

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 359

Introduced by Senator ~~Runner~~ *Senators Runner and Dutton*

February 20, 2007

~~An act to amend Sections 17052.12, 17053.36, 17053.37, 23609, 23636, 23637, and 25120 of, to amend, add, and repeal Section 25128 of, and to add and repeal Sections 6357.7 and 6377 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~
An act to amend Sections 17052.12 and 23609 of, to amend, add, and repeal Section 25128 of, and to add and repeal Sections 6357.7, 6377, 6902.5, 17053.36, 17053.37, 17053.85, 17053.86, 23636, 23637, 23685, and 23686 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 359, as amended, Runner. Sales and use taxes: ~~exemptions: exemptions: income and corporation taxes: credits: qualified motion picture production.~~

(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 would, from January 1, ~~2007~~ 2008, until an ~~unspecified date~~ *December 31, 2017*, exempt from those state taxes gross receipts in excess of \$1.88 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.

(2) 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 and provides various exemptions from the taxes imposed by that law.

This bill would, for calendar years beginning on or after January 1, ~~2007~~ 2008, and before January 1, ~~2018~~, allow an exemption from those taxes for the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property, as defined, purchased for use by a qualified person, as defined, engaged in the manufacturing, processing, refining, fabricating, or recycling of property, as specified.

(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, 2017, for taxable years beginning on or after January 1, 2007, 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.

Additionally, this bill would authorize a credit against those taxes, until January 1, 2017, for taxable years beginning on or after January 1, 2007, subject to specified limitations, in an amount equal to 10% of the incremental qualified production costs paid or incurred with respect to the production of qualified commercials, as defined.

This bill would, in lieu of the credits authorized under the Personal Income Tax and Corporation Tax Law for qualified motion pictures allow a credit against liability for taxes paid or payable, as applicable, under the Sales and Use Tax Law for qualified motion pictures. This bill would impose specified duties on the California Film Commission and the Franchise Tax Board in administering the credits.

This bill would require the Business, Transportation and Housing Agency to report to the Legislature regarding the effectiveness 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 is required by this act for a specified reason.

(3)

(4) 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 the credit for increasing research expenses to 16% of the excess of the qualified research expenses. This bill would also make modification to alternative incremental credit provided under those federal income tax laws.

~~(4) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit against those taxes for specified taxable years, in an amount equal to a specified percentage of the qualified wages, as defined, paid, or incurred during the taxable or income year or in connection with an initial contract or subcontract to manufacture property for ultimate use in a Joint Strike Fighter, as specified. The Personal Income Tax Law and the Corporation Tax Law also authorize a credit against the taxes imposed by those laws for specified taxable years, in an amount equal to 10% of the qualified cost, as provided, of property for use in the manufacture of a product for ultimate use in a Joint Strike Fighter, as specified. Existing law provides that these provisions are repealed on December 1, 2006.~~

~~This bill would extend these credits to the manufacture of property for ultimate use as a Crew Exploration Vehicle, as defined, and would also extend the repeal date of these provisions to December 1, _____.~~

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

This bill would, for taxable years beginning on or after January 1, 2007, and before January 1, 2017, authorize a credit against those taxes for specified taxable years, in an amount equal to a specified percentage of the qualified wages, as defined, paid, or incurred during the taxable or income year or in connection with an initial contract or subcontract to manufacture property for ultimate use in a Joint Strike Fighter or Crew Exploration Vehicle, as defined. This bill would also authorize, for taxable years beginning on or after January 1, 2007, and before January 1, 2017, a credit in an amount equal to 10% of the qualified cost, as provided, of property for use in the manufacture of a product for ultimate use in a Joint Strike Fighter or Crew Exploration Vehicle, as defined.

~~(5)~~

(6) 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 based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, including an extractive business activity, business income is apportioned in accordance with a specified 3-factor formula.

This bill would permit, by election, business income of a qualified taxpayer, as defined, to be apportioned to this state, for taxable years beginning on or after January 1, 2007, and before ~~January 1, _____~~ *January 1, 2017*, by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus 4 times the sales factor, and the denominator of which is 6.

This bill would also provide that, for taxable years beginning on or after January 1, 2007, and before January 1, ~~_____~~ *2017*, a taxpayer that is neither a qualified taxpayer nor engaged in a specified business activity must apportion its business income to this state in accordance with the 4-factor formula, and would specify that, with respect to a certain business activity, a trade or business would be allowed to

apportion its business income based upon the revised formula or in accordance with the 3-factor formula, as provided, and would specify that, with respect to certain qualified business activities, a trade or business must apportion its business income to this state in accordance with the 3-factor formula.

This bill, for purposes of the sales factor, would provide that notwithstanding the Multistate Tax Compact, gross receipts would also define the term “total sales arising from a treasury function,” as defined, to mean only the overall net gain, including interest and dividends, realized by the taxpayer from transactions undertaken as part of its treasury function, as defined.

(6)

(7) 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 automatically incorporated into the local taxes.

This bill would specify that this exemption does not apply to local sales or transactions and use taxes, unless the governing body of the taxing county, city, or district votes otherwise.

(7)

(8) This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: 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) From January 1, 2008, to December 31, 2017,
4 inclusive, there are exempted from the taxes imposed by this part,
5 those gross receipts in excess of one dollar eighty-eight cents
6 (\$1.88) per gallon derived from the sale in this state of, or the
7 storage, use, or other consumption in this state of, fuel and
8 petroleum products sold to or purchased by an air common carrier
9 for consumption or shipment in the conduct of its business as an
10 air common carrier, on a domestic flight.
11 (b) To qualify for the exemption, the air common carrier shall
12 furnish to the seller an exemption certificate in the form prescribed
13 by the board. Acceptance in good faith of that certificate shall

1 *relieve the seller from liability for the sales tax exempted under*
2 *this section.*

3 *(c) For purposes of this section, the following definitions apply:*

4 *(1) “Air common carrier” has the same meaning as that set*
5 *forth in Section 23046 of the Business and Professions Code.*

6 *(2) “Domestic flight” means a flight whose final destination is*
7 *a point inside of the United States, including its territories.*

8 *(d) Any air common carrier claiming exemption under this*
9 *section, who is not required to hold a valid seller’s permit, shall*
10 *be required to register with the board and obtain a fuel exemption*
11 *registration number, and shall be required to file returns as the*
12 *board may prescribe, either if the board notifies the carrier that*
13 *returns must be filed or if the carrier is liable for taxes based upon*
14 *consumption or transportation of fuel or petroleum products*
15 *erroneously claimed as exempt under this section.*

16 *(e) An air common carrier claiming an exemption under this*
17 *section, upon request, shall make available to the board records,*
18 *including, but not limited to, a copy of a log abstract, an air*
19 *waybill, or a cargo manifest, documenting its consumption or*
20 *transportation of the fuel or petroleum products on a domestic*
21 *flight and the amount claimed as exempt. If the carrier fails to*
22 *provide these records upon request, the board may revoke the*
23 *carrier’s fuel exemption registration number.*

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

28 *(g) Pursuant to this section, any use of the fuel and petroleum*
29 *products by the purchasing carrier, other than that incident to the*
30 *delivery of the fuel and petroleum products to the carrier and the*
31 *consumption or transportation of the fuel and petroleum products*
32 *by the carrier on a domestic flight for use in the conduct of its*
33 *business as a common carrier, or a failure of the carrier to*
34 *document its consumption or transportation of the fuel and*
35 *petroleum products on a domestic flight, shall subject the carrier*
36 *to liability for payment of sales tax as if it were a retailer making*
37 *a retail sale of the property at the time of that use or failure, and*
38 *the sales price of the property to it shall be deemed to be the gross*
39 *receipts from the retail sale.*

1 (h) Notwithstanding any provision of the Bradley-Burns Uniform
2 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
3 7200)) or the Transactions and Use Tax Law (Part 1.6
4 (commencing with Section 7251)), the exemption established by
5 this section shall not apply with respect to any tax levied by a
6 county, city, or district pursuant to, or in accordance with, either
7 of those laws, unless approved by the local government that would
8 otherwise receive the revenues derived from the taxes imposed
9 under those laws.

10 (i) This section shall remain in effect only until January 1, 2018,
11 and as of that date is repealed.

12 SEC. 2. Section 6377 is added to the Revenue and Taxation
13 Code, to read:

14 6377. (a) For calendar years beginning on or after January
15 1, 2008, there are exempted from the taxes imposed by this part
16 the gross receipts from the sale of, and the storage, use, or other
17 consumption in this state of, any of the following:

18 (1) Tangible personal property purchased for use by a qualified
19 person to be used primarily in any stage of the manufacturing,
20 processing, refining, fabricating, or recycling of property,
21 beginning at the point any raw materials are received by the
22 qualified person and introduced into the process and ending at
23 the point at which the manufacturing, processing, refining,
24 fabricating, or recycling has altered property to its completed
25 form, including packaging, if required.

26 (2) Tangible personal property purchased for use by a qualified
27 person to be used primarily in research and development.

