

AMENDED IN ASSEMBLY JULY 20, 2007

AMENDED IN ASSEMBLY JULY 16, 2007

SENATE BILL

No. 98

Introduced by Committee on Budget and Fiscal Review

January 17, 2007

~~An act relating to the Budget Act of 2007.~~ *An act to amend Section 23036 of, to amend, repeal, and add Sections 17052.12, 23609, and 25128 of, and to add and repeal Sections 6357.7, 6357.8, 6357.9, 17053.85, 17053.86, 23685, and 23686 of, the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

SB 98, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2007.~~ *Taxation.*

(1) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption for the gross receipts from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for immediate consumption or shipment in the conduct of its business on an international flight. .

This bill, for calendar years beginning on and after July 1, 2008, would exempt from those state taxes the gross receipts derived from the sale in this state of, and the storage, use, or other consumption in this state of, low-sulfur fuel products for use in a vessel's auxiliary or main engine sold to a water common carrier for use in California's territorial or internal waters, as provided. This exemption would continue until June 30, 2013, with respect to the exemption for products

used in a vessel's auxiliary engine. With respect to exemption for products used in a vessel's main engine, the exemption would continue until June 30, 2013, or for 6 months following the publication of a specified finding, whichever occurs first.

This bill would, from July 1, 2008, until July 1, 2013, also exempt from those state taxes gross receipts in excess of specified amounts per gallon derived from the sale in this state of, and the storage, use, or other consumption in this state of, fuel and petroleum products sold to or purchased by an air common carrier on a domestic flight, as specified.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

(2) The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws for increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, for purposes of the Corporation Tax Law, 24% of the basic research payments, as defined. The term "base amount" means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable year and the fixed-base percentage, as defined, but in no event less than 50% of the qualified research expenses for the taxable year. A taxpayer may elect an alternative incremental credit for increasing research expenses in modified conformity to federal income tax laws.

This bill would modify those provisions beginning on or after January 1, 2007, and before January 1, 2013, to increase the credit for increasing research expenses to 20% of the excess of the qualified research expenses. This bill would also provide complete conformity

to the alternative incremental credit provided under those federal income tax laws.

(3) *The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws. This bill would authorize a credit against those taxes, until January 1, 2014, for taxable years beginning on or after January 1, 2008, subject to specified limitations, in an amount equal to 12% of the qualified amount for qualified wages paid or incurred with respect to the production of each qualified motion picture with an additional 3% for specific qualified motion pictures. This bill would authorize \$70,000,000 for credits beginning in the 2008 calendar year, and each calendar year thereafter, subject to specified provisions.*

Additionally, this bill would authorize a credit against those taxes, until January 1, 2014, for taxable years beginning on or after January 1, 2008, subject to specified limitations, in an amount equal to 12% of the incremental qualified production costs paid or incurred with respect to the production of qualified commercials, as defined. This bill would authorize \$5,000,000 for credits beginning in the 2008 calendar year, and each calendar year thereafter, subject to specified provisions.

This bill would authorize the sale of these credits to an unrelated party as specified.

The Corporation Tax Law defines the term “tax” for those purposes, and provides that credits shall be allowed against the tax in a specified order.

This bill would add to that list of credits, credits that contain refundable provisions, but do not contain carryover provisions.

This bill would impose specified duties on the California Film Commission and the Franchise Tax Board in administering the credits, including a requirement that the commission report to the Legislature, on or before June 1, 2011, and annually thereafter, on the diversity of the workforce employed in the production of the qualified motion pictures and qualified commercials.

This bill would require the Business, Transportation and Housing Agency to report to the Legislature regarding the economic impact of the tax incentives created by the bill.

The bill would require a taxpayer to certify under penalty of perjury that he or she is the taxpayer entitled to claim certain deductions with respect to a qualified motion picture, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

(4) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from, or attributable to, sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula, except as otherwise provided.

This bill, for taxable years beginning on or after January 1, 2008 and before January 1, 2011, would allow a taxpayer that is a member of the apportioning trade or business to elect, as provided, to apportion its business income to this state by utilizing one of the revised apportionment formulas, as specified.

~~This bill would express the intent of the Legislature to make statutory changes relating to the Budget Act of 2007.~~

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

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

1 SECTION 1. Section 6357.7 is added to the Revenue and
2 Taxation Code, to read:
3 6357.7. (a) Effective July 1, 2008, through and including June
4 30, 2013, there are exempted from the taxes imposed by this part,
5 the gross receipts from the sale in this state of, and the storage,
6 use, or other consumption in this state of, low-sulfur fuel products
7 for use in a vessel's auxiliary engine, sold to a water common
8 carrier inside this state for immediate consumption in the conduct
9 of its business as a water common carrier in California's territorial
10 or internal waters.
11 (b) To qualify for the exemption, the water common carrier
12 shall furnish to the seller an exemption certificate, in the form
13 prescribed by the board, stating the quantity of low-sulfur fuel
14 products for use in a vessel's auxiliary engines claimed as exempt

1 *that are to be consumed within California’s territorial or internal*
2 *waters. The certificate shall bear the purchaser’s valid seller’s*
3 *permit number or valid fuel exemption registration number.*
4 *Acceptance in good faith of that certificate shall relieve the seller*
5 *from liability for the sales tax exempted under this section.*

6 *(c) For purposes of this section:*

7 *(1) “Immediate consumption” means that the delivery of the*
8 *low-sulfur fuel products for use in a vessel’s auxiliary engine by*
9 *the seller is directly into a vessel for consumption by that vessel*
10 *while in California’s territorial or internal waters, and is not used*
11 *for storage by the purchaser or any third party.*

12 *(2) “Low-sulfur fuel products” means any fuel, including heavy*
13 *fuel oil, marine distillate fuels, marine gas oil, marine diesel oil,*
14 *or any other diesel fuel, with a sulfur content of no greater than*
15 *0.05 percent, or 500 parts per million.*

16 *(3) “Auxiliary engine” means an engine on a vessel that*
17 *provides power for a use other than propulsion.*

18 *(4) “Territorial or internal waters” means waters within a*
19 *seaward boundary three geographical miles into the Pacific Ocean*
20 *measured from the mean low-water mark of the California coast,*
21 *all interior navigable waterways, and the Monterey Bay, subject*
22 *to definitions of the United Nations Convention on the Law of the*
23 *Sea.*

24 *(5) “Water common carrier” has the same meaning as “common*
25 *carrier” as set forth in Section 6385.*

26 *(d) (1) Any water common carrier claiming exemption under*
27 *this section that is not required to hold a valid seller’s permit,*
28 *shall be required to register with the board and obtain a fuel*
29 *exemption registration number, and shall be required to file returns*
30 *as the board may prescribe, either if the board notifies the carrier*
31 *that returns must be filed or if the carrier is liable for taxes based*
32 *upon consumption of fuel products erroneously claimed as exempt*
33 *under this section.*

34 *(2) A water common carrier required to hold a fuel exemption*
35 *registration number shall be subject to all applicable provisions*
36 *of this part, Part 1.5 (commencing with Section 7200), and Part*
37 *1.6 (commencing with Section 7251).*

38 *(3) Upon approval of the board, a water common carrier may*
39 *utilize a single fuel exemption registration number for all*
40 *exemptions claimed under this article.*

1 (e) (1) A water common carrier claiming an exemption under
2 this section, upon request shall make available to the board
3 records, documenting its consumption of low-sulfur fuel products
4 for use in a vessel's auxiliary engine while in California's
5 territorial and internal waters, the amount claimed as exempt, and
6 any additional information related to a vessel's engines, fuel tanks,
7 and sailing schedules. If the carrier fails to provide the records
8 upon request, the board may revoke the carrier's fuel exemption
9 registration number.

10 (2) Records required by the board pursuant to this subdivision
11 may include, but are not limited to:

12 (A) A description of the types of low-sulfur fuel products that
13 meet the requirements of this section and that are used in each
14 auxiliary engine.

15 (B) A description of the use of the low-sulfur fuel products.

16 (C) A description of the vessel that used the low-sulfur fuel
17 product, including the type of vessel, whether the vessel is
18 mono-fueled or dual-fueled, and the number of auxiliary engines
19 used by the vessel.

20 (D) A description of the vessel's locations and destinations for
21 the period the vessel was in California's territorial or internal
22 waters.

23 (3) A supplier or retailer, upon request by the board, shall
24 confirm the sulfur content of fuels sold to a water common carrier
25 and claimed as exempt under this section.

26 (f) The board may require any water common carrier claiming
27 an exemption under this section and required to obtain a fuel
28 exemption registration number, to place with it such security as
29 the board may determine pursuant to Section 6701.

30 (g) Pursuant to this section, any use of the fuel products by the
31 purchasing carrier, other than that incident to the delivery of the
32 fuel products to the carrier and the immediate consumption of the
33 fuel products by the carrier for use in an auxiliary engine in
34 California's territorial or internal waters in the conduct of its
35 business as a water common carrier, or a failure of the carrier to
36 document its consumption of the fuel products in an auxiliary
37 engine in California's territorial or internal waters, shall subject
38 the carrier to liability for payment of sales tax as if it were a
39 retailer making a retail sale of the property at the time of that use

1 *or failure, and the sales price of the property to it shall be deemed*
2 *to be the gross receipts from the retail sale.*

3 *(h) No exemption may be claimed under this section for which*
4 *an exemption under Section 6357.8 may be claimed.*

5 *(i) On or before January 1, 2012, the Legislative Analyst's*
6 *Office, in consultation with the Department of Finance, the board,*
7 *and the State Air Resources Board, shall submit a report to the*
8 *Legislature on the economic and health impacts of the exemption*
9 *authorized under this section. The report shall include, but is not*
10 *limited to, a recommendation as to whether the exemption should*
11 *be extended, and if so, any recommended modifications of the*
12 *exemption.*

13 *(j) This section shall remain in effect only until June 30, 2013,*
14 *and as of that date is repealed, unless a later enacted statute, which*
15 *is enacted before June 30, 2013, deletes or extends that date.*

16 *SEC. 2. Section 6357.8 is added to the Revenue and Taxation*
17 *Code, to read:*

18 *6357.8. (a) Effective July 1, 2008, there are exempted from*
19 *the taxes imposed by this part, the gross receipts from the sale in*
20 *this state of, and the storage, use, or other consumption of,*
21 *low-sulfur fuel products for use in a vessel's main engine, sold to*
22 *a water common carrier for immediate consumption in the conduct*
23 *of its business as a water common carrier until the first out-of-state*
24 *destination or 500 nautical miles beyond California's territorial*
25 *waters, whichever is less.*

26 *(b) To qualify for the exemption, the water common carrier*
27 *shall furnish to the seller an exemption certificate, in the form*
28 *prescribed by the board, stating the quantity of low-sulfur fuel*
29 *products for use in a vessel's main engines claimed as exempt.*
30 *The certificate shall bear the purchaser's valid seller's permit*
31 *number or valid fuel exemption registration number. Acceptance*
32 *in good faith of that certificate shall relieve the seller from liability*
33 *for the sales tax exempted under this section.*

34 *(c) For purposes of this section:*

35 *(1) "Immediate consumption" means that the delivery of the*
36 *low-sulfur fuel products for use in a vessel's main engine by the*
37 *seller is directly into a vessel for consumption by that vessel alone*
38 *until the first out-of-state destination or 500 miles beyond*
39 *California's territorial waters and not used for storage by the*
40 *purchaser or any third party.*

1 (2) “First out-of-state destination” has the same meaning as
2 set forth in Section 6385.

3 (3) “Low-sulfur fuel products” means any fuel, including heavy
4 fuel oil, marine distillate fuels, marine gas oil, marine diesel oil,
5 or any other diesel fuel, with a sulfur content of no greater than
6 1.5 percent, or 15,000 parts per million.

7 (4) “Main engine” means any propulsion engine, including,
8 but not limited to, an engine whose main purpose is to provide
9 power for propulsion, regardless of other uses, including a
10 diesel-electric engine.

11 (5) “Territorial waters” means waters within a seaward
12 boundary three geographical miles into the Pacific Ocean
13 measured from the mean low-water mark of the California coast,
14 and the Monterey Bay, subject to definitions of the United Nations
15 Convention on the Law of the Sea.

16 (6) “Water common carrier” has the same meaning as “common
17 carrier” as set forth in Section 6385.

18 (d) (1) Any water common carrier claiming exemption under
19 this section that is not required to hold a valid seller’s permit,
20 shall be required to register with the board and obtain a fuel
21 exemption registration number, and shall be required to file returns
22 as the board may prescribe, either if the board notifies the carrier
23 that returns must be filed or if the carrier is liable for taxes based
24 upon consumption of fuel products erroneously claimed as exempt
25 under this section.

26 (2) A water common carrier required to hold a fuel exemption
27 registration number shall be subject to all applicable provisions
28 of this part, Part 1.5 (commencing with Section 7200), and Part
29 1.6 (commencing with Section 7251).

30 (3) Upon approval of the board, a water common carrier may
31 utilize a single fuel exemption registration number for all
32 exemptions claimed under this article.

33 (e) (1) A water common carrier claiming an exemption under
34 this section, upon request shall make available to the board
35 records, documenting its consumption of low-sulfur fuel products
36 for use in a vessel’s main engine, the amount claimed as exempt,
37 and any additional information related to a vessel’s engines, fuel
38 tanks, and sailing schedules. If the carrier fails to provide the
39 records upon request, the board may revoke the carrier’s fuel
40 exemption registration number.

1 (2) *Records required by the board pursuant to this subdivision*
2 *may include, but are not limited to:*

3 (A) *A description of the types of low-sulfur fuel products that*
4 *meet the requirements of this section and that are used in each*
5 *main engine.*

6 (B) *A description of the use of the low-sulfur fuel products.*

7 (C) *A description of the vessel that used the low-sulfur fuel*
8 *product, including the type of vessel, whether the vessel is*
9 *mono-fueled or dual-fueled, and the number of auxiliary engines*
10 *used by the vessel.*

11 (D) *A description of the vessel's locations and destinations for*
12 *the period the vessel was in California's territorial or internal*
13 *waters.*

14 (3) *A supplier or retailer, upon request by the board, shall*
15 *confirm the sulfur content of fuels sold to a water common carrier*
16 *and claimed as exempt under this section.*

17 (f) *The board may require any water common carrier claiming*
18 *an exemption under this section and required to obtain a fuel*
19 *exemption registration number, to place with it such security as*
20 *the board may determine pursuant to Section 6701.*

21 (g) *Pursuant to this section, any use of the fuel products by the*
22 *purchasing carrier, other than that incident to the delivery of the*
23 *fuel products to the carrier and the immediate consumption of the*
24 *fuel products by the carrier for use in the conduct of its business*
25 *as a water common carrier, or a failure of the carrier to document*
26 *its consumption of the fuel products in a main engine until the first*
27 *out-of-state destination or 500 nautical miles beyond California's*
28 *territorial waters, shall subject the carrier to liability for payment*
29 *of sales tax as if it were a retailer making a retail sale of the*
30 *property at the time of that use or failure, and the sales price of*
31 *the property to it shall be deemed to be the gross receipts from the*
32 *retail sale.*

33 (h) *On or before January 1, 2012, the Legislative Analyst's*
34 *Office, in consultation with the Department of Finance, the board,*
35 *and the State Air Resources Board, shall submit a report to the*
36 *Legislature on the economic and health impacts of the exemption*
37 *authorized under this section. The report shall include, but is not*
38 *limited to, a recommendation as to whether the exemption should*
39 *be extended, and if so, any recommended modifications of the*
40 *exemption.*

1 (i) This section is repealed on the earlier of any of the following:

2 (1) Six months from the date the board submits a finding to the
3 Legislature and the Office of Administrative Law, for publication
4 in the state register; that the United States Environmental
5 Protection Agency established a Sulfur Emission Control Area
6 under the provisions of Annex VI of the International Convention
7 for the Prevention of Pollution from Ships, 1973, as amended at
8 London in February 1978.

