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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **CORPORATION FRANCHISE TAX APPEAL**
12 **STANDARD REGISTER COMPANY¹**) Case No. 417837

13
14 TYE Claim
15 12/31/1999 For Refund²
16 \$64,921

16 Representing the Parties:

17 For Appellant: Marty Dakessian, Akerman Senterfitt LLP
18 Jon A. Sperring, PricewaterhouseCoopers LLC
19 LaShelle T. Wilson, California Credits Group, LLC
20 For Franchise Tax Board: Ann H. Hodges, Tax Counsel III

21 QUESTION: Whether appellant has demonstrated that it is entitled to the claimed Enterprise Zone
22 Hiring Credits.

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24 ///

25
26 ¹ Appellant is headquartered in Dayton, Ohio.

27 ² This amount represents the amount of enterprise zone hiring credit denied. During the course of the appeal, respondent has
28 allowed some of the denied credits. The parties should be prepared to provide an accurate amount at issue and to state what part of this claim for refund has already been allowed by respondent.

1 HEARING SUMMARY

2 Background

3 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 (TCA) was responsible for administering the vouchering program, and was specifically tasked
17 with conducting compliance audits of the EZs.³ Appellant attained vouchers for its employees for TYE
18 12/31/1999 from the Richmond Works, Porterville, and Yuba Sutter EZs. (Resp. Reply Br., p. 1.)⁴

19 Factual Background

20 For the tax year ending (TYE) 12/31/1999, appellant operated in the West Sacramento
21 and Porterville EZs in California. Appellant claimed EZ hiring credits in the amount of \$99,002 on its
22 original return for TYE 12/31/1999. (Resp. Reply Br., p. 1 & exhibit A p. 14.) Respondent audited
23

24 ³ On January 1, 2004, the Housing and Community Development Department (HCD) took over the responsibility for
25 administering the vouchering program.

26 ⁴ Respondent has submitted a copy of audit results and findings for the Richmond EZ dated August 14, 2006 and marked
27 “DRAFT.” (Resp. Reply Br., exhibit B.) Respondent notes that this document indicates that the Richmond EZ failed the
28 audit. (Resp. Reply Br., p. 1, fn. 2.) However, the briefing does not indicate which vouchers, if any, were issued from this
EZ location for the employees at issue in this appeal, or when those vouchers were issued. Furthermore, the document
explicitly states that it only covered the time period from 2002 to 2004, and that the 2002 audit for the Richmond EZ, which
was an extension of a 1997 audit and included the year at issue in this appeal, concluded that the EZ received a passing score
of 186 out of 200 (150 required). (*Id.*, at p. 14.)

1 appellant and on July 8, 2004, issued a Notice of Proposed Assessment (NPA). (App. Appeal Letter,
2 exhibit B.) In response, appellant protested the NPA and submitted an amended return signed May 31,
3 2005. (Resp. Reply Br., exhibit A, pp. 1-9.) On this amended return, appellant claimed an additional
4 \$169,689 in EZ hiring credits for a total of \$268,691, and provided vouchers for the employees from the
5 Richmond Works, Porterville, and Yuba Sutter EZs.⁵ (Resp. Reply Br., p. 1 & exhibit A, pp. 6 & 8.)

6 On May 4, 2007, respondent issued a Notice of Action (NOA) amending the NPA by
7 allowing \$203,770 in EZ hiring credits and disallowing the remaining \$64,921. (App. Op. Br., exhibit
8 A.) This timely appeal followed. Respondent states in its additional brief that it is willing to allow the
9 credits for the 2 contested employees under the Job Training Partnership Act (JTPA) category JTPA –
10 Youth (Married/Pregnant) based on evidence subsequently provided by appellant.⁶ (Resp. Supp. Br., p.
11 10.) The remaining 6 contested EZ hiring credits fall under these eligibility categories:

<u>Category</u>	<u>Employees</u>
JTPA - Older Worker (55 or older)	2
Dislocated Worker, Plant Closure	1
Dislocated Worker, Laid Off	3

16 (Resp. Supp. Br.)

17 Applicable Law

18 R&TC section 23622.7 requires, as a condition to be eligible for the hiring credit via the
19 JTPA, that an employee be a qualified employee by either receiving services funded by the JTPA (or its
20 successor) or be “eligible” for such services. In relevant part, Revenue and Taxation Code (R&TC)
21 section 23622.7, subd. (b)(4)(A)(iv)(I), defines a “qualified employee,” for purposes of the hiring credit,
22 as including an individual who:

23 “Immediately preceding the qualified employee's commencement of employment with
24 the taxpayer, was a person eligible for services under the federal Job Training Partnership
Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to

25
26 ⁵ Respondent indicates that appellant claimed EZ hiring credit for approximately 54 employees and provided vouchers in the
27 following amounts from EZs: 28 from Richmond Works, 21 from Porterville, and 5 from Yuba Sutter. (Resp. Reply Br., p.
1.)

28 ⁶ The appeal amount still reflects the disallowance of these employees. Respondent should be prepared to provide the
amount of credit allowed for these workers and the amount of refund claimed still at issue.