28 (3) Tangible personal property purchased for use by a qualified
29 person to be used primarily to maintain, repair, measure, or test
30 any property described in paragraph (1), (2), or (3).

31 (4) Tangible personal property purchased for use by a
32 contractor purchasing that property either as an agent of a
33 qualified person or for the contractor's own account and
34 subsequent resale to a qualified person for use in the performance
35 of a construction contract for the qualified person who will use
36 the tangible personal property as an integral part of the
37 manufacturing, processing, refining, fabricating, or recycling
38 process, or as a research or storage facility for use in connection
39 with the manufacturing process.

1 (b) *This exemption does not apply to any tangible personal*
2 *property that is used primarily in administration, general*
3 *management, or marketing.*

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

5 (1) *“Fabricating” means to make, build, create, produce, or*
6 *assemble components or property to work in a new or different*
7 *manner.*

8 (2) *“Manufacturing” means the activity of converting or*
9 *conditioning property by changing the form, composition, quality,*
10 *or character of the property for ultimate sale at retail or use in*
11 *the manufacturing of a product to be ultimately sold at retail.*
12 *Manufacturing includes any improvements to tangible personal*
13 *property that result in a greater service life or greater functionality*
14 *than that of the original property.*

15 (3) *“Primarily” means tangible personal property used 50*
16 *percent or more of the time in an activity described in subdivision*
17 *(a).*

18 (4) (A) *“Process” means the period beginning at the point at*
19 *which any raw materials are received by the qualified taxpayer*
20 *and introduced into the manufacturing, processing, refining,*
21 *fabricating, or recycling activity of the qualified taxpayer and*
22 *ending at the point at which the manufacturing, processing,*
23 *refining, fabricating, or recycling activity of the qualified taxpayer*
24 *has altered tangible personal property to its completed form,*
25 *including packaging, if required. Raw materials shall be considered*
26 *to have been introduced into the process when the raw materials*
27 *are stored on the same premises where the qualified taxpayer’s*
28 *manufacturing, processing, refining, fabricating, or recycling*
29 *activity is conducted.*

30 (B) *Raw materials that are stored on premises other than where*
31 *the qualified taxpayer’s manufacturing, processing, refining,*
32 *fabricating, or recycling activity is conducted, shall not be*
33 *considered to have been introduced into the manufacturing,*
34 *processing, refining, fabricating, or recycling process.*

35 (5) *“Processing” means the physical application of the materials*
36 *and labor necessary to modify or change the characteristics of*
37 *property.*

38 (6) *“Qualified person” means any person that is both of the*
39 *following:*

1 (A) *A new trade or business. In determining whether a trade or*
2 *business activity qualifies as a new trade or business, the following*
3 *rules shall apply:*

4 (i) *In any case where a person purchases or otherwise acquires*
5 *all or any portion of the assets of an existing trade or business,*
6 *irrespective of the form of entity, that is doing business in this*
7 *state, within the meaning of Section 23101, the trade or business*
8 *thereafter conducted by that person or any related person shall*
9 *not be treated as a new business if the aggregate fair market value*
10 *of the acquired assets, including, real, personal, tangible, and*
11 *intangible property, used by that person or any related person in*
12 *the conduct of his or her trade or business exceeds 20 percent of*
13 *the aggregate fair market value of the total assets of the trade or*
14 *business being conducted by the person or any related person. For*
15 *purposes of this subparagraph only, the following rules shall apply:*

16 (I) *The determination of the relative fair market values of the*
17 *acquired assets and the total assets shall be made as of the last*
18 *day of the month following the quarterly period in which the person*
19 *or any related person first uses any of the acquired trade or*
20 *business assets in his or her business activity.*

21 (II) *Any acquired assets that constituted property described in*
22 *Section 1221(1) of the Internal Revenue Code in the hands of the*
23 *transferor shall not be treated as assets acquired from an existing*
24 *trade or business, unless those assets also constitute property*
25 *described in Section 1221(1) of the Internal Revenue Code in the*
26 *hands of the acquiring person or related person.*

27 (ii) *In any case where a person or any related person is engaged*
28 *in one or more trade or business activities in this state, or has*
29 *been engaged in one or more trade or business activities in this*
30 *state within the preceding 36 months (“prior trade or business*
31 *activity”), and thereafter commences an additional trade or*
32 *business activity in this state, the additional trade or business*
33 *activity shall only be treated as a new business if the additional*
34 *trade or business activity is classified under a different division*
35 *of the Standard Industrial Classification Manual published by the*
36 *United States Office of Management and Budget, 1987 edition,*
37 *than are any of the person’s or any related person’s current or*
38 *prior trade or business activities in this state.*

39 (iii) *In any case where a person, including all related persons,*
40 *is engaged in trade or business activities wholly outside of this*

1 state and that person first commences doing business in this state,
2 within the meaning of Section 23101, after December 31, 2002,
3 other than by purchase or other acquisition described in clause
4 (i), the trade or business activity shall be treated as a new business.

5 (iv) In any case where the legal form under which a trade or
6 business activity is being conducted is changed, the change in form
7 shall be disregarded and the determination of whether the trade
8 or business activity is a new business shall be made by treating
9 the person as having purchased or otherwise acquired all or any
10 portion of the assets of an existing trade or business under the
11 rules of clause (i).

12 (v) “Related person” means any person that is related to that
13 person under either Section 267 or 318 of the Internal Revenue
14 Code.

15 (vi) “Acquire” includes any gift, inheritance, transfer incident
16 to divorce, or any other transfer, whether or not for consideration.

17 (B) Engaged in those lines of business described in Codes 2011
18 to 3999, inclusive, and Codes 7371 to 7373, inclusive, of the
19 Standard Industrial Classification Manual published by the United
20 States Office of Management and Budget, 1987 edition, or engaged
21 in telecommunication activities.

22 (7) Notwithstanding paragraph (6), “qualified person” shall
23 not include any person who has conducted business activities in
24 a new trade or business for three or more years.

25 (8) “Recycling” means using, reusing, or reclaiming a
26 recyclable material to produce new or recycled property.

27 (9) “Refining” means the process of converting a natural
28 resource to an intermediate or finished product.

29 (10) “Research and development” means those activities that
30 are described in Section 174 of the Internal Revenue Code or in
31 any regulations promulgated under that section.

32 (11) “Tangible personal property” does not include any of the
33 following:

34 (A) Consumables with a normal useful life of less than one year,
35 except as provided in subparagraph (E) of paragraph (11).

36 (B) Furniture, inventory, equipment used in the extraction
37 process, or equipment used to store finished products that have
38 completed the manufacturing process.

39 (12) “Tangible personal property” includes, but is not limited
40 to, all of the following:

1 (A) Machinery and equipment, including component parts and
2 contrivances such as belts, shafts, moving parts, and operating
3 structures.

4 (B) All equipment or devices used or required to operate,
5 control, regulate, or maintain the machinery, including, without
6 limitation, computers, data processing equipment, and computer
7 software, together with all repair and replacement parts with a
8 useful life of one or more years, whether purchased separately or
9 in conjunction with a complete machine and regardless of whether
10 the machine or component parts are assembled by the taxpayer
11 or another party.

12 (C) Property used in pollution control that meets or exceeds
13 standards established by this state or any local or regional
14 governmental agency within this state.

15 (D) Special purpose buildings and foundations used as an
16 integral part of the manufacturing, processing, refining, or
17 fabricating process, or that constitute a research or storage facility
18 used during the manufacturing process. Buildings used solely for
19 warehousing purposes after completion of the manufacturing
20 process are not included.

21 (E) Fuels used or consumed in the manufacturing process.

22 (F) Property used in recycling.

23 (d) No exemption is allowed under this section unless the
24 purchaser furnishes the retailer with an exemption certificate,
25 completed in accordance with any instructions or regulations as
26 the board may prescribe, and the retailer subsequently furnishes
27 the board with a copy of the exemption certificate. The exemption
28 certificate shall contain the sales price of the machinery or
29 equipment that is exempt pursuant to subdivision (a).

30 (e) Notwithstanding any provision of the Bradley-Burns Uniform
31 Local Sales and Use Tax Law (Part 1.5 (commencing with Section
32 7200)) or the Transactions and Use Tax Law (Part 1.6
33 (commencing with Section 7251)), the exemption established by
34 this section does not apply with respect to any tax levied by a
35 county, city, or district pursuant to, or in accordance with, either
36 of those laws.

