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California Competes Tax Credit Program

Committee Meeting

**Thursday, November 16, 2017
10:30 a.m.**

Department of Food and Agriculture
Auditorium
1220 N Street
Sacramento, CA 95814

And (via teleconference)
Fontana City Hall
Executive Conference Room
8353 Sierra Avenue
Fontana, CA 92335

MEMBERS:

Panorea Avdis, *Chair
Director
Governor's Office of Business
and Economic Development*

John Chiang
State Treasurer

Michael Cohen, *Director
Department of Finance*

Denise Zapata, *Appointee of
the Senate Committee on Rules*

Madeline Janis, *Appointee of
the Speaker of the Assembly*

AGENDA

A. Call to Order and Roll Call

Chair Avdis called the meeting of the California Competes Tax Credit Committee (Committee) to order at 10:31 a.m.

Members Present: Panorea Avdis, Steve Juarez (representing the State Treasurer), Eraina Ortega (representing the Director of the Department of Finance), and Denise Zapata via teleconference.

Members Absent: Madeline Janis

B. Approval of Minutes from June 15, 2017, Committee Meeting

Chair Avdis called for any questions or comments from the Committee or public regarding Agenda Item B.

Action Moved/Seconded: Member Juarez/Member Ortega.

Yes: Members Avdis, Juarez, Ortega, Zapata

No: None



C. Deputy Director's Report

- **Agenda Overview – Agreements with 90 Businesses, Total Tax Credits \$69,575,083.**

Chief Deputy Director Koch provided the Committee with the following updates:

Kristen Kane recently accepted a new position and is no longer with GO-Biz. We hope to have a new Deputy Director of California Competes Tax Credit (CCTC) program before our next committee meeting.

At our last meeting we discussed finding the appropriate balance between staff time and the value of information provided in gathering applicant responses to the diversity and inclusiveness question in the application. In the briefing material for today's meeting, we included each business' complete answer to that question if the credit amount awarded is \$1 million or more. We will continue to do so going forward.

Agreement compliance was also a topic of the last few meetings and I would like to review the roles and responsibilities of both GO-Biz and the Franchise Tax Board (FTB). It is GO-Biz's role to administer the program, accept and review applications for the credit, and enter into contracts to allocate the credit to businesses. Each agreement requires businesses to achieve hiring and investment commitments which we call "milestones" before they can claim the credit on their tax return. All agreements provide businesses that don't achieve their milestones an opportunity to catch up and achieve the milestones and claim the credit in a later tax year within the life of the agreement.

Verification of whether or not businesses actually achieve these goals is statutorily vested with the FTB. Prior to an FTB review, GO-Biz has an annual certification requirement via a worksheet provided to the businesses each year to help them determine if they have met their milestones. For businesses that are considered a non-small business, those with gross receipts of \$2 million or greater, FTB has a 100% requirement to review books and records and verify compliance. For small businesses, such a review is at the discretion of FTB.

Our agreements span five tax years and there is also a three tax year maintenance requirement. Therefore, it could be up to eight years from the agreement before FTB is complete with its review process. Should FTB identify a breach of the agreement, it will notify GO-Biz, which will then notify the Committee to consider for a credit recapture. To date, we have received no such notice from FTB regarding a breach of an agreement nor would we expect to receive any until the earliest agreements approach their five year close date.

Mr. Koch then asked for any questions from the Committee on this topic.

Member Juarez asked about a scenario where an awarded taxpayer has taken the credit, then subsequently has the credit recaptured, do we have the ability to recoup those funds claimed?

Chief Deputy Director Koch said Franchise Tax Board (FTB) has that ability.



Member Juarez asked how investment amounts play into the awarding determination.

Mr. Koch said job growth is the primary goal of the CCTC, and though investment does play a part in supporting net increase of jobs, some projects do not have investments.

Member Juarez then asked if a lack of investments disqualifies an applicant.

Mr. Koch said no, it does not.

At Koch's request, California Competes Counsel Van T. Nguyen presented on a number of legal issues. First, Mr. Nguyen provided an overview of the CCTC program's experience with California Public Records Act (CPRA) requests. Mr. Nguyen described the types of documents that were most commonly sought and then outlined the most applicable exemptions under the CPRA. Mr. Nguyen then discussed the legal issues and concerns that would result if GO-Biz provided confidential documents to the CCTC Committee members. The first issue is that if the CCTC Committee members considered and evaluated confidential documents that the public does not have access to, then this would create a tension between the privilege/exemption protecting the confidentiality of the document and the purpose of the Bagley Keene Open Meeting Act, which is to ensure that the public can meaningfully monitor and participate in the decision-making process. The second issue is that under California Government Code section 11125.1, documents distributed to all, or a majority of all the members of a public body, are disclosable public records under the CPRA, with only limited exceptions. By providing the documents to the CCTC committee, the documents can no longer be protected from disclosure using the balancing test under Government Code section 6255(a) and must fit within a statutory exemption to avoid losing their confidentiality. Finally, Mr. Nguyen stated that the use of a closed session to maintain the confidentiality of documents would not be consistent with the intent of the applicable laws as the documents do not fall under the items or matters statutorily permitted to be considered in closed session.

D. Discussion and Approval of California Competes Tax Credit Agreements with Businesses other than Small Businesses

Total Recommended Tax Credits:	\$53,331,750
Total Recommended Tax Credits after Adjusting for S-Corporation Law¹:	\$56,231,333

Chair Avdis called for any questions or comments from the Committee or the public regarding Agenda Item D. There were none. Chair Avdis stated Agenda Item D-4 was removed from consent for further discussion after Agenda Item D.

