

AMENDED IN ASSEMBLY APRIL 30, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2747**

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**Introduced by Assembly Members Wesson, Cohn, Goldberg, and  
Frommer**  
*(Coauthors: Assembly Members Nakano, Negrete McLeod, and  
Pavley)*

February 22, 2002

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An act to add and repeal Sections 6902.5, 17053.35, and 23635 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2747, as amended, Wesson. Tax: credits: qualified motion picture.

The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after July 1, 2004, and before January 1, 2010, in an amount equal to a specified percentage of the amount paid or incurred ~~during the taxable year~~, *as specified*, for qualified wages, up to a specified amount, with respect to each California motion picture production, as defined.

This bill would allow a taxpayer, in lieu of electing the credit for a qualified motion picture production against the personal income or bank and corporation tax, to file a claim for a refund of sales or use taxes

paid or a credit against liability for sale and use taxes due, equal to the personal income or bank and corporation tax credit.

This bill would require the Technology, Trade, and Commerce Agency to report to the Legislature on the effectiveness of the tax credits authorized by this bill, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6902.5 is added to the Revenue and  
2 Taxation Code, to read:  
3 6902.5. (a) (1) In lieu of claiming the credit allowed by  
4 Section 17053.35 or 23635, a person may claim either a refund of  
5 sales or use taxes paid, or a credit against liability for sales or use  
6 taxes due, that is equal to the credit amount or any portion thereof  
7 that would otherwise be allowed pursuant to those sections.  
8 (2) Any person who claims a refund or credit under this section  
9 shall make an irrevocable election to waive the equivalent amount  
10 of credit allowed under Section 17053.35 or 23635. Any refund or  
11 credit claimed under this section shall be in lieu of claiming any  
12 credit under Section 17053.35 or 23635. Any person electing to  
13 file a claim for refund pursuant to this section shall provide a copy  
14 of the personal income or bank and corporation tax return on which  
15 the tax liability was assessed for which the in-lieu refund is being  
16 claimed under this section.  
17 (b) Notwithstanding Section 6961, the board may recover any  
18 refund or credit, or part thereof, that is erroneously made pursuant  
19 to this section. In recovering any erroneous refund or credit made  
20 pursuant to this section, the board, in its discretion, may issue a  
21 deficiency determination in accordance with Article 2  
22 (commencing with Section 6481) or Article 4 (commencing with  
23 Section 6536) of Chapter 5. Except in the case of fraud, that  
24 determination shall be made within three years from the last day  
25 of the month following the quarterly period in which the board  
26 approved the refund.  
27 (c) The board shall provide an annual listing to the Franchise  
28 Tax Board, in a form and manner agreed upon by the board and the  
29 Franchise Tax Board, of the persons who during the year have



1 claimed a refund or credit of sales or use tax under this section and  
2 the amount of the refund or credit allowed to each person.

3 (d) Any refund approved by the board pursuant to this section  
4 shall, upon an appropriation by the Legislature, be payable from  
5 the General Fund.

6 (e) This section shall remain in effect only until December 31,  
7 2010, and as of that date is repealed.

8 SEC. 2. Section 17053.35 is added to the Revenue and  
9 Taxation Code, to read:

10 17053.35. (a) For each taxable year beginning on or after  
11 July 1, 2004, and before January 1, 2010, there shall be allowed as  
12 a credit against the “net tax,” as defined in Section 17039, an  
13 amount equal to 15 percent of the total amount paid or incurred by  
14 the taxpayer during the taxable year for qualified wages with  
15 respect to each qualified motion picture production.

16 (b) In the case of a qualified individual in any qualified motion  
17 picture located in an area designated as an enterprise zone pursuant  
18 to the Enterprise Zone Act (Chapter 12.8 (commencing with  
19 Section 7070) of Division 7 of Title 1 of the Government Code),  
20 for each taxable year beginning on or after July 1, 2004, and before  
21 January 1, 2010, there shall be allowed as a credit against the “net  
22 tax,” as defined in Section 17309, an amount equal to 25 percent  
23 of the total amount paid or incurred by the taxpayer during the  
24 taxable year for qualified wages with respect to each qualified  
25 motion picture.