37 (f) (1) Notwithstanding subdivision (a), the exemption provided
38 by this section does not apply to any sale or use of property which,
39 within one year from the date of purchase, is either removed from

1 *California or converted from an exempt use under subdivision (a)*
2 *to some other use not qualifying for the exemption.*

3 *(2) The exemption established by this section does not apply*
4 *with respect to any tax levied pursuant to Sections 6051.2 and*
5 *6201.2, or pursuant to Section 35 of Article XIII of the California*
6 *Constitution.*

7 *(g) If a purchaser certifies in writing to the seller that the*
8 *property purchased without payment of the tax will be used in a*
9 *manner entitling the seller to regard the gross receipts from the*
10 *sale as exempt from the sales tax, and within one year from the*
11 *date of purchase, the purchaser (1) removes that property outside*
12 *California, (2) converts that property for use in a manner not*
13 *qualifying for the exemption, or (3) uses that property in a manner*
14 *not qualifying for the exemption, the purchaser shall be liable for*
15 *payment of sales tax, with applicable interest, as if the purchaser*
16 *were a retailer making a retail sale of the property at the time the*
17 *property is so removed, converted, or used, and the sales price of*
18 *the property to the purchaser shall be deemed the gross receipts*
19 *from that retail sale.*

20 *(h) This section applies to leases of tangible personal property*
21 *classified as “continuing sales” and “continuing purchases” in*
22 *accordance with Sections 6006.1 and 6010.1. The exemption*
23 *established by this section applies to the rentals payable pursuant*
24 *to a lease, provided the lessee is a qualified person and the*
25 *property is used in an activity described in subdivision (a). Rentals*
26 *that meet the foregoing requirements are eligible for the exemption*
27 *for a period of six years from the date of commencement of the*
28 *lease. At the close of the six-year period from the date of*
29 *commencement of the lease, lease receipts are subject to tax*
30 *without exemption.*

31 *(i) This section shall remain in effect only until January 1, 2018,*
32 *and as of that date is repealed.*

33 *SEC. 3. Section 6902.5 is added to the Revenue and Taxation*
34 *Code, to read:*

35 *6902.5. (a) A qualified taxpayer, as designated by the*
36 *California Film Commission pursuant to subdivision (h) of Section*
37 *17053.85 or 23685, that makes an irrevocable election pursuant*
38 *to subdivision (h) of Section 17053.85 or 23685 to claim the credit*
39 *authorized by this section, may claim that credit as either a refund*
40 *of sales or use taxes paid under this part, or a credit against*

1 liability for sales or use taxes due under this part, that is equal to
2 the credit amount that would otherwise be allowed pursuant to
3 those sections.

4 (b) Notwithstanding Section 6961, the board may recover any
5 refund or credit, or part thereof, that is erroneously made pursuant
6 to this section. In recovering any erroneous refund or credit made
7 pursuant to this section, the board, in its discretion, may issue a
8 deficiency determination in accordance with Article 2 (commencing
9 with Section 6481) of, or Article 4 (commencing with Section 6536)
10 of, Chapter 5. Except in the case of fraud, that determination shall
11 be made within three years from the last day of the month following
12 the quarterly period in which the board approved the refund.

13 (c) In the case where the credit allowed by this section exceeds
14 the qualified taxpayer's tax liability computed under this part, the
15 excess shall first be credited against other amounts due, if any,
16 from the qualified taxpayer to this state, including, but not limited
17 to, tax deficiencies, penalties, and interest assessed by the
18 Franchise Tax Board, tax deficiencies, penalties, and interest
19 assessed by the State Board of Equalization, child support
20 payments, and payments due under the Unemployment Insurance
21 Code, and the excess, if any, may be carried over to reduce any
22 amounts due to the Franchise Tax Board, the State Board of
23 Equalization, or any payments due under the Unemployment
24 Insurance Code in the following year, and succeeding years if
25 necessary, until the credit is exhausted.

26 (d) The board shall provide an annual listing to the Franchise
27 Tax Board, in a form and manner agreed upon by the board and
28 the Franchise Tax Board, of the qualified taxpayers who, during
29 the year, have claimed a refund or credit of sales or use tax under
30 this section and the amount of the refund or credit allowed to each
31 qualified taxpayer.

32 (e) Section 6907, relating to interest on overpayments, shall not
33 apply to any return claiming a credit under this section.

34 (f) The California Film Commission shall provide a list, at least
35 annually, to the State Board of Equalization, in the form and
36 manner as shall be determined by the California Film Commission
37 and the State Board of Equalization, of the names, taxpayer
38 identification numbers, including taxpayer identification numbers
39 of each partner or shareholder, as applicable, the qualified motion

1 *pictures for which tax credit was allocated, and the total amount*
2 *of the tax credit allocated to each qualified taxpayer.*

3 *(g) This section shall remain in effect only until January 1, 2018,*
4 *and as of that date is repealed, unless a later enacted statute, that*
5 *is enacted before January 1, 2018, deletes or extends that date.*

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

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

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

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

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

24 (3) For each taxable year beginning on or after January 1, 2000,
25 *and before January 1, 2007*, the reference to “20 percent” in
26 Section 41(a)(1) of the Internal Revenue Code is modified to read
27 “15 percent.”

28 (4) *For each taxable year beginning on or after January 1,*
29 *2007, the reference to “20 percent” in Section 41(a)(1) of the*
30 *Internal Revenue Code is modified to read “16 percent.”*

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

33 (d) “Qualified research” shall include only research conducted
34 in California.

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

39 (f) (1) With respect to any expense paid or incurred after the
40 operative date of Section 6378, Section 41(b)(1) of the Internal

1 Revenue Code is modified to exclude from the definition of
2 “qualified research expense” any amount paid or incurred for
3 tangible personal property that is eligible for the exemption from
4 sales or use tax ~~provided by~~ *under* Section 6378.

5 (2) For each taxable year beginning on or after January 1, 1998,
6 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
7 Internal Revenue Code, relating to contract research expenses, is
8 modified to read “this part or Part 11 (commencing with Section
9 23001).”

10 (g) (1) For each taxable year beginning on or after January 1,
11 2000, *and before January 1, 2007*:

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

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

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

21 (2) *For each taxable year beginning on or after January 1,*
22 *2007, the following apply:*

23 (A) *The reference to “2.65 percent” in Section 41(c)(4)(A)(i)*
24 *of the Internal Revenue Code is modified to read “two percent.”*

25 (B) *The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of*
26 *the Internal Revenue Code is modified to read “two and one-half*
27 *percent.”*

28 (C) *The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)*
29 *of the Internal Revenue Code is modified to read “three percent.”*

30 ~~(2)~~

31 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an
32 election under Section 41(c)(4)(A) of the Internal Revenue Code
33 may be made for any taxable year of the taxpayer beginning on or
34 after January 1, 1998. That election shall apply to the taxable year
35 for which made and all succeeding taxable years unless revoked
36 with the consent of the Franchise Tax Board.

37 ~~(3)~~

38 (4) Section 41(c)(6) of the Internal Revenue Code, relating to
39 gross receipts, is modified to take into account only those gross
40 receipts from the sale of property held primarily for sale to

1 customers in the ordinary course of the taxpayer's trade or business
2 that is delivered or shipped to a purchaser within this state,
3 regardless of f.o.b. point or any other condition of the sale.

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

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

9 (1) The last sentence shall not apply.

10 (2) If the amount determined under Section 41(a) of the Internal
11 Revenue Code for any taxable year exceeds the limitation of
12 Section 41(g) of the Internal Revenue Code, that amount may be
13 carried over to other taxable years under the rules of subdivision
14 (e); except that the limitation of Section 41(g) of the Internal
15 Revenue Code shall be taken into account in each subsequent
16 taxable year.

17 *SEC. 5. Section 17053.36 is added to the Revenue and Taxation*
18 *Code, to read:*

19 *17053.36. (a) For each taxable year beginning on or after*
20 *January 1, 2007, and before January 1, 2017, a qualified taxpayer*
21 *shall be allowed as a credit against the "net tax," as defined in*
22 *Section 17039, an amount equal to the following:*

23 (1) *Fifty percent of qualified wages paid or incurred during any*
24 *taxable year beginning on or after January 1, 2007, and before*
25 *January 1, 2010.*

26 (2) *Forty percent of qualified wages paid or incurred during*
27 *any taxable year beginning on or after January 1, 2010, and before*
28 *January 1, 2012.*

29 (3) *Thirty percent of the qualified wages paid or incurred during*
30 *any taxable year beginning on or after January 1, 2012, and before*
31 *January 1, 2014.*

32 (4) *Twenty percent of the qualified wages paid or incurred*
33 *during any taxable year beginning on or after January 1, 2014,*
34 *and before January 1, 2016.*

35 (5) *Ten percent of the qualified wages paid or incurred during*
36 *any taxable year beginning on or after January 1, 2016, and before*
37 *January 1, 2017.*

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

1 (1) (A) “Qualified taxpayer” means any taxpayer under an
2 initial contract or subcontract to manufacture property for ultimate
3 use in a Joint Strike Fighter or a Crew Exploration Vehicle.

4 (B) In the case of any passthrough entity, the determination of
5 whether a taxpayer is a qualified taxpayer under this section shall
6 be made at the entity level and any credit under this section or
7 Section 23636 shall be allowed to the passthrough entity and
8 passed through to the partners or shareholders in accordance with
9 applicable provisions of this part or Part 11 (commencing with
10 Section 23001). For purposes of this paragraph, “passthrough
11 entity” means any partnership or “S” corporation.

