Frankencredit: California New Employment Credit

by Jeffery L. Morris

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In this viewpoint, Morris discusses California's new employment credit for taxpayers that hire employees who are otherwise difficult to employ and who live in economically depressed areas. He offers ways the credit could be changed to increase its effectiveness for both taxpayers and the state.

How can I describe my emotions at this catastrophe, or how delineate the wretch whom with such infinite pains and care I had endeavoured to form? His limbs were in proportion, and I had selected his features as beautiful. Beautiful! — Great God! His yellow skin scarcely covered the work of muscles and arteries beneath; his hair was of a lustrous black, and flowing; his teeth of a pearly whiteness; but these luxuriances only formed a more horrid contrast with his watery eyes, that seemed almost of the same colour as the dun white sockets in which they were set, his shrivelled complexion and straight black lips.[1]

I. Making California Employment Credits Great Again

After stitching together various parts of human corpses to create his new being, scientist Victor Frankenstein succeeds in reanimating the dead but is immediately repulsed by his creation and its "ugliness." Dr. Frankenstein falls into a deep depression and shuns his creation. After numerous well-intentioned incongruous statutory requirements were stitched together so that one could qualify for the California New Employment Credit (NEC), the Golden State's creation was nearly impossible to earn and has been similarly shunned by businesses.

In 2014 Gov. Jerry Brown (D) enacted a trio of new economic development incentives: the California Competes credit; the manufacturing sales tax exemption; and the NEC. The incentives were enacted under tax-neutral legislation that reduced $750 million in annual costs by eliminating enterprise zones. The California Competes cost for 2015-2016 was budgeted by statute to $200 million and the sales tax exemption was budgeted to be $160 million — leaving up to $390 million for the NEC to be revenue neutral.[2]

Despite the potentially large $390 million budget for the NEC, the entire amount claimed by taxpayers in its first year of 2014 was a paltry $299,164.[3] The NEC legislation required the Franchise Tax Board to publish taxpayer names and the amount of NEC claimed. According to the first report, only 37 California taxpayers properly claimed the NEC, and the largest award was only $25,152.[4]

Dr. Frankenstein may have assembled his creature from beautiful parts, but "when those muscles and joints were rendered capable of motion, it became a thing such as even Dante could not have conceived."[5] The NEC was created from beautiful statutory parts with laudable goals but taken together, produced an enormously complex program that has not accomplished its goals.

II. NEC Overview

The NEC has the potential to be a powerful economic incentive stimulating economic activity and new employment. The credit is computed based on 35 percent of

[1]Mary Shelley, *Frankenstein* 55 (Simon & Schuster 2004) (1818).

[2]Press release, "Governor Brown Signs Legislation in San Diego to Help Create Jobs, Grow Economy" (July 11, 2013). *See* Gov. Edmund G. Brown Jr., "CA Governor's Budget Summary 2016-17" (Jan. 7, 2016), *available at* http://bit.ly/2hbEyXf.

[3]California Franchise Tax Board, "New Employment Credits Claimed," (Mar. 16, 2016), *available at* http://bit.ly/2hteAx1.

[4]*Id.*

[5]Shelley *supra* note 1, at 57.

qualified wages paid or incurred by a qualified taxpayer for up to 60 months after employment.[6]

The NEC could be substantial. Hypothetically, hiring a qualified person in 2017 to work in a qualifying position at $36.75 for 2,000 hours per year could produce more than $70,000 in credits from 2017 to 2021. Unfortunately, as the 2014 FTB report shows, the reality is that few companies make hires that will pass the NEC requirement gantlet.

A. NEC Goals

The reason so few companies have claimed the NEC is that the law created a mishmash of requirements reflecting conflicting objectives for the new credit program. You can imagine a conference room full of well-intentioned participants, all with different ideas about what the NEC should accomplish. These goals can be described in three categories: economic development mission, social mission, and taxpayer mission.

B. Economic Development Mission

California is in a competition with other states and cities for business location and expansion decisions. The NEC was one of three prongs in Brown's quiver of economic development legislation that was enacted to "help grow our economy and create good manufacturing jobs."[7] The NEC could be an extremely effective tool in multistate competitions to attract facilities to economically challenged parts of the state. For example, Fresno, Riverside, and Merced were given special status as pilot areas with a relaxed wage standard of $10 per hour instead of $15.75 (that is, 150 percent of minimum wage for 2017).[8] Despite the lower wage threshold, it does not appear the NEC has translated into new jobs and investments in these areas as a result of numerous restrictions and requirements to qualify for and use the credit. However, with legislative and documentation changes, this problem could be fixed, and the NEC could be a powerful lure attracting businesses into these pilot areas.