9 (2) Six months from the date the board submits a finding to the
10 Legislature and the Office of Administrative Law, for publication
11 in the state register; that the United States Environmental
12 Protection Agency established vessel air emissions standards
13 consistent with any amendments made by the International
14 Maritime Organization to Annex VI of the International Convention
15 for the Prevention of Pollution from Ships after the enactment date
16 of the act that added this section, provided that the air quality
17 benefits in California are at least as great as those from a Sulfur
18 Emission Control Area and the standards are not applied
19 exclusively to United States flagged vessels.

20 (3) June 30, 2013.

21 SEC. 3. Section 6357.9 is added to the Revenue and Taxation
22 Code, to read:

23 6357.9. (a) (1) Except as provided in paragraph (2), from
24 July 1, 2008, to June 1, 2013, inclusive, there are exempted from
25 the taxes imposed by this part, those gross receipts in excess of
26 one dollar ninety-three cents (\$1.93) per gallon derived from the
27 sale in this state of, or the storage, use, or other consumption in
28 this state of, fuel and petroleum products sold to or purchased by
29 an air common carrier for consumption or shipment in the conduct
30 of its business as an air common carrier, on a domestic flight.

31 (2) Notwithstanding paragraph (1), for any year commencing
32 on July 1, 2009, and for each year commencing on each July 1
33 thereafter to July 1, 2012, inclusive, the “one dollar ninety-three
34 cents (\$1.93)” amount under paragraph (1) shall be modified, as
35 follows:

36 (A) Except as provided in subparagraphs (B), (C), or (D), the
37 amount shall be one dollar eighty-eight cents (\$1.88) for the year
38 commencing on July 1, 2009, and for any year thereafter, in which
39 the total amount of fuel and petroleum products to be sold, stored,
40 or otherwise consumed in this state, as estimated by the board,

1 exceeds by 5 percent the total amount of fuel and petroleum
2 products to be sold, stored, or otherwise consumed in this state,
3 as estimated by the board, during the year commencing on July
4 1, 2008.

5 (B) Except as provided in subparagraph (C) or (D), the amount
6 shall be one dollar eighty-three cents (\$1.83) for the year
7 commencing on July 1, 2010, and for any year thereafter, in which
8 the total amount of fuel and petroleum products to be sold, stored,
9 or otherwise consumed in this state, as estimated by the board,
10 exceeds by 5 percent the total amount of fuel and petroleum
11 products to be sold, stored, or otherwise consumed in this state,
12 as estimated by the board, during the year commencing on July
13 1, 2009.

14 (C) Except as provided in subparagraph (D), the amount shall
15 be one dollar seventy-eight cents (\$1.78) for any year commencing
16 on July 1, 2011, and on each July 1 thereafter, in which the total
17 amount of fuel and petroleum products to be sold, stored, or
18 otherwise consumed in this state, as estimated by the board,
19 exceeds by 5 percent the total amount of fuel and petroleum
20 products to be sold, stored, or otherwise consumed in this state
21 during the year commencing on July 1, 2010.

22 (D) Notwithstanding subparagraph (A), the amount shall be
23 one dollar seventy-three cents (\$1.73) for any year commencing
24 on July 1, 2012, and on each July 1 thereafter, in which the total
25 amount of fuel and petroleum products to be sold, stored, or
26 otherwise consumed in this state, as estimated by the board,
27 exceeds by 5 percent the total amount of fuel and petroleum
28 products to be sold, stored, or otherwise consumed in this state
29 during the year commencing on July 1, 2011.

30 (b) To qualify for the exemption, the air common carrier shall
31 furnish to the seller an exemption certificate in the form prescribed
32 by the board. Acceptance in good faith of that certificate shall
33 relieve the seller from liability for the sales tax exempted under
34 this section.

35 (c) For purposes of this section, “domestic flight” means a
36 flight whose final destination is a point inside of the United States.

37 (d) Any air common carrier claiming exemption under this
38 section, that is not required to hold a valid seller’s permit, shall
39 be required to register with the board and obtain a fuel exemption
40 registration number, and shall be required to file returns as the

1 board may prescribe, either if the board notifies the carrier that
2 returns must be filed or if the carrier is liable for taxes based upon
3 consumption or transportation of fuel or petroleum products
4 erroneously claimed as exempt under this section.

5 (e) An air common carrier claiming an exemption under this
6 section, upon request, shall make available to the board records,
7 including, but not limited to, a copy of a log abstract, an air
8 waybill, or a cargo manifest, documenting its consumption or
9 transportation of the fuel or petroleum products on a domestic
10 flight and the amount claimed as exempt. If the carrier fails to
11 provide these records upon request, the board may revoke the
12 carrier's fuel exemption registration number.

13 (f) The board may require any air common carrier claiming an
14 exemption under this section and required to obtain a fuel
15 exemption registration number, to place with it such security as
16 the board may determine pursuant to Section 6701.

17 (g) Pursuant to this section, any use of the fuel and petroleum
18 products by the purchasing carrier, other than that incident to the
19 delivery of the fuel and petroleum products to the carrier and the
20 consumption or transportation of the fuel and petroleum products
21 by the carrier on a domestic flight for use in the conduct of its
22 business as a common carrier, or a failure of the carrier to
23 document its consumption or transportation of the fuel and
24 petroleum products on a domestic flight, shall subject the carrier
25 to liability for payment of sales tax as if it were a retailer making
26 a retail sale of the property at the time of that use or failure, and
27 the sales price of the property to it shall be deemed to be the gross
28 receipts from the retail sale.

29 (h) Notwithstanding any provision of the Bradley-Burns Uniform
30 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
31 7200)) or the Transactions and Use Tax Law (Part 1.6
32 (commencing with Section 7251)), the exemption established by
33 this section shall not apply with respect to any tax levied by a
34 county, city, city and county, or district pursuant to, or in
35 accordance with, either of those laws, unless approved on or before
36 March 1, 2008, by the local government that would otherwise
37 receive the revenues derived from the taxes imposed under those
38 laws. Any governing body of any county, city, city and county, or
39 district that votes to allow the exemption established by this section

1 shall so notify the State Board of Equalization on or before March
2 1, 2008.

3 (i) This section shall remain in effect only until July 1, 2013,
4 and as of that date is repealed.

5 SEC. 4. Section 17052.12 of the Revenue and Taxation Code
6 is amended to read:

7 17052.12. For each taxable year beginning on or after January
8 1, 1987, there shall be allowed as a credit against the “net tax” (as
9 defined by Section 17039) for the taxable year an amount
10 determined in accordance with Section 41 of the Internal Revenue
11 Code, except as follows:

12 (a) For each taxable year beginning before January 1, 1997, the
13 reference to “20 percent” in Section 41(a)(1) of the Internal
14 Revenue Code is modified to read “8 percent.”

15 (b) (1) For each taxable year beginning on or after January 1,
16 1997, and before January 1, 1999, the reference to “20 percent”
17 in Section 41(a)(1) of the Internal Revenue Code is modified to
18 read “11 percent.”

19 (2) For each taxable year beginning on or after January 1, 1999,
20 and before January 1, 2000, the reference to “20 percent” in Section
21 41(a)(1) of the Internal Revenue Code is modified to read “12
22 percent.”

23 (3) For each taxable year beginning on or after January 1, 2000,
24 the reference to “20 percent” in Section 41(a)(1) of the Internal
25 Revenue Code is modified to read “15 percent.”

26 (c) Section 41(a)(2) of the Internal Revenue Code, relating to
27 basic research payments, shall not apply.

28 (d) “Qualified research” shall include only research conducted
29 in California.

30 (e) In the case where the credit allowed under this section
31 exceeds the “net tax,” the excess may be carried over to reduce
32 the “net tax” in the following year, and succeeding years if
33 necessary, until the credit has been exhausted.

34 (f) (1) With respect to any expense paid or incurred after the
35 operative date of Section 6378, Section 41(b)(1) of the Internal
36 Revenue Code is modified to exclude from the definition of
37 “qualified research expense” any amount paid or incurred for
38 tangible personal property that is eligible for the exemption from
39 sales or use tax provided by Section 6378.

1 (2) For each taxable year beginning on or after January 1, 1998,
2 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
3 Internal Revenue Code, relating to contract research expenses, is
4 modified to read “this part or Part 11 (commencing with Section
5 23001).”

6 (g) (1) For each taxable year beginning on or after January 1,
7 2000, *and before January 1, 2008*:

8 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
9 of the Internal Revenue Code is modified to read “one and
10 forty-nine hundredths of one percent.”

11 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
12 the Internal Revenue Code is modified to read “one and
13 ninety-eight hundredths of one percent.”

14 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
15 of the Internal Revenue Code is modified to read “two and
16 forty-eight hundredths of one percent.”

17 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
18 election under Section 41(c)(4)(A) of the Internal Revenue Code
19 may be made for any taxable year of the taxpayer beginning on or
20 after January 1, 1998. That election shall apply to the taxable year
21 for which made and ~~all~~ *each* succeeding taxable ~~years~~ *year* unless
22 revoked with the consent of the Franchise Tax Board.

23 (3) Section 41(c)(6) of the Internal Revenue Code, relating to
24 gross receipts, is modified to take into account only those gross
25 receipts from the sale of property held primarily for sale to
26 customers in the ordinary course of the taxpayer’s trade or business
27 that is delivered or shipped to a purchaser within this state,
28 regardless of f.o.b. point or any other condition of the sale.

29 (h) Section 41(h) of the Internal Revenue Code, relating to
30 termination, shall not apply.

31 (i) Section 41(g) of the Internal Revenue Code, relating to
32 special rule for passthrough of credit, is modified by each of the
33 following:

34 (1) The last sentence shall not apply.

35 (2) If the amount determined under Section 41(a) of the Internal
36 Revenue Code for any taxable year exceeds the limitation of
37 Section 41(g) of the Internal Revenue Code, that amount may be
38 carried over to other taxable years under the rules of subdivision
39 (e); except that the limitation of Section 41(g) of the Internal

1 Revenue Code shall be taken into account in each subsequent
2 taxable year.

3 (3) *This section shall remain in effect only until and including*
4 *December 31, 2013, and as of that date is repealed, unless a later*
5 *enacted statute that is enacted before January 1, 2014 extends that*
6 *date.*

7 *SEC. 5. Section 17053.85 is added to the Revenue and Taxation*
8 *Code, to read:*

9 *17053.85. (a) (1) For taxable years beginning on or after*
10 *January 1, 2008, and before January 1, 2014, subject to the*
11 *limitation in paragraph (2), there shall be allowed to a qualified*
12 *taxpayer, as designated by the California Film Commission*
13 *pursuant to subdivision (h), as a credit against the “net tax,” as*
14 *defined in Section 17039, an amount equal to 12 percent of the*
15 *qualified amount. A movie of the week and a miniseries, for which*
16 *an executed licensing agreement from a network or basic cable*
17 *entity is provided, shall be entitled to an additional 3 percent of*
18 *the qualified amount.*

19 (2) *The credit allowed by paragraph (1) shall not exceed the*
20 *lesser of:*

21 (A) *The amount of the credit allocated to the qualified taxpayer*
22 *by the California Film Commission based on the initial application.*

23 (B) *The amount of the credit calculated based on actual*
24 *allowable expenditures on the qualified motion picture.*

25 (C) *Three million dollars (\$3,000,000) per qualified motion*
26 *picture.*

27 (b) *For purposes of this section:*

28 (1) *“Ancillary product” means any article for sale to the public*
29 *that contains a portion of, or any element of, the motion picture.*

30 (2) *“Budget” means an estimate of all expenses paid or incurred*
31 *during the production period of a motion picture. It shall be the*
32 *same budget used by the qualified taxpayer and production*
33 *company for all qualified motion picture purposes.*

34 (3) *“Clip use” means a use of any portion of a motion picture,*
35 *other than the qualified motion picture, used in the qualified motion*
36 *picture.*

37 (4) (A) *“Employee fringe benefits” means the amount allowable*
38 *as a deduction under this part to the qualified taxpayer involved*
39 *in the production of the qualified motion picture for any year*
40 *during the production period with respect to any of the following:*

- 1 (i) Employer contributions under any pension, profit-sharing,
2 annuity, or similar plan.
- 3 (ii) Employer-provided coverage under any accident or health
4 plan for employees.
- 5 (iii) The employer's cost of life or disability insurance provided
6 to employees.
- 7 (B) Any amount treated as wages under clause (i) of
8 subparagraph (A) of paragraph (21) shall not be taken into account
9 under this paragraph.
- 10 (5) "Licensing" means any grant of rights to distribute the
11 qualified motion picture, in whole or in part.
- 12 (6) "Movie of the week" and "miniseries" both mean a motion
13 picture, produced for initial exploitation on television, which
14 contains a scripted storyline requiring two or more consecutive
15 hours of programming.
- 16 (7) "New to California" means a television series that has not
17 previously engaged in principal photography in this state, other
18 than for a production that is a pilot or presentation.
- 19 (8) "New use" means any use of a motion picture in a medium
20 other than the medium for which it was initially created.
- 21 (9) (A) "Postproduction" means the final activities in a
22 qualified motion picture's production, including editing, foley
23 recording, automatic dialogue replacement, sound editing, scoring
24 and music editing, beginning and end credits, negative cutting,
25 negative processing and duplication, the addition of sound and
26 visual effects, soundmixing, film to tape transfers, encoding, and
27 color correction.
- 28 (B) "Postproduction" does not include the manufacture or
29 shipping of release prints.
- 30 (10) "Preproduction" means the process of preparation for
31 actual physical production which begins after a qualified motion
32 picture has received a firm agreement of financial commitment,
33 or is greenlit, with, for example, the establishment of a dedicated
34 production office, the hiring of key crew members, and includes,
35 but is not limited to, activities that include location scouting and
36 execution of contracts with vendors of equipment and stage space.
- 37 (11) "Principal photography" means the phase of production
38 during which the motion picture is actually shot, as distinguished
39 from preproduction and postproduction.

1 (12) “Production accountant” means an employee of the
2 production company whose duties include some or all of the
3 following activities: oversight of production budgets, cost
4 reporting, order management, payment of expenses, and the review
5 of financial reports for accuracy and completeness.

6 (13) “Production company” means a company primarily
7 engaged in qualified production activities that have been approved
8 by the California Film Commission.

9 (14) “Production period” means the period of time in which
10 the preproduction, principal photography, and postproduction
11 occurs until the qualified motion picture is completed, as described
12 in clause (v) of subparagraph (C) of paragraph (18).

13 (15) (A) “Qualified amount” means all of the following:

14 (i) The total amount paid or incurred during the production
15 period for qualified wages with respect to the production of each
16 qualified motion picture.

17 (ii) The total amount paid or incurred during the production
18 period for qualified property.

