more than 10 percent of participants in a program assisted  
under this part [29 USCS §§ 1601 et seq.], other than participants served under section  
204(d) [29 USCS § 1604(d)], in each service delivery area may be individuals who are  
not economically disadvantaged if such individuals are age 22 or older and within 1 or  
more categories of individuals who face serious barriers to employment. Such categories  
may include the categories described in subsection (b), or categories such as displaced  
homemakers, veterans, alcoholics, or addicts.

**(d) Additional category.** A service delivery area conducting a program assisted  
under this part [29 USCS §§ 1601 et seq.] may add one category of individuals who face

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24 <sup>5</sup> The JTPA has been replaced by the Workforce Investment Act of 1998 (WIA), effective July 1, 2000. (29 U.S.C. §§ 2801,  
25 et seq.). If the credits that remain at issue relate to the appeal period following the July 1, 2000 effective date of the WIA, the  
26 parties may wish to address at the hearing whether, with respect to the periods following the July 1, 2000 effective date of the  
27 WIA (i.e., the latter half of 2000 and 2001), the above-quoted provision required that the employees at issue must have been,  
28 instead of or in addition to being eligible under the JTPA at commencement of employment, eligible under the WIA (or  
receiving services under the WIA). If so, the parties may wish to discuss whether the WIA eligibility requirements were  
satisfied for this period and address whether this issue changes the amount actually at issue in this appeal.

<sup>6</sup> Although other requirements must also be met for an employee to be a "qualified employee" for purposes of the hiring  
credit, these other requirements have not been disputed by the parties.

1 serious barriers to employment to the categories of eligible individuals described in  
subsection (b) if--

2 (1) the service delivery area submits a request to the Governor identifying the  
additional category of individuals and justifying the inclusion of such category;

3 (2) the additional category of individuals is not solely comprised of--

4 (A) individuals with a poor work history; or

(B) individuals who are unemployed; and

5 (3) the Governor approves the request submitted under paragraph (1) and  
transmits a description of the approved request to the Secretary, as part of the Governor's  
6 coordination and special services plan under section 121 [29 USCS § 1531].

7 Section 1603 (a) of the JTPA provides generally that eligibility for participation in the  
8 JTPA requires that an individual be 22 years of age or older and economically disadvantaged. However,  
9 subsection (c) of section 1603 provides that no more than 10 percent of participants assisted under the  
10 JTPA in each service delivery area may be individuals who are *not* economically disadvantaged if such  
11 individuals are age 22 or older and fall within one or more categories of individuals facing serious  
12 barriers to employment. The group of individuals who qualify under this provision are referred to as  
13 “JTPA 10%”.

14 The serious barriers to employment categories may include the categories described in  
15 subsection (b) of section 1603 or categories such as displaced homemakers, veterans, alcoholics, or  
16 addicts. Furthermore, under subsection (d) a service delivery area may add one category of individuals  
17 who face serious barriers to employment to the categories described in subsection (b) provided that the  
18 service delivery area submits a request to the Governor identifying the additional category with  
19 justification for inclusion of the category and the additional category is not solely comprised of  
20 individuals with a poor work history or those who are unemployed.

21 With respect to the additional category of individuals who face serious barriers to  
22 employment allowed by subsection (d), the Employment Development Department (EDD) issued a  
23 JTPA Directive number D96-5, dated August 13, 1996 (JTPA D96-5), which listed state-approved  
24 additional barriers to employment. JTPA D96-5 explains that service delivery areas may select barriers  
25 from the list or may specify barriers other than those on the list. (Resp. Supp. Br., exhibit Q, p. 3.)  
26 Among the categories listed is “older individual with low income” which is defined as “[i]ndividuals age  
27 55 or older whose income does not exceed 125% of the Poverty Guideline.” (Resp. Supp. Br.,  
28 exhibit Q, p. 5.) On the JTPA application form (JTPA 1 ERF Part 1), there is a section for an applicant

1 to provide information as to his or her qualification for JTPA 10% status. That section is titled “10%  
2 Window (for Non-Economically Disadvantaged Only)” and provides several categories for an applicant  
3 to self-identify his or her qualification, including the category “Older Worker”. (Resp. Supp. Br.,  
4 exhibit Q1, p. 4.)