1 receive, subsidized employment, training, or services funded by the federal Job Training
2 Partnership Act, or its successor.”⁷

3 Section 1603 of the federal JTPA, which addresses whether an individual is “eligible” for
4 services under the JTPA, is set forth in full below (emphasis is added).

5 “§ 1603. Eligibility for services

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

- 8 (1) 22 years of age or older; and
- 9 (2) economically disadvantaged.

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

- 14 (1) Individuals who are basic skills deficient.
- 15 (2) Individuals who are school dropouts.
- 16 (3) Individuals who are recipients of cash welfare payments.
- 17 (4) Individuals who are offenders.
- 18 (5) Individuals with disabilities.
- 19 (6) Individuals who are homeless.
- 20 (7) Individuals who are in a category established under subsection (d).

21 (c) **Special rule.** Not more than 10 percent of participants in a program assisted
22 under this part [29 USCS §§ 1601 et seq.], other than participants served under section
23 204(d) [29 USCS § 1604(d)], in each service delivery area may be individuals who are
24 not economically disadvantaged if such individuals are age 22 or older and within 1 or
25 more categories of individuals who face serious barriers to employment. Such categories
26 may include the categories described in subsection (b), or categories such as displaced
27 homemakers, veterans, alcoholics, or addicts.

28 (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
serious barriers to employment to the categories of eligible individuals described in
subsection (b) if--

- 29 (1) the service delivery area submits a request to the Governor identifying the
30 additional category of individuals and justifying the inclusion of such category;
- 31 (2) the additional category of individuals is not solely comprised of--
 - 32 (A) individuals with a poor work history; or
 - 33 (B) individuals who are unemployed; and
- 34 (3) the Governor approves the request submitted under paragraph (1) and
35 transmits a description of the approved request to the Secretary, as part of the Governor's
36 coordination and special services plan under section 121 [29 USCS § 1531].
37 [Underscoring added.]

38 Section 1603 (a) of the JTPA provides generally that eligibility for participation in the
39 JTPA requires that an individual be 22 years of age or older and economically disadvantaged. However,

40 _____
41 ⁷ Although other requirements must also be met for an employee to be a “qualified employee” for purposes of the hiring
42 credit, these other requirements have not been disputed by the parties.

1 subsection (c) of Section 1603 provides that no more than 10 percent of participants assisted under the
2 JTPA in each service delivery area (SDA) may be individuals who are *not* economically disadvantaged
3 if such individuals are age 22 or older and fall within one or more categories of individuals facing
4 serious barriers to employment. The group of individuals who qualify under this provision are referred
5 to as “JTPA 10%.”

6 The serious barriers to employment categories may include the categories described in
7 subsection (b) of section 1603 or categories such as displaced homemakers, veterans, alcoholics, or
8 addicts. Furthermore, under subsection (d) a SDA may add one category of individuals who face serious
9 barriers to employment to the categories described in subsection (b) provided that the SDA submits a
10 request to the Governor identifying the additional category with justification for inclusion of the
11 category and the additional category is not solely comprised of individuals with a poor work history or
12 those who are unemployed.

13 With respect to the additional category of individuals who face serious barriers to
14 employment allowed by subsection (d), the California Employment Development Department (EDD)
15 issued a JTPA Directive number D96-5, dated August 13, 1996 (JTPA D96-5), which listed state-
16 approved additional barriers to employment.⁸ (Resp. Reply Br., exhibit F.)⁹ JTPA D96-5 explains that
17 SDAs may select barriers from the list or may specify barriers other than those on the list. (*Id.* at p. 3.)
18 Among the categories listed is “older individual with low income” which is defined as “[i]ndividuals age
19 55 or older whose income does not exceed 125% of the Poverty Guideline.” (*Id.* at p. 5.)

20 Section 1604, subsection (d), of the JTPA authorizes the Governor to provide for job
21 training and placement programs for older individuals. Subsection (d)(5)(A) provides that an individual
22 shall be eligible to participate in a job training program under subsection (d) “only if the individual is
23 economically disadvantaged and is an older individual.” Subsection (d)(5)(B)(i) sets forth an exception
24 to the eligibility requirements by providing that an individual who is not economically disadvantaged
25

26 ⁸ The EDD was the state agency responsible for administering the JTPA.

27 ⁹ Staff notes that respondent’s reply brief contains two exhibit F’s. The second exhibit F, which is a 31 page copy of EDD
28 JTPA Directive number D97-7, is also included as exhibit G. Therefore, respondent’s reply brief exhibit F will only refer to
the first exhibit F, the 8 page copy of JTPA D96-5.

1 shall be eligible to participate in a program assisted under this subsection if the individual “faces serious
2 barriers to employment, is an older individual and meets income eligibility requirements under Title V
3 of the Older Americans Act of 1965.” (See Resp. Reply Br., exhibit D, p. 12.) However, no more than
4 10 percent of all participants may be individuals in the latter category. (29 U.S.C. § 1604(d)(5)(B)(ii).)