19 (iii) Amounts paid or incurred for qualified wages and qualified
20 property related to the qualified motion picture for preproduction
21 costs that include set design and construction, props, wardrobe,
22 prosthetics, testing, and location scouting that are paid or incurred.
23 In the case of a television series described in clause (ii) of
24 subparagraph (C) of paragraph (18), the amounts paid or incurred
25 for the items described in this subparagraph shall be ratably
26 allocated amongst the episodes produced in the first season.

27 (B) Notwithstanding subparagraph (A), the term “qualified
28 amount” shall not include any qualified wages paid or incurred
29 for services performed nor any qualified property purchased or
30 leased before January 1, 2008.

31 (16) “Qualified entity” means a personal service corporation
32 as defined in Section 269A(b)(1) of the Internal Revenue Code, a
33 payroll services corporation, or any entity receiving qualified
34 wages with respect to services performed by a qualified individual.

35 (17) (A) “Qualified individual” means any individual who
36 performs services during the production period in an activity
37 related to the production of a qualified motion picture.

38 (B) “Qualified individual” shall not include either of the
39 following:

1 (i) Any individual related to the qualified taxpayer as described
2 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
3 Revenue Code.

4 (ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of
5 the Internal Revenue Code, of the qualified taxpayer.

6 (18) (A) “Qualified motion picture” means any motion picture
7 that is produced, adapted, or altered for exploitation in, on, or
8 through any medium or by any device, including, but not limited
9 to, a motion picture produced for exploitation in movie theaters,
10 through any form of television, videotapes, videodiscs, DVDs, or
11 any other digital format or on commercial carriers. “Qualified
12 motion picture” shall also include, but shall not be limited to, all
13 adapted versions thereof, whether adapted for exploitation in any
14 language, for any media, or otherwise.

15 (B) (i) “Qualified motion picture” shall not include any motion
16 picture produced for private noncommercial use, such as weddings
17 or graduations, by students made as part of any educational course,
18 or any motion picture produced for industrial purposes.

19 (ii) “Qualified motion picture” shall not include a news
20 program, current events or public events program, talk show, game
21 show, sporting event or activity, awards show, telethon or other
22 production that solicits funds, reality television program, a feature
23 where 80 percent or more of the content consists of
24 computer-generated images, clip-based programming if more than
25 50 percent of the content is comprised of licensed footage,
26 documentaries, variety programs, daytime dramas, strip shows,
27 one-half-hour (air time) episodic television shows, or any
28 production that falls within the recordkeeping requirements of
29 Section 2257 of Title 18 of the United States Code.

30 (C) To qualify as a “qualified motion picture,” all of the
31 following additional conditions shall be satisfied:

32 (i) The qualified motion picture shall be a feature with a
33 minimum budget of one million dollars (\$1,000,000) and a
34 maximum budget of seventy-five million dollars (\$75,000,000), or
35 a movie of the week or miniseries with a minimum budget of one
36 million dollars (\$1,000,000) and a maximum budget of seventy-five
37 million dollars (\$75,000,000).

38 (ii) A qualified motion picture shall also include a single episode
39 in a single season, not to exceed 22 episodes per season, of a
40 television series new to California with a minimum budget of five

1 *hundred thousand dollars (\$500,000) and a maximum budget of*
2 *one million eight hundred thousand dollars (\$1,800,000) per*
3 *episode. This clause shall only apply to the first three seasons of*
4 *a television series that is new to California.*

5 *(iii) The actual expenses totaled at the completion of the*
6 *qualified motion picture must fall within the fiscal ranges*
7 *established in clause (i) or (ii) at the time of application to the*
8 *California Film Commission.*

9 *(iv) At least 75 percent of the total days spent in principal*
10 *photography of a qualified motion picture occur wholly in*
11 *California.*

12 *(v) Production of the qualified motion picture is completed*
13 *within 30 months of the date on which the qualified taxpayer's*
14 *application was approved by the California Film Commission.*
15 *For the purposes of this section, a qualified motion picture is*
16 *"completed" when the process of postproduction has been finished,*
17 *and a final answer print or broadcast delivery air master of the*
18 *qualified motion picture is produced.*

19 *(vi) Principal photography of the qualified motion picture begins*
20 *within 180 days of the designation of the taxpayer as a qualified*
21 *taxpayer by the California Film Commission.*

22 *(D) For the purposes of clauses (i) and (ii) of subparagraph*
23 *(C), the following additional rules apply:*

24 *(i) In computing the total amounts paid or incurred for the*
25 *production of a qualified motion picture, all amounts paid or*
26 *incurred by all persons or entities that share in the costs of the*
27 *qualified motion picture shall be aggregated.*

28 *(ii) In the case of a television series, described in clause (ii) of*
29 *subparagraph (C), each episode shall be treated as a separate*
30 *qualified motion picture.*

31 *(E) For purposes of computing the limitations under this*
32 *paragraph, "wages" means all amounts described in subparagraph*
33 *(A) of paragraph (21), provided that these amounts are paid for*
34 *services performed or rendered within this state.*

35 *(19) (A) "Qualified property" means tangible personal property*
36 *purchased or leased in California and is used primarily in the*
37 *production of a qualified motion picture.*

38 *(B) "Qualified property" shall not include a story, script, or*
39 *scenario to be used for a qualified motion picture, or the literary,*
40 *dramatic, or musical material upon which the qualified motion*

1 picture is based or may be adapted, or any rights related to the
2 foregoing.

3 (20) (A) “Qualified taxpayer” means an applicant who has a
4 reservation of an allocation of tax credits pursuant to subdivision
5 (h).

6 (B) (i) In the case of any passthrough entity, the determination
7 of whether a taxpayer is a qualified taxpayer under this section
8 shall be made at the entity level and any credit under this section
9 is not allowed to the passthrough entity, but shall be passed
10 through to the partners or shareholders in accordance with
11 applicable provisions of Part 10 (commencing with Section 17001)
12 or Part 11 (commencing with Section 23001). For purposes of this
13 paragraph, “passthrough entity” means any entity taxed as a
14 partnership or “S” corporation.

15 (ii) In the case of an “S” corporation, the credit allowed under
16 this section shall not be used by an “S” corporation as a credit
17 against a tax imposed under Chapter 4.5 (commencing with Section
18 23800) of Part 11 of Division 2.

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

20 (i) Any wages reported under Section 13050 of the
21 Unemployment Insurance Code that were paid or incurred by the
22 production company involved in the production of a qualified
23 motion picture with respect to a qualified individual for services
24 performed on the qualified motion picture production within this
25 state.

26 (ii) The portion of any employee fringe benefits paid or incurred
27 by the production company involved in the production of the
28 qualified motion picture that are properly allocable to qualified
29 wage amounts described in clause (i).

30 (iii) Any payments made to a qualified entity for services
31 performed on a qualified motion picture in this state by qualified
32 individuals within the meaning of paragraph (17).

33 (iv) Remuneration paid to an independent contractor, as
34 described in Section 2750.5 of the Labor Code, who is a qualified
35 individual for services performed within this state by that qualified
36 individual.

37 (B) “Qualified wages” shall not include any of the following:

38 (i) Expenses, including wages, for legal or accounting services
39 except production accountants.

1 (ii) Expenses, including wages, in excess of the first twenty-five
2 thousand dollars (\$25,000) paid per person per qualified motion
3 picture for writers, directors, music directors, music composers,
4 music supervisors, producers, and performers, other than
5 background actors with no scripted lines.

6 (iii) Expenses, including wages, related to new use, reuse, clip
7 use, licensing, secondary markets, or residual compensation, or
8 the creation of any ancillary product, including, but not limited
9 to, a soundtrack album, toy, game, trailer, or teaser.

10 (iv) Expenses, including wages, paid or incurred with respect
11 to acquisition, development, turnaround, or any rights thereto.

12 (v) Expenses, including wages, related to financing, overhead,
13 marketing, promotion, or distribution of a qualified motion picture.

14 (22) “Residual compensation” means supplemental
15 compensation paid at the time that a motion picture is exhibited
16 through new use, reuse, clip use, or in secondary markets, as
17 distinguished from payments made during production.

18 (23) “Reuse” means any use of a qualified motion picture in
19 the same medium for which it was created, following the initial
20 use in that medium.

21 (24) “Secondary markets” means media in which a qualified
22 motion picture is exhibited following the initial media in which it
23 is exhibited.

24 (c) (1) Notwithstanding any other provision of law, a qualified
25 taxpayer may sell any credit allowed under this section that is
26 attributable to an independent film to an unrelated party.

27 (2) For purposes of this subdivision “independent film” means
28 a motion picture with a minimum budget of one million dollars
29 (\$1,000,000) and a maximum budget of ten million dollars
30 (\$10,000,000) that is produced by a company that is not publicly
31 traded and publicly traded companies do not own, directly or
32 indirectly, more than 25 percent of the producing company.

33 (3) The qualified taxpayer shall report to the Franchise Tax
34 Board prior to the sale of the credit, in the form and manner
35 specified by the Franchise Tax Board, all required information
36 regarding the purchase and sale of the credit.

37 (4) The party acquiring tax credits under this paragraph shall
38 be subject to the requirements of this subdivision.

39 (5) In the case where the credit allowed under this section
40 exceeds the “net tax,” the excess credit may be carried over to

1 reduce the “net tax” in the following taxable year, and succeeding
2 five taxable years, if necessary, until the credit has been exhausted.

3 (6) A credit shall not be assigned or sold pursuant to this
4 subdivision to more than two successive taxpayers.

5 (d) The amount of any credit allowed under this section to the
6 qualified taxpayer shall be treated as a separate item of income
7 of the qualified taxpayer from a source wholly within this state for
8 the taxable year in which the credit is allowed.

9 (e) No credit shall be allowed pursuant to this section unless
10 the qualified taxpayer substantiates, by adequate books and records
11 or by sufficient evidence corroborating his or her own statement,
12 that:

13 (1) The qualified wages and the qualified property on which
14 the credit was calculated were actually paid or incurred in the
15 amount claimed. Substantiation of this item shall include proof
16 that the services were performed in California and the qualified
17 property was purchased or leased in California.

18 (2) The motion picture was a qualified motion picture.
19 Substantiation of this item shall include, but is not limited to, the
20 following:

21 (A) Identification of each qualified individual.

22 (B) The specific start and end dates of production.

23 (C) The total wages paid and amount and type of qualified
24 property purchased.

25 (D) The amount of qualified wages paid to each qualified
26 individual.

27 (E) Certification from the Director of the California Film
28 Commission that identifies the motion picture as a qualified motion
29 picture.

30 (f) Subdivision (c) of Section 19341, relating to interest on
31 overpayments, shall not apply to any return claiming a credit under
32 this section.

33 (g) If the qualified taxpayer fails to attach the certification issued
34 by the California Film Commission in accordance with subdivision
35 (h), the credit shall be disallowed and assessed and collected under
36 Section 19051.

37 (h) For purposes of this section, the Director of the California
38 Film Commission shall do all of the following:

39 (1) With respect to the reservation and allocation of tax credits:

40 (A) Reserve allocations of tax credits for applicants.

1 (B) Establish a procedure for qualified taxpayers to file with
2 the California Film Commission a written application, on a form
3 jointly prescribed by the California Film Commission and the
4 Franchise Tax Board, for allocation of tax credits. The application
5 shall be filed under penalty of perjury and include, but not be
6 limited to, the following information:

7 (i) The budget for the motion picture production.

8 (ii) A one-line shooting schedule.

9 (iii) A financing plan for the production.

10 (iv) An application fee.

11 (v) The copyright registration number for the screenplay, as
12 reflected on the certificate of registration issued under the authority
13 of Section 410 of Title 17 of the United States Code, relating to
14 registration of claim and issuance of certificate.

15 (vi) The diversity of the workforce employed by the qualified
16 taxpayer, including, but not limited to, the ethnic and racial
17 makeup of the individuals employed by the qualified taxpayer
18 during the production of the qualified motion picture, to the extent
19 possible.

20 (vii) Any other information deemed relevant by the California
21 Film Commission.

22 (C) (i) Determine and designate who is a qualified taxpayer
23 meeting the requirements of this section.

24 (ii) The State Board of Equalization and the Franchise Tax
25 Board shall not be involved in making this determination or
26 designation unless authorized by the Director of the California
27 Film Commission.

28 (D) Process and approve, or reject, all applications on a
29 first-come, first-served basis.

30 (E) Provide for the cancellation of the reservation of allocation
31 credits, if principal photography on the qualified motion picture
32 does not begin within 180 days after notification of the reservation
33 of allocated credits by the California Film Commission, in
34 accordance with subdivision (i).

35 (2) With respect to the certification of allowed tax credits:

36 (A) Certify tax credits allowed to taxpayers with an existing and
37 noncanceled reservation of allocation of tax credits.

38 (B) Establish specific audit requirements, in addition to those
39 provided under current law, that must be complied with prior to
40 the issuance of a certificate by the California Film Commission,

1 *and provide for the reallocation of previously reserved allocations*
2 *of tax credits, in accordance with subdivision (i), that are*
3 *disallowed pursuant to the audit requirements.*

4 *(C) Issue a certificate to the qualified taxpayer setting forth the*
5 *name of the qualified taxpayer, identification of the qualified*
6 *motion picture, and the total amount of the tax credit allocated.*

7 *(D) Establish an appeals procedure with the California Film*
8 *Commission regarding the amount of the certified tax credit*
9 *allowed.*

10 *(3) No later than March 1, 2008, the California Film*
11 *Commission shall promulgate rules and regulations necessary to*
12 *establish procedures, processes, requirements, and rules identified*
13 *in or required to implement this section. Rules and regulations*
14 *may be adopted on an emergency basis if necessary to meet the*
15 *March 1, 2008, deadline. The California Film Commission may*
16 *amend these rules and regulations as necessary. The California*
17 *Film Commission may adopt rules and regulations to more*
18 *narrowly define the terms listed in subdivision (b) to limit their*
19 *meaning, but may not expand the definition of any terms defined*
20 *in subdivision (b).*

21 *(i) The aggregate amount of credits that may be allocated in*
22 *any calendar year pursuant to this section and Section 23685, and*
23 *shall be an amount equal to the sum of all of the following:*

24 *(1) Seventy million dollars (\$70,000,000) for the 2008 calendar*
25 *year, and each calendar year thereafter.*

26 *(2) The unused credit ceiling, if any, for the preceding calendar*
27 *year.*

28 *(3) The amount of previously allocated credit cancelled or*
29 *disallowed in the preceding calendar year by reason of*
30 *subparagraph (E) of paragraph (1) or subparagraph (B) of*
31 *paragraph (2) of subdivision (h).*

32 *(j) The California Film Commission shall provide a list, at least*
33 *annually, to the Franchise Tax Board, in the form and manner as*
34 *shall be determined by the California Film Commission and the*
35 *Franchise Tax Board, of the names, taxpayer identification*
36 *numbers, including taxpayer identification numbers of each partner*
37 *or shareholder, as applicable, the qualified motion pictures for*
38 *which tax credit was allocated, and the total amount of the tax*
39 *credit allocated to each qualified taxpayer.*

1 (k) *This section shall remain in effect only until January 1, 2014,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2014, deletes or extends that date.*

4 SEC. 6. *Section 17053.86 is added to the Revenue and Taxation*
5 *Code, to read:*

6 17053.86. (a) (1) *For taxable years beginning on or after*
7 *January 1, 2008, and before January 1, 2014, subject to the*
8 *limitation in paragraph (2), there shall be allowed to a qualified*
9 *commercial production company, as designated by the California*
10 *Film Commission pursuant to subdivision (h), as a credit against*
11 *the “net tax,” as defined in Section 17039, an amount equal to 12*
12 *percent of the incremental qualified production costs.*

13 (2) *The credit allowed by paragraph (1) shall not exceed the*
14 *lesser of:*

15 (A) *Five hundred thousand dollars (\$500,000) per qualified*
16 *production company per calendar year.*

17 (B) *The amount of the credit allocated by the California Film*
18 *Commission to the qualified commercial production company*
19 *pursuant to subdivision (h).*

20 (b) *For the purposes of this section:*

21 (1) *“Base year” is the taxable year preceding the taxable year*
22 *for which the credit is claimed.*

23 (2) (A) *“Employee fringe benefits” means the amount allowable*
24 *as a deduction under this part to the qualified commercial*
25 *production company involved in the production of the qualified*
26 *commercial for any year during the production period with respect*
27 *to any of the following:*

28 (i) *Employer contributions under any pension, profit-sharing,*
29 *annuity, or similar plan.*

30 (ii) *Employer-provided coverage under any accident or health*
31 *plan for employees.*

32 (iii) *The employer’s cost of life or disability insurance provided*
33 *to employees.*

34 (B) *Any amount treated as wages under clause (i) of*
35 *subparagraph (A) of paragraph (10) shall not be taken in account*
36 *under this paragraph.*

37 (3) *“Incremental qualified production costs” are any qualified*
38 *production costs for the taxable year greater than the qualified*
39 *production costs for the base year.*

1 (4) “Principal photography” means the phase of production
2 during which the qualified commercial is actually shot.