26 (c) With respect to each qualified motion picture, the amount  
27 of qualified wages paid or incurred to each qualified individual or  
28 qualified entity on behalf of each qualified individual that shall be  
29 taken into account in computing the credit in subdivision (a) shall  
30 not exceed twenty-five thousand dollars (\$25,000).

31 (d) For purposes of this section, the following definitions  
32 apply:

33 (1) “Employee fringe benefit expenses” means the amount  
34 allowable as a deduction under this part to the employer for any  
35 taxable year with respect to all of the following:

36 (A) Employer contributions under stock bonus, pension,  
37 profit-sharing, annuity, or similar plan.

38 (B) Employer-provided coverage under any accident or health  
39 plan for employees.



1 (C) The cost of life or disability insurance provided to  
2 employees.

3 Any amount treated as wages under clause (i) of subparagraph  
4 (A) of paragraph (5) shall not be taken into account under this  
5 paragraph.

6 (2) “Qualified entity” means a personal service corporation as  
7 defined in Section 269A(b)(1) of the Internal Revenue Code, a  
8 payroll services corporation, or any entity receiving qualified  
9 wages on behalf of a qualified individual.

10 (3) “Qualified individual” means, with respect to any period,  
11 any individual who renders personal services, if substantially all  
12 of the services are performed during the period in an activity  
13 related to any qualified motion picture. “Qualified individual”  
14 shall not include either of the following:

15 (A) Any individual described in subparagraph (A), (B), or (C)  
16 of Section 51(i)(1) of the Internal Revenue Code.

17 (B) Any 5-percent owner, as defined in Section 416(i)(1)(B) of  
18 the Internal Revenue Code.

19 (4) “Qualified motion picture” has the same meaning as  
20 “qualified motion picture” in paragraph (3) of subdivision (b) of  
21 Section 6010.6, including, but not limited to, productions in digital  
22 format, where both of the following exist:

23 (A) The total cost of wages of the qualified motion picture,  
24 exclusive of payments excluded pursuant to subparagraph (B) of  
25 paragraph (5), is more than two hundred thousand dollars  
26 (\$200,000), but less than ten million dollars (\$10,000,000). For  
27 purposes of this subparagraph, in the case of an episodic television  
28 series, each episode shall constitute a separate motion picture. In  
29 the case of any taxable year beginning in a calendar year after  
30 2004, the ~~one hundred thousand dollars (\$100,000)~~ *two hundred*  
31 *thousand dollars (\$200,000)* and the ten million dollars  
32 (\$10,000,000) shall be increased by an amount equal to such dollar  
33 amount, multiplied by the cost-of-living adjustment as computed  
34 in subdivision (h) of Section 17041. If any increase for cost of  
35 living of the ~~one hundred thousand dollars (\$100,000)~~ *two*  
36 *hundred thousand dollar (\$200,000)* limit is not a multiple of five  
37 thousand dollars (\$5,000), that amount shall be rounded to the  
38 nearest multiple of five thousand dollars (\$5,000). If any increase  
39 for cost of living of the ten million ~~dollars~~ *dollar* (\$10,000,000)  
40 limit is not a multiple of five hundred thousand dollars (\$500,000),



1 that amount shall be rounded to the nearest multiple of five  
2 hundred thousand dollars (\$500,000).

3 (B) Fifty percent of the total wages of the production are  
4 qualified wages.

5 (5) (A) “Qualified wages” means all of the following:

6 (i) Any compensation paid or incurred by an employer on or  
7 after ~~July~~ January 1, 2004, for services performed in this state by  
8 an employee while the employee is a qualified individual.

9 (ii) The employee fringe benefit expenses of the employer  
10 allocable to the services performed in this state by the employee.

11 (iii) Any payments made to a qualified entity on or after ~~July~~  
12 January 1, 2004, for services performed by qualified individuals  
13 in this state.

14 (iv) Compensation paid to independent contractors who are  
15 qualified individuals on or after ~~July~~ January 1, 2004, for services  
16 personally rendered in this state.

17 (B) “Qualified wages” does not include any of the following:

18 (i) Any compensation for legal or accounting services, except  
19 for legal or accounting services performed by production  
20 employees.

21 (ii) Any ~~cost~~ costs arising from new use, reuse, clip use,  
22 licensing, secondary markets, or delayed residual compensation,  
23 or the creation of any ancillary product, including, but not limited  
24 to, a soundtrack album, toy, or game.

25 (iii) Any cost or fee incurred with respect to acquisition,  
26 development, turnaround, or any rights thereto.

27 (iv) Any marketing, promotional, or distribution costs.

28 (6) “Wages” means all amounts described in subparagraph (A)  
29 of paragraph (5), whether these amounts are paid for services  
30 performed or rendered within or without this state.

31 (e) For purposes of this section, all employers treated as a single  
32 employer under subsection (a) or (b) of Section 52 of the Internal  
33 Revenue Code shall be treated as a single employer. The credit, if  
34 any, determined under this section with respect to each employer  
35 shall be its proportionate share of the wages giving rise to the  
36 credit.

37 (f) No credit shall be allowed under any other provision of this  
38 chapter for qualified wages paid to any employee during any  
39 taxable year if the employer is allowed a credit under this section  
40 for any qualified wages.



1 (g) (1) A taxpayer may elect to assign any portion of any credit  
2 allowed under this section to one or more taxpayers within the  
3 same controlled group for each taxable year in which the credit is  
4 allowed. For purposes of this subdivision, “controlled group”  
5 means “controlled group” as defined in Section 1563(a) of the  
6 Internal Revenue Code, except that:

7 (A) “50” shall be substituted for “80” each place it appears in  
8 Section 1563(a)(1) of the Internal Revenue Code.

9 (B) The determination shall be made without regard to  
10 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal  
11 Revenue Code.

12 (2) The election provided in paragraph (1):

13 (A) May be based on any method selected by the taxpayer that  
14 originally receives the credit.

15 (B) Shall be irrevocable for the taxable year the credit is  
16 allowed, once made.

17 (C) May be changed for any subsequent taxable year, if the  
18 election to make the assignment is expressly shown on each of the  
19 returns of the taxpayers within the same controlled group that  
20 assigns and receives the credits.

21 (D) May be applied to credits carried over from previous  
22 taxable years.

23 (h) The taxpayer may elect to take the credit allowed by this  
24 section, which credit shall be in lieu of any other credit allowed by  
25 this part for the costs for which a credit is allowed by this section.

26 (i) In the case where the credit allowed by this section exceeds  
27 the “tax,” the excess may be carried over to reduce the “tax” in  
28 the following year, and succeeding years if necessary, until the  
29 credit is exhausted.

30 (j) This section shall remain in effect only until December 31,  
31 2010, and as of that date is repealed.

32 SEC. 3. Section 23635 is added to the Revenue and Taxation  
33 Code, to read:

34 23635. (a) For each taxable year beginning on or after July 1,  
35 2004, and before January 1, 2010, there shall be allowed as a credit  
36 against the “tax,” as defined in Section 23036, an amount equal  
37 to 15 percent of the total amount paid or incurred by the taxpayer  
38 during the taxable year for qualified wages with respect to each  
39 qualified motion picture production.



1 (b) In the case of a qualified individual in any qualified motion  
2 picture located in an area designated as an enterprise zone pursuant  
3 to the Enterprise Zone Act (Chapter 12.8 (commencing with  
4 Section 7070) of Division 7 of Title 1 of the Government Code),  
5 for each taxable year beginning on or after July 1, 2004, and before  
6 January 1, 2010, there shall be allowed as a credit against the  
7 “tax,” as defined in Section 23036, an amount equal to 25 percent  
8 of the total amount paid or incurred by the taxpayer during the  
9 taxable year for qualified wages with respect to each qualified  
10 motion picture.

11 (c) With respect to each qualified motion picture, the amount  
12 of qualified wages paid or incurred to each qualified individual or  
13 qualified entity on behalf of each qualified individual that shall be  
14 taken into account in computing the credit in subdivision (a) shall  
15 not exceed twenty-five thousand dollars (\$25,000).

16 (d) For purposes of this section, the following definitions  
17 apply:

18 (1) “Employee fringe benefit expenses” means the amount  
19 allowable as a deduction under this part to the employer for any  
20 taxable year with respect to all of the following:

21 (A) Employer contributions under stock bonus, pension,  
22 profit-sharing, annuity, or similar plan.

23 (B) Employer-provided coverage under any accident or health  
24 plan for employees.

25 (C) The cost of life or disability insurance provided to  
26 employees.

27 Any amount treated as wages under clause (i) of subparagraph  
28 (A) of paragraph (5) shall not be taken into account under this  
29 paragraph.

30 (2) “Qualified entity” means a personal service corporation as  
31 defined in Section 269A(b)(1) of the Internal Revenue Code, a  
32 payroll services corporation, or any entity receiving qualified  
33 wages on behalf of a qualified individual.

34 (3) “Qualified individual” means, with respect to any period,  
35 any individual who renders personal services, if substantially all  
36 of the services are performed during the period in an activity  
37 related to any qualified motion picture. “Qualified individual”  
38 shall not include either of the following:

39 (A) Any individual described in subparagraph (A), (B), or (C)  
40 of Section 51(i)(1) of the Internal Revenue Code.



1 (B) Any 5-percent owner, as defined in Section 416(i)(1)(B) of  
2 the Internal Revenue Code.

3 (4) “Qualified motion picture” has the same meaning as  
4 “qualified motion picture” in paragraph (3) of subdivision (b) of  
5 Section 6010.6, including, but not limited to, productions in digital  
6 format, where both of the following exist:

7 (A) The total cost of wages of the qualified motion picture,  
8 exclusive of payments excluded pursuant to subparagraph (B) of  
9 paragraph (5), is more than two hundred thousand dollars  
10 (\$200,000), but less than ten million dollars (\$10,000,000). For  
11 purposes of this subparagraph, in the case of an episodic television  
12 series, each episode shall constitute a separate motion picture. In  
13 the case of any taxable year beginning in a calendar year after  
14 2004, the ~~one hundred thousand dollars (\$100,000)~~ *two hundred*  
15 *thousand dollars (\$200,000)* and the ten million dollars  
16 (\$10,000,000) shall be increased by an amount equal to such dollar  
17 amount, multiplied by the cost-of-living adjustment as computed  
18 in subdivision (h) of Section 17041. If any increase for cost of  
19 living of the ~~one hundred thousand dollar (\$100,000)~~ *two hundred*  
20 *thousand dollar (\$200,000)* limit is not a multiple of five thousand  
21 dollars (\$5,000), that amount shall be rounded to the nearest  
22 multiple of five thousand dollars (\$5,000). If any increase for cost  
23 of living of the ten million ~~dollar (\$10,000,000)~~ limit is not  
24 a multiple of five hundred thousand dollars (\$500,000), that  
25 amount shall be rounded to the nearest multiple of five hundred  
26 thousand dollars (\$500,000).

27 (B) Fifty percent of the total wages of the production are  
28 qualified wages.

29 (5) (A) “Qualified wages” means all of the following:

30 (i) Any compensation paid or incurred by an employer on or  
31 after ~~July~~ *January* 1, 2004, for services performed in this state by  
32 an employee while the employee is a qualified individual.

33 (ii) The employee fringe benefit expenses of the employer  
34 allocable to the services performed in this state by the employee.

35 (iii) Any payments made to a qualified entity on or after ~~July~~  
36 *January* 1, 2004, for services performed by qualified individuals  
37 in this state.

38 (iv) Compensation paid to independent contractors who are  
39 qualified individuals on or after ~~July~~ *January* 1, 2004, for services  
40 personally rendered in this state.



1 (B) “Qualified wages” does not include any of the following:

2 (i) Any compensation for legal or accounting services, except  
3 for legal or accounting services performed by production  
4 employees.

5 (ii) Any ~~cost~~ costs arising from new use, reuse, clip use,  
6 licensing, secondary markets, or delayed residual compensation,  
7 or the creation of any ancillary product, including, but not limited  
8 to, a soundtrack album, toy, or game.

9 (iii) Any cost or fee incurred with respect to acquisition,  
10 development, turnaround, or any rights thereto.

11 (iv) Any marketing, promotional, or distribution costs.

12 (6) “Wages” means all amounts described in subparagraph (A)  
13 of paragraph (5), whether these amounts are paid for services  
14 performed or rendered within or without this state.

15 (e) For purposes of this section, all employers treated as a single  
16 employer under subsection (a) or (b) of Section 52 of the Internal  
17 Revenue Code shall be treated as a single employer. The credit, if  
18 any, determined under this section with respect to each employer  
19 shall be its proportionate share of the wages giving rise to the  
20 credit.

21 (f) No credit shall be allowed under any other provision of this  
22 chapter for qualified wages paid to any employee during any  
23 taxable year if the employer is allowed a credit under this section  
24 for any qualified wages.

25 (g) (1) A taxpayer may elect to assign any portion of any credit  
26 allowed under this section to one or more taxpayers within the  
27 same controlled group for each taxable year in which the credit is  
28 allowed. For purposes of this subdivision, “controlled group”  
29 means “controlled group” as defined in Section 1563(a) of the  
30 Internal Revenue Code, except that:

31 (A) “50” shall be substituted for “80” each place it appears in  
32 Section 1563(a)(1) of the Internal Revenue Code.

33 (B) The determination shall be made without regard to  
34 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal  
35 Revenue Code.

36 (2) The election provided in paragraph (1):

37 (A) May be based on any method selected by the taxpayer that  
38 originally receives the credit.

39 (B) Shall be irrevocable for the taxable year the credit is  
40 allowed, once made.



1 (C) May be changed for any subsequent taxable year, if the  
2 election to make the assignment is expressly shown on each of the  
3 returns of the taxpayers within the same controlled group that  
4 assigns and receives the credits.

5 (D) May be applied to credits carried over from previous  
6 taxable years.

7 (h) The taxpayer may elect to take the credit allowed by this  
8 section, which credit shall be in lieu of any other credit allowed by  
9 this part for the costs for which a credit is allowed by this section.

10 (i) In the case where the credit allowed by this section exceeds  
11 the "tax," the excess may be carried over to reduce the "tax" in  
12 the following year, and succeeding years if necessary, until the  
13 credit is exhausted.

14 (j) This section shall remain in effect only until December 31,  
15 2010, and as of that date is repealed.

16 SEC. 4. (a) On or before December 31, 2007, and on or  
17 before December 31, 2009, the Technology, Trade, and Commerce  
18 Agency shall report to the Legislature on the effectiveness of the  
19 incentives created by this act. In preparing the report, the agency  
20 shall consider, but is not limited to considering, all of the  
21 following:

22 (1) The number and increase or decrease of qualified motion  
23 pictures produced in California.

24 (2) The amount of total qualified wages paid or incurred in  
25 California.

26 (3) The level of employment in the production industry in  
27 California.

28 (b) The agency may consult with the Employment  
29 Development Department, the Franchise Tax Board, the State  
30 Board of Equalization, representatives of industry and labor  
31 organizations, and agencies of local government before  
32 completing its report.

33 SEC. 5. The provisions of this act are severable. If any  
34 provision of this act or its application is held invalid, that invalidity  
35 shall not affect other provisions or applications that can be given  
36 effect without the invalid provision or application.

37 SEC. 6. This act provides for a tax levy within the meaning of  
38 Article IV of the Constitution and shall go into immediate effect.