C. Social Mission

The economic development mission must also be consistent with the NEC social mission to create high-paying jobs in high-poverty neighborhoods. The NEC is allowed only if several circumstances are met.

The first requirement is that the jobs are in the poorest neighborhoods with the highest unemployment, referred to as Designated Geographic Areas (DGAs). The DGAs comprise:

- designated census tracts that have the highest unemployment and highest poverty in the state,
- former enterprise zones (EZs) (in existence on December 31, 2011, designated in 2012) and any revision to an EZ before June 30, 2013, except census tracts within those EZs with lowest unemployment and lowest poverty levels, and
- former Local Agency Military Base Recovery Areas (LAMBRAs) in existence on July 11, 2013.[9]

The jobs must be created in a designated census tract or economic development area.[10] A designated census tract is one determined by the Department of Finance to be in the top 25 percent of California census tracts in terms of civilian unemployment and poverty rates. For purposes of this credit, economic development areas are specified former enterprise zones or LAMBRAs.[11] A map and search tool with all the designated census tracts and economic development areas is available on the FTB's website.[12]

The second requirement for the NEC is that the most economically challenged employees are hired, including:

- a veteran separated from service within the previous 12 months;[13]
- a recipient of the federal earned income tax credit during the prior year;[14]
- an ex-offender previously convicted of a felony;[15]
- a recipient of CALWORKS or other general assistance;[16] or

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[6]Cal. Rev. & Tax. Code sections 17053.73(b)(12) and 23626(b)(12). The minimum wage is established by California Labor Code section 1171, et. seq. section 17053.73(b)(9) and section 23626(b)(9).

[7]According to Brown's signing statement:

> The legislation (AB 93 and SB 90), which received broad, bipartisan support in the Legislature, establishes the Governor's Economic Development Initiative. The Initiative will help bolster California's business climate and put Californians to work by establishing the following:
> - Sales Tax Exemption: A statewide sales tax exemption on all manufacturing equipment and research and development equipment purchases for biotech and manufacturing companies;
> - Hiring Credits: Hiring credits for businesses in areas with the highest unemployment rate and poverty; and
> - California Competes Investment Incentives: The opportunity for California businesses to compete for available tax credits based on the number of jobs to be created and retained, wages paid in those jobs and other factors.

[8]On April 24, 2014, GO-Biz designated pilot areas in the former Fresno City enterprise zone, except within census tracts with the lowest unemployment and poverty; the former Merced City enterprise zone, except within census tracts with the lowest unemployment and poverty; and census tracts 303, 401.01, 402.03, 429.04, and 467 in Riverside County. Unless extended, these pilot areas are effective until

(Footnote continued in next column.)

December 31, 2017. *See* California Franchise Tax Board "New Employment Credit FAQ" (Apr. 24, 2014).

[9]Cal. Rev. & Tax. Code section 23626(b)(7)-(8).

[10]Cal. Rev. & Tax. Code section 23626 (a)(1).

[11]Cal. Rev. & Tax. Code section 23626(b)(7)-(8).

[12]*See* http://maps.gis.ca.gov/gobiz/dga/default.aspx.

[13]Cal. Rev. & Tax. Code section 23626(b)(10)(A)(vi)(II).

[14]Cal. Rev. & Tax. Code section 23626(b)(10)(A)(vi)(III). *See* IRC section 32.

[15]Cal. Rev. & Tax. Code section 23626(b)(10)(A)(vi)(IV).

[16]Cal. Rev. & Tax. Code section 23626(b)(10)(A)(vi).

- someone who has been unemployed for the previous six months.[17]

Finally, NEC recipients must offer jobs that pay high wages, defined as at least 150 percent of minimum wage.[18] The jobs must also be full time[19] and performed primarily in the economically challenged neighborhood.[20]

The social mission has not been accomplished because it is unrealistic to expect an employer to not only expand in the poorest neighborhoods but also target economically challenged employees for full-time employment and pay them wages that are 150 percent of the minimum wage, which is scheduled to increase to $15 per hour by 2021. For example, the types of investments that might be a good fit in the pilot areas and DGAs, would be large-scale distribution centers providing an entry point to the workplace for residents of these cities. These jobs are unlikely to pay 150 percent of minimum wage but would provide large numbers of new jobs in parts of California that need them.