12 (2) “Qualified wages” means that portion of wages paid or
13 incurred by the qualified taxpayer during the taxable year with
14 respect to qualified employees that are direct costs as defined in
15 Section 263A of the Internal Revenue Code allocable to property
16 manufactured in this state by the qualified taxpayer for ultimate
17 use in a Joint Strike Fighter or a Crew Exploration Vehicle.

18 (3) “Qualified employee” means an individual whose services
19 for the qualified taxpayer are performed in this state and are at
20 least 90 percent directly related to the qualified taxpayer’s contract
21 or subcontract to manufacture property for ultimate use in a Joint
22 Strike Fighter or a Crew Exploration Vehicle.

23 (4) “Joint Strike Fighter” means the next generation air combat
24 strike aircraft developed and produced under the Joint Strike
25 Fighter program.

26 (5) “Joint Strike Fighter program” means the multiservice,
27 multinational project conducted by the United States government
28 to develop and produce the next generation of air combat strike
29 aircraft.

30 (6) “Crew Exploration Vehicle” means the next generation
31 spacecraft being planned by the National Aeronautics and Space
32 Administration.

33 (c) The credit allowed by this section shall not exceed ten
34 thousand dollars (\$10,000) per year, per qualified employee. For
35 employees that are qualified employees for part of a taxable year,
36 the credit shall not exceed ten thousand dollars (\$10,000)
37 multiplied by a fraction, the numerator of which is the number of
38 months of the taxable year that the employee is a qualified
39 employee and the denominator of which is 12.

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

5 (e) No credit shall be allowed unless the credit is reflected within
6 the bid upon which the qualified taxpayer’s contract or subcontract
7 to manufacture property for ultimate use in a Joint Strike Fighter
8 or a Crew Exploration Vehicle is based by reducing the amount
9 of the bid by the amount of the credit allowable.

10 (f) All references to the credit and ultimate cost reductions
11 incorporated into any successful bid that was awarded a contract
12 or subcontract and for which a qualified taxpayer is making a
13 claim shall be made available to the Franchise Tax Board upon
14 request.

15 (g) This section shall remain in effect only until December 1,
16 2017, and as of that date is repealed.

17 SEC. 6. Section 17053.37 is added to the Revenue and Taxation
18 Code, to read:

19 17053.37. (a) For each taxable year beginning on or after
20 January 1, 2007, and before January 1, 2017, a qualified taxpayer
21 shall be allowed as a credit against the “net tax,” as defined in
22 Section 17039, an amount equal to 10 percent of the qualified cost
23 of qualified property that is placed in service in this state.

24 (b) (1) For purposes of this section, “qualified cost” means
25 any costs that satisfy each of the following conditions:

26 (A) Except as otherwise provided in this subparagraph, is a
27 cost paid or incurred by the qualified taxpayer for the construction,
28 reconstruction, or acquisition of qualified property on or after
29 January 1, 2007, and before January 1, 2017. In the case of any
30 qualified property constructed, reconstructed, or acquired by the
31 qualified taxpayer, or any person related to the qualified taxpayer
32 within the meaning of Section 267 or 707 of the Internal Revenue
33 Code, pursuant to a binding contract in existence on or before
34 January 1, 2007, costs paid pursuant to that contract shall be
35 subject to allocation as follows. Contract costs shall be allocated
36 to qualified property based on a ratio of costs actually paid prior
37 to January 1, 2007, and total contract costs actually paid. “Cost
38 paid” shall include, without limitation, contractual deposits and
39 option payments. To the extent of costs allocated, whether or not
40 currently deductible or depreciable for tax purposes, to a period

1 *prior to January 1, 2007, the cost shall be deemed allocated to*
2 *property acquired before January 1, 2007, and is thus not a*
3 *“qualified cost.”*

4 *(B) Except for capitalized labor costs as described in*
5 *subparagraph (B) of paragraph (1) of subdivision (d), is an amount*
6 *upon which the qualified taxpayer has paid, directly or indirectly,*
7 *as a separately stated contract amount or as determined from the*
8 *records of the qualified taxpayer, sales or use tax under Part 1*
9 *(commencing with Section 6001).*

10 *(C) Is an amount properly chargeable to the capital account of*
11 *the qualified taxpayer.*

12 *(2) (A) For purposes of this subdivision, any contract entered*
13 *into on or after January 1, 2007, that is a successor or replacement*
14 *contract to a contract that was binding before January 1, 2007,*
15 *shall be treated as a binding contract in existence before January*
16 *1, 2007.*

17 *(B) If a successor or replacement contract is entered into on or*
18 *after January 1, 2007, and the subject of the successor or*
19 *replacement contract relates both to amounts for the construction,*
20 *reconstruction, or acquisition of qualified property described in*
21 *the original binding contract and to costs for the construction,*
22 *reconstruction, or acquisition of qualified property not described*
23 *in the original binding contract, then the portion of those amounts*
24 *described in the successor or replacement contract that were not*
25 *described in the original binding contract shall not be treated as*
26 *costs paid or incurred pursuant to a binding contract in existence*
27 *on or prior to January 1, 2007, under subparagraph (A) of*
28 *paragraph (1).*

29 *(3) (A) For purposes of this section, an option contract in*
30 *existence before January 1, 2007, under which a qualified taxpayer*
31 *(or any other person related to the qualified taxpayer within the*
32 *meaning of Section 267 or 707 of the Internal Revenue Code) had*
33 *an option to acquire qualified property, shall be treated as a*
34 *binding contract under the rules in paragraph (2). For purposes*
35 *of this subparagraph, an option contract shall not include an option*
36 *under which the optionholder will forfeit an amount less than 10*
37 *percent of the fixed option price in the event the option is not*
38 *exercised.*

39 *(B) For purposes of this section, a contract shall be treated as*
40 *binding even if the contract is subject to a condition.*

1 (c) (1) For purposes of this section, “qualified taxpayer” means
2 any taxpayer under an initial contract or subcontract to
3 manufacture property for ultimate use in a Joint Strike Fighter or
4 a Crew Exploration Vehicle.

5 (2) In the case of any passthrough entity, the determination of
6 whether a taxpayer is a qualified taxpayer under this section shall
7 be made at the entity level and any credit under this section or
8 Section 23637 shall be allowed to the passthrough entity and
9 passed through to the partners or shareholders in accordance with
10 applicable provisions of Part 10 (commencing with Section 17001)
11 or Part 11 (commencing with Section 23001). For purposes of this
12 paragraph, the term “passthrough entity” means any partnership
13 or “S” corporation.

14 (3) The Franchise Tax Board may prescribe regulations to carry
15 out the purposes of this section, including any regulations
16 necessary to prevent the avoidance of the effect of this section
17 through splitups, shell corporations, partnerships, tiered ownership
18 structures, sale-leaseback transactions, or otherwise.

19 (d) (1) For purposes of this section, “qualified property” means
20 property that is described as either of the following:

21 (A) Tangible personal property that is defined in Section
22 1245(a)(3)(A) of the Internal Revenue Code for use by a qualified
23 taxpayer primarily in qualified activities to manufacture a product
24 for ultimate use in a Joint Strike Fighter or a Crew Exploration
25 Vehicle.

26 (B) The value of any capitalized labor costs that are direct costs
27 as defined in Section 263A of the Internal Revenue Code allocable
28 to the construction or modification of property described in
29 subparagraph (A).

30 (2) Qualified property does not include any of the following:

31 (A) Furniture.

32 (B) Inventory.

33 (C) Equipment used to store finished products that have
34 completed the manufacturing process.

35 (D) Any tangible personal property that is used in
36 administration, general management, or marketing.

37 (e) For purposes of this section:

38 (1) “Crew Exploration Vehicle” means the next generation
39 spacecraft being planned by the National Aeronautics and Space
40 Administration.

1 (2) “Fabricating” means to make, build, create, produce, or
2 assemble components or property to work in a new or different
3 manner.

4 (3) “Joint Strike Fighter” means the next generation air combat
5 strike aircraft developed and produced under the Joint Strike
6 Fighter program.

7 (4) “Joint Strike Fighter program” means the multiservice,
8 multinational project conducted by the United States government
9 to develop and produce the next generation of air combat strike
10 aircraft.

11 (5) “Manufacturing” means the activity of converting or
12 conditioning property by changing the form, composition, quality,
13 or character of the property for ultimate use in a Joint Strike
14 Fighter or a Crew Exploration Vehicle. Manufacturing includes
15 any improvements to tangible personal property that result in a
16 greater service life or greater functionality than that of the original
17 property.

18 (6) “Primarily” means tangible personal property used 50
19 percent or more of the time in an activity described in
20 subparagraph (A) of paragraph (1) of subdivision (d).