Chair Avdis asked for a motion to approve all items under Agenda Item D except for items D-4.

¹ One-third of the California Competes Tax Credit may be utilized by an S-Corporation to offset the tax on net income at the S-Corporation level (R&TC §23803(a)(1)). The remaining two-thirds is disregarded and may not be used as a carryover for the S-Corporation (R&TC §23803(a)(2)(A)). However, the full amount of the California Competes Tax Credit is also passed through to the S-Corporation's shareholders (R&TC §23803(a)(2)(F)).



Action Moved/Seconded: Ortega/Juarez
Yes: Members Avdis, Juarez, Ortega, Zapata
No: None

Member Ortega abstained from voting on item D4.

Chair Avdis called for any questions or comments from the Committee or public regarding Item D-4. Seeing none, she asked for a motion to approve Item D-4.

Action Moved/Seconded: Juarez/Avdis
Yes: Members Juarez, Zapata, Avdis
No: None
Abstain: Ortega

E. Discussion and Approval of California Competes Tax Credit Agreements with Small Businesses

Total Recommended Tax Credits: \$11,727,812
Total Recommended Tax Credits after Adjusting for S-Corporation Law²: \$13,343,749

Chair Avdis called for questions or comments from the Committee or public regarding Agenda Item E. Hearing none, she requested a motion to approve Agenda Item E.

Member Juarez indicated that his vote on agenda item E-2, Sila Nanotechnologies would have no bearing on a CAETFA hearing the business is scheduled for next month.

Action Moved/Seconded: Ortega/Juarez
Yes: Members Avdis, Juarez, Ortega, Zapata
No: None

F. Discussion and Approval of Recommendations for California Competes Tax Credit Agreement Termination and Credit Recapture

Total Tax Credits Recommended to be Recaptured: \$7,588,000
Total Tax Credits Recommended to be Recaptured after Adjusting for S-Corporation Law: \$7,874,667

Chair Avdis asked for any comments from the Committee.

² One-third of the California Competes Tax Credit may be utilized by an S-Corporation to offset the tax on net income at the S-Corporation level (R&TC §23803(a)(1)). The remaining two-thirds is disregarded and may not be used as a carryover for the S-Corporation (R&TC §23803(a)(2)(A)). However, the full amount of the California Competes Tax Credit is also passed through to the S-Corporation's shareholders (R&TC §23803(a)(2)(F)).



Member Ortega asked about the staff report language in Item F-3, as it is noticeably different than the others as it mentions a material breach of the agreement.

Koch responded that all businesses except F-3 voluntarily asked to be withdrawn from the program. F-3 (ISO Nano) is different because we reached out in accordance with our compliance procedures but received no response. Eventually, we determined that the ISO Nano was no longer in business. We went through all of our required processes and followed the terms and conditions of the agreement to recapture the credit.

Action Moved/Seconded: Ortega/Avdis

Yes: Members Avdis, Juarez, Ortega, Zapata

No: None

Member Juarez brought up a Legislative Analyst's Office (LAO) report which had some serious points to make about the program. Is GO-Biz prepared to respond? How do we intend to proceed forward based on the points made in the report?

Koch stated that GO-Biz has evaluated the LAO report and is in the process of putting together a fact sheet to document our view of the program. GO-Biz does not disagree with everything in the report, such as the fact that it correctly points out that GO-Biz administers the program in accordance with the statutory requirements and we agree with the LAO that it is a well-managed program. Over the years, the Committee has heard directly from dozens of businesses that have explained how important this credit is to help them to achieve growth in California. GO-Biz also received a note from a prior credit awardee after the release of the LAO report which stated, "Cal Competes has been instrumental in achieving the intended growth. The program has allowed us to make stretch goals and then incentivized us to achieve those goals. I've authorized the procurement of several expensive machine tools this year alone which I would not have done this quickly without the GO-Biz program. Additionally, we've reinvested savings from the program to increase the starting wages of manufacturing workers."

Koch added that it is the view of GO-Biz that the CCTC is vital for growing businesses in California. To that end GO-Biz will be developing a fact sheet about the program that specifically addresses the points raised by the LAO report.

Member Juarez asked that the committee members be notified about the specifics of the fact sheet when it is ready.

Koch replied in the affirmative.

Chair Avdis stated that it will be provided to the Committee members.



G. Public Comment

Chair Avdis opened the meeting up for comments from the public.

Elaine Litster from SAFECHECKS (Agenda Item E-34) indicated that she wanted to commend the program. She and her husband Greg founded the company 20 years ago. While earning her Master's degree from UCLA in Urban Planning with an emphasis in social policy analysis, she examined the efficacy of enterprise zones in her thesis. In her study, she found that many businesses did not realize they were in an enterprise zone, and the majority indicated that their additional hiring was not attributable to being in an enterprise zone. She believes the CCTC is much more specific, and in being more quantifiable, the program is on the right track. Because of the program we can meet the goals that we talked about, and might not be able to do so without it. She believes it is interesting to come full circle on the issue of what stimulates job growth. She commended the Committee and gave thanks for allowing them to be part of the program.

Member Avdis thanked the commenter and congratulated her business on the credit award.

H. Adjournment

Chair Avdis adjourned at the meeting at 10:59 a.m.

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