D. Taxpayer Mission

The taxpayer mission is to limit the use of the credit because of perceived past windfalls under the EZ credit program.[21] There are several limitations and requirements regarding the credit.

First, it is unavailable for businesses in certain industries or for certain jobs, including retailers, food services, temporary help, gambling, serving alcohol, or sexually oriented businesses.[22]

Second, after hiring a qualified full-time employee, the taxpayer must request a tentative credit reservation from the FTB within 30 days of complying with the Employment Development Department's new-hire reporting requirement as provided in Unemployment Insurance Code section 1088.5.[23]

Third, the taxpayer must provide the FTB an annual certification of employment regarding each qualified full-time employee hired in a previous tax year, on or before the 15th day of the third month of the tax year. The certification shall include information, as determined by the FTB, including the name, Social Security number, start date, and rate of pay for each qualified full-time employee.[24]

In addition, the credit can be claimed only on a timely filed original qualified taxpayer return and only regarding qualified full-time employees for whom the taxpayer has received a tentative credit reservation.[25] It cannot be claimed by taxpayers that increase employment at a work location without increasing overall California employment.[26] When calculating the number of employees, all employees of business that are treated as related under IRC sections 267, 318, or 707 are treated as being employed by a single taxpayer.[27] The credits cannot be used to reduce tax below tentative minimum tax.[28] Finally, the credits are recaptured if an employee is terminated within 36 months after hire.[29]

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[17]Cal. Rev. & Tax. Code section 23626(b)(10)(A)(vi)(I). In the case of an individual who completed a program of study at a college, university, or other postsecondary educational institution, received a baccalaureate, postgraduate, or professional degree, and was unemployed for the six months immediately preceding employment with the qualified taxpayer, that individual must have completed that program of study at least 12 months prior to the commencement of the individual's employment with the qualified taxpayer.

[18]Cal. Rev. & Tax. Code section 23626(b)(10)(A)(ii).

[19]Cal. Rev. & Tax. Code section 23626(b)(10)(A)(v)(I)- (II). The full-time requirement is satisfied if the employee is paid qualified wages by the qualified taxpayer for services not less than an average of 35 hours per week or is a salaried employee and was paid compensation during the tax year for full-time employment, within the meaning of Labor Code section 515.

[20]Cal. Rev. & Tax. Code section 23626(b)(10)(A)(i). The locality requirement is satisfied if the employee performs at least 50 percent of his services for the taxpayer during the tax year in a designated census tract or economic development area.

[21]Cal. Franchise Tax Board, "New Employment Credit Report," (Mar. 2016), *available at* http://bit.ly/2heJxGx. "As the Legislature considers options for increasing claims under the NEC program, it may wish to keep in mind the credit's goal of incentivizing net new hiring and avoid some of the windfall provisions that were contained in the prior Enterprise Zone Hiring Credit (EZ)."

[22]Cal. Rev. & Tax. Code section 23626(b)(11)(C). A qualified taxpayer shall not include:

- Employers that provide temporary help services, as described in Code 561320 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2012 edition (Cal. Rev. & Tax. Code section 23626(b)(11)(C)(i)).
- Employers that provide retail trade services, as described in NAICS Sector 44-45 (Cal. Rev. & Tax. Code section 23626(b)(11)(C)(ii)).
- Employers that are primarily engaged in providing food services, as described in NAICS Code 711110, 722511, 722513, 722514, or 722515 (Cal. Rev. & Tax. Code section 23626(b)(11)(C)(iii)).
- Employers that are primarily engaged in services as described in NAICS Code 713210, 721120, or 722410 (gambling or serving of alcoholic beverages) (Cal. Rev. & Tax. Code section 23626(b)(11)(C)(iv)).

[23]Cal. Rev. & Tax. Code section 23626(e)(1).

[24]Cal. Rev. & Tax. Code section 23626(e)(3).

[25]Cal. Rev. & Tax. Code section 23626(a)(4).

[26]Cal. Rev. & Tax. Code section 23626(b)(2).

The "applicable percentage" for a tax year shall be equal to a fraction, the numerator of which is the net increase in the total number of full-time employees employed in this state during the taxable year, determined on an annual full-time equivalent basis, as compared with the total number of full-time employees employed in this state during the base year, determined on the same basis, and the denominator of which shall be the total number of qualified full-time employees employed in this state during the taxable year. The applicable percentage shall not exceed 100 percent.