21 (7) “Process” means the period beginning at the point at which
22 any raw materials are received by the qualified taxpayer and
23 introduced into the manufacturing, processing, or fabricating
24 activity of the qualified taxpayer and ending at the point at which
25 the manufacturing, processing, or fabricating activity of the
26 qualified taxpayer has altered tangible personal property to its
27 completed form, including packaging, if required. Raw materials
28 shall be considered to have been introduced into the process when
29 the raw materials are stored on the same premises where the
30 qualified taxpayer’s manufacturing, processing, or fabricating
31 activity is conducted. Raw materials that are stored on premises
32 other than where the qualified taxpayer’s manufacturing,
33 processing, or fabricating activity is conducted, shall not be
34 considered to have been introduced into the manufacturing,
35 processing, or fabricating process.

36 (8) “Processing” means the physical application of the materials
37 and labor necessary to modify or change the characteristics of
38 property.

39 (9) “Qualified activities” means manufacturing, processing, or
40 fabricating of property, beginning at the point at which any raw

1 materials are received by the qualified taxpayer and introduced
2 into the process and ending at the point at which the
3 manufacturing, processing, or fabricating has altered tangible
4 personal property to its completed form, including packaging, if
5 required.

6 (f) The credit allowed under subdivision (a) shall apply to
7 qualified property that is acquired by or subject to lease by a
8 qualified taxpayer, subject to the following special rules:

9 (1) A lessor of qualified property, irrespective of whether the
10 lessor is a qualified taxpayer, shall not be allowed the credit
11 provided under subdivision (a) with respect to any qualified
12 property leased to another qualified taxpayer.

13 (2) For purposes of paragraphs (2) and (3) of subdivision (b),
14 “binding contract” includes any lease agreement with respect to
15 the qualified property.

16 (3) (A) For purposes of determining the qualified cost paid or
17 incurred by a lessee in any leasing transaction that is not treated
18 as a sale under Part 1 (commencing with Section 6001), the
19 following rules shall apply:

20 (i) Except as provided by subparagraph (C) of this paragraph,
21 subparagraphs (A) and (C) of paragraph (1) of subdivision (b)
22 shall not apply.

23 (ii) Except as provided in subparagraph (B) and clause (iii),
24 the “qualified cost” upon which the lessee shall compute the credit
25 provided under this section shall be equal to the original cost to
26 the lessor, within the meaning of Section 18031, of the qualified
27 property that is the subject of the lease.

28 (iii) The requirement of subparagraph (B) of paragraph (1) of
29 subdivision (b) shall be treated as satisfied only if the lessor has
30 made a timely election under either Section 6094.1 or subdivision
31 (d) of Section 6244 and has paid sales tax reimbursement or use
32 tax measured by the purchase price of the qualified property, within
33 the meaning of paragraph (5) of subdivision (g) of Section 6006.
34 For purposes of this subdivision, the amount of original cost to
35 the lessor which may be taken into account under clause (ii) shall
36 not exceed the purchase price upon which sales tax reimbursement
37 or use tax has been paid under the preceding sentence.

38 (B) For purposes of applying subparagraph (A) only, the
39 following special rules shall apply:

1 (i) *The original cost to the lessor of the qualified property shall*
2 *be reduced by the amount of any original cost of that property that*
3 *was taken into account by a predecessor lessee in computing the*
4 *credit allowable under this section.*

5 (ii) *Clause (i) shall not apply in any case where the predecessor*
6 *lessee was required to recapture the credit provided under this*
7 *section pursuant to the provisions of subdivision (g).*

8 (iii) *For purposes of this section only, in any case where a*
9 *successor lessor has acquired qualified property from a*
10 *predecessor lessor in a transaction not treated as a sale under*
11 *Part 1 (commencing with Section 6001) of Division 2, the original*
12 *cost to the successor lessor of the qualified property shall be*
13 *reduced by the amount of the original cost of the qualified property*
14 *that was taken into account by any lessee of the predecessor lessor*
15 *in computing the credit allowable under this section.*

16 (C) *In determining the original cost of any qualified property*
17 *under this paragraph, only amounts paid or incurred by the lessor*
18 *on or after January 1, 2007, and before January 1, 2017, shall be*
19 *taken into account. In the case of any qualified property*
20 *constructed, reconstructed, or acquired by a lessor pursuant to a*
21 *binding contract in existence on or prior to January 1, 2007, the*
22 *allocation rule specified in subparagraph (A) of paragraph (1) of*
23 *subdivision (b) shall apply in determining the original cost to the*
24 *lessor of qualified property.*

25 (D) *Notwithstanding subparagraph (A), in the case of any*
26 *leasing transaction for which the lessee is allowed the credit under*
27 *this section and thereafter the lessee, or any party related to the*
28 *lessee within the meaning of Section 267 or 318 of the Internal*
29 *Revenue Code, acquires the qualified property from the lessor, or*
30 *any successor lessor, within one year from the date the qualified*
31 *property is first used by the lessee under the terms of the lease,*
32 *the lessee's (or related party's) acquisition of the qualified property*
33 *from the lessor, or successor lessor, shall be treated as a*
34 *disposition by the lessee of the qualified property that was subject*
35 *to the lease under subdivision (g).*

36 (4) *For purposes of determining the qualified cost paid or*
37 *incurred by a lessee in any leasing transaction that is treated as*
38 *a sale under Part 1 (commencing with Section 6001) of Division*
39 *2, the following rules shall apply:*

1 (A) Subparagraph (A) of paragraph (1) of subdivision (b) shall
2 be applied by substituting the term “purchase” for the term
3 “construction, reconstruction, or acquisition.”

4 (B) Subparagraph (C) of paragraph (1) of subdivision (b) shall
5 apply.

6 (C) The requirement of subparagraph (B) of paragraph (1) of
7 subdivision (b) shall be treated as satisfied at the time that either
8 the lessor or the qualified taxpayer pays sales or use tax under
9 Part 1 (commencing with Section 6001) of Division 2.

10 (5) (A) In the case of any leasing transaction described in
11 paragraph (3), the lessor shall provide a statement to the lessee
12 specifying the amount of the lessor’s original cost of the qualified
13 property and the amount of that cost upon which a sales or use
14 tax was paid within 45 days after the close of the lessee’s taxable
15 year in which the credit is allowable to the lessee under this
16 section.

17 (B) The statement required under subparagraph (A) shall be
18 made available to the Franchise Tax Board upon request.

19 (g) No credit shall be allowed if the qualified property is
20 removed from the state, is disposed of to an unrelated party, or is
21 used for any purpose not qualifying for the credit provided in this
22 section in the same taxable year in which the taxpayer first places
23 the qualified property in service in this state. If any qualified
24 property for which a credit is allowed pursuant to this section is
25 thereafter removed from this state, disposed of to an unrelated
26 party, or used for any purpose not qualifying for the credit provided
27 in this section within one year from the date the taxpayer first
28 places the qualified property in service in this state, the amount
29 of the credit allowed by this section for that qualified property
30 shall be recaptured by adding that credit amount to the net tax of
31 the qualified taxpayer for the taxable year in which the qualified
32 property is disposed of, removed, or put to an ineligible use.

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

37 (i) (1) No credit shall be allowed under this section if a credit
38 is claimed under Section 17053.49 in connection with the same
39 property.

1 (2) No credit shall be allowed unless the credit is reflected
2 within the bid upon which the qualified taxpayer's contract or
3 subcontract to manufacture property for ultimate use in a Joint
4 Strike Fighter or a Crew Exploration Vehicle is based by reducing
5 the amount of the bid by the amount of the credit allowable.

6 (j) All references to the credit and ultimate cost reductions
7 incorporated into any successful bid that was awarded a contract
8 or subcontract and for which a qualified taxpayer is making a
9 claim shall be made available to the Franchise Tax Board upon
10 request.

11 (k) This section shall remain in effect only until January 1, 2017,
12 and as of that date is repealed.

13 SEC. 7. Section 17053.85 is added to the Revenue and Taxation
14 Code, to read:

15 17053.85. (a) (1) For taxable years beginning on or after
16 January 1, 2007, subject to the limitation in paragraph (2), there
17 shall be allowed to a qualified taxpayer, as designated by the
18 California Film Commission pursuant to subdivision (h), that
19 makes an irrevocable election pursuant to subdivision (h) to claim
20 the credit authorized by this section, as a credit against the "net
21 tax," as defined in Section 17039, an amount equal to 12 percent
22 of the qualified amount. A movie of the week and a miniseries, for
23 which an executed licensing agreement from a network or basic
24 cable entity is provided, shall be entitled to an additional 3 percent
25 of the qualified amount.

26 (2) The credit allowed by paragraph (1) shall not exceed the
27 lesser of any of the following:

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

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

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

34 (b) For purposes of this section:

35 (1) "Ancillary product" means any article for sale to the public
36 that contains a portion of, or any element of, the motion picture.

37 (2) "Budget" means an estimate of all expenses paid or incurred
38 during the production period of a motion picture. It shall be the
39 same budget used by the qualified taxpayer and production
40 company for all qualified motion picture purposes.