5 The JTPA application/registration form (JTA 1 ERF Part 1) requires that an applicant
6 provide necessary information to determine eligibility for JTPA services.¹⁰ (Resp. Reply Br., exhibit E,
7 pp. 4 & 5.) The first page, titled “Eligibility Information,” requires applicants to provide information as
8 to their qualification for JTPA 10 percent status. (*Id.* at p. 4.) Box 48 on page 1 is titled “10% Window
9 (for Non-Economically Disadvantaged Only),” and provides several categories for an applicant to self-
10 identify his or her qualification, including the category “Older Worker.” Box 49 on page 1 is titled
11 “Dislocated Worker,” and provides eligibility categories including “Terminated or Laid off” and “Plant
12 Closure/Sub Layoff.” (*Id.*)

13 The two “Dislocated Worker” eligibility categories from Box 49 are also included in
14 R&TC section 23622.7. To be eligible, a worker who has been terminated or laid off must also have
15 been eligible for or have exhausted entitlement to unemployment insurance benefits immediately
16 preceding employment with the taxpayer, and have been unlikely to return to his or her previous
17 industry or occupation. (Rev. & Tax. Code, § 23622.7, subd. (b)(4)(A)(iv)(IV)(aa).) A dislocated
18 worker who seeks eligibility because his or her employment was terminated due to a permanent closure
19 or substantial layoffs needs to provide evidence he or she received written notification of the event or
20 provide proof of a public announcement of the event by the employer. (Rev. & Tax. Code, § 23622.7,
21 subd. (b)(4)(A)(iv)(IV)(bb).) Respondent has the authority to review and disallow hiring credit
22 vouchers. (*Appeal of Deluxe Corp.*, 2006-SBE-03, Dec. 12, 2006, at p. 10.)

23 Contentions

24 Appellant contends that it is entitled to all of the EZ hiring credits denied by respondent.
25 Respondent allowed some of the EZ hiring credits originally contested, but still disallows 6 employees
26 based on three categories of eligibility. Respondent contends that appellant has not substantiated some
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28 ¹⁰ JTA is an abbreviation for the Job Training Automation (JTA) System.

1 employees' eligibility with proper documentation, and that other employees are not qualifying
2 employees based on the category appellant uses.¹¹

3 JTPA 10% - Older Worker (55 or older)

4 Respondent's Contentions:

5 Respondent states that while it does not contest that JTPA 10 percent is an eligibility
6 category, it argues that being an "older worker", i.e., 55 years of age or older, is not by itself a serious
7 barrier to employment for purposes of the JTPA 10 percent category. (Resp. Reply Br., pp. 3-7.)
8 Respondent contends that the 1992 amendment to the JTPA showed a legislative intent to make an
9 income requirement applicable to older workers seeking eligibility. Among other things, "older
10 workers" was removed from the list of serious barriers to employment and individuals of 55 years of age
11 or older were deemed eligible for the program if they either were economically disadvantaged or faced
12 serious barriers to employment and met the income requirements of the Older Americans Act. (Resp.
13 Supp. Br., p. 4.) Respondent also refers to the Older Americans Act (OAA), enacted 1965, to show a
14 legislative history of using a low income requirement in addition to age to determine eligibility for
15 assistance. (*Id.*)

16 Respondent references the "Eligibility Information" portion of JTA 1 ERF Part 1, stating
17 that "Older Worker" is listed as a serious barrier to employment for purposes of JTPA 10 percent.¹²
18 Respondent indicates that the origin of this barrier is as a "Governor Approved Statewide Additional
19 Category." (Resp. Reply Br., p. 5.) Respondent also notes that the "JTPA Client Forms Handbook,"
20 published by the EDD, states in pertinent part that JTPA 10 percent candidates can qualify if they belong
21 to a category of individuals who face serious barriers, including any locally identified categories
22 included in the SDA's approved Job Training Plan. (Resp. Reply Br., p. 6.) Respondent notes that there
23 is a directive that sets forth policies and procedures for local SDAs to request that the Governor approve
24 additional serious barriers to employment and lists the previous Governor-approved serious barriers.

26 ¹¹ For ease of comprehension, the contentions will be presented on a topic by topic basis with the respondent's contentions
27 first.

28 ¹² Respondent notes that the Board apparently decided that "older worker" was a serious barrier to employment in *Appeal of
Jessica McClintock*, a non-precedent decision, possibly based on this form. (Resp. Reply Br., p. 3.)

1 (*Id.*)

2 Respondent contends that EDD Directive 96-5 (JTPA D96-5), effective August 13, 1996,
3 lists the state-approved additional barriers to employment. (Resp. Reply Br., exhibit F.) JTPA D96-5
4 explains that SDAs may select barriers from the list or may specify barriers other than those on the list
5 with approval from the Governor. Among the categories listed is “older individual with low income”
6 and the barrier to employment for that category is defined as “[i]ndividuals age 55 or older whose
7 income does not exceed 125% of the Poverty Guideline.” (Resp. Reply Br., exhibit F, p.5.) Thus,
8 respondent contends that an individual 55 or older must also meet the specified income requirement in
9 order to be considered to have the state-approved barrier. Respondent indicates that appellant’s reliance
10 on an outdated manual issued to its auditors is not persuasive in light of JTPA D96-5. (Resp. Supp. Br.,
11 p. 9 & exhibit P.) Respondent notes that the manual did not instruct auditors to allow the credit for
12 “older workers” under the JTPA 10 percent category, but rather only allowed it if they were already
13 enrolled in the JTPA program (a practice that is obsolete). (Resp. Supp. Br., p. 9 & exhibit P, p. 5, fn.
14 6.)