[27]Cal. Rev. & Tax. Code section 23626(d).

[28]Cal. Franchise Tax Board, "New Employment Credit — FAQs," (2016), *available at* http://bit.ly/2haFk9j. *See also* Cal. Rev. & Tax. Code section 23626(a)(1):

For each taxable year beginning on or after January 1, 2014, and before January 1, 2021, there shall be allowed to a qualified

(Footnote continued on next page.)

If the taxpayer mission was to prevent windfall benefits from the program, the mission has been accomplished. However, with a large budget available for the NEC, consideration should be given to legislative changes that help make the NEC the effective economic development and job-creating tool it was intended to be.

III. FTB Report on the Effectiveness of the NEC

"A ghastly grin wrinkled his lips as he gazed on me, where I sat fulfilling the task which he had allotted to me."[30]

Dr. Frankenstein could not alter his creation, but our legislators wisely anticipated the need to potentially revise the NEC by requiring an annual review of its effectiveness.[31] The FTB is required to provide an annual report by no later than March 1 to the Joint Legislative Budget Committee, which includes:

- the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year;
- a comparison with the department's estimate of the total dollar amount of credits claimed under this section with respect to that fiscal year; and
- should the total dollar amount of credits claimed for the fiscal year be less than the estimate, options for increasing annual claims of the credit so as to meet estimated amounts.[32]

A. FTB Options for Increasing Annual Credits Claimed

The FTB outlined options for the legislature to consider to improve use of the credit.[33] These revisions can be summarized as follows:

- Expand geographic limitations beyond the current DGAs.
- Simplify some of the eligibility requirements by reducing some or all these restrictions.
- Change the range of qualifying wages.
- Drop the reservation requirement or streamline the process.
- Expand to additional business types to widen the pool of potential program participants.
- Increase the credit percentage.
- Expand and increase education and outreach.

The FTB options provide examples of changes that would increase NEC use. Think Relocation and Advisory Services have built on that analysis from firsthand experience advising companies on the economic impact of site-based decisions. Based on that experience, there is an excellent opportunity to revise the criteria for the NEC to attract business and jobs to economically challenged parts of California.

B. Recommendations for Increasing Annual Credits Claimed

As outlined above, the NEC is serving three missions that are not in concert with each other. Prioritizing the most important mission and goals would be a good starting point for amending the NEC. If the primary mission is to stimulate investment and job creation in the poorest neighborhoods without creating a taxpayer applicant windfall, the legislature could consider the following changes:

1. Include all DGA residents.

Expand the scope of qualifying employees to include all DGA residents and residents of nearby low-income residential communites. Requiring qualifying new hires to be in the current narrow categories limits the ability of the NEC to have a significant effect on site location decisions. If the NEC were available to all residents of these neighborhoods, it would be a powerful lure to attract new investments in large-scale job-creating projects. This simple change would have a meaningful effect in lifting these DGA communities out of their low-income status. Limiting qualifications is inconsistent with the objective to uplift these neighborhoods by creating large-scale new employment.

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taxpayer that hires a qualified full-time employee and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract or economic development area, and that receives a tentative credit reservation for that qualified full-time employee, a credit against the "tax," as defined by section 23036, in an amount calculated under this section.

[29]Cal. Rev. & Tax. Code section 23626(i)(1).

[30]Shelley *supra* note 1, at 204.

[31]Cal. Rev. & Tax. Code section 23626(l).

(1) Upon the effective date of this section, the Department of Finance shall estimate the total dollar amount of credits that will be claimed under this section with respect to each fiscal year from the 2013-14 fiscal year to the 2020-21 fiscal year, inclusive.

(2) The Franchise Tax Board shall annually provide to the Joint Legislative Budget Committee, by no later than March 1, a report of the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year. The report shall compare the total dollar amount of credits claimed under this section with respect to that fiscal year with the department's estimate with respect to that same fiscal year. If the total dollar amount of credits claimed for the fiscal year is less than the estimate for that fiscal year, the report shall identify options for increasing annual claims of the credit so as to meet estimated amounts.

[32]California Franchise Tax Board, "New Employment Credit Report" (Mar. 2016), *available at* http://bit.ly/2heJxGx.