3 (5) “Postproduction” means the final activities in a qualified
4 commercial’s production, including, but not limited to, offline
5 editorial, online editorial, dailies, color correction, compositing,
6 CGI, graphics, sound editorial, sound mixing, sound design,
7 automated dialogue replacement, foley recording, music
8 composition and scoring, and duplication associated with the
9 above process.

10 (6) (A) “Qualified commercial” means a commercial or
11 advertisement composed of moving images and sounds that is
12 recorded on film, videotape, or other digital medium, created for
13 display on a network, regional channel, or cable where 75 percent
14 of the total production days spent in principal photography occur
15 wholly in California.

16 (B) “Qualified commercial” shall not include any program
17 length production with an advertising component including a
18 documentary length commercial, an infomercial, news, or current
19 affairs program, interview or talk program, network promotion
20 (short form content intended to promote other programming),
21 feature film promotion (trailers and teasers), sporting event, game
22 show, award ceremony, daytime drama, reality entertainment
23 programming or program intended primarily for industrial,
24 corporate, or institutional end users, fundraising or commercial
25 promoting political candidates or political issues, a program
26 consisting primarily of stock footage, a program produced by an
27 organization organized under Section 527 of the Internal Revenue
28 Code, or any production that falls within the recordkeeping
29 requirements of Section 2257 of Title 18 of the United States Code.

30 (7) (A) “Qualified commercial production company” means a
31 taxpayer, allocated tax credits by the California Film Commission
32 pursuant to subdivision (h), that is principally engaged in the
33 production of a qualified commercial and has control over the
34 selection of production location, deployment, or management of
35 the production equipment, and directly employs the production
36 crew on the qualified commercial, or is a taxpayer who provides
37 postproduction services on a qualified commercial. All members
38 of a commonly controlled group, as defined by subdivision (b) of
39 Section 25105, shall be treated as a single qualified commercial

1 *production company for the purposes of computing qualified*
2 *production costs pursuant to paragraph (9).*

3 *(B) (i) In the case of any passthrough entity, the determination*
4 *of whether a taxpayer is a qualified commercial production*
5 *company under this section shall be made at the entity level and*
6 *any credit under this section is not allowed to the passthrough*
7 *entity, but shall be passed through to the partners or shareholders*
8 *in accordance with applicable provisions of Part 10 (commencing*
9 *with Section 17001) or Part 11 (commencing with Section 23001).*
10 *For the purposes of this paragraph, “passthrough entity” means*
11 *any entity taxed as a partnership or “S” corporation.*

12 *(ii) In the case of an “S” corporation, the credit allowed under*
13 *this section shall not be used by an “S” corporation as a credit*
14 *against a tax imposed under Chapter 4.5 (commencing with Section*
15 *23800) of Part 11 of Division 2.*

16 *(8) (A) “Qualified individual” means any individual who*
17 *performs services during the production period in an activity*
18 *related to the production of a qualified commercial.*

19 *(B) “Qualified individual” shall not include either of the*
20 *following:*

21 *(i) Any individual related to the qualified commercial production*
22 *company as described in subparagraph (A), (B), (C), or Section*
23 *51(i)(1) of the Internal Revenue Code.*

24 *(ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of*
25 *the Internal Revenue Code, of the qualified commercial production*
26 *company.*

27 *(9) “Qualified production costs” means all of the following:*

28 *(A) Costs for tangible property used and services performed*
29 *directly and predominately in the production of a qualified*
30 *commercial.*

31 *(B) Costs for qualified wages, technical and crew production*
32 *costs, allocable portions of depreciation on equipment directly*
33 *used in production, rental or other expenditures for commercial*
34 *production facilities, props, makeup, wardrobe, film processing,*
35 *camera rental, sound recording, set construction, lighting,*
36 *on-location meals, and lodging.*

37 *(C) Costs for equipment and services required to complete*
38 *postproduction of the qualified commercial.*

1 (D) “Qualified production costs” does not include costs for
2 story, script, or scenario to be used for a qualified commercial,
3 or any qualified wages paid or incurred before January 1, 2008.

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

5 (i) Any wages reported under Section 13050 of the
6 Unemployment Insurance Code that were paid or incurred by the
7 qualified commercial production company involved in the
8 production of a qualified commercial with respect to a qualified
9 individual for services performed on the qualified commercial
10 production within this state.

11 (ii) The portion of any employee fringe benefits paid or incurred
12 by the qualified commercial production company involved in the
13 production of a qualified commercial that are properly allocated
14 to qualified wage amounts described in clause (i).

15 (iii) Remuneration paid to a qualified individual for services
16 performed within this state by that qualified individual.

17 (iv) Remuneration paid to an independent contractor, as
18 described in Section 2750.5 of the Labor Code, who is a qualified
19 individual for services performed in this state by that qualified
20 individual.

21 (B) “Qualified wages” shall not include wages, salaries, or
22 other compensation for writers, directors, music directors,
23 producers, and performers, other than background actors with no
24 scripted lines who are employed by a qualified commercial
25 production company.

26 (c) (1) Notwithstanding any other provision of law, a qualified
27 taxpayer may sell any credit allowed under this section that is
28 attributable to an independent production to an unrelated party.

29 (2) For purposes of this subdivision “independent production”
30 means a commercial production with a minimum budget of one
31 million dollars (\$1,000,000) and a maximum budget of ten million
32 dollars (\$10,000,000) that is produced by a company that is not
33 publicly traded and publicly traded companies do not own, directly
34 or indirectly, more than 25 percent of the producing company.

35 (3) The qualified taxpayer shall report to the Franchise Tax
36 Board prior to the sale of the credit, in the form and manner
37 specified by the Franchise Tax Board, all required information
38 regarding the purchase and sale of the credit.

39 (4) The party acquiring tax credits under this paragraph shall
40 be subject to the requirements of this subdivision.

1 (5) In the case where the credit allowed under this section
2 exceeds the “net tax,” the excess credit may be carried over to
3 reduce the “net tax” in the following taxable year, and succeeding
4 five taxable years, if necessary, until the credit has been exhausted.

5 (6) A credit shall not be assigned or sold pursuant to this
6 subdivision to more than two successive taxpayers.

7 (d) The amount of any credit allowed under this section to the
8 qualified taxpayer shall be treated as a separate item of income
9 of the qualified taxpayer from a source wholly within this state for
10 the taxable year in which the credit is allowed.

11 (e) No credit shall be allowed pursuant to this section unless
12 the qualified commercial production company substantiates, by
13 adequate books and records or by sufficient evidence corroborating
14 his or her own statement, that:

15 (1) The incremental qualified production costs upon which the
16 credit was calculated were actually paid or incurred in the amount
17 claimed.

18 (2) The commercial was a qualified commercial. Substantiation
19 of this item shall include, but is not limited to, the following:

20 (A) Identification of each qualified individual.

21 (B) The specific start and end dates of production.

22 (C) The total wages paid.

23 (D) The amount of qualified wages paid to each qualified
24 individual.

25 (E) Certification from the Director of the California Film
26 Commission as required in subdivision (h).

27 (f) Subdivision (c) of Section 19341, relating to interest on
28 overpayments, shall not apply to any return claiming a credit under
29 this section.

30 (g) If the qualified commercial production company fails to
31 attach the certification issued by the Director of the California
32 Film Commission, in accordance with subdivision (h), the credit
33 shall be disallowed and assessed and collected under Section
34 19051.

35 (h) (1) For purposes of this section, the Director of the
36 California Film Commission shall do all of the following:

37 (A) Allocate tax credits to applicants, including establishing a
38 procedure to allocate tax credits among qualified commercial
39 production companies pursuant to paragraph (2) of subdivision
40 (i).

1 (B) Establish a procedure for qualified commercial production
2 companies to file with the California Film Commission a written
3 application, on a form jointly prescribed by the California Film
4 Commission and the Franchise Tax Board, for allocation of tax
5 credits. The application shall be filed under penalty of perjury and
6 include, but not be limited to, the following information:
7 (i) The qualified production costs for the base year.
8 (ii) The qualified production costs for the taxable year in which
9 the credit is claimed.
10 (iii) An application fee.
11 (iv) The diversity of the workforce employed by the qualified
12 commercial production company, including, but not limited to, the
13 ethnic and racial makeup of the individuals employed by the
14 qualified commercial production company during the production
15 of the qualified commercial, to the extent possible.
16 (v) Any other information deemed relevant by the California
17 Film Commission.
18 (C) Determine and designate who is a qualified commercial
19 production company meeting the requirements of this section.
20 (D) Process and approve, or reject, all applications.
21 (E) Establish specific audit requirements, in addition to those
22 provided under current law, that must be complied with prior to
23 the issuance of the certificate required by subparagraph (F), and
24 provide for the reallocation of previously approved credits that
25 are disallowed pursuant to the audit requirements, in accordance
26 with subdivision (i).
27 (F) Issue a certificate to the qualified taxpayer setting forth the
28 name of the qualified taxpayer and the total amount of the tax
29 credit allocated.
30 (2) No later than March 1, 2008, the California Film
31 Commission shall promulgate rules and regulations necessary to
32 establish procedures, processes, requirements, and rules identified
33 in or required to implement this section. Rules and regulations
34 may be adopted on an emergency basis if necessary to meet the
35 March 1, 2008, deadline. The California Film Commission may
36 amend these rules and regulations as necessary. The California
37 Film Commission may adopt rules and regulations to more
38 narrowly define the terms listed in subdivision (b) to limit their
39 meaning, but may not expand the definition of any terms defined
40 in subdivision (b).

1 (i) (1) *The aggregate amount of credits that may be allocated*
2 *in any calendar year pursuant to this section and Section 23686*
3 *shall be an amount equal to the sum of all of the following:*

4 (A) *Five million dollars (\$5,000,000) for the 2008 calendar*
5 *year, and each calendar year thereafter.*

6 (B) *The unused credit ceiling, if any, for the preceding calendar*
7 *years.*

8 (C) *The amount of previously allocated credit canceled or*
9 *disallowed in the calendar year by reason of subparagraph (E) of*
10 *paragraph (1) of subdivision (h).*

11 (2) *If the amount allocable to qualified commercial production*
12 *companies exceeds the aggregate amount of credits that may be*
13 *allocated in any calendar year, the credits shall be distributed to*
14 *qualified commercial production companies as follows:*

15 (A) *The California Film Commission shall allocate the credits*
16 *on a pro rata basis to qualified commercial production companies*
17 *for the designated period.*

18 (B) *The California Film Commission will compute the pro rata*
19 *allocation based on submitted applications from all qualified*
20 *commercial production companies within 120 days of the*
21 *application due date.*

22 (j) *The California Film Commission shall provide a list, at least*
23 *annually, to the Franchise Tax Board, in the form and manner as*
24 *shall be determined by the California Film Commission and the*
25 *Franchise Tax Board, of the names, taxpayer identification*
26 *numbers, including taxpayer identification numbers of each partner*
27 *or shareholder, as applicable, the qualified commercials for which*
28 *tax credit was allocated, and the total amount of the tax credit*
29 *allocated to each qualified taxpayer.*

30 (k) *This section shall remain in effect only until January 1, 2014,*
31 *and as of that date is repealed, unless a later enacted statute, that*
32 *is enacted before January 1, 2014, deletes or extends that date.*

33 *SEC. 7. Section 23036 of the Revenue and Taxation Code is*
34 *amended to read:*

35 23036. (a) (1) The term “tax” includes any of the following:

36 (A) The tax imposed under Chapter 2 (commencing with Section
37 23101).

38 (B) The tax imposed under Chapter 3 (commencing with Section
39 23501).

1 (C) The tax on unrelated business taxable income, imposed
2 under Section 23731.

3 (D) The tax on—S “S” corporations imposed under Section
4 23802.

5 (2) The term “tax” does not include any amount imposed under
6 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
7 of subdivision (f) of Section 24667.

8 (b) For purposes of Article 5 (commencing with Section 18661)
9 of Chapter 2, Article 3 (commencing with Section 19031) of
10 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
11 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
12 and for purposes of Sections 18601, 19001, and 19005, the term
13 “tax” also includes all of the following:

14 (1) The tax on limited partnerships, imposed under Section
15 17935, the tax on limited liability companies, imposed under
16 Section 17941, and the tax on registered limited liability
17 partnerships and foreign limited liability partnerships imposed
18 under Section 17948.

19 (2) The alternative minimum tax imposed under Chapter 2.5
20 (commencing with Section 23400).

21 (3) The tax on built-in gains of—S “S” corporations, imposed
22 under Section 23809.

23 (4) The tax on excess passive investment income of—S “S”
24 corporations, imposed under Section 23811.

25 (c) Notwithstanding any other provision of this part, credits are
26 allowed against the “tax” in the following order:

27 (1) Credits that do not contain carryover provisions.

28 (2) Credits that, when the credit exceeds the “tax,” allow the
29 excess to be carried over to offset the “tax” in succeeding taxable
30 years, except for those credits that are allowed to reduce the “tax”
31 below the tentative minimum tax, as defined by Section 23455.
32 The order of credits within this paragraph shall be determined by
33 the Franchise Tax Board.

34 (3) The minimum tax credit allowed by Section 23453.

35 (4) Credits that are allowed to reduce the “tax” below the
36 tentative minimum tax, as defined by Section 23455.

37 (5) Credits for taxes withheld under Section 18662.