5 Services for Older Individuals Under the JTPA

6 Section 1604, subsection (d) of the JTPA authorizes the Governor to provide for job  
7 training and placement programs for older individuals. Subsection (d)(5)(A) provides that an individual  
8 shall be eligible to participate in a job training program under subsection (d) “only if the individual is  
9 economically disadvantaged and is an older individual.” Subsection (d)(5)(B)(i) sets forth an exception  
10 to the eligibility requirements by providing that an individual who is not economically disadvantaged  
11 shall be eligible to participate in a program assisted under this subsection if the individual “faces serious  
12 barriers to employment, is an older individual and meets income eligibility requirements under Title V  
13 of the Older Americans Act of 1965.” However, no more than 10 percent of all participants may be  
14 individuals in the latter category. (29 U.S.C. § 1604(d)(5)(B)(ii).)

15 Dislocated Workers

16 In addition, R&TC section 23622.7, subd. (b)(4)(A)(iv)(IV) provides that a “qualified  
17 employee” includes a “dislocated worker” which is further defined as follows:

18 (IV) Immediately preceding the qualified employee’s commencement of employment  
19 with the taxpayer, was a dislocated worker who meets any of the following:

20 (aa) Has been terminated or laid off or who has received a notice of termination or layoff  
21 from employment, is eligible for or has exhausted entitlement to unemployment  
22 insurance benefits, and is unlikely to return to his or her previous industry or occupation.

23 ...

24 (cc) Is long-term unemployed and has limited opportunities for employment or  
25 reemployment in the same or a similar occupation in the area in which the individual  
26 resides, including an individual 55 years of age or older who may have substantial  
27 barriers to employment by reason of age.

28 (dd) Was self-employed (including farmers and ranchers) and is unemployed as a result  
of general economic conditions in the community in which he or she resides or because  
of natural disasters.

Dislocated Worker, Long-Term Unemployed

R&TC section 23622.7, subdivision (b)(4)(A)(iv)(IV)(cc), provides that a qualified

1 employee is one who, immediately preceding their commencement of employment with the taxpayer,  
2 was long-term unemployed and had limited opportunities for employment or reemployment in the same  
3 or a similar occupation in the area in which the individual resides, including an individual 55 years of  
4 age or older who may have substantial barriers to employment by reason of age.

5 The term “unemployed individuals” means individuals who are without jobs and who  
6 want and are available for work. (29 U.S.C. § 1503 (25).) “Long-term unemployed” is defined as an  
7 individual unemployed at the time of the eligibility determination who has been unemployed for 15 or  
8 more of the 26 weeks immediately prior to such determination. (EDD JTPA Directive D97-7.) An  
9 individual is considered to have “limited opportunities for return to the previous industry or occupation”  
10 if one or more of the following circumstances applies to the individual:

- 11 • The individual has had a lack of job offers;
- 12 • Worked in an industry/occupation for which there are limited job orders in the EDD Job  
13 Match system;
- 14 • Is insufficiently educated and/or does not have the necessary skills for reentry into the  
15 former industry/occupation;
- 16 • Has physical or other problems which would preclude reentry into the former  
17 industry/occupation;
- 18 • Has a poor employment history that indicates a reduced capacity or ability to be reemployed  
19 in the former industry/occupation. Poor employment history may include (but is not limited  
20 to) situations such as: employment has been limited to one or more part time (20 hours a  
21 week or less) or short term (four months or less) jobs within the prior year which were for  
22 the purpose of income maintenance rather than a career path; unemployment insurance  
23 and/or public assistance receipt in the prior year with little or no employment in interim  
24 periods, indicating a poor work history.

25 (*Id.*)

26 Dislocated Worker, Terminated or Laid Off

27 R&TC section 23622.7, subdivision (b)(4)(A)(iv)(IV)(aa), provides that a qualified  
28 employee is one who, immediately preceding their commencement of employment with the taxpayer,

1 has been terminated or laid off or has received a notice of termination or layoff from employment, is  
2 eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to  
3 his or her previous industry or occupation. Part 631.3(a) of the JTPA regulations (20 C.F.R. (2006))  
4 provides that the term “eligible for” unemployment compensation includes any individual whose wages  
5 from employment would be considered in determining eligibility for unemployment compensation under  
6 Federal or State unemployment compensation laws.