[33]*Id.*

2. Qualified wages based on minimum wage.

Use minimum wage as the definition of qualifying wages with the NEC computed on the excess wages over minimum wage. The Legislature has made progress by enacting minimum wage increases to $15 by 2021. The California Competes credit has used high wages as a key factor in approving projects for the credit. It is redundant to use high wages as a criterion under the NEC and the California Competes credit. In economically challenged neighborhoods, residents are likely to face several barriers to employment that make high wages an unrealistic requirement. Relaxing this standard to minimum wage would make it feasible for employers considering lower skill projects to seriously consider these neighborhoods for new investment. Consider a lower percentage (for example, 25 percent) for jobs below the 150 percent minimum wage standard along with an annual cap (for example, $8,000/job). For those employers who create higher wage jobs, the NEC could offer a higher percentage credit to provide an even more powerful incentive to bring higher paying jobs to these communities.

3. Target job growth at the DGA site.

Allow a company to increase its employment in the DGA regardless of its employment statewide. If the mission is to create jobs in DGAs, it should be irrelevant whether a company and its affiliates increase employment overall in California. To avoid awarding credits to companies making significant headcount reductions in the state, there could be reasonable restrictions — for example, an overall decline in state baseline employment by more than 10 percent.

4. Eliminate the TMT credit utilization trap.

Allow companies to use the NEC to reduce income tax below tentative minimum tax (TMT) in the same way the California Competes credit utilization provision was revised.[34] There is a large budget for the NEC, and there should not be a utilization trap for the unwary, limiting use of the credit to the difference between the regular 8.84 percent tax rate and the 6.65 percent tentative minimum tax rate. This limitation is out of step with the other program objectives. Unlike many other state tax employment credit programs, the NEC is not monetizable in cash without regard to tax liability. Other states monetize credits without regard to tax liability. This typically involves retaining an equivalent amount of employee state tax withholdings, granting cash refunds, or allowing the sale of credits. This is already a competitive disadvantage that limits the effectiveness of the NEC. To further limit the credit to the sliver of income tax above TMT does not make sense.

5. Require simple advance taxpayer approval.

Require an advance application before hiring to claim the NEC but remove the burdensome tentative certificate reservation procedures. Having to document and obtain reservation certificates without knowing whether the taxpayer will even qualify for the NEC is a substantial burden limiting the NEC's effectiveness. As with other state incentive programs, the concerns about windfall benefits will be avoided with much less administrative effort for the taxpayer and the state. Other states such as Colorado merely require a simple form advising the state that the taxpayer could potentially use the state employment tax credits by applying before calendar year-end.[35]

6. Define qualifying activities at the project site.

Revise the qualified taxpayer provision to include qualifying activities at an establishment level. Qualifying activities would be expanded to include distribution, warehouse, and ancillary support activities. This would lure excluded business like retailers and food service to invest in desirable support facilities in the targeted DGA neighborhoods. This would be consistent with other state provisions that look beyond the primary activity of the business. For example, Georgia adopted establishment-level qualification for its jobs tax credit.[36] While an auto lender would not qualify for the Georgia jobs credit, if the lender established a customer

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[34]Ch. 22 (S.B. 81), Laws 2015 (effective June 24, 2015, and applicable to tax years beginning on or after January 1, 2014). A credit may not reduce the tax below the tentative minimum tax (see Cal. Rev. & Tax. Code section 23455(1)(a)) except for the GO-Biz California Competes Credit for tax years beginning on or after January 1, 2014.

[35]Colo. Rev. Stat. section 39-30-103(7)(a). Beginning January 1, 2012, taxpayers must submit a pre-certification form to an enterprise zone facilitator prior to beginning any activity for which they intend to claim an enterprise zone tax credit. In connection with the pre-certification, taxpayers are also required to (a) obtain verification from the enterprise zone administrator that the taxpayer's business is located in an enterprise zone; (b) certify that the taxpayer is aware of the enterprise zone income tax credits available; (c) certify that the enterprise zone income tax credits a contributing factor to the start-up, expansion, or relocation of the taxpayer's business in the enterprise zone; and (d) certify that the taxpayer acknowledges that the pre-certification is required for activities that begin after the date that the pre-certification form is executed by the enterprise zone administrator through the end of the business's then-current income tax year.