15 Respondent asserts, through reference to JTPA D96-5 and the state-approved additional
16 barriers to employment, that appellant has not shown that the older worker category (without an income
17 requirement) has been approved as a locally identified category in the SDA’s approved Job Training
18 Plan. (Resp. Supp. Br., p. 7.) Respondent contends that appellant has not presented any evidence that
19 the individuals have met the low-income requirement and, thus, has not established that they are
20 qualified employees for the EZ hiring credit. (Resp. Supp. Br., p. 2.)

21 Appellant’s Contentions:

22 Appellant contends that respondent incorrectly denied its claim for EZ hiring credits for
23 two employees who fell into this category. Appellant contends that the Board has decided that the law
24 requires only that an individual be 55 years of age or older to qualify under the older worker category.
25 (App. Reply Br., p. 4; Resp. Reply Br., exhibit C; see also App. Reply Br., exhibit A.) Appellant asserts
26 that it has provided all the necessary documentation to verify these employees are 55 years of age or
27 older, the age required by the JTPA to be considered an older worker. (App. Reply Br., p. 3.)

28 Appellant contends that it has established that the individuals were “eligible” for services

1 under subsection (c) of section 1603 of the JTPA and, therefore, that the individuals were qualified
2 employees for purposes of the hiring credit provided by R&TC section 23622.7, subdivision
3 (b)(4)(A)(iv)(I). (App. Reply Br., pp. 3-9.) Appellant asserts that subsection (c) of Section 1603 must
4 be construed to mean that an individual who is not “economically disadvantaged” may be eligible for
5 JTPA services if he or she is faced with a “serious barrier to employment.” (App. Reply Br., p. 4.)
6 Appellant states that subsection (c) provides an open list by saying the categories “may include” barriers
7 “such as” the ones expressed in the statute. Appellant contends that other state-approved barriers, such
8 as older workers, that are not expressly listed qualify as well. (*Id.*) Appellant asserts that the Board has
9 previously found that older workers are eligible for JTPA services regardless of income level. (App.
10 Reply Br., p. 5.)

11 Appellant points to the JTA 1 ERF Part 1 page titled “Eligibility Information” which
12 includes a “10% ‘Window’ (for Non-Economically Disadvantaged Only)” (Box 48) which lists “older
13 worker” among other categories of serious barriers. (App. Reply Br., p. 5; Resp. Reply Br., exhibit E, p.
14 4.) Appellant also asserts that the instructions to Box 48 offer further proof that being an older worker is
15 a serious barrier. The instructions state: “[i]ndividuals who are not economically disadvantaged and do
16 not meet the income requirements under Title V of the OAA may be assisted because they are within
17 one or more categories of individuals who face serious barriers to employment.” (Resp. Reply Br.,
18 exhibit E, p. 21.) Appellant contends that this means employees in the older worker category are
19 eligible for JTPA services regardless of income by virtue of age alone, particularly since the reference to
20 the OAA inherently refers to individuals of 55 years of age or older. (App. Reply Br., pp. 5-6.)

21 Appellant states that respondent’s position is also inconsistent with the instructions given
22 to its staff in the Economic Development Areas Manual which states that JTPA 10 percent exception
23 categories include “Older Worker (55 or older).” (Resp. Supp. Br., exhibit P, p. 5, fn. 6.)¹³ Appellant
24 contends that respondent is mistaken in its application of JTPA D96-5. While agreeing with the general
25 premise asserted by respondent, that it states that “older worker” is only a serious barrier to employment
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28 ¹³ It should be noted that while this manual decidedly lists “older worker” as a serious barrier, it also specifically instructs
staff to disregard any voucher served under this category unless the employee is in fact enrolled in the JTPA (as opposed to
just being eligible for the JTPA program). Respondent notes that this action is out of date, and therefore this section of the
manual should be disregarded entirely.

1 if the employee is 55 years of age or older and also meets low-income requirements, appellant contends
2 that the directive's application is much more limited than respondent acknowledges. (App. Reply Br.,
3 pp. 7-9.) Appellant asserts that JTPA D96-5 refers only to an "older worker with low income," since it
4 mirrors the requirements of eligibility for OAA, which in itself satisfies the eligibility requirement for
5 the JTPA program. (App. Reply Br., p. 8.) Appellant argues that since an older worker with low
6 income is already eligible for services through Box 47 on the JTA 1 ERF Part 1, the "older worker"
7 category listed in Box 48 must relate to older workers who do not satisfy the low-income requirements.
8 (App Reply Br., pp. 8-9.)