38 (6) *Credits that contain refundable provisions, but do not*
39 *contain carryover provisions.*

- 1 (d) Notwithstanding any other provision of this part, each of
2 the following applies:
- 3 (1) No credit may reduce the “tax” below the tentative minimum
4 tax (as defined by paragraph (1) of subdivision (a) of Section
5 23455), except the following credits:
- 6 (A) The credit allowed by former Section 23601 (relating to
7 solar energy).
- 8 (B) The credit allowed by former Section 23601.4 (relating to
9 solar energy).
- 10 (C) The credit allowed by former Section 23601.5 (relating to
11 solar energy).
- 12 (D) The credit allowed by Section 23609 (relating to research
13 expenditures).
- 14 (E) The credit allowed by former Section 23609.5 (relating to
15 clinical testing expenses).
- 16 (F) The credit allowed by Section 23610.5 (relating to
17 low-income housing).
- 18 (G) The credit allowed by former Section 23612 (relating to
19 sales and use tax credit).
- 20 (H) The credit allowed by Section 23612.2 (relating to enterprise
21 zone sales or use tax credit).
- 22 (I) The credit allowed by former Section 23612.6 (relating to
23 Los Angeles Revitalization Zone sales tax credit).
- 24 (J) The credit allowed by former Section 23622 (relating to
25 enterprise zone hiring credit).
- 26 (K) The credit allowed by Section 23622.7 (relating to enterprise
27 zone hiring credit).
- 28 (L) The credit allowed by former Section 23623 (relating to
29 program area hiring credit).
- 30 (M) The credit allowed by former Section 23623.5 (relating to
31 Los Angeles Revitalization Zone hiring credit).
- 32 (N) The credit allowed by former Section 23625 (relating to
33 Los Angeles Revitalization Zone hiring credit).
- 34 (O) The credit allowed by Section 23633 (relating to targeted
35 tax area sales or use tax credit).
- 36 (P) The credit allowed by Section 23634 (relating to targeted
37 tax area hiring credit).
- 38 (Q) The credit allowed by Section 23649 (relating to qualified
39 property).

1 (2) No credit against the tax may reduce the minimum franchise
2 tax imposed under Chapter 2 (commencing with Section 23101).

3 (e) Any credit which is partially or totally denied under
4 subdivision (d) is allowed to be carried over to reduce the “tax”
5 in the following year, and succeeding years if necessary, if the
6 provisions relating to that credit include a provision to allow a
7 carryover of the unused portion of that credit.

8 (f) Unless otherwise provided, any remaining carryover from a
9 credit that has been repealed or made inoperative is allowed to be
10 carried over under the provisions of that section as it read
11 immediately prior to being repealed or becoming inoperative.

12 (g) Unless otherwise provided, if two or more taxpayers share
13 in costs that would be eligible for a tax credit allowed under this
14 part, each taxpayer is eligible to receive the tax credit in proportion
15 to his or her respective share of the costs paid or incurred.

16 (h) Unless otherwise provided, in the case of an—S “S”
17 corporation, any credit allowed by this part is computed at the—S
18 “S” corporation level, and any limitation on the expenses
19 qualifying for the credit or limitation upon the amount of the credit
20 applies to the—S “S” corporation and to each shareholder.

21 (i) (1) With respect to any taxpayer that directly or indirectly
22 owns an interest in a business entity that is disregarded for tax
23 purposes pursuant to Section 23038 and any regulations thereunder,
24 the amount of any credit or credit carryforward allowable for any
25 taxable year attributable to the disregarded business entity is limited
26 in accordance with paragraphs (2) and (3).

27 (2) The amount of any credit otherwise allowed under this part,
28 including any credit carryover from prior years, that may be applied
29 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for
30 the taxable year is limited to an amount equal to the excess of the
31 taxpayer’s regular tax (as defined in Section 23455), determined
32 by including income attributable to the disregarded business entity
33 that generated the credit or credit carryover, over the taxpayer’s
34 regular tax (as defined in Section 23455), determined by excluding
35 the income attributable to that disregarded business entity. No
36 credit is allowed if the taxpayer’s regular tax (as defined in Section
37 23455), determined by including the income attributable to the
38 disregarded business entity is less than the taxpayer’s regular tax
39 (as defined in Section 23455), determined by excluding the income
40 attributable to the disregarded business entity.

1 (3) If the amount of a credit allowed pursuant to the section
2 establishing the credit exceeds the amount allowable under this
3 subdivision in any taxable year, the excess amount may be carried
4 over to subsequent taxable years pursuant to subdivisions (d), (e),
5 and (f).

6 (j) (1) Unless otherwise specifically provided, in the case of a
7 taxpayer that is a partner or shareholder of an eligible pass-through
8 entity described in paragraph (2), any credit passed through to the
9 taxpayer in the taxpayer's first taxable year beginning on or after
10 the date the credit is no longer operative may be claimed by the
11 taxpayer in that taxable year, notwithstanding the repeal of the
12 statute authorizing the credit prior to the close of that taxable year.

13 (2) For purposes of this subdivision, "eligible pass-through
14 entity" means any partnership or-S "S" corporation that files its
15 return on a fiscal year basis pursuant to Section 18566, and that is
16 entitled to a credit pursuant to this part for the taxable year that
17 begins during the last year a credit is operative.

18 (3) This subdivision applies to credits that become inoperative
19 on or after the operative date of the act adding this subdivision.

20 *SEC. 8. Section 23609 of the Revenue and Taxation Code is*
21 *amended to read:*

22 23609. For each taxable year beginning on or after January 1,
23 1987, there shall be allowed as a credit against the "tax" (as defined
24 by Section 23036) an amount determined in accordance with
25 Section 41 of the Internal Revenue Code, except as follows:

26 (a) For each taxable year beginning before January 1, 1997,
27 both of the following modifications shall apply:

28 (1) The reference to "20 percent" in Section 41(a)(1) of the
29 Internal Revenue Code is modified to read "8 percent."

30 (2) The reference to "20 percent" in Section 41(a)(2) of the
31 Internal Revenue Code is modified to read "12 percent."

32 (b) (1) For each taxable year beginning on or after January 1,
33 1997, and before January 1, 1999, both of the following
34 modifications shall apply:

35 (A) The reference to "20 percent" in Section 41(a)(1) of the
36 Internal Revenue Code is modified to read "11 percent."

37 (B) The reference to "20 percent" in Section 41(a)(2) of the
38 Internal Revenue Code is modified to read "24 percent."

39 (2) For each taxable year beginning on or after January 1, 1999,
40 and before January 1, 2000, both of the following shall apply:

1 (A) The reference to “20 percent” in Section 41(a)(1) of the
2 Internal Revenue Code is modified to read “12 percent.”

3 (B) The reference to “20 percent” in Section 41(a)(2) of the
4 Internal Revenue Code is modified to read “24 percent.”

5 (3) For each taxable year beginning on or after January 1, 2000,
6 both of the following shall apply:

7 (A) The reference to “20 percent” in Section 41(a)(1) of the
8 Internal Revenue Code is modified to read “15 percent.”

9 (B) The reference to “20 percent” in Section 41(a)(2) of the
10 Internal Revenue Code is modified to read “24 percent.”

11 (c) (1) With respect to any expense paid or incurred after the
12 operative date of Section 6378, Section 41(b)(1) of the Internal
13 Revenue Code is modified to exclude from the definition of
14 “qualified research expense” any amount paid or incurred for
15 tangible personal property that is eligible for the exemption from
16 sales or use tax provided by Section 6378.

17 (2) “Qualified research” and “basic research” shall include only
18 research conducted in California.

19 (d) The provisions of Section 41(e)(7)(A) of the Internal
20 Revenue Code, shall be modified so that “basic research,” for
21 purposes of this section, includes any basic or applied research
22 including scientific inquiry or original investigation for the
23 advancement of scientific or engineering knowledge or the
24 improved effectiveness of commercial products, except that the
25 term does not include any of the following:

26 (1) Basic research conducted outside California.

27 (2) Basic research in the social sciences, arts, or humanities.

28 (3) Basic research for the purpose of improving a commercial
29 product if the improvements relate to style, taste, cosmetic, or
30 seasonal design factors.

31 (4) Any expenditure paid or incurred for the purpose of
32 ascertaining the existence, location, extent, or quality of any deposit
33 of ore or other mineral (including oil and gas).

34 (e) (1) In the case of a taxpayer engaged in any
35 biopharmaceutical research activities that are described in codes
36 2833 to 2836, inclusive, or any research activities that are described
37 in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard
38 Industrial Classification (SIC) Manual published by the United
39 States Office of Management and Budget, 1987 edition, or any
40 other biotechnology research and development activities, the

1 provisions of Section 41(e)(6) of the Internal Revenue Code shall
2 be modified to include both of the following:

3 (A) A qualified organization as described in Section
4 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
5 institution of higher education as described in Section 3304(f) of
6 the Internal Revenue Code.

7 (B) A charitable research hospital owned by an organization
8 that is described in Section 501(c)(3) of the Internal Revenue Code,
9 is exempt from taxation under Section 501(a) of the Internal
10 Revenue Code, is not a private foundation, is designated a
11 “specialized laboratory cancer center,” and has received Clinical
12 Cancer Research Center status from the National Cancer Institute.

13 (2) For purposes of this subdivision:

14 (A) “Biopharmaceutical research activities” means those
15 activities that use organisms or materials derived from organisms,
16 and their cellular, subcellular, or molecular components, in order
17 to provide pharmaceutical products for human or animal
18 therapeutics and diagnostics. Biopharmaceutical activities make
19 use of living organisms to make commercial products, as opposed
20 to pharmaceutical activities that make use of chemical compounds
21 to produce commercial products.

22 (B) “Other biotechnology research and development activities”
23 means research and development activities consisting of the
24 application of recombinant DNA technology to produce
25 commercial products, as well as research and development
26 activities regarding pharmaceutical delivery systems designed to
27 provide a measure of control over the rate, duration, and site of
28 pharmaceutical delivery.

29 (f) In the case where the credit allowed by this section exceeds
30 the “tax,” the excess may be carried over to reduce the “tax” in
31 the following year, and succeeding years if necessary, until the
32 credit has been exhausted.

33 (g) For each taxable year beginning on or after January 1, 1998,
34 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
35 Internal Revenue Code, relating to contract research expenses, is
36 modified to read “this part or Part 10 (commencing with Section
37 17001).”

38 (h) (1) For each taxable year beginning on or after January 1,
39 2000, *and before January 1, 2008*:

1 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
2 of the Internal Revenue Code is modified to read “one and
3 forty-nine hundredths of one percent.”

4 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
5 the Internal Revenue Code is modified to read “one and
6 ninety-eight hundredths of one percent.”

7 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
8 of the Internal Revenue Code is modified to read “two and
9 forty-eight hundredths of one percent.”

10 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
11 election under Section 41(c)(4)(A) of the Internal Revenue Code
12 may be made for any taxable year of the taxpayer beginning on or
13 after January 1, 1998. That election shall apply to the taxable year
14 for which made and ~~all~~ *each* succeeding taxable ~~years~~ *year* unless
15 revoked with the consent of the Franchise Tax Board.

16 (3) Section 41(c)(6) of the Internal Revenue Code, relating to
17 gross receipts, is modified to take into account only those gross
18 receipts from the sale of property held primarily for sale to
19 customers in the ordinary course of the taxpayer’s trade or business
20 that is delivered or shipped to a purchaser within this state,
21 regardless of f.o.b. point or any other condition of the sale.

22 (i) Section 41(h) of the Internal Revenue Code, relating to
23 termination, shall not apply.

24 (j) Section 41(g) of the Internal Revenue Code, relating to
25 special rule for passthrough of credit, is modified by each of the
26 following:

27 (1) The last sentence shall not apply.

28 (2) If the amount determined under Section 41(a) of the Internal
29 Revenue Code for any taxable year exceeds the limitation of
30 Section 41(g) of the Internal Revenue Code, that amount may be
31 carried over to other taxable years under the rules of subdivision
32 (f), except that the limitation of Section 41(g) of the Internal
33 Revenue Code shall be taken into account in each subsequent
34 taxable year.

35 (k) *This section shall remain in effect only until and including*
36 *December 31, 2013, and as of that date is repealed, unless a later*
37 *enacted statute that is enacted before January 1, 2014 extends that*
38 *date.*

39 *SEC. 9. Section 23685 is added to the Revenue and Taxation*
40 *Code, to read:*

1 23685. (a) (1) For taxable years beginning on or after January
2 1, 2008, and before January 1, 2014, subject to the limitation in
3 paragraph (2), there shall be allowed to a qualified taxpayer, as
4 designated by the California Film Commission pursuant to
5 subdivision (g), as a credit against the “tax,” as defined in Section
6 23036, an amount equal to 12 percent of the qualified amount. A
7 movie of the week and a miniseries, for which an executed licensing
8 agreement from a network or basic cable entity is provided, shall
9 be entitled to an additional 3 percent of the qualified amount.

10 (2) The credit allowed by paragraph (1) shall not exceed the
11 lesser of:

12 (A) The amount of the credit allocated to the qualified taxpayer
13 by the California Film Commission based on the initial application.

14 (B) The amount of the credit calculated based on actual
15 allowable expenditures on the qualified motion picture.

16 (C) Three million dollars (\$3,000,000) per qualified motion
17 picture.

18 (b) For purposes of this section:

19 (1) “Ancillary product” means any article for sale to the public
20 that contains a portion of, or any element of, the motion picture.

21 (2) “Budget” means an estimate of all expenses paid or incurred
22 during the production period of a motion picture. It shall be the
23 same budget used by the qualified taxpayer and production
24 company for all qualified motion picture purposes.

25 (3) “Clip use” means a use of any portion of a motion picture,
26 other than the qualified motion picture, used in the qualified motion
27 picture.

28 (4) (A) “Employee fringe benefits” means the amount allowable
29 as a deduction under this part to the qualified taxpayer involved
30 in the production of the qualified motion picture for any year
31 during the production period with respect to any of the following:

32 (i) Employer contributions under any pension, profit-sharing,
33 annuity, or similar plan.

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

36 (iii) The employer’s cost of life or disability insurance provided
37 to employees.

38 (B) Any amount treated as wages under clause (i) of
39 subparagraph (A) of paragraph (21) shall not be taken into account
40 under this paragraph.

1 (5) “Licensing” means any grant of rights to distribute the
2 qualified motion picture, in whole or in part.

3 (6) “Movie of the week” and “miniseries” both mean a motion
4 picture, produced for initial exploitation on television, which
5 contains a scripted storyline requiring two or more consecutive
6 hours of programming.

7 (7) “New to California” means a television series that has not
8 previously engaged in principal photography in this state, other
9 than for a production that is a pilot or presentation.

10 (8) “New use” means any use of a motion picture in a medium
11 other than the medium for which it was initially created.

12 (9) (A) “Postproduction” means the final activities in a
13 qualified motion picture’s production, including editing, Foley
14 recording, automatic dialogue replacement, sound editing, scoring
15 and music editing, beginning and end credits, negative cutting,
16 negative processing and duplication, the addition of sound and
17 visual effects, soundmixing, film to tape transfers, encoding, and
18 color correction.

19 (B) “Postproduction” does not include the manufacture or
20 shipping of release prints.

21 (10) “Preproduction” means the process of preparation for
22 actual physical production which begins after a qualified motion
23 picture has received a firm agreement of financial commitment,
24 or is greenlit, with, for example, the establishment of a dedicated
25 production office, the hiring of key crew members, and includes,
26 but is not limited to, activities that include location scouting and
27 execution of contracts with vendors of equipment and stage space.

28 (11) “Principal photography” means the phase of production
29 during which the motion picture is actually shot, as distinguished
30 from preproduction and postproduction.

31 (12) “Production accountant” means an employee of the
32 production company whose duties include some or all of the
33 following activities: oversight of production budgets, cost
34 reporting, order management, payment of expenses, and the review
35 of financial reports for accuracy and completeness.