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

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

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

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

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

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

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

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

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

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

28 (9) (A) “Postproduction” means the final activities in a
29 qualified motion picture’s production, including editing, foley
30 recording, automatic dialogue replacement, sound editing, scoring
31 and music editing, beginning and end credits, negative cutting,
32 negative processing and duplication, the addition of sound and
33 visual effects, soundmixing, film to tape transfers, encoding, and
34 color correction.

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

37 (10) “Preproduction” means the process of preparation for
38 actual physical production which begins after a qualified motion
39 picture has received a firm agreement of financial commitment,
40 or is greenlit, with, for example, the establishment of a dedicated

1 *production office, the hiring of key crew members, and includes,*
2 *but is not limited to, activities that include location scouting and*
3 *execution of contracts with vendors of equipment and stage space.*

4 (11) *“Principal photography” means the phase of production*
5 *during which the motion picture is actually shot, as distinguished*
6 *from preproduction and postproduction.*

7 (12) *“Production accountant” means an employee of the*
8 *production company whose duties include some or all of the*
9 *following activities: oversight of production budgets, cost*
10 *reporting, order management, payment of expenses, and the review*
11 *of financial reports for accuracy and completeness.*

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

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

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

20 (i) *The total amount paid or incurred during the production*
21 *period for qualified wages with respect to the production of each*
22 *qualified motion picture.*

23 (ii) *The total amount paid or incurred during the production*
24 *period for qualified property.*

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

33 (B) *Notwithstanding subparagraph (A), the term “qualified*
34 *amount” shall not include any qualified wages paid or incurred*
35 *for services performed nor any qualified property purchased or*
36 *leased before January 1, 2007.*

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

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

4 (B) “Qualified individual” shall not include either of the
5 following:

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

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

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

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

24 (ii) “Qualified motion picture” shall not include a news
25 program, current events or public events program, talk show, game
26 show, sporting event or activity, awards show, telethon or other
27 production that solicits funds, reality television program, a feature
28 where 80 percent or more of the content consists of
29 computer-generated images, clip-based programming if more than
30 50 percent of the content is comprised of licensed footage,
31 documentaries, variety programs, daytime dramas, strip shows,
32 one-half-hour (air time) episodic television shows, or any
33 production that falls within the recordkeeping requirements of
34 Section 2257 of Title 18 of the United States Code.

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

37 (i) The qualified motion picture shall be a feature with a
38 minimum budget of three million dollars (\$3,000,000) and a
39 maximum budget of seventy-five million dollars (\$75,000,000), or
40 a movie of the week or miniseries with a minimum budget of five

1 *hundred thousand dollars (\$500,000) and a maximum budget of*
2 *seventy-five million dollars (\$75,000,000).*

3 *(ii) A qualified motion picture shall also include a single episode*
4 *in a single season, not to exceed 22 episodes per season, of a*
5 *television series new to California with a minimum budget of five*
6 *hundred thousand dollars (\$500,000) and a maximum budget of*
7 *one million eight hundred thousand dollars (\$1,800,000) per*
8 *episode. This clause shall only apply to the first three seasons of*
9 *a television series that is new to California.*

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

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

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

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

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

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

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

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

1 (19) (A) “Qualified property” means tangible personal property
2 purchased or leased in California and is used primarily in the
3 production of a qualified motion picture.

4 (B) “Qualified property” shall not include a story, script, or
5 scenario to be used for a qualified motion picture, or the literary,
6 dramatic, or musical material upon which the qualified motion
7 picture is based or may be adapted, or any rights related to the
8 foregoing.

9 (20) (A) “Qualified taxpayer” means an applicant who has
10 been allocated tax credits by the California Film Commission
11 pursuant to subdivision (h).

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

21 (ii) In the case of an “S” corporation, the credit allowed under
22 this section shall not be used by an “S” corporation as a credit
23 against a tax imposed under Chapter 4.5 (commencing with Section
24 23800) of Part 11 of Division 2.

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

26 (i) Any wages reported under Section 13050 of the
27 Unemployment Insurance Code that were paid or incurred by the
28 production company involved in the production of a qualified
29 motion picture with respect to a qualified individual for services
30 performed on the qualified motion picture production within this
31 state.

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

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

39 (iv) Remuneration paid to an independent contractor, as
40 described in Section 2750.5 of the Labor Code, who is a qualified

1 individual for services performed within this state by that qualified
2 individual.

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

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

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

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

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

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

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

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

26 (24) “Secondary markets” means media in which a qualified
27 motion picture is exhibited following the initial media in which it
28 is exhibited.

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

33 (d) No credit shall be allowed pursuant to this section unless
34 the qualified taxpayer substantiates, by adequate books and records
35 or by sufficient evidence corroborating his or her own statement,
36 that:

37 (1) The qualified wages and the qualified property on which
38 the credit was calculated were actually paid or incurred in the
39 amount claimed. Substantiation of this item shall include proof

1 *that the services were performed in California and the qualified*
2 *property was purchased or leased in California.*

3 *(2) The motion picture was a qualified motion picture.*
4 *Substantiation of this item shall include, but is not limited to, the*
5 *following:*

6 *(A) Identification of each qualified individual.*

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

8 *(C) The total wages paid and amount and type of qualified*
9 *property purchased.*

10 *(D) The amount of qualified wages paid to each qualified*
11 *individual.*

12 *(E) Certification from the Director of the California Film*
13 *Commission that identifies the motion picture as a qualified motion*
14 *picture.*

15 *(e) The Franchise Tax Board shall provide an annual listing to*
16 *the State Board of Equalization, in a form and manner agreed*
17 *upon by the Franchise Tax Board and the State Board of*
18 *Equalization, of the qualified taxpayers who, during that reporting*
19 *period, have claimed a credit under this section, including the*
20 *amount of the credit allowed to each qualified taxpayer.*

21 *(f) Subdivision (c) of Section 19341, relating to interest on*
22 *overpayments, shall not apply to any return claiming a credit under*
23 *this section.*

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

28 *(h) (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.*

31 *(B) Establish a procedure for qualified taxpayers to file with*
32 *the California Film Commission a written application, on a form*
33 *jointly prescribed by the California Film Commission and the*
34 *Franchise Tax Board, for allocation of tax credits. The application*
35 *shall be filed under penalty of perjury and include, but not be*
36 *limited to, the following information:*

37 *(i) The budget for the motion picture production.*

38 *(ii) A one-line shooting schedule.*

39 *(iii) A financing plan for the production.*

40 *(iv) An application fee.*

1 (v) *The copyright registration number for the screenplay, as*
2 *reflected on the certificate of registration issued under the authority*
3 *of Section 410 of Title 17 of the United States Code, relating to*
4 *registration of claim and issuance of certificate.*

5 (vi) *Any other information deemed relevant by the California*
6 *Film Commission.*

7 (C) *Establish a procedure for qualified taxpayers to make an*
8 *irrevocable election to claim the tax credit allocation as a credit*
9 *pursuant to this section or as a credit pursuant to Section 6902.5.*

10 (D) *Determine and designate who is a qualified taxpayer*
11 *meeting the requirements of this section.*

12 (E) *Process and approve, or reject, all applications on a*
13 *first-come, first-served basis.*

14 (F) *Provide for the cancellation of the allocated credits, if*
15 *principal photography on the qualified motion picture does not*
16 *begin within 180 days after notification of the credit allocation by*
17 *the California Film Commission in accordance with subdivision*
18 *(i).*

19 (G) *Establish specific audit requirements, in addition to those*
20 *provided under current law, that must be complied with prior to*
21 *the issuance of the certificate required by subparagraph (H), and*
22 *provide for the reallocation of previously approved credits that*
23 *are disallowed pursuant to the audit requirements, in accordance*
24 *with subdivision (i).*

25 (H) *Issue a certificate to the qualified taxpayer setting forth the*
26 *name of the qualified taxpayer, identification of the qualified*
27 *motion picture, and the total amount of the tax credit allocated.*

28 (2) *No later than ____ 2007, the California Film Commission*
29 *shall promulgate rules and regulations necessary to establish*
30 *procedures, processes, requirements, and rules identified in or*
31 *required to implement this section. Rules and regulations may be*
32 *adopted on an emergency basis if necessary to meet the March 1,*
33 *2008, deadline. The California Film Commission may amend these*
34 *rules and regulations as necessary. The California Film*
35 *Commission may adopt rules and regulations to more narrowly*
36 *define the terms listed in subdivision (b) to limit their meaning,*
37 *but may not expand the definition of any terms defined in*
38 *subdivision (b).*

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

4 (1) Ten million dollars (\$10,000,000) for each calendar quarter,
5 and each calendar quarter thereafter.

6 (2) The unused credit ceiling, if any, for the preceding calendar
7 quarter.

8 (3) The amount of previously allocated credit cancelled or
9 disallowed in the preceding calendar quarter by reason of
10 subparagraph (F) or subparagraph (G) of paragraph (1) of
11 subdivision (h).

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

20 (k) This section shall remain in effect only until January 1, 2017,
21 and as of that date is repealed, unless a later enacted statute, that
22 is enacted before January 1, 2017, deletes or extends that date.