7 The EDD Directive D97-7 defines when an employee is “unlikely to return to his or her  
8 previous industry or occupation” as circumstances where the employee:

- 9 • Worked in a declining industry/occupation as documented on state (available at EDD) or locally-  
10 developed lists (such as a local chamber of commerce) of such industries/occupations;
- 11 • Has had a lack of job offers or received rejection letters from employers in the area; or (3) is  
12 insufficiently educated and/or does not have the necessary skills for reentry into the former  
13 industry/occupation; or
- 14 • Has physical or other problems which would preclude reentry into the former industry or  
15 occupation; or
- 16 • Has a poor employment history indicating a reduced capacity or ability to be reemployed in the  
17 former industry or occupation. The definition of poor employment history for a worker who is  
18 terminated or laid off is the same as that for a worker who is long-term unemployed, as discussed  
19 above.

#### 20 Dislocated Worker, Self-Employed

21 R&TC section 23622.7, subdivision (b)(4)(A)(iv)(IV)(dd) provides that a qualified  
22 employee is one who, immediately preceding their commencement of employment with the taxpayer,  
23 was self-employed (including farmers and ranchers) and is unemployed as a result of general economic  
24 conditions in the community in which he or she resides or because of natural disasters.

#### 25 Veteran

26 R&TC section 23622.7, subdivision (b)(4)(A)(iv)(V), provides that a qualified employee  
27 is one who, immediately preceding their commencement of employment with the taxpayer, was (among  
28 other things) a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is

1 recently separated from military service. The JTPA provides that the term “veteran” means an  
2 individual who served in the active military, naval, or air service, and who was discharged or released  
3 under conditions other than dishonorable. (29 U.S.C. §1503(27)(A).) The JTPA further provides that a  
4 disabled veteran means a veteran who is entitled to compensation under laws administered by the  
5 Secretary of Veterans Affairs, or an individual who was discharged or released from active duty because  
6 of service-connected disability. (29 U.S.C., § 1503(27)(B).) In addition, “recently separated” veterans  
7 are defined as those who first apply for participation in a program funded under any title of JTPA within  
8 48 months after separation from military service. (29 U.S.C., § 1503(27)(C).) Finally, “Vietnam era  
9 veteran” means a veteran any part of whose active service occurred between August 5, 1964, and May 7,  
10 1975. (29 U.S.C., § 1503(27)(D).)

### 11 Contentions

#### 12 Appellant’s Contentions

13 In its reply brief, appellant contends that the individuals for whom EZ hiring credits  
14 provided by R&TC section 23622.7 were claimed were qualified employees, and that respondent  
15 incorrectly denied those claims, because the individuals were “eligible” for services under subsection (c)  
16 of the JTPA. Appellant contends that respondent’s position that enrollment in, rather than eligibility for,  
17 a JTPA program is a necessary precondition for an individual to be considered a “qualified employee” is  
18 contrary to the statute and to *Appeal of Deluxe Corporation* (2006-SBE-003) decided December 12,  
19 2006 and the Board’s decision in the *Appeal of Jessica McClintock and Jessica McClintock, Inc.* Case  
20 Nos. 304497 and 304512, decided on August 14, 2007. (App. Reply Br., pp. 2-3.)

21 Appellant also contends that respondent erroneously determined that the documentation  
22 provided by appellant to the EZ vouchering agency was not sufficient to support the eligibility  
23 determinations. Appellant contends that respondent relied on HCD regulations that have no application  
24 here because they were adopted and effective after the dates that the vouchers were issued. Moreover,  
25 appellant contends that respondent’s own audit procedures state that any relevant documentation may be  
26 acceptable for a voucher determination. Specifically, appellant quotes a portion of the procedures which  
27 state that an employment application may be accepted as valid documentation if it “reasonably supports  
28 that the employee was basic skills deficient, school dropout, public assistance, a veteran, an offender or

1 disabled, unemployed, etc.” Appellant notes that respondent’s auditor sustained many vouchers based  
2 on a job application and appellant asserts that, by declining to rely on applications, respondent is  
3 ignoring a widely followed business practice. (App. Reply Br., pp. 3-4.)