36 (13) “Production company” means a company primarily
37 engaged in qualified production activities that have been approved
38 by the California Film Commission.

39 (14) “Production period” means the period of time in which
40 the preproduction, principal photography, and postproduction

1 occurs until the qualified motion picture is completed, as described
2 in clause (v) of subparagraph (C) of paragraph (18).

3 (15) (A) “Qualified amount” means all of the following:

4 (i) The total amount paid or incurred during the production
5 period for qualified wages with respect to the production of each
6 qualified motion picture.

7 (ii) The total amount paid or incurred during the production
8 period for qualified property.

9 (iii) Amounts paid or incurred for qualified wages and qualified
10 property related to the qualified motion picture for preproduction
11 costs that include set design and construction, props, wardrobe,
12 prosthetics, testing, and location scouting that are paid or incurred.
13 In the case of a television series described in clause (ii) of
14 subparagraph (C) of paragraph (18), the amounts paid or incurred
15 for the items described in this subparagraph shall be ratably
16 allocated amongst the episodes produced in the first season of
17 production.

18 (B) Notwithstanding subparagraph (A), the term “qualified
19 amount” shall not include any qualified wages paid or incurred
20 for services performed nor any qualified property purchased or
21 leased before January 1, 2008.

22 (16) “Qualified entity” means a personal service corporation
23 as defined in Section 269A(b)(1) of the Internal Revenue Code, a
24 payroll services corporation, or any entity receiving qualified
25 wages with respect to services performed by a qualified individual.

26 (17) (A) “Qualified individual” means any individual who
27 performs services during the production period in an activity
28 related to the production of a qualified motion picture.

29 (B) “Qualified individual” shall not include either of the
30 following:

31 (i) Any individual related to the qualified taxpayer as described
32 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
33 Revenue Code.

34 (ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of
35 the Internal Revenue Code, of the qualified taxpayer.

36 (18) (A) “Qualified motion picture” means any motion picture
37 that is produced, adapted, or altered for exploitation in, on, or
38 through any medium or by any device, including, but not limited
39 to, a motion picture produced for exploitation in movie theaters,
40 through any form of television, videotapes, videodiscs, DVDs, or

1 any other digital format or on commercial carriers. “Qualified
2 motion picture” shall also include, but shall not be limited to, all
3 adapted versions thereof, whether adapted for exploitation in any
4 language, for any media, or otherwise.

5 (B) (i) “Qualified motion picture” shall not include any motion
6 picture produced for private noncommercial use, such as weddings
7 or graduations, made by students as part of any educational course,
8 or any motion picture produced for industrial purposes.

9 (ii) “Qualified motion picture” shall not include a news
10 program, current events or public events program, talk show, game
11 show, sporting event or activity, awards show, telethon or other
12 production that solicits funds, reality television program, a feature
13 where 80 percent or more of the content consists of
14 computer-generated images, clip-based programming if more than
15 50 percent of the content is comprised of licensed footage,
16 documentaries, variety programs, daytime dramas, strip shows,
17 one-half-hour (air time) episodic television shows, or any
18 production that falls within the recordkeeping requirements of
19 Section 2257 of Title 18 of the United States Code.

20 (C) To qualify as a “qualified motion picture,” all of the
21 following additional conditions shall be satisfied:

22 (i) The qualified motion picture shall be a feature with a
23 minimum budget of one million dollars (\$1,000,000) and a
24 maximum budget of seventy-five million dollars (\$75,000,000), or
25 a movie of the week or miniseries with a minimum budget of one
26 million dollars (\$1,000,000) and a maximum budget of seventy-five
27 million dollars (\$75,000,000).

28 (ii) A qualified motion picture shall also include a single episode
29 in a single season, not to exceed 22 episodes per season, of a
30 television series new to California with a minimum budget of five
31 hundred thousand dollars (\$500,000) and a maximum budget of
32 one million eight hundred thousand dollars (\$1,800,000). This
33 clause shall only apply to the first three seasons of a television
34 series that is new to California.

35 (iii) The actual expenses totaled at the completion of the
36 qualified motion picture must fall within the fiscal ranges
37 established in clause (i) or (ii) at the time of application to the
38 California Film Commission.

1 (iv) At least 75 percent of the total days spent in principal
2 photography of a qualified motion picture occur wholly in
3 California.

4 (v) Production of the motion picture is completed within 30
5 months of the date on which the qualified taxpayer's application
6 was approved by the California Film Commission. For purposes
7 of this section, a qualified motion picture is "completed" when
8 the process of postproduction has been finished, and a final answer
9 print or broadcast delivery air master of the qualified motion
10 picture is produced.

11 (vi) Principal photography of the qualified motion picture begins
12 within 180 days of the designation of the taxpayer as a qualified
13 taxpayer by the California Film Commission.

14 (D) For the purposes of clauses (i) and (ii) of subparagraph
15 (C) the following additional rules apply:

16 (i) In computing the total amounts paid or incurred for the
17 production of a qualified motion picture, all amounts paid or
18 incurred by all persons or entities that share in the costs of the
19 qualified motion picture shall be aggregated.

20 (ii) In the case of a television series, described in clause (ii) of
21 subparagraph (C), each episode shall be treated as a separate
22 qualified motion picture.

23 (E) For purposes of computing the limitations under this
24 paragraph, "wages" means all amounts described in subparagraph
25 (A) of paragraph (21), provided that these amounts are paid or
26 services performed or rendered within this state.

27 (19) (A) "Qualified property" means tangible personal property
28 purchased or leased in California and is used primarily in the
29 production of a qualified motion picture.

30 (B) "Qualified property" shall not include a story, script, or
31 scenario to be used for a qualified motion picture, or the literary,
32 dramatic, or musical material upon which the qualified motion
33 picture is based or may be adapted, or any rights related to the
34 foregoing.

35 (20) (A) "Qualified taxpayer" means an applicant who has a
36 reservation of an allocation of tax credits pursuant to subdivision
37 (g).

38 (B) (i) In the case of any passthrough entity, the determination
39 of whether a taxpayer is a qualified taxpayer under this section
40 shall be made at the entity level and any credit under this section

1 *is not allowed to the passthrough entity, but shall be passed*
2 *through to the partners or shareholders in accordance with*
3 *applicable provisions of Part 10 (commencing with Section 17001)*
4 *or Part 11 (commencing with Section 23001). For purposes of this*
5 *paragraph, “passthrough entity” means any entity taxed as a*
6 *partnership or “S” corporation.*

7 *(ii) In the case of an “S” corporation, the credit allowed under*
8 *this section shall not be used by an “S” corporation as a credit*
9 *against a tax imposed under Chapter 4.5 (commencing with Section*
10 *23800) of Part 11 of Division 2.*

11 *(21) (A) “Qualified wages” means all of the following:*

12 *(i) Any wages reported under Section 13050 of the*
13 *Unemployment Insurance Code that were paid or incurred by the*
14 *production company involved in the production of a qualified*
15 *motion picture with respect to a qualified individual for services*
16 *performed on the qualified motion picture within this state.*

17 *(ii) The portion of any employee fringe benefits paid or incurred*
18 *by the production company involved in the production of the*
19 *qualified motion picture that are properly allocable to qualified*
20 *wage amounts described in clause (i).*

21 *(iii) Any payments made to qualified entity for services*
22 *performed on a qualified motion picture in this state by qualified*
23 *individuals within the meaning of paragraph (17).*

24 *(iv) Remuneration paid to an independent contractor, as*
25 *described in Section 2750.5 of the Labor Code, who is a qualified*
26 *individual for services performed within this state by that qualified*
27 *individual.*

28 *(B) “Qualified wages” shall not include any of the following:*

29 *(i) Expenses, including wages, for legal or accounting services,*
30 *except production accountants.*

31 *(ii) Expenses, including wages, in excess of the first twenty-five*
32 *thousand dollars (\$25,000) paid per person per qualified motion*
33 *picture for writers, directors, music directors, music composers,*
34 *music supervisors, producers, and performers, other than*
35 *background actors with no scripted lines.*

36 *(iii) Expenses, including wages, related to new use, reuse, clip*
37 *use, licensing, secondary markets, or residual compensation, or*
38 *the creation of any ancillary product, including, but not limited*
39 *to, a soundtrack album, toy, game, trailer, or teaser.*

1 (iv) Expenses, including wages, paid or incurred with respect
2 to acquisition, development, turnaround, or any rights thereto.

3 (v) Expenses, including wages, related to financing, overhead,
4 marketing, promotion, or distribution of a qualified motion picture.

5 (22) “Residual compensation” means supplemental
6 compensation paid at the time that a motion picture is exhibited
7 through new use, reuse, clip use, or in secondary markets, as
8 distinguished from payments made during production.

9 (23) “Reuse” means any use of a qualified motion picture in
10 the same medium for which it was created, following the initial
11 use in that medium.

12 (24) “Secondary markets” means media in which a qualified
13 motion picture is exhibited following the initial media in which it
14 is exhibited.

15 (c) (1) Notwithstanding any other provision of law, a qualified
16 taxpayer may sell any credit allowed under this section that is
17 attributable to an independent film to an unrelated party.

18 (2) For purposes of this subdivision “independent film” means
19 a motion picture with a minimum budget of one million dollars
20 (\$1,000,000) and a maximum budget of ten million dollars
21 (\$10,000,000) that is produced by a company that is not publicly
22 traded and publicly traded companies do not own, directly or
23 indirectly, more than 25 percent of the producing company.

24 (3) The qualified taxpayer shall report to the Franchise Tax
25 Board prior to the sale of the credit, in the form and manner
26 specified by the Franchise Tax Board, all required information
27 regarding the purchase and sale of the credit.

28 (4) The party acquiring tax credits under this paragraph shall
29 be subject to the requirements of this subdivision.

30 (5) In the case where the credit allowed under this section
31 exceeds the “net tax,” the excess credit may be carried over to
32 reduce the “net tax” in the following taxable year, and succeeding
33 five taxable years, if necessary, until the credit has been exhausted.

34 (6) A credit shall not be assigned or sold pursuant to this
35 subdivision to more than two successive taxpayers.

36 (7) No portion of the credit allowed by this section shall be
37 refunded to a “S” corporation.

38 (8) Notwithstanding Section 23803, the amount of credit claimed
39 by an “S” corporation pursuant to this section shall be reduced

1 by an amount equal to the amount of credit claimed by the
2 shareholders of the “S” corporation.

3 (d) The amount of any credit allowed under this section to the
4 qualified taxpayer shall be treated as an item of income of the
5 qualified taxpayer from a separate trade or business conducted
6 wholly within this state for the taxable year in which the credit is
7 allowed.

8 (e) No credit shall be allowed pursuant to this section unless
9 the qualified taxpayer substantiates, by adequate books and records
10 or by sufficient evidence corroborating his or her own statement,
11 that:

12 (1) The qualified wages and the qualified property on which
13 the credit was calculated were actually paid or incurred in the
14 amount claimed. Substantiation of this item shall include proof
15 that the services were performed in California and the qualified
16 property was purchased or leased in California.

17 (2) The motion picture was a qualified motion picture.
18 Substantiation of this item shall include, but not limited to, the
19 following:

20 (A) Identification of each qualified individual.

21 (B) The specific start and end dates of production.

22 (C) The total wages paid and the amount and type of qualified
23 property purchased.

24 (D) The amount of qualified wages paid to each qualified
25 individual.

26 (E) Certification from the Director of the California Film
27 Commission that identifies the motion picture as a qualified motion
28 picture.

29 (f) If the qualified taxpayer fails to attach the certification issued
30 by the California Film Commission, in accordance with subdivision
31 (g), the credit shall be disallowed and assessed and collected under
32 Section 19051.

33 (g) For purposes of this section, the Director of the California
34 Film Commission shall do all of the following:

35 (1) With respect to the reservation and allocation of tax credits.

36 (A) Reserve allocations of tax credits for applicants.

37 (B) Establish a procedure for qualified taxpayers to file with
38 the California Film Commission a written application, on a form
39 jointly prescribed by the California Film Commission and the
40 Franchise Tax Board, for allocation of tax credits. The application

1 shall be filed under penalty of perjury and include, but not be
2 limited to, the following information:

- 3 (i) The budget for the motion picture production.
- 4 (ii) A one-line shooting schedule.
- 5 (iii) A financing plan for the production.
- 6 (iv) An application fee.
- 7 (v) The copyright registration number for the screenplay, as
8 reflected on the certificate of registration issued under the authority
9 of Section 410 of Title 17 of the United States Code, relating to
10 registration of claim and issuance of certificate.
- 11 (vi) The diversity of the workforce employed by the qualified
12 taxpayer, including, but not limited to, the ethnic and racial
13 makeup of the individuals employed by the qualified taxpayer
14 during the production of the qualified motion picture, to the extent
15 possible.

16 (C) (i) Determine and designate who is a qualified taxpayer
17 meeting the requirements of this section.

18 (ii) The State Board of Equalization and the Franchise Tax
19 Board shall not be involved in making this determination or
20 designation unless authorized by the Director of the California
21 Film Commission.

22 (D) Process and approve, or reject, all applications on a
23 first-come, first-served basis.

24 (E) Provide for the cancellation of the reservation of allocation
25 of tax credits if principal photography on the qualified motion
26 picture does not begin within 180 days after notification of the
27 reservation of allocation of tax credits by the California Film
28 Commission, in accordance with subdivision (h).

29 (2) With respect to the certification of allowed tax credits:

30 (A) Certify tax credits allowed to taxpayers with an existing and
31 noncanceled reservation of allocation of tax credits.

32 (B) Establish specific audit requirements, in addition to those
33 provided under current law, that must be complied with prior to
34 the issuance of a certificate by the California Film Commission,
35 and provide for the reallocation of previously reserved allocations
36 of tax credits, in accordance with subdivision (h), that are
37 disallowed pursuant to the audit requirements.

38 (C) Issue a certificate to the qualified taxpayer setting forth the
39 name of the qualified taxpayer, identification of the qualified
40 motion picture, and the total amount of the tax credit allocated.

1 (D) Establish an appeals procedure with the California Film
2 Commission regarding the amount of the certified tax credit
3 allowed.

4 (3) No later than March 1, 2008, the California Film
5 Commission shall promulgate rules and regulations necessary to
6 establish procedures, processes, requirements, and rules identified
7 in or required to implement this section. Rules and regulations
8 may be adopted on an emergency basis if necessary to meet the
9 March 1, 2008, deadline. The California Film Commission may
10 amend these rules and regulations as necessary. The California
11 Film Commission may adopt rules and regulations to more
12 narrowly define the terms listed in subdivision (b) to limit their
13 meaning, but may not expand the definition of any terms defined
14 in subdivision (b).

15 (h) The aggregate amount of credits that may be allocated in
16 any calendar year pursuant to this section and Section 17053.85
17 shall be an amount equal to the sum of all the following:

18 (1) Seventy million dollars (\$70,000,000) for the 2008 calendar
19 year, and each calendar year thereafter.

20 (2) The unused credit ceiling, if any, for the preceding calendar
21 year.

22 (3) The amount of previously allocated credit canceled or
23 disallowed in the preceding calendar year by reason of
24 subparagraph (E) of paragraph (1) or subparagraph (B) of
25 paragraph (2) of subdivision (g).