9 Dislocated Worker – Plant Closure

10 Respondent's Contentions:

11 Respondent indicates that an employee can be eligible for EZ hiring credit purposes
12 under the R&TC if immediately preceding the employee's commencement of employment with the
13 taxpayer, the employee:

14 Has been terminated or has received a notice of termination of employment as a result of
15 any permanent closure or any substantial layoff at a plant, facility, or enterprise,
16 including an individual who has not received written notification but whose employer has
17 made a public announcement of the closure or layoff.

18 (Rev. & Tax. Code, § 23622.7, subd. (b)(4)(A)(iv)(IV)(bb).)

19 Respondent states that appellant has only provided an employment application to verify
20 the employee's eligibility. Respondent argues that an employment application, completed by the
21 employee, does not count as third-party verification as required for this category. (Resp. Reply Br., p.
22 11.) Respondent contends that it generally refers to supporting documents used by vouchering agents
23 when reviewing vouchers. (Resp. Reply Br., exhibit J, p. 5.) Respondent indicates that there is more
24 than one source that provides a guideline or list of acceptable documents to verify eligibility under this
25 category. (Resp. Reply Br., pp. 8-11.)

26 Respondent states that EDD issued guidance regarding acceptable documentation for
27 eligibility under this category in Directive D97-7 (JTPA D97-7) on October 7, 1997. (Resp. Reply Br.,
28 pp. 8-9 & exhibit G.) JTPA D97-7 states, in general, that acceptable documentation includes employer
notice of intent to permanently close a facility, a Worker Adjustment and Retraining Notification Act

1 (WARN) notice, or a newspaper article or public notice documenting the closure or intent to close.
2 (Resp. Reply Br., exhibit G, p. 22.) An employment application is not listed in the JTPA D97-7 as
3 acceptable documentation, and the directive also requires proof that the employee was employed at the
4 facility for the relevant time period (e.g. payroll records, employee identification). (*Id.*) The second
5 source respondent refers to is the TCA guidelines for vouchering. Respondent notes that at the time the
6 vouchers were issued, the Housing and Community Development Department's (HCD's) predecessor
7 had set forth guidelines that incorporated the documentation standards found in JTPA D97-7.¹⁴ (Resp.
8 Reply Br., exhibit H, p. 19.)

9 Respondent asserts that HCD regulations, while only effective for vouchers issued after
10 January 26, 2007, are instructive as to what type of documentation is acceptable. (Resp. Reply Br., p.
11 10.) Similar to the requirements of JTPA D97-7, the HCD regulations require two documents: (1)
12 documentation showing a permanent facility closure or substantial layoff (e.g. bankruptcy documents,
13 printed media announcement, statement from employer, WARN notice); and (2) documentation showing
14 that the employee had been terminated or received notice of termination from employment at the
15 facility. (Resp. Reply Br., exhibit I, p. 7.)

16 Respondent contends that appellant has not provided sufficient documentation.
17 Appellant has provided a copy of an employee application on which the applicant stated his reason for
18 leaving his prior employer as, "Company Relocating." (App. Op. Br., exhibit H, p. 3.) Respondent
19 contends that since appellant has not provided any third party documentation supporting appellant's
20 claim, there is not sufficient documentation to demonstrate this employee's eligibility for EZ hiring
21 credit. (Resp. Reply Br., p. 11.)

22 Appellant's Contentions:

23 Appellant has provided a sample of a California EZ voucher form (revised July 2001)
24 which defines "plant closure" as "company moved or went out of business." (App. Op. Br., exhibit G,
25 p. 4.) Appellant contends that the employment application, on which the eligible employee entered
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28 ¹⁴ The guidelines, published March 1, 2001, also state that if the appropriate form of required documentation is not available,
then alternative methods of documentation may exist, including verification by telephone or by applicant statement. (Resp.
Reply Br., exhibit H, p. 19.) The applicant statement form was on the backside of the telephone verification form.

1 “company [was] relocating” as his reason for leaving, is sufficient documentation to verify that the
2 employee is eligible for EZ hiring credit under the category of Dislocated Worker – Plant Closure.¹⁵
3 (App. Op. Br., p. 6.)

4 Appellant contends that respondent has denied the EZ hiring credit for the one employee
5 under this category only because appellant has provided an employment application as supporting
6 documentation. (App. Closing Br., p. 3.) Appellant asserts that the Board has already accepted the use
7 of job applications to establish employee eligibility in *Appeal of Deluxe Corp., supra*. Furthermore,
8 appellant contends that the Board has explicitly accepted employment applications for the category of
9 Dislocated Worker – Plant Closure in non-published decisions. (*Id.*) Appellant notes that respondent’s
10 instructions to its auditors advise them to accept employment applications depending on their reliability.
11 (Resp. Reply Br., exhibit J, p. 2.) Appellant also claims that employment applications are inherently
12 reliable as contemporaneous business records prepared without tax consequences, and that their
13 acceptance would be consistent with this Board’s evidentiary rules set forth in Regulation 5523.6,
14 subdivision (a). (App. Reply Br., p. 10.)