23 SEC. 8. Section 17053.86 is added to the Revenue and Taxation
24 Code, to read:

25 17053.86. (a) (1) For taxable years beginning on or after
26 January 1, 2007, subject to the limitation in paragraph (2), there
27 shall be allowed to a qualified commercial production company,
28 as designated by the California Film Commission pursuant to
29 subdivision (g), as a credit against the "net tax," as defined in
30 Section 17039, an amount equal to 12 percent of the incremental
31 qualified production costs.

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

34 (A) Five hundred thousand dollars (\$500,000) per qualified
35 production company per calendar year.

36 (B) The amount of the credit allocated by the California Film
37 Commission to the qualified commercial production company
38 pursuant to subdivision (g).

39 (b) For the purposes of this section:

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

3 (2) (A) “Employee fringe benefits” means the amount allowable
4 as a deduction under this part to the qualified commercial
5 production company involved in the production of the qualified
6 commercial for any year during the production period with respect
7 to any of the following:

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

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

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

14 (B) Any amount treated as wages under clause (i) of
15 subparagraph (A) of paragraph (10) shall not be taken into account
16 under this paragraph.

17 (3) “Incremental qualified production costs” are any qualified
18 production costs for the taxable year greater than the qualified
19 production costs for the base year.

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

22 (5) “Postproduction” means the final activities in a qualified
23 commercial’s production, including, but not limited to, offline
24 editorial, online editorial, dailies, color correction, compositing,
25 CGI, graphics, sound editorial, sound mixing, sound design,
26 automated dialogue replacement, foley recording, music
27 composition and scoring, and duplication associated with the
28 above process.

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

35 (B) “Qualified commercial” shall not include any program
36 length production with an advertising component including a
37 documentary length commercial, an infomercial, news, or current
38 affairs program, interview or talk program, network promotion
39 (short form content intended to promote other programming),
40 sporting event, game show, award ceremony, daytime drama,

1 reality entertainment programming or program intended primarily
2 for industrial, corporate, or institutional end users, fundraising
3 or political commercial, a program consisting primarily of stock
4 footage, a program produced by an organization organized under
5 Section 527 of the Internal Revenue Code, or any production that
6 falls within the recordkeeping requirements of Section 2257 of
7 Title 18 of the United States Code.

8 (7) (A) “Qualified commercial production company” means a
9 taxpayer, allocated tax credits by the California Film Commission
10 pursuant to subdivision (g), that is principally engaged in the
11 production of a qualified commercial and has control over the
12 selection of production location, deployment, or management of
13 the production equipment, and directly employs the production
14 crew on the qualified commercial, or is a taxpayer who provides
15 postproduction services on a qualified commercial.

16 (B) (i) In the case of any passthrough entity, the determination
17 of whether a taxpayer is a qualified commercial production
18 company under this section shall be made at the entity level and
19 any credit under this section is not allowed to the passthrough
20 entity, but shall be passed through to the partners or shareholders
21 in accordance with applicable provisions of Part 10 (commencing
22 with Section 17001) or Part 11 (commencing with Section 23001).
23 For the purposes of this paragraph, “passthrough entity” means
24 any entity taxed as a partnership or “S” corporation.

25 (ii) In the case of an “S” corporation, the credit allowed under
26 this section shall not be used by an “S” corporation as a credit
27 against a tax imposed under Chapter 4.5 (commencing with Section
28 23800) of Part 11 of Division 2.

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

32 (B) “Qualified individual” shall not include either of the
33 following:

34 (i) Any individual related to the qualified commercial production
35 company as described in subparagraph (A), (B), (C), or Section
36 51(i)(1) of the Internal Revenue Code.

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

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

1 (A) Costs for tangible property used and services performed
2 directly and predominately in the production of a qualified
3 commercial.

4 (B) Costs for qualified wages, technical and crew production
5 costs, allocable portions of depreciation on equipment directly
6 used in production, rental or other expenditures for commercial
7 production facilities, props, makeup, wardrobe, film processing,
8 camera rental, sound recording, set construction, lighting,
9 on-location meals, and lodging.

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

12 (D) “Qualified production costs” does not include costs for
13 story, script, or scenario to be used for a qualified commercial,
14 or any qualified wages paid or incurred before January 1, 2007.

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

16 (i) Any wages reported under Section 13050 of the
17 Unemployment Insurance Code that were paid or incurred by the
18 qualified commercial production company involved in the
19 production of a qualified commercial with respect to a qualified
20 individual for services performed on the qualified commercial
21 production within this state.

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

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

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

32 (B) “Qualified wages” shall not include wages, salaries, or
33 other compensation for writers, directors, music directors,
34 producers, and performers (other than background actors with no
35 scripted lines who are employed by a qualified commercial
36 production company).

37 (c) In the case where the credit allowed under this section
38 exceeds the “net tax,” the excess may be carried over to reduce
39 the “net tax” in the following year, and succeeding years if
40 necessary, until the credit has been exhausted.

1 (d) No credit shall be allowed pursuant to this section unless
2 the qualified commercial production company substantiates, by
3 adequate books and records or by sufficient evidence corroborating
4 his or her own statement, that:

5 (1) The incremental qualified production costs upon which the
6 credit was calculated were actually paid or incurred in the amount
7 claimed.

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

10 (A) Identification of each qualified individual.

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

12 (C) The total wages paid.

13 (D) The amount of qualified wages paid to each qualified
14 individual.

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

17 (e) Subdivision (c) of Section 19341, relating to interest on
18 overpayments, shall not apply to any return claiming a credit under
19 this section.

20 (f) If the qualified commercial production company fails to
21 attach the certification issued by the Director of the California
22 Film Commission, in accordance with subdivision (g), the credit
23 shall be disallowed and assessed and collected under Section
24 19051.

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

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

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

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

38 (ii) The qualified production costs for the taxable year in which
39 the credit is claimed.

40 (iii) An application fee.

1 (iv) Any other information deemed relevant by the California
2 Film Commission.

3 (C) Determine and designate who is a qualified commercial
4 production company meeting the requirements of this section.

5 (D) Process and approve, or reject, all applications.

6 (E) Establish specific audit requirements, in addition to those
7 provided under current law, that must be complied with prior to
8 the issuance of the certificate required by subparagraph (F), and
9 provide for the reallocation of previously approved credits that
10 are disallowed pursuant to the audit requirements, in accordance
11 with subdivision (h).

12 (F) Issue a certificate to the qualified taxpayer setting forth the
13 name of the qualified taxpayer and the total amount of the tax
14 credit allocated.

15 (2) No later than ____ 2007, the California Film Commission
16 shall promulgate rules and regulations necessary to establish
17 procedures, processes, requirements, and rules identified in or
18 required to implement this section. Rules and regulations may be
19 adopted on an emergency basis if necessary to meet the March 1,
20 2008, deadline. The California Film Commission may amend these
21 rules and regulations as necessary. The California Film
22 Commission may adopt rules and regulations to more narrowly
23 define the terms listed in subdivision (b) to limit their meaning,
24 but may not expand the definition of any terms defined in
25 subdivision (b).

26 (h) (1) The aggregate amount of credits that may be allocated
27 in any calendar year pursuant to this section and Section 23686
28 shall be an amount equal to the sum of all of the following:

29 (A) Twenty million dollars (\$20,000,000) for the 2008 calendar
30 year, and each calendar year thereafter.

31 (B) The unused credit ceiling, if any, for the preceding calendar
32 years.

33 (C) The amount of previously allocated credit canceled or
34 disallowed in the calendar year by reason of subparagraph (E) of
35 paragraph (1) of subdivision (g).

36 (2) If the amount allocable to qualified commercial production
37 companies exceeds the aggregate amount of credits that may be
38 allocated in any calendar year, the credits shall be distributed to
39 qualified commercial production companies as follows:

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

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

8 (i) *The California Film Commission shall provide a list, at least*
9 *annually, to the Franchise Tax Board, in the form and manner as*
10 *shall be determined by the California Film Commission and the*
11 *Franchise Tax Board, of the names, taxpayer identification*
12 *numbers, including taxpayer identification numbers of each partner*
13 *or shareholder, as applicable, the qualified motion pictures for*
14 *which tax credit was allocated, and the total amount of the tax*
15 *credit allocated to each qualified taxpayer.*

16 (j) *This section shall remain in effect only until January 1, 2017,*
17 *and as of that date is repealed, unless a later enacted statute, that*
18 *is enacted before January 1, 2017, deletes or extends that date.*

19 SEC. 9. *Section 23609 of the Revenue and Taxation Code is*
20 *amended to read:*

21 23609. For each taxable year beginning on or after January 1,
22 1987, there shall be allowed as a credit against the “tax” (as defined
23 by Section 23036) an amount determined in accordance with
24 Section 41 of the Internal Revenue Code, except as follows:

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

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

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

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

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

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

38 (2) For each taxable year beginning on or after January 1, 1999,
39 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 *and before January 1, 2007*, 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 (4) *For each taxable year beginning on or after January 1,*
12 *2007, both of the following shall apply:*

13 (A) *The reference to “20 percent” in Section 41(a)(1) of the*
14 *Internal Revenue Code is modified to read “16 percent.”*

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

17 (c) (1) With respect to any expense paid or incurred after the
18 operative date of Section 6378, Section 41(b)(1) of the Internal
19 Revenue Code is modified to exclude from the definition of
20 “qualified research expense” any amount paid or incurred for
21 tangible personal property that is eligible for the exemption from
22 sales or use tax ~~provided by~~ *under* Section 6378.