26 (i) The California Film Commission shall provide a list, at least
27 annually, to the Franchise Tax Board, in the form and manner as
28 shall be determined by the California Film Commission and the
29 Franchise Tax Board, of the names, taxpayer identification
30 numbers, including taxpayer identification numbers of each partner
31 or shareholder, as applicable, the qualified motion pictures for
32 which tax credit was allocated, and the total amount of the tax
33 credit allocated to each qualified taxpayer.

34 (j) This section shall remain in effect only until January 1, 2014,
35 and as of that date is repealed, unless a later enacted statute, that
36 is enacted before January 1, 2014, deletes or extends that date.

37 SEC. 10. Section 23686 is added to the Revenue and Taxation
38 Code, to read:

39 23686. (a) (1) For taxable years beginning on or after January
40 1, 2008, and before January 1, 2014, subject to the limitation in

1 *paragraph (2), there shall be allowed to a qualified commercial*
2 *production company, as designated by the California Film*
3 *Commission pursuant to subdivision (g), as a credit against the*
4 *“tax,” as defined in Section 23036, an amount equal to 12 percent*
5 *of the incremental qualified production costs.*

6 *(2) The credit allowed by paragraph (1) shall not exceed the*
7 *lesser of:*

8 *(A) Five hundred thousand dollars (\$500,000) per qualified*
9 *production company per calendar year.*

10 *(B) The amount of the credit allocated by the California Film*
11 *Commission to the qualified commercial production company*
12 *pursuant to subdivision (g).*

13 *(b) For the purposes of this section:*

14 *(1) “Base year” is the taxable year preceding the taxable year*
15 *for which the credit is claimed.*

16 *(2) (A) “Employee fringe benefits” means the amount allowable*
17 *as a deduction under this part to the qualified commercial*
18 *production company involved in the production of the qualified*
19 *commercial for any year during the production period with respect*
20 *to any of the following:*

21 *(i) Employer contributions under any pension, profit-sharing,*
22 *annuity, or similar plan.*

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

25 *(iii) The employer’s cost of life or disability insurance provide*
26 *to employees.*

27 *(B) Any amount treated as wages under clause (i) of*
28 *subparagraph (A) of paragraph (10) shall not be taken in account*
29 *under this paragraph.*

30 *(3) “Incremental qualified production costs” are any qualified*
31 *production costs for the taxable year greater than the qualified*
32 *production costs for the base year.*

33 *(4) “Principal photography” means the phase of production*
34 *during which the qualified commercial is actually shot.*

35 *(5) “Postproduction” means the final activities in a qualified*
36 *commercial’s production, including, but not limited to, offline*
37 *editorial, online editorial, dailies, color correction, compositing,*
38 *CGI, graphics, sound editorial, sound mixing, sound design,*
39 *automated dialogue replacement, foley recording, music*

1 *composition and scoring, and duplication associated with the*
2 *above process.*

3 (6) (A) *“Qualified commercial” means a commercial or*
4 *advertisement composed of moving images and sounds that is*
5 *recorded on film, videotape, or other digital medium, created for*
6 *display on a network, regional channel, or cable where 75 percent*
7 *of the total production days spent in principal photography occur*
8 *wholly in California.*

9 (B) *“Qualified commercial” shall not include any program*
10 *length production with an advertising component including a*
11 *documentary length commercial, an infomercial, news, or current*
12 *affairs program, interview or talk program, network promotion*
13 *(short form content intended to promote other programming),*
14 *feature film promotion (trailers and teasers), sporting event, game*
15 *show, award ceremony, daytime drama, reality entertainment*
16 *programming or program intended primarily for industrial,*
17 *corporate, or institutional end users, fundraising or commercial*
18 *promoting political candidates or political issues, a program*
19 *consisting of primarily of stock footage, a program produced by*
20 *organization organized under Section 527 of the Internal Revenue*
21 *Code, or any production that falls within the recordkeeping*
22 *requirements of Section 2257 of Title 18 of the United States Code.*

23 (7) (A) *“Qualified commercial production company” means a*
24 *taxpayer, allocated tax credits by the California Film Commission*
25 *pursuant to subdivision (g), that is principally engaged in the*
26 *production of a qualified commercial and has control over the*
27 *selection of production location, deployment, or management of*
28 *the production equipment, and directly employs the production*
29 *crew on the qualified commercial, or is a taxpayer who provides*
30 *qualified postproduction services. All members of a commonly*
31 *controlled group, as defined by subdivision (b) of Section 25105,*
32 *shall treated as a single qualified commercial production company*
33 *for the purpose of computing qualified production costs pursuant*
34 *to paragraph (9).*

35 (B) (i) *In the case of any passthrough entity, the determination*
36 *of whether a taxpayer is a qualified commercial production*
37 *company under this section shall be made at the entity level and*
38 *any credit under this section is not allowed to the passthrough*
39 *entity, but shall be passed through to the partners or shareholders*
40 *in accordance with applicable provisions of Part 10 (commencing*

1 with Section 17001) or Part 11 (commencing with Section 23001).
2 For the purposes of this paragraph, “passthrough entity” means
3 any entity taxed as a partnership or “S” corporation.

4 (ii) In the case of an “S” corporation, the credit allowed under
5 this section shall not be used by an “S” corporation as a credit
6 against a tax imposed under Chapter 4.5 (commencing with Section
7 23800) of Part 11 of Division 2.

8 (8) (A) “Qualified individual” means any individual who
9 performs services during the production period in an activity
10 related to the production of a qualified commercial.

11 (B) “Qualified individual” shall not include either of the
12 following:

13 (i) Any individual related to the qualified commercial production
14 company as described in subparagraph (A), (B), (C), or Section
15 51(i)(1) of the Internal Revenue Code.

16 (ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of
17 the Internal Revenue Code, of the qualified commercial production
18 company.

19 (9) “Qualified production costs” means all of the following:

20 (A) Costs for tangible property used and services performed
21 directly and predominately in the production of a qualified
22 commercial.

23 (B) Costs for qualified wages, technical and crew production
24 costs, allocable portions of depreciation on equipment directly
25 used in production, rental or other expenditures for commercial
26 production facilities, props, makeup, wardrobe, film processing,
27 camera rental, sound recording, set construction, lighting,
28 on-location meals, and lodging.

29 (C) Costs for equipment and services required to complete
30 postproduction of the qualified commercial.

31 (D) “Qualified production costs” does not include costs for
32 story, script, or scenario to be used for a qualified commercial,
33 or any qualified wages paid or incurred before January 1, 2008.

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

35 (i) Any wages reported under Section 13050 of the
36 Unemployment Insurance Code that were paid or incurred by the
37 qualified commercial production company involved in the
38 production of a qualified commercial with respect to a qualified
39 individual for services performed on the qualified commercial
40 production within this state.

1 (ii) *The portion of any employee fringe benefits paid or incurred*
2 *by the qualified commercial production company involved in the*
3 *production of a qualified commercial that are properly allocation*
4 *to qualified wage amounts described in clause (i).*

5 (iii) *Remuneration paid to a qualified individual for services*
6 *performed within this state by that qualified individual.*

7 (iv) *Remuneration paid to an independent contractor, as*
8 *described in Section 2750.5 of the Labor Code, who is a qualified*
9 *individual for services performed in this state by that qualified*
10 *individual.*

11 (B) *“Qualified wages” shall not include wages, salaries, or*
12 *other compensation for writers, directors, music directors,*
13 *producers and performers (other than background actors with no*
14 *scripted lines who are employed by a qualified commercial*
15 *production company.*

16 (c) (1) *Notwithstanding any other provision of law, a qualified*
17 *taxpayer may sell any credit allowed under this section that is*
18 *attributable to an independent production to an unrelated party.*

19 (2) *For purposes of this subdivision “independent production”*
20 *means a commercial production with a minimum budget of one*
21 *million dollars (\$1,000,000) and a maximum budget of ten million*
22 *dollars (\$10,000,000) that is produced by a company that is not*
23 *publicly traded and publicly traded companies do not own, directly*
24 *or indirectly, more that 25 percent of the producing company.*

25 (3) *The qualified taxpayer shall report to the Franchise Tax*
26 *Board prior to the sale of the credit, in the form and manner*
27 *specified by the Franchise Tax Board, all required information*
28 *regarding the purchase and sale of the credit.*

29 (4) *The party acquiring tax credits under this paragraph shall*
30 *be subject to the requirements of this subdivision.*

31 (5) *In the case where the credit allowed under this section*
32 *exceeds the “net tax,” the excess credit may be carried over to*
33 *reduce the “net tax” in the following taxable year, and succeeding*
34 *five taxable years, if necessary, until the credit has been exhausted.*

35 (6) *A credit shall not be assigned or sold pursuant to this*
36 *subdivision to more than two successive taxpayers.*

37 (7) *No portion of the credit allowed by this section shall be*
38 *refunded to a “S” corporation.*

39 (3) *Notwithstanding Section 23803, the amount of credit claimed*
40 *by an “S” corporation pursuant to this section shall be reduced*

1 by an amount equal to the amount of credit claimed by the
2 shareholders of the “S” corporation.

3 (8) The amount of any credit allowed under this section to the
4 qualified commercial production company shall be treated as an
5 item of income of the qualified commercial production company
6 from a separate trade or business conducted wholly within this
7 state for the taxable year in which the credit is allowed.

8 (e) No credit shall be allowed pursuant to this section unless
9 the qualified commercial production company substantiates, by
10 adequate books and records or by sufficient evidence corroborating
11 his or her own statement, that:

12 (1) The incremental qualified production costs upon which the
13 credit was calculated were actually paid or incurred in the amount
14 claimed.

15 (2) The commercial was a qualified commercial. Substantiation
16 of this item shall include, but is not limited to, the following:

17 (A) Identification of each qualified individual.

18 (B) The specific start and end dates of production.

19 (C) The total wages paid.

20 (D) The amount of qualified wages paid to each qualified
21 individual.

22 (E) Certification from the Director of the California Film
23 Commission as required in subdivision (g).

24 (f) If the qualified commercial production company fails to
25 attach the certification issued by the California Film Commission,
26 in accordance with subdivision (g), the credit shall be disallowed
27 and assessed under Section 19051.

28 (g) (1) For purposes of this section, the Director of the
29 California Film Commission shall do all of the following:

30 (A) Allocate tax credits to applicants, including establishing a
31 procedure to allocate tax credits among qualified commercial
32 production companies pursuant to paragraph (2) of subdivision
33 (h).

34 (B) Establish a procedure for qualified commercial production
35 companies to file with the commission a written application, on a
36 form jointly prescribed by the commission and the Franchise Tax
37 Board, for allocation of tax credits. The application shall be filed
38 under penalty of perjury and include, but not be limited to, the
39 following information:

40 (i) The qualified production costs for the base year.

- 1 (ii) *The qualified production costs for the taxable year in which*
2 *the credit is claimed.*
- 3 (iii) *An application fee.*
- 4 (iv) *The diversity of the workforce employed by the qualified*
5 *commercial production company, including, but not limited to, the*
6 *ethnic and racial makeup of the individuals employed by the*
7 *qualified commercial production company during the production*
8 *of the qualified commercial, to the extent possible.*
- 9 (v) *Any other information deemed relevant by the commission.*
- 10 (C) *Determine and designate who is a qualified commercial*
11 *production company meeting the requirements of this section.*
- 12 (D) *Process and approve, or reject, all applications.*
- 13 (E) *Establish specific audit requirements, in addition to those*
14 *provided under current law that must be complied with prior to*
15 *the issuance of the certificate required by subparagraph (F), and*
16 *to provide for the reallocation of previously approved credits that*
17 *are disallowed pursuant to the audit requirements, in accordance*
18 *with subdivision (h).*
- 19 (F) *Issue a certificate to the qualified taxpayer setting forth the*
20 *name of the qualified taxpayer and the total amount of the tax*
21 *credit allocated.*
- 22 (2) *No later than March 1, 2008, the California Film*
23 *Commission shall promulgate rules and regulations necessary to*
24 *establish procedures, processes, requirements, and rules identified*
25 *in or required to implement this section. Rules and regulations*
26 *may be adopted on an emergency basis if necessary to meet the*
27 *March 1, 2008, deadline. The California Film Commission may*
28 *amend these rules and regulations as necessary. The California*
29 *Film Commission may adopt rules and regulations to more*
30 *narrowly define the terms listed in subdivision (b) to limit their*
31 *meaning, but may not expand the definition of any terms defined*
32 *in subdivision (b).*
- 33 (h) (1) *The aggregate amount of credits that may be allocated*
34 *in any calendar year pursuant to this section and Section 17053.86*
35 *shall be an amount equal to the sum of all of the following:*
- 36 (A) *Five million dollars (\$5,000,000) for the 2008 calendar*
37 *year, and each calendar year thereafter.*
- 38 (B) *The unused credit ceiling, if any, for the preceding calendar*
39 *years.*

1 (C) *The amount of previously allocated credit cancelled or*
2 *disallowed in the calendar year by reason of subparagraph (E) of*
3 *paragraph (1) of subdivision (g).*

4 (2) *If the amount allocable to qualified commercial production*
5 *companies exceeds the aggregate amount of credits that may be*
6 *allocated in any calendar year, the credits shall be distributed to*
7 *qualified commercial production companies as follows:*

8 (A) *The California Film Commission shall allocate the credits*
9 *on a pro rata basis to qualified commercial production companies*
10 *for the designated period.*

11 (B) *The California Film Commission will compute the pro rata*
12 *allocation based on submitted applications from all qualified*
13 *commercial production companies within 120 days of the*
14 *application due date.*

15 (i) *The California Film Commission shall provide a list, at least*
16 *annually, to the Franchise Tax Board, in the form and manner as*
17 *shall be determined by the California Film Commission and the*
18 *Franchise Tax Board, of the names, taxpayer identification*
19 *numbers, including taxpayer identification numbers of each partner*
20 *or shareholder, as applicable, the qualified commercials for which*
21 *tax credit was allocated, and the total amount of the tax credit*
22 *allocated to each qualified taxpayer.*

23 (j) *This section shall remain in effect only until January 1, 2014,*
24 *and as of that date is repealed, unless a later enacted statute, that*
25 *is enacted before January 1, 2014, deletes or extends that date.*

26 *SEC. 11. Section 25128 of the Revenue and Taxation Code is*
27 *amended to read:*

28 25128. (a) *Notwithstanding Section 38006, all business income*
29 *shall be apportioned to this state by multiplying the business*
30 *income by a fraction, the numerator of which is the property factor*
31 *plus the payroll factor plus twice the sales factor, and the*
32 *denominator of which is four, except as provided in subdivision*
33 *(b) or (c).*

34 (b) (1) *If an apportioning trade or business derives more than*
35 *50 percent of its “gross business receipts” from conducting one or*
36 *more qualified business activities, all business income of the*
37 *apportioning trade or business shall be apportioned to this state by*
38 *multiplying business income by a fraction, the numerator of which*
39 *is the property factor plus the payroll factor plus the sales factor,*
40 *and the denominator of which is three.*