15 Appellant contends that respondent’s use of the JTPA D97-7 and TCA guidelines is
16 misleading. Appellant notes that the guidelines are not legal authority and were meant to allow for
17 discretion by local zones to accept different types of eligibility documentation. (App. Reply Br., p. 9;
18 See, e.g., Resp. Reply Br., exhibit H, p. 2.) Appellant contends that the HCD guidelines are inapplicable
19 to this appeal since the vouchers were all issued prior to January 1, 2007, well before the effective date
20 of the regulation. (App. Reply Br., p. 9.) Appellant maintains that employment applications are
21 acceptable documentation and that the employee application for this issue substantiates the employee’s
22 eligibility for EZ hiring credit under the Dislocated Worker – Plant Closure category. (App. Closing
23 Br., p. 3.)

24 Dislocated Worker – Laid Off

25 Respondent’s Contentions:

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28 ¹⁵ Appellant indicates that each employee made an affirmation that they completed the application truthfully by using the following phrase: “I understand that misrepresentation or omission of facts requested may be cause for rejection of this application or later dismissal after employment.” (App. Op. Br., p. 6; see, e.g., App. Op. Br., exhibits H, p. 3 & J, pp. 4, 11, & 15.)

1 Respondent indicates that an employee can be eligible for EZ hiring credit purposes
2 under the R&TC if immediately preceding the employee's commencement of employment with the
3 taxpayer, the employee:

4 Has been terminated or laid off or who has received a notice of termination or layoff from
5 employment, is eligible for or has exhausted entitlement to unemployment insurance
6 benefits, and is unlikely to return to his or her previous industry or occupation.

6 (Rev. & Tax. Code, § 23622.7, subd. (b)(4)(A)(iv)(IV)(aa).)

7 To be eligible for EZ hiring credits under the Dislocated Worker – Laid Off category, three requirements
8 must be demonstrated. The employee must have been: (1) terminated or laid off; (2) eligible for or
9 exhausted unemployment insurance (UI) benefits; and (3) unlikely to return to the previous industry or
10 occupation. Respondent contends that appellant has not demonstrated that the three employees seeking
11 eligibility under this category meet these requirements. Respondent asserts that the documentation
12 standards are found in JTPA D97-7 and HCD regulations. (Resp. Reply. Br., pp. 11-13.)

13 JTPA D97-7's list of acceptable documents to show that the employee was terminated
14 includes an employer layoff notice, severance pay documentation, evidence of early retirement in lieu of
15 layoff, and UI documents verifying that the employee was laid off. (Resp. Reply Br., exhibit G, p. 20)
16 Documents showing eligibility for unemployment include UI documents, verification of UI eligibility by
17 local UI office, and wages from layoff employer considered in determining UI eligibility. (*Id.* at p. 21.)
18 Documents indicating that the employee is unlikely to return to the same industry or occupation include
19 state or local lists indicating the industry/occupation is declining, UI office documents or rejection
20 letters showing that employee has a lack of job offers, EDD Job Match System information showing that
21 the employee worked in an industry with limited job orders, evidence that the employee lacks
22 skills/education or has physical problems precluding reentry in the industry/occupation, and evidence of
23 a poor employment history. (*Id.* at pp. 21-22.)

24 Similar to the requirements of JTPA D97-7, the HCD regulations require three
25 documents. Sufficient documentation to show that the employee was terminated includes the
26 termination notice and UI documents as described above, as well as a copy of a media article or
27 announcement that includes the name and date of the publication accompanied by a copy of the last
28 payroll check. UI records or a statement from a UI representative are sufficient to show unemployment

1 eligibility. To show that the employee is unlikely to return to his previous industry or occupation, a
2 doctor's statement or vocational rehabilitation counselor's statement regarding physical impairment, a
3 screen print of the EDD Labor Market Information Division screens showing limited opportunities, and
4 other third-party documentation demonstrating the unavailability of similar employment in the previous
5 industry or profession will suffice. (Resp. Reply Br., exhibit I, pp. 7-8; Cal. Code Regs., tit. 25, § 8466,
6 subd. (c).)

7 Respondent contends that each of the three employees under this category lack sufficient
8 documentation to substantiate their eligibility. Respondent indicates that appellant has provided
9 employment applications for the three employees but has not offered any documentation as to their
10 eligibility for unemployment insurance. Respondent notes that the employment application for
11 Employee 06-LM indicates that the employee was laid off by Levi Strauss approximately one month
12 prior to being hired by appellant.¹⁶ (Resp. Reply Br., p. 14; App. Op. Br., exhibit J, pp. 1-7.) Appellant
13 provided an article stating that Levi Strauss was closing plants (but not where the employee worked),
14 and an EDD labor market printout showing that the durable goods industry was declining in San
15 Francisco County at the time of the employee's hire by appellant. (App. Op. Br., pp. 5-7.) However,
16 respondent states that Employee 06-LM was employed as a systems analyst, and appellant has not
17 shown that the employee was not able to attain another systems analyst position. (Resp. Reply Br., p.
18 14.)