[36]Georgia 48-7-40(a)(2):

> Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

support facility, those new jobs would qualify based on the NAICS of the actual facility.[37]

7. Consider dropping excluded businesses.

An even more expansive approach to creating jobs in the DGAs would be to eliminate all but the sexually oriented business category. Retailers are not qualified for the Georgia Jobs tax credit unless they are in specific targeted areas of the state (for example, Georgia's 40 poorest counties).[38] Operating any business in the most economically challenged areas in California is difficult. Allowing a broader spectrum of businesses to qualify for the NEC would help balance the enhanced economic investment risk and create more jobs for community residents.

8. EITC eligibility.

Hiring an individual who qualified for the federal EITC qualifies for the NEC.[39] As noted, it appears the NEC's social mission is to create jobs in poor communities for low-income Californians. The statute should be changed to provide that the individual will qualify if the employee is *eligible* for the EITC. This statutory change is necessary to avoid the intrusive documentation requirements to claim the NEC on EITC recipients. The FTB requires the employer to obtain confidential employee tax information, such as a copy of the employee's prior federal tax return, a copy of the employee's EITC worksheet, or the employee's tax transcript.[40] These are invasive methods to demonstrate the employee was low-income prior to hire. The income conditions to be eligible for the EITC are straightforward based on prior-year income and number of children.[41] The FTB should accept a signed statement on a form listing the employee's prior-year income and number of children with Social Security numbers. Creating NEC jobs for low-income Californians should not require an employer to violate the new employee's taxpayer confidentiality privilege to document qualification as a low-income person or household. Most companies are sensitive about requesting confidential information from employees and many will thus pass on claiming the NEC. California is missing an opportunity to attract businesses to target low-income communities and low-income job candidates.

[37]Colo. Rev. Stat. section 39-30-103(7)(a).

[38]Georgia O.C.G.A. section 48-7-40.1(e); reg. section 560-7-8-.36(5) "Credits similar to the credits available in Tier 1 counties are also available to businesses that create new jobs in certain less developed census tracts in the metropolitan areas of the state."

[39]Cal. Rev. & Tax. Code, section 23626(b)(10)(A)(vi)(III). "Was a recipient of the credit allowed under Section 32 of the Internal Revenue Code, relating to earned income, as applicable for federal purposes, for the previous taxable year."

[40]Cal. Franchise Tax Board, *supra* note 32.

[41]IRS, "2016 EITC Income Limits " (Nov. 3, 2016).

9. Unemployment documentation simplification.

The documentation required by the FTB to prove an employee is an unemployed qualified employee is too onerous.[42] To document an unemployed new hire potentially requires proving that the individual:

- has been unemployed for six months by presenting a letter from Employment Development Department or proof of receipt of unemployment benefits;
- that the individual was not self-employed; and
- that the individual did not graduate college within the past 12 months.

To avoid this intrusive unrealistic amount of documentation, the FTB should accept a form signed under penalty of perjury that the individual met the unemployment requirements. The requirements would be outlined on the form and require the employee to check the appropriate boxes. The employer would also sign a statement under penalty of perjury that the form was signed by the employee and accepted in good faith.

10. CalWORKs documentation simplification.

The FTB requirement that the taxpayer prove an employee is a recipient of either CalWORKs or general assistance is too onerous.[43] The FTB's desire to obtain third-party source data to prove the new hire was a recipient of public assistance should be balanced with the time and resources needed to obtain information from these agencies. The purpose of the NEC is to encourage employers to hire economically challenged people should not be frustrated with overly burdensome documentation requirements. The FTB concerns about inappropriate NEC claims should be addressed by a form signed under penalty of perjury that the individual received public assistance. The requirements would be outlined on the form and require the employee to check the appropriate boxes. The employer would also sign a statement under penalty of perjury that the form was signed by the employee and accepted in good faith.

IV. Conclusion

Farewell!!! I leave you, and in you the last of humankind whom these eyes will ever behold. Farewell, Frankenstein![44]

We need not say goodbye to our Frankencredit. Let us return to the lab where, with some targeted legislative and documentation changes, we can improve our California employment credits. The changes described above would lead companies nationwide to seriously consider investing and creating tens of thousands of jobs in the most economically challenged California cities for the most economically challenged California residents. ■

[42]Cal. Franchise Tax Board, *supra* note 32.

[43]Cal. Rev. & Tax. Code, section 23626(b)(10)(A)(vi)(V); and Cal. Franchise Tax Board, *supra* note 32.

[44]Shelly *supra* note 1, at 275.