1 ~~(e)~~
 2 (2) For purposes of this ~~section~~ *subdivision*, a “qualified business
 3 activity” means the following:
 4 ~~(1)~~
 5 (A) An agricultural business activity.
 6 ~~(2)~~
 7 (B) An extractive business activity.
 8 ~~(3)~~
 9 (C) A savings and loan activity.
 10 ~~(4)~~
 11 (D) A banking or financial business activity.
 12 (c) (1) *Notwithstanding any other provision of law, for taxable*
 13 *years beginning on or after January 1, 2009, and before January*
 14 *1, 2014, a qualified taxpayer may, on behalf of the apportioning*
 15 *trade or business of which it is a member, elect, as provided in*
 16 *paragraph (2), to adjust the fraction described in subdivision (a)*
 17 *or (b), as applicable, by utilizing the following alternative method:*
 18 (A) *In calculating its business income apportioned to this state,*
 19 *the apportioning trade or business may add an additional sales*
 20 *factor to the numerator of the fraction described in subdivision*
 21 *(a) or (b), whichever is applicable, and may increase the*
 22 *denominator of that fraction by one for every two hundred fifty*
 23 *million dollars (\$250,000,000) of qualified expenditures incurred*
 24 *by the apportioning trade or business during a taxable year*
 25 *beginning on or after January 1, 2008.*
 26 (B) *In any one taxable year, in adjusting the fraction as*
 27 *described in clause (i) of this subparagraph, the apportioning*
 28 *trade or business may add to the numerator of that fraction not*
 29 *more than two additional sales factors as compared to the number*
 30 *of sales factors added to the numerator of that fraction by the*
 31 *apportioning trade or business in the immediately preceding*
 32 *taxable year. Any remaining additional sales factors shall be used*
 33 *by the apportioning trade or business in the following taxable year*
 34 *in which the apportioning trade or business incurs qualified*
 35 *expenditures that will qualify the apportioning trade or business*
 36 *for fewer than two additional sales factors, until the additional*
 37 *sales factors are fully utilized.*
 38 (2) (A) *On or after January 1, 2009, an apportioning trade or*
 39 *business may elect to adjust the fraction described in subdivision*
 40 *(a) or (b), whichever is applicable, in accordance with this*

1 *subdivision. The election shall be made by attaching a statement*
2 *to the original, timely filed return of the apportioning trade or*
3 *business specifying which method of adjusting the apportionment*
4 *factor under this subdivision the apportioning trade or business*
5 *will utilize and designating the member of the apportioning trade*
6 *or business that will be required to submit the aggregate*
7 *information to substantiate the qualifications for the adjustments*
8 *authorized under this subdivision.*

9 *(B) If the apportioning trade or business chooses to elect the*
10 *method authorized by this subdivision, all changes made to the*
11 *sales factor in subsequent years will remain in effect for all*
12 *subsequent taxable years for which the election authorized by this*
13 *subdivision is operative.*

14 *(C) If a new affiliate member is formed or acquired by an*
15 *apportioning trade or business, or the apportioning trade or*
16 *business is acquired, then the election made by the apportioning*
17 *trade or business, pursuant to this paragraph, shall remain in*
18 *effect unless the value of the new affiliate member's total business*
19 *assets exceeds the value of the electing member's total business*
20 *assets.*

21 *(D) If the election is terminated as a result of either a formation*
22 *or an acquisition, as described in subparagraph (C), a new election*
23 *may be made.*

24 (d) For purposes of this section:

25 (1) "Gross business receipts" means gross receipts described in
26 subdivision (e) of Section 25120 (other than gross receipts from
27 sales or other transactions within an apportioning trade or business
28 between members of a group of corporations whose income and
29 apportionment factors are required to be included in a combined
30 report under Section 25101, limited, if applicable, by Section
31 25110), whether or not the receipts are excluded from the sales
32 factor by operation of Section 25137.

33 (2) "Agricultural business activity" means activities relating to
34 any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
35 plantation, ranch, nursery, or range. "Agricultural business activity"
36 also includes activities relating to cultivating the soil or raising or
37 harvesting any agricultural or horticultural commodity, including,
38 but not limited to, the raising, shearing, feeding, caring for, training,
39 or management of animals on a farm as well as the handling,
40 drying, packing, grading, or storing on a farm any agricultural or

1 horticultural commodity in its unmanufactured state, but only if
2 the owner, tenant, or operator of the farm regularly produces more
3 than one-half of the commodity so treated.

4 (3) “Extractive business activity” means activities relating to
5 the production, refining, or processing of oil, natural gas, or mineral
6 ore.

7 (4) “Savings and loan activity” means any activities performed
8 by savings and loan associations or savings banks which have been
9 chartered by federal or state law.

10 (5) “Banking or financial business activity” means activities
11 attributable to dealings in money or moneyed capital in substantial
12 competition with the business of national banks.

13 (6) “Apportioning trade or business” means a distinct trade or
14 business whose business income is required to be apportioned
15 under Sections 25101 and 25120, limited, if applicable, by Section
16 25110, using the same denominator for each of the applicable
17 payroll, property, and sales factors.

18 ~~(7) Paragraph (4) of subdivision (c) shall apply only if the~~
19 ~~Franchise Tax Board adopts the Proposed Multistate Tax~~
20 ~~Commission Formula for the Uniform Apportionment of Net~~
21 ~~Income from Financial Institutions, or its substantial equivalent,~~
22 ~~and shall become operative upon the same operative date as the~~
23 ~~adopted formula.~~

24 ~~(8) In any case where the income and apportionment factors of~~
25 ~~two or more savings associations or corporations are required to~~
26 ~~be included in a combined report under Section 25101, limited, if~~
27 ~~applicable, by Section 25110, both of the following shall apply:~~

28 ~~(A) The application of the more than 50 percent test of~~
29 ~~subdivision (b) shall be made with respect to the “gross business~~
30 ~~receipts” of the entire apportioning trade or business of the group.~~

31 ~~(B) The entire business income of the group shall be apportioned~~
32 ~~in accordance with either subdivision (a) or (b), as applicable.~~

33 (7) (A) “Qualified expenditures” means any of the following
34 expenditures that are incurred on or after January 1, 2009:

35 (i) Capital expenditures for real and tangible personal property
36 located in this state.

37 (ii) Expenses incurred to acquire, develop, or license intellectual
38 property in this state.

1 (iii) *Research and experimental expenditures, within the*
2 *meaning of Section 174 of the Internal Revenue Code, incurred in*
3 *this state.*

4 (iv) *Capitalized rent paid in this state in excess of the prior year.*

5 (v) *The total amount of compensation and benefits paid to*
6 *employees in this state, as defined in Section 25132 and the*
7 *regulations pursuant thereto, in excess of the amount paid during*
8 *the prior taxable year. “Total amount of compensation and*
9 *benefits” also includes any modifications to the payroll factors*
10 *contained in the regulations promulgated under Section 25137.*

11 (B) *An expense that qualifies as an eligible expenditure under*
12 *two or more categories of qualified expenditures, as listed in*
13 *subparagraph (A), may be taken into account only under one*
14 *category of qualified expenditures for purposes of satisfying the*
15 *two hundred fifty million dollars (\$250,000,000) requirement*
16 *described in subparagraph (A) of paragraph (1) of subdivision*
17 *(c).*

18 (C) *Sales, transfers, or other transactions between members of*
19 *the apportioning trade or business shall not be taken into account*
20 *for purposes of determining the amount of qualified expenditures*
21 *made in this state.*

22 (8) *“Qualified taxpayer” means a taxpayer that is a member*
23 *of an apportioning trade or business, other than a trade or business*
24 *that derives more than 50 percent of its “gross business receipts”*
25 *from a savings and loan activity, a banking or financial business*
26 *activity, a real estate activity classified in Subsector 531 of the*
27 *North American Industry Classification System (NAICS) 2002*
28 *Edition, or an insurance activity that is subject to tax under this*
29 *part.*

30 (e) *For purposes of paragraph (1) of subdivision (c), qualified*
31 *expenditures do not include purchased or otherwise acquired stock*
32 *or other equity interest in a corporation or other business entity.*
33 *In addition, in any case where a member purchases or otherwise*
34 *acquires all or any portion of the assets of an existing trade or*
35 *business, irrespective of the form of entity, that is doing business*
36 *in this state, within the meaning of Section 23101, the purchased*
37 *assets shall not be treated as a qualified expenditure for purposes*
38 *of paragraph (1) of subdivision (c).*

39 (f) *The provisions of this section are severable. If any provision*
40 *of this section or its application is held invalid, that invalidity shall*

1 not affect other provisions or applications that can be given effect
2 without the invalid provision or application.

3 (g) The amendments made to this section by the act adding this
4 subdivision shall apply to taxable years beginning on or after
5 January 1, 2009.

6 (h) The Franchise Tax Board may prescribe any regulations
7 that may be necessary or appropriate to implement the provisions
8 of this section.

9 (i) A taxpayer that makes the election authorized by subdivision
10 (c) shall not be eligible to utilize any credit authorized by this part
11 with respect to any qualified expenditure.

12 (j) The Franchise Tax Board shall report to the Legislature no
13 later than December 1 of each year beginning with 2010 the
14 following information from the preceding taxable year: the fiscal
15 impact of the apportionment factors revised pursuant to subdivision
16 (c) and the aggregate qualified investments for the taxable year.

17 (k) The Legislative Analyst, in consultation with the Franchise
18 Tax Board and the Department of Finance, shall report to the
19 Legislature by February 1, 2014 on the revenue and economic
20 impact of the apportionment factors revised pursuant to subdivision
21 (c) for taxable years 2009-2012, inclusive as well as
22 recommendations as to whether these provisions should be
23 continued or modified.

24 (l) This section shall remain in effect until December 1, 2014,
25 and as of that date is repealed. Any adjustments made pursuant
26 to subdivision (c) shall remain in effect for all subsequent taxable
27 years for which the election authorized by subdivision (c) is
28 operative.

29 SEC. 12. Section 25128 is added to the Revenue and Taxation
30 Code, to read:

31 25128. (a) Notwithstanding Section 38006, for taxable years
32 beginning on or after January 1, 2014, all business income shall
33 be apportioned to this state by multiplying the business income by
34 a fraction, the numerator of which is the property factor plus the
35 payroll factor plus twice the sales factor, and the denominator of
36 which is four, except as provided in subdivision (b) or (c).

37 (b) If an apportioning trade or business derives more than 50
38 percent of its "gross business receipts" from conducting one or
39 more qualified business activities, all business income of the
40 apportioning trade or business shall be apportioned to this state

1 *by multiplying business income by a fraction, the numerator of*
2 *which is the property factor plus the payroll factor plus the sales*
3 *factor, and the denominator of which is three.*

4 *(c) For purposes of this section, a “qualified business activity”*
5 *means the following:*

6 *(1) An agricultural business activity.*

7 *(2) An extractive business activity.*

8 *(3) A savings and loan activity.*

9 *(4) A banking or financial business activity.*

10 *(d) For purposes of this section:*

11 *(1) “Gross business receipts” means gross receipts described*
12 *in subdivision (e) of Section 25120 (other than gross receipts from*
13 *sales or other transactions within an apportioning trade or*
14 *business between members of a group of corporations whose*
15 *income and apportionment factors are required to be included in*
16 *a combined report under Section 25101, limited, if applicable, by*
17 *Section 25110), whether or not the receipts are excluded from the*
18 *sales factor by operation of Section 25137.*

19 *(2) “Agricultural business activity” means activities relating*
20 *to any stock, dairy, poultry, fruit, furbearing animal, or truck farm,*
21 *plantation, ranch, nursery, or range. “Agricultural business*
22 *activity” also includes activities relating to cultivating the soil or*
23 *raising or harvesting any agricultural or horticultural commodity,*
24 *including, but not limited to, the raising, shearing, feeding, caring*
25 *for, training, or management of animals on a farm as well as the*
26 *handling, drying, packing, grading, or storing on a farm any*
27 *agricultural or horticultural commodity in its unmanufactured*
28 *state, but only if the owner, tenant, or operator of the farm*
29 *regularly produces more than one-half of the commodity so treated.*

30 *(3) “Extractive business activity” means activities relating to*
31 *the production, refining, or processing of oil, natural gas, or*
32 *mineral ore.*

33 *(4) “Savings and loan activity” means any activities performed*
34 *by savings and loan associations or savings banks which have*
35 *been chartered by federal or state law.*

36 *(5) “Banking or financial business activity” means activities*
37 *attributable to dealings in money or moneyed capital in substantial*
38 *competition with the business of national banks.*

39 *(6) “Apportioning trade or business” means a distinct trade or*
40 *business whose business income is required to be apportioned*

1 under Sections 25101 and 25120, limited, if applicable, by Section
2 25110, using the same denominator for each of the applicable
3 payroll, property, and sales factors.

4 (7) Paragraph (4) of subdivision (c) shall apply only if the
5 Franchise Tax Board adopts the Proposed Multistate Tax
6 Commission Formula for the Uniform Apportionment of Net
7 Income from Financial Institutions, or its substantial equivalent,
8 and shall become operative upon the same operative date as the
9 adopted formula.

10 (8) In any case where the income and apportionment factors of
11 two or more savings associations or corporations are required to
12 be included in a combined report under Section 25101, limited, if
13 applicable, by Section 25110, both of the following shall apply:

14 (A) The application of the more than 50 percent test of
15 subdivision (b) shall be made with respect to the “gross business
16 receipts” of the entire apportioning trade or business of the group.

17 (B) The entire business income of the group shall be apportioned
18 in accordance with either subdivision (a) or (b), as applicable.

19 (e) This section shall become operative on and after January
20 1, 2014.

21 SEC. 13. The California Film Commission shall report to the
22 Legislature on or before June 1, 2011, and annually thereafter,
23 on the diversity of the workforce employed for a qualified motion
24 picture or a qualified commercial by the qualified taxpayers and
25 qualified commercial production companies that received a credit
26 under Section 17053.85, 17053.86, 23685, or 23686 of the Revenue
27 and Taxation Code. The report shall include, but shall not be
28 limited to, information regarding the ethnic and racial makeup of
29 the workforce, as provided by the qualified taxpayers and qualified
30 commercial production companies.

31 SEC. 14. (a) On or before December 31, 2011, the Business,
32 Transportation and Housing Agency shall report to the Legislature
33 on the economic impact of the tax incentives created by Sections
34 17053.85, 17053.86, 23685, and 23686. In preparing the report,
35 the agency shall consider, but is not limited to considering, all of
36 the following:

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

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

1 (3) *The level of employment in the production industry in*
2 *California.*

3 (4) *The demographics and geographic distribution of the*
4 *workforce involved in productions that benefit from the tax*
5 *incentives created by this act.*

6 (b) *The agency may consult with the Employment Development*
7 *Department, the Franchise Tax Board, the State Board of*
8 *Equalization, representatives of industry and labor organizations*

9 *SEC. 15. The provisions of this act are severable. If any*
10 *provision of this act or its application is held invalid, that invalidity*
11 *shall not affect other provisions or applications that can be given*
12 *effect without the invalid provision or application.*

13 *SEC. 16. No reimbursement is required by this act pursuant*
14 *to Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

22 *SEC. 17. Notwithstanding Section 2230 of the Revenue and*
23 *Taxation Code, no appropriation is made by this act and the state*
24 *shall not reimburse any local agency for any sales and use tax*
25 *revenues lost by it under this act.*

26 *SEC. 18. It is the intent of the Legislature that Section 8 of this*
27 *act does not modify the sales factor, as defined in Section 25134*
28 *of the Revenue and Taxation Code, used in any special*
29 *apportionment formulas contained in the regulations promulgated*
30 *by the Franchise Tax Board pursuant to Section 25137 of the*
31 *Revenue and Taxation Code.*

32 ~~SECTION 1. It is the intent of the Legislature to make statutory~~
33 ~~changes relating to the Budget Act of 2007.~~