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

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

32 (1) Basic research conducted outside California.

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

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

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

1 (e) (1) In the case of a taxpayer engaged in any
2 biopharmaceutical research activities that are described in ~~codes~~
3 *Codes* 2833 to 2836, inclusive, or any research activities that are
4 described in ~~codes~~ *Codes* 3826, 3829, or 3841 to 3845, inclusive,
5 of the Standard Industrial Classification (SIC) Manual published
6 by the United States Office of Management and Budget, 1987
7 edition, or any other biotechnology research and development
8 activities, the provisions of Section 41(e)(6) of the Internal Revenue
9 Code shall be modified to include both of the following:

10 (A) A qualified organization as described in Section
11 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
12 institution of higher education as described in Section 3304(f) of
13 the Internal Revenue Code.

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

20 (2) For purposes of this subdivision:

21 (A) “Biopharmaceutical research activities” means those
22 activities that use organisms or materials derived from organisms,
23 and their cellular, subcellular, or molecular components, in order
24 to provide pharmaceutical products for human or animal
25 therapeutics and diagnostics. Biopharmaceutical activities make
26 use of living organisms to make commercial products, as opposed
27 to pharmaceutical activities that make use of chemical compounds
28 to produce commercial products.

29 (B) “Other biotechnology research and development activities”
30 means research and development activities consisting of the
31 application of recombinant DNA technology to produce
32 commercial products, as well as research and development
33 activities regarding pharmaceutical delivery systems designed to
34 provide a measure of control over the rate, duration, and site of
35 pharmaceutical delivery.

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

1 (g) 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 10 (commencing with Section
5 17001).”

6 (h) (1) For each taxable year beginning on or after January 1,
7 2000, *and before January 1, 2007*:

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) *For each taxable year beginning on or after January 1,*
18 *2007, the following apply:*

19 (A) *The reference to “2.65 percent” in Section 41(c)(4)(A)(i)*
20 *of the Internal Revenue Code is modified to read “two percent.”*

21 (B) *The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of*
22 *the Internal Revenue Code is modified to read “two and one-half*
23 *percent.”*

24 (C) *The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)*
25 *of the Internal Revenue Code is modified to read “three percent.”*

26 ~~(2)~~

27 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an
28 election under Section 41(c)(4)(A) of the Internal Revenue Code
29 may be made for any taxable year of the taxpayer beginning on or
30 after January 1, 1998. That election shall apply to the taxable year
31 for which made and all succeeding taxable years unless revoked
32 with the consent of the Franchise Tax Board.

33 ~~(3)~~

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

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

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

6 (1) The last sentence shall not apply.

7 (2) If the amount determined under Section 41(a) of the Internal
8 Revenue Code for any taxable year exceeds the limitation of
9 Section 41(g) of the Internal Revenue Code, that amount may be
10 carried over to other taxable years under the rules of subdivision
11 (f), except that the limitation of Section 41(g) of the Internal
12 Revenue Code shall be taken into account in each subsequent
13 taxable year.

14 *SEC. 10. Section 23636 is added to the Revenue and Taxation*
15 *Code, to read:*

16 *23636. (a) For each taxable year beginning on or after*
17 *January 1, 2007, and before January 1, 2017, a qualified taxpayer*
18 *shall be allowed as a credit against the “tax,” as defined in Section*
19 *23036, an amount equal to the following:*

20 *(1) Fifty percent of qualified wages paid or incurred during any*
21 *taxable year beginning on or after January 1, 2007, and before*
22 *January 1, 2010.*

23 *(2) Forty percent of qualified wages paid or incurred during*
24 *any taxable year beginning on or after January 1, 2010, and before*
25 *January 1, 2012.*

26 *(3) Thirty percent of the qualified wages paid or incurred during*
27 *any taxable year beginning on or after January 1, 2012, and before*
28 *January 1, 2014.*

29 *(4) Twenty percent of the qualified wages paid or incurred*
30 *during any taxable year beginning on or after January 1, 2014,*
31 *and before January 1, 2016.*

32 *(5) Ten percent of the qualified wages paid or incurred during*
33 *any taxable year beginning on or after January 1, 2016, and before*
34 *January 1, 2017.*

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

36 *(1) (A) “Qualified taxpayer” means any taxpayer under an*
37 *initial contract or subcontract to manufacture property for ultimate*
38 *use in a Joint Strike Fighter or a Crew Exploration Vehicle.*

39 *(B) In the case of any passthrough entity, the determination of*
40 *whether a taxpayer is a qualified taxpayer under this section shall*

1 *be made at the entity level and any credit under this section or*
2 *Section 17053.36 shall be allowed to the passthrough entity and*
3 *passed through to the partners or shareholders in accordance with*
4 *applicable provisions of Part 10 (commencing with Section 17001)*
5 *or this part. For purposes of this paragraph, “passthrough entity”*
6 *means any partnership or “S” corporation.*

7 (2) *“Qualified wages” means that portion of wages paid or*
8 *incurred by the qualified taxpayer during the taxable year with*
9 *respect to qualified employees that are direct costs as defined in*
10 *Section 263A of the Internal Revenue Code allocable to property*
11 *manufactured in this state by the qualified taxpayer for ultimate*
12 *use in a Joint Strike Fighter or a Crew Exploration Vehicle.*

13 (3) *“Qualified employee” means an individual whose services*
14 *for the qualified taxpayer are performed in this state and are at*
15 *least 90 percent directly related to the qualified taxpayer’s contract*
16 *or subcontract to manufacture property for ultimate use in a Joint*
17 *Strike Fighter or a Crew Exploration Vehicle.*

18 (4) *“Joint Strike Fighter” means the next generation air combat*
19 *strike aircraft developed and produced under the Joint Strike*
20 *Fighter program.*

21 (5) *“Joint Strike Fighter program” means the multiservice,*
22 *multinational project conducted by the United States government*
23 *to develop and produce the next generation of air combat strike*
24 *aircraft.*

25 (6) *“Crew Exploration Vehicle” means the next generation*
26 *spacecraft being planned by the National Aeronautics and Space*
27 *Administration.*

28 (c) *The credit allowed by this section shall not exceed ten*
29 *thousand dollars (\$10,000) per year, per qualified employee. For*
30 *employees that are qualified employees for part of a taxable year,*
31 *the credit shall not exceed ten thousand dollars (\$10,000)*
32 *multiplied by a fraction, the numerator of which is the number of*
33 *months of the taxable year that the employee is a qualified*
34 *employee and the denominator of which is 12.*

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

39 (e) *No credit shall be allowed unless the credit is reflected within*
40 *the bid upon which the qualified taxpayer’s contract or subcontract*

1 to manufacture property for ultimate use in a Joint Strike Fighter
2 or a Crew Exploration Vehicle is based by reducing the amount
3 of the bid by the amount of the credit allowable.

4 (f) All references to the credit and ultimate cost reductions
5 incorporated into any successful bid that was awarded a contract
6 or subcontract and for which a qualified taxpayer is making a
7 claim shall be made available to the Franchise Tax Board upon
8 request.

9 (g) This section shall remain in effect only until December 1,
10 2017, and as of that date is repealed.

11 SEC. 11. Section 23637 is added to the Revenue and Taxation
12 Code, to read:

13 23637. (a) For each taxable year beginning on or after
14 January 1, 2007, and before January 1, 2017, a qualified taxpayer
15 shall be allowed as a credit against the "tax," as defined in Section
16 23036, an amount equal to 10 percent of the qualified cost of
17 qualified property that is placed in service in this state.

18 (b) (1) For purposes of this section, "qualified cost" means
19 any costs that satisfy each of the following conditions:

20 (A) Except as otherwise provided in this subparagraph, is a
21 cost paid or incurred by the qualified taxpayer for the construction,
22 reconstruction, or acquisition of qualified property on or after
23 January 1, 2007, and before January 1, 2017. In the case of any
24 qualified property constructed, reconstructed, or acquired by the
25 qualified taxpayer (or any person related to the qualified taxpayer
26 within the meaning of Section 267 or 707 of the Internal Revenue
27 Code) pursuant to a binding contract in existence on or before
28 January 1, 2007, costs paid pursuant to that contract shall be
29 subject to allocation as follows. Contract costs shall be allocated
30 to qualified property based on a ratio of costs actually paid prior
31 to January 1, 2007, and total contract costs actually paid. "Cost
32 paid" shall include, without limitation, contractