

AMENDED IN ASSEMBLY MAY 16, 2002

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, ~~as specified~~ *on or after January 1, 2004*, 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



1 Franchise Tax Board, of the persons who during the year have  
2 claimed a refund or credit of sales or use tax under this section and  
3 the amount of the refund or credit allowed to each person.

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

7 (e) This section shall remain in effect only until December 31,  
8 2010, and as of that date is repealed.

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

11 17053.35. (a) For each taxable year beginning on or after  
12 July 1, 2004, and before January 1, 2010, there shall be allowed *to*  
13 *a qualified person* as a credit against the “net tax,” as defined in  
14 Section 17039, an amount equal to 15 percent of the total amount  
15 paid or incurred by the taxpayer ~~during the taxable year~~ *on or after*  
16 *January 1, 2004*, for qualified wages with respect to each qualified  
17 motion picture production. *For each qualified motion picture*  
18 *production, there shall be no more than one taxpayer eligible for*  
19 *the credit.*

20 (b) In the case of a qualified individual in any qualified motion  
21 picture located in an area designated as an enterprise zone pursuant  
22 to the Enterprise Zone Act (Chapter 12.8 (commencing with  
23 Section 7070) of Division 7 of Title 1 of the Government Code),  
24 for each taxable year beginning on or after July 1, 2004, and before  
25 January 1, 2010, there shall be allowed *to a qualified person* as a  
26 credit against the “net tax,” as defined in Section ~~17309~~ 17039,  
27 an amount equal to 25 percent of the total amount paid or incurred  
28 by the taxpayer ~~during the taxable year~~ *on or after January 1, 2004*,  
29 for qualified wages with respect to each qualified motion picture.

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

35 (d) For purposes of this section, the following definitions  
36 apply:

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



1 (A) Employer contributions under *any* stock bonus, pension,  
2 profit-sharing, annuity, or similar plan.

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

5 (C) The cost of life or disability insurance provided to  
6 employees.

7 Any amount treated as wages under clause (i) of subparagraph  
8 (A) of paragraph ~~(5)~~ (6) shall not be taken into account under this  
9 paragraph.

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

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

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

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

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

27 (A) The total cost of wages of the qualified motion picture,  
28 exclusive of payments excluded pursuant to subparagraph (B) of  
29 paragraph ~~(5)~~ (6), is more than two hundred thousand dollars  
30 (\$200,000), but less than ten million dollars (\$10,000,000). For  
31 purposes of this subparagraph, in the case of an episodic television  
32 series, each episode shall constitute a separate motion picture. In  
33 the case of any taxable year beginning in a calendar year after  
34 2004, the two hundred thousand dollars (\$200,000) and the ten  
35 million dollars (\$10,000,000) shall be increased by an amount  
36 equal to such dollar amount, multiplied by the cost-of-living  
37 adjustment as computed in subdivision (h) of Section 17041. If any  
38 increase for cost of living of the two hundred thousand dollar  
39 (\$200,000) limit is not a multiple of five thousand dollars  
40 (\$5,000), that amount shall be rounded to the nearest multiple of



1 five thousand dollars (\$5,000). If any increase for cost of living of  
2 the ten million dollar (\$10,000,000) limit is not a multiple of five  
3 hundred thousand dollars (\$500,000), that amount shall be  
4 rounded to the nearest multiple of five hundred thousand dollars  
5 (\$500,000).

6 (B) Fifty percent of the total wages of the production are  
7 qualified wages.

8 (5) “*Qualified person*” means the holder of legal title to a  
9 *qualified motion picture*.

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

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

15 (ii) The employee fringe benefit expenses of the employer  
16 allocable to the services performed in this state *on or after January*  
17 *1, 2004*, by the employee.

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

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

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

25 (i) Any compensation for legal or accounting services, except  
26 for legal or accounting services performed by production  
27 employees.

28 (ii) Any costs arising from new use, reuse, clip use, licensing,  
29 secondary markets, or delayed residual compensation, or the  
30 creation of any ancillary product, including, but not limited to, a  
31 soundtrack album, toy, or game.

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

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

35 ~~(6)~~

36 (7) “Wages” means all amounts described in subparagraph (A)  
37 of paragraph ~~(5)~~ (6), whether these amounts are paid for services  
38 performed or rendered within or without this state.

39 (e) For purposes of this section, all employers treated as a single  
40 employer under subsection (a) or (b) of Section 52 of the Internal



1 Revenue Code shall be treated as a single employer. The credit, if  
2 any, determined under this section with respect to each employer  
3 shall be its proportionate share of the wages giving rise to the  
4 credit.

5 (f) No credit shall be allowed under any other provision of this  
6 chapter for qualified wages paid to any employee during any  
7 taxable year if the employer is allowed a credit under this section  
8 for any qualified wages.

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

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

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

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

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

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

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

29 (D) May be applied to credits carried over from previous  
30 taxable years.

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

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

38 (j) This section shall remain in effect only until December 31  
39 1, 2010, and as of that date is repealed.



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

3 23635. (a) For each taxable year beginning on or after July 1,  
4 2004, and before January 1, 2010, there shall be allowed *to a*  
5 *qualified person* as a credit against the “tax,” as defined in Section  
6 23036, an amount equal to 15 percent of the total amount paid or  
7 incurred by the taxpayer ~~during the taxable year~~ *on or after*  
8 *January 1, 2004*, for qualified wages with respect to each qualified  
9 motion picture production. *For each qualified motion picture*  
10 *production, there shall be no more than one taxpayer eligible for*  
11 *the credit.*

12 (b) In the case of a qualified individual in any qualified motion  
13 picture located in an area designated as an enterprise zone pursuant  
14 to the Enterprise Zone Act (Chapter 12.8 (commencing with  
15 Section 7070) of Division 7 of Title 1 of the Government Code),  
16 for each taxable year beginning on or after July 1, 2004, and before  
17 January 1, 2010, there shall be allowed *to a qualified person* as a  
18 credit against the “tax,” as defined in Section 23036, an amount  
19 equal to 25 percent of the total amount paid or incurred by the  
20 taxpayer ~~during the taxable year~~ *on or after January 1, 2004*, for  
21 qualified wages with respect to each qualified motion picture.

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

27 (d) For purposes of this section, the following definitions  
28 apply:

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

32 (A) Employer contributions under *any* stock bonus, pension,  
33 profit-sharing, annuity, or similar plan.

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

36 (C) The cost of life or disability insurance provided to  
37 employees.

38 Any amount treated as wages under clause (i) of subparagraph  
39 (A) of paragraph ~~(5)~~ (6) shall not be taken into account under this  
40 paragraph.



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

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

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

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

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

18 (A) The total cost of wages of the qualified motion picture,  
19 exclusive of payments excluded pursuant to subparagraph (B) of  
20 paragraph ~~(5)~~ (6), is more than two hundred thousand dollars  
21 (\$200,000), but less than ten million dollars (\$10,000,000). For  
22 purposes of this subparagraph, in the case of an episodic television  
23 series, each episode shall constitute a separate motion picture. In  
24 the case of any taxable year beginning in a calendar year after  
25 2004, the two hundred thousand dollars (\$200,000) and the ten  
26 million dollars (\$10,000,000) shall be increased by an amount  
27 equal to such dollar amount, multiplied by the cost-of-living  
28 adjustment as computed in subdivision (h) of Section 17041. If any  
29 increase for cost of living of the two hundred thousand dollar  
30 (\$200,000) limit is not a multiple of five thousand dollars  
31 (\$5,000), that amount shall be rounded to the nearest multiple of  
32 five thousand dollars (\$5,000). If any increase for cost of living of  
33 the ten million dollar (\$10,000,000) limit is not a multiple of five  
34 hundred thousand dollars (\$500,000), that amount shall be  
35 rounded to the nearest multiple of five hundred thousand dollars  
36 (\$500,000).

37 (B) Fifty percent of the total wages of the production are  
38 qualified wages.

39 (5) “*Qualified person*” means the holder of legal title to a  
40 qualified motion picture.



- 1 (6) (A) “Qualified wages” means all of the following:
- 2 (i) Any compensation paid or incurred by an employer ~~on or~~  
3 ~~after January 1, 2004~~, for services performed in this state *on or*  
4 *after January 1, 2004*, by an employee while the employee is a  
5 qualified individual.
- 6 (ii) The employee fringe benefit expenses of the employer  
7 allocable to the services performed in this state *on or after January*  
8 *1, 2004*, by the employee.
- 9 (iii) Any payments made to a qualified entity ~~on or after~~  
10 ~~January 1, 2004~~, for services performed by qualified individuals  
11 in this state *on or after January 1, 2004*.
- 12 (iv) Compensation paid to independent contractors who are  
13 qualified individuals ~~on or after January 1, 2004~~, for services  
14 personally rendered in this state *on or after January 1, 2004*.
- 15 (B) “Qualified wages” does not include any of the following:
- 16 (i) Any compensation for legal or accounting services, except  
17 for legal or accounting services performed by production  
18 employees.
- 19 (ii) Any costs arising from new use, reuse, clip use, licensing,  
20 secondary markets, or delayed residual compensation, or the  
21 creation of any ancillary product, including, but not limited to, a  
22 soundtrack album, toy, or game.
- 23 (iii) Any cost or fee incurred with respect to acquisition,  
24 development, turnaround, or any rights thereto.
- 25 (iv) Any marketing, promotional, or distribution costs.
- 26 ~~(6)~~
- 27 (7) “Wages” means all amounts described in subparagraph (A)  
28 of paragraph ~~(5)~~ (6), whether these amounts are paid for services  
29 performed or rendered within or without this state.
- 30 (e) For purposes of this section, all employers treated as a single  
31 employer under subsection (a) or (b) of Section 52 of the Internal  
32 Revenue Code shall be treated as a single employer. The credit, if  
33 any, determined under this section with respect to each employer  
34 shall be its proportionate share of the wages giving rise to the  
35 credit.
- 36 (f) No credit shall be allowed under any other provision of this  
37 chapter for qualified wages paid to any employee during any  
38 taxable year if the employer is allowed a credit under this section  
39 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 *1*, 2010, and as of that date is repealed.

32 SEC. 4. (a) On or before December 31, 2007, and on or  
 33 before December 31, 2009, the Technology, Trade, and Commerce  
 34 Agency shall report to the Legislature on the effectiveness of the  
 35 incentives created by this act. In preparing the report, the agency  
 36 shall consider, but is not limited to considering, all of the  
 37 following:

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



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

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

5 (b) The agency may consult with the Employment  
6 Development Department, the Franchise Tax Board, the State  
7 Board of Equalization, representatives of industry and labor  
8 organizations, and agencies of local government before  
9 completing its report.

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

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