19 Respondent states that the employment application for Employee 07-CS indicates he or
20 she left a position with Packard Bell because of "layoff shift realignment." (App. Op. Br., exhibit J, pp.
21 8-12.) Appellant also provided an EDD labor market printout showing that the computer and electronic
22 product manufacturing industry had declined in Sacramento County during 1998. (*Id.* at p. 12.)
23 Respondent notes that appellant hired the employee as a "printronix operator" approximately one month
24 after he or she left Packard Bell employment with the duties of "Disti Program/Ordering materials [and]
25 shipping and receiving." (Resp. Supp. Br., p. 12.) Respondent contends that the employee's previous
26 job appears to be clerical in nature and since he or she obtained a clerical job about a month later, there
27

28 ¹⁶ The employees' personal information was redacted by appellant and names were replaced with identifiers like 06-LM.

1 is no indication that the employee could not have likely returned to a position involving his or her
2 previous duties. (Resp. Reply Br., p. 15.)

3 Respondent notes that the employment application for Employee 08-TB indicates he or
4 she left Susquehana Broadcasting because they “downsized.” (App. Op. Br., exhibit J, pp. 13-16.)
5 Appellant also provided an EDD labor market printout showing that broadcasting in San Francisco
6 County had declined by about 5 percent from 1998 to 1999. (*Id.* at p. 16.) Respondent notes that
7 employee’s duties at his previous position were “on air radio commercial sales and events marketing”
8 and the position he or she applied for with appellant was “sales.” (Resp. Reply Br., p. 15.) Respondent
9 contends that appellant has not shown that the employee was eligible for UI benefits, and has not shown
10 that he or she was unlikely to return to a position involving his or her previous duties, i.e. sales. (*Id.*)

11 Respondent contends that appellant needs to provide third party documentation according
12 to the standards of the JTPA D97-7 or HCD guidelines, or which otherwise meet the requirements of the
13 statute. Respondent states that appellant has not shown that the employees at issue were unlikely to
14 return to the same industry or occupation and has not provided any information regarding their
15 eligibility for UI benefits. (Resp. Reply Br., pp. 14 & 15.)

16 Appellant’s Contentions:

17 Appellant contends that it has satisfied the three requirements to show that each of the
18 three employees are eligible to be considered qualified employees for EZ hiring credit purposes. (App.
19 Op. Br., p. 8.) Appellant contends that the employment applications satisfy the first requirement for
20 each employee, showing that they were laid off from their previous employer. (App. Op. Br., pp. 6 &
21 7.)

22 As to the second issue, of whether the employees were eligible for UI benefits, appellant
23 contends that they were eligible under the JTPA regulations. (App. Op. Br., p. 6, fn. 12.) Appellant
24 states that Part 631.3(a) of the JTPA regulations state that “the term ‘eligible for’ unemployment
25 compensation includes any individual whose wages from employment would be considered in
26 determining eligibility for unemployment compensation under Federal or State unemployment
27 compensation laws.” (20 C.F.R. 631.3(a).) Appellant notes that there are exceptions to this, but they do
28 not apply to these employees. (App. Op. Br., p. 6, fn. 12.)

1 Appellant contends that the information provided with its opening brief satisfy the
2 documentation requirements to show that the employees were unlikely to return to the same industry or
3 occupation. Appellant notes that JTPA D97-7 includes as acceptable documentation evidence showing
4 that the employee worked in a declining industry/occupation, as documented on State or locally-
5 developed lists of such industries/occupations. (Resp. Reply Br., exhibit G, p. 21.) Appellant states that
6 it has provided EDD labor market printouts for each employee showing that the respective industries in
7 their area experienced a decline during the time they were laid off. (App. Op. Br., exhibit J, pp. 7, 12, &
8 16.) In addition, appellant provided an article describing the financial difficulties experienced by the
9 former employer of Employee 06-LM. (*Id.* at pp. 5 & 6.)

10 STAFF COMMENTS

11 At the hearing, the parties should be prepared to provide the amount of the hiring credit at
12 issue with respect to each employee so that the Board has this information available if it determines that
13 the hiring credit is available with respect to some, but not all, of the employees at issue. With regard to
14 the Richmond EZ audit report submitted with respondent's reply brief, respondent should be prepared to
15 offer evidence showing which vouchers were issued from the Richmond EZ and when they were issued,
16 as well as discuss what affect this has on the issues in this appeal.

17 JTPA 10% - Older Worker

18 With respect to the JTPA 10% - Older Worker category, the parties may wish to discuss
19 at the hearing the relevance, if any, of Section 1604(d)(5), which provides that JTPA services may be
20 provided to "older individuals" if such older individuals are also economically disadvantaged or, among
21 other things, face serious barriers to employment.

22 The parties should be prepared to discuss the apparent discrepancy between JTPA D96-5,
23 dated and effective as of August 13, 1996, and the EDD form JTA 1 ERF Part 1, dated August 1996.
24 While JTPA D96-5 indicates that older workers must also have an income that does not exceed 125
25 percent of the Poverty Guideline in order to constitute a state-approved additional barrier, Box 48 of
26 JTA 1 ERF Part 1 lists "older worker" as a category for the "10% 'Window' (for Non-Economically
27 Disadvantaged Only)." Respondent should be prepared to provide legislative or other evidence to show
28 why the directive controls over the plain interpretation of the application/registration form. If JTPA