4 Appellant further contends that respondent misapplies the criteria for eligibility under the  
5 “dislocated worker” category in its determination that appellant had not shown that the employees in  
6 that category were “unemployed” for 15 out of the 26 weeks prior to hire by appellant. Appellant notes  
7 that respondent contended that the JTPA defined “unemployed individuals” as “individuals who are  
8 without jobs and who want and are available for work.” Appellant states that each individual satisfied  
9 that definition as each was interviewed and accepted a job with appellant, which indicates that each  
10 wanted to work and was available to work. (App. Reply Br., p. 4.)

11 With respect to respondent’s position that appellant failed to meet its burden of proof,  
12 appellant contends that respondent assigns no importance to the fact that appellant obtained a voucher  
13 for each employee for whom the EZ hiring credits were claimed. While acknowledging that the Board  
14 in *Appeal of Deluxe Corporation, supra*, held that respondent has authority to review the validity of  
15 vouchers, appellant asserts that the vouchering agency is in a better position to make factual  
16 determinations about local economic conditions than respondent. Appellant asserts that the 42 separate  
17 local coordinators were created in order to apply their specialized experience and training about local  
18 economic conditions. (App. Reply Br., p. 5.)

#### 19 Respondent’s Contentions

20 In its opening brief, respondent contends that, except for a few employees, appellant  
21 provided only a voucher and a job application which does not satisfy minimum documentation  
22 requirements to establish eligibility. (Resp. Opening Br., p. 13.) As support for its position, respondent  
23 points to the JTPA Technical Assistance Guide (TAG) which provides a comprehensive list of  
24 acceptable documentation to establish each eligibility requirement and states that a job application was  
25 acceptable only for the limited purpose of verifying an applicant’s social security number. (Resp.  
26 Opening Br., p. 4, exhibit H, p. 8 et seq.) Respondent also states that the EDD issued guidance for  
27 acceptable documentation which, to the extent applicable, was the same as the TAG. (EDD 97-7.)  
28 (Resp. Opening Br., p. 4.) At the time that the vouchers were issued, TTCA had adopted guidelines for

1 EZ vouchering agents which incorporated the foregoing standards. Finally, respondent states that HCD  
2 has more recently adopted regulations which, while not applicable to the vouchers at issue, are  
3 instructive as they provide examples of acceptable documentation for the categories addressed in this  
4 appeal. (Resp. Opening Br., p. 5.)

5 With its opening brief, respondent provided an “Analysis of Employee Eligibility”  
6 (Eligibility Analysis) for 92 employees, identified by letter-number designators, whom respondent  
7 determined were not qualified employees and disallowed those claims for EZ hiring credits.<sup>7</sup> The  
8 Eligibility Analysis is attached to this hearing summary (attached hereto as exhibit 1). The entry for  
9 each employee (1) lists the eligibility category, (2) provides respondent auditor’s analysis describing the  
10 evidence submitted and explaining the eligibility requirement or requirements that the employee has not  
11 satisfied, (3) provides a summary of appellant’s position stating the justification for eligibility and (4)  
12 for most entries, provides the auditor’s comments which generally state one or more additional reasons  
13 for disallowance. The following summarizes respondent’s findings of ineligibility by category of  
14 employee and identifies each employee by the letter-number designator used in the Eligibility Analysis.

15 JTPA 10% - School Drop Out – D15, D16, E22, E23, G26, G31, M41, M42, O49, O50, P52, S70, V84

16 The job applications did not show that these individuals dropped out of school and appellant has not  
17 shown that the individuals were economically disadvantaged as required by statute.

18 JTPA 10% - 55 or older – H32, N47, O51, S61, S62, T79, T80, V83.

19 Appellant has not shown that the individuals were economically disadvantaged as required by statute  
20 and has not demonstrated a substantial barrier to employment. An employee’s age of 55 or older is not a  
21 substantial barrier to employment.

22 Veteran – A1, A2, H34, S63. Appellant provided no evidence that the employees were veterans.

23 Long-Term Unemployed – A2, A4, B5, B6, B7, B9, C10, C11, C12, C13, D17, D18, E21, G27, G29,  
24 G30, I35, L37, L38, L39, L40, M45, M46, N48, P53, R55, R56, R57, R59, S64, S65, S66, S67, S68,  
25 S69, S71, S73, T74, T75, V85, W89, W90, W91.

26  
27  
28 <sup>7</sup> Appellant conceded the EZ hiring credit claims for employees B8, D19, E20, F24, H33, M43, R58, S72, and W88.  
Appellant apparently conceded the claim for employee T76 because no evidence was submitted to show that she was a Native  
American and appellant did not respond to the auditor’s finding.

1 Appellant has not shown that the employees met the following statutory requirements: the individual had  
2 been unemployed for 15 out of the prior 26 weeks and had limited opportunities for employment in the  
3 same or a similar occupation in the area in which the individual resided.

4 Self-Employed – A3, F25, K36, L37, T77, T78, W92

5 Appellant has not shown that the employees were unemployed due to general economic conditions as  
6 required by statute.

7 TEA – B5

8 The employee’s Form I-9 shows that he did not live inside the enterprise zone and thus was not qualified  
9 under TEA.

10 Terminated/Laid Off – G28, M44, P54, R56, R60, T81, U82, W86, W87

11 Appellant has not presented evidence to demonstrate that the employees were terminated, were eligible  
12 for or had exhausted entitlement to unemployment insurance benefits, and was unlikely to return to their  
13 previous industries or occupations as required by statute. For employees M44 and W87 appellant  
14 provided no evidence to support the claims.

15 Supplemental Briefing

16 In its supplemental brief, respondent states that based on the Board’s decision in the  
17 *Appeal of Jessica McClintock* respondent does not take the position that JTPA 10% is not an eligibility  
18 category. (Resp. Supp. Br., p. 2.) However, respondent notes that an individual must have a serious  
19 barrier to employment to fall within that category. Respondent contends that “older worker” by itself is  
20 not a serious barrier to employment category for JTPA 10% purposes and presents the JTPA 1 ERF and  
21 the JTPA D96-5 as support for that position. Specifically, respondent references the authority of a local  
22 SDA to develop state-approved additional barriers to employment and points the barrier set forth in that  
23 document which is described as “Older individual with low income” and defined as “Individuals age 55  
24 or older whose income does not exceed 125% of the Poverty Guidelines”. (Resp. Supp. Br., pp. 5-6.)

25 Appellant states that “based upon Respondent’s concession”, respondent must allow  
26 credits for 25 named individuals, “found to be eligible for services under, but not enrolled in, a JTPA  
27 program.” Appellant then argues that “older worker” by itself is a serious barrier to employment  
28 category and points to the JTPA 1 ERF Part 1 which has a box 48 for “10% Window (non-

1 Economically Disadvantaged)” and one of the categories that may be selected is “older worker”.  
2 Appellant contends that EDD has never taken the position that low-income was a requirement for an  
3 older worker’s eligibility. Furthermore, such an interpretation is contrary to the Board’s decision in  
4 *Appeal of Jessica McClintock* and would place an untenable burden on employers to gather such  
5 information from employees. (App. Supp. Br., pp. 3-4.)

6 STAFF COMMENTS

7 At the hearing, the parties may wish to discuss the relevance, if any, of  
8 Section 1604(d)(5), which provides that JTPA services may be provided to “older individuals” if such  
9 older individuals are also economically disadvantaged or, among other things, face serious barriers to  
10 employment.<sup>8</sup> The parties may also wish to address the relevance, if any, of subsection (d) of  
11 Section 1603 of the JTPA. This subsection generally provides that if a service area intends to add a  
12 category of individuals who face “serious barriers” to employment to the categories expressly listed in  
13 subsection (b), it must, among other things, obtain the approval of the Governor. Since neither  
14 subsection (b) nor subsection (c) expressly lists “older worker” or “older individual” as a category of  
15 individual facing a “serious barrier” to employment, does subsection (d) effectively require the pre-  
16 approval of the Governor in order to add “older worker” as a category of individuals facing serious  
17 barriers to employment?

18 At the hearing, the parties should also be prepared to provide the amount of the hiring  
19 credit at issue with respect to each employee so that the Board has this information available if it  
20 determines that the hiring credit is available with respect to some, but not all, of the employees at issue.

21 Attachment: Exhibit 1

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28 <sup>8</sup> See FTB Supp. Br., June 22, 2007, Exhibit 3 (which sets forth this provision in full).