1 D96-5 and JTA 1 ERF Part 1 are both relevant, the parties should be prepared to provide evidence as to
2 JTPA D96-5's reach, and whether it is merely redundant by making eligible older workers with low
3 income who are already eligible under OAA eligibility in Box 47, or whether it encompasses the
4 category of older workers included in Box 48 as well.¹⁷

5 Congress amended the JTPA in 1992 and removed "older workers" from its list of
6 categories of persons who face barriers to employment under the relevant JTPA section. (29 U.S.C.
7 Section 1603; see Public Law 102-367, the Job Training Reform Amendments of 1992.)¹⁸ This
8 amendment occurred before the years at issue in this appeal, and before the California Legislature, in
9 1995, expanded the scope of the enterprise zone hiring credit to allow credits for persons who merely
10 were eligible for the JTPA as opposed to having to be actually enrolled in a JTPA program. The parties
11 should be prepared to discuss whether, in light of the removal of "older workers" from the list of
12 categories of persons facing a barrier to employment, older individuals either (i) had to be
13 "economically disadvantaged" or (ii) face serious barriers to employment and meet certain income
14 eligibility requirements (under the separate provision in Section 1604(d)(5) for "older individuals") in
15 order to be eligible for JTPA services.

16 Appellant should provide any available evidence showing that during or prior to the years
17 at issue, California's Governor approved "older workers" to be added to the category of persons eligible
18 to receive JTPA benefits without being economically disadvantaged pursuant to Section 1603(d) of the
19 JTPA, if such evidence exists. If this evidence does exist, then appellant should be prepared to show
20 evidence supporting that the Richmond Works, Porterville, and Yuba Sutter EZ (depending on where the
21 vouchers were issued for the employees in this appeal) chose to use this authorized category.

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24 ¹⁷ Staff notes that under either interpretation there will probably be redundancy (if it only applies to Box 47) or contradiction
(if it applies to Box 48, which specifically says it is for the non-economically disadvantaged only).

25 ¹⁸ In relevant part, the prior provision provided that:

26 "up to 10 percent of the participants . . . may be individuals who are not economically disadvantaged if
27 such individuals have encountered barriers to employment. Such individuals may include, but are not
28 limited to, those who have limited English-language proficiency, or are displaced homemakers, school
dropouts, teenage parents, handicapped, older workers, veterans, offenders, alcoholics, or addicts."
(Underscoring added.)

Staff further notes that the former provision referred simply to "barriers" to employment, rather than to "serious" barriers, as
the current provision does, which arguably implies that Congress intended to tighten eligibility requirements.

1 Respondent should be prepared to show why its own manual, which clearly listed this
2 category as a JTPA 10 percent category, is not conclusive evidence in this matter. In the event that the
3 board decides in favor of appellant for any employees in this category, the parties should be prepared to
4 discuss whether there is sufficient evidence to support that each of these employees were 55 years of age
5 or older.

6 Dislocated Worker – Plant Closure

7 As stated above, JTPA D97-7 sets forth the types of acceptable documentation and
8 describes the circumstances to establish that an individual was a dislocated worker. Staff notes that the
9 JTPA process, as administered by the EDD, generally requires evidence from a third-party (e.g., a
10 WARN notice), or some objective factual showing (e.g., documentation specifying number/ratio of
11 layoffs and time period). (See, e.g., Resp. Reply Br., exhibit F, pp. 5-7; Resp. Reply Br., exhibit G, p.
12 22.) Both parties should be prepared to provide evidence showing to what extent the HCD guidelines
13 should be followed and why.

14 Both parties should be prepared to discuss whether it is reasonable to rely solely on
15 employment applications completed by prospective employees to establish JTPA eligibility.
16 Respondent should be prepared to explain how its instructions to its auditors, which instructs them to
17 accept employment applications depending on reliability, reconciles with its contention that employment
18 applications are not sufficient documentation.

19 Dislocated Worker – Laid Off

20 As above, both parties should be prepared to discuss whether employment applications
21 completed by a prospective employee are sufficient documentation to prove the requirements of
22 eligibility. Specifically, do the statements under the section, “reason for leaving,” act as sufficient proof
23 to show that the employee was terminated or laid off?

24 Both parties should be prepared to discuss whether appellant has met the documentation
25 requirement for each employee as to their entitlement to UI benefits. The parties should be prepared to
26 provide any additional evidence to further define the documentation requirement, as defined by Part
27 361.3(a) of the JTPA regulations.

28 Both parties should be prepared to discuss the meaning of “unlikely to return to his

1 previous industry or occupation.” While appellant appears to interpret this as meaning that the industry
2 in which the employee’s former employer works in has declined (App. Closing Br., p. 5), respondent
3 appears to construe this to mean that the employee was not able to attain a position similar to his
4 previous job without abnormal difficulty (Resp. Reply Br., p. 15.). Both parties should be prepared to
5 discuss what impact the hiring of these employees has on this issue; addressing whether the employees
6 obtained similar or the same positions, whether appellant is in a similar or the same industry, and the
7 time from when the employee was laid off to when they were hired by appellant. Both parties should be
8 prepared to discuss whether the EDD labor market printouts showing declines in the relative industries
9 satisfy this element according to the list of acceptable documents in JTPA D97-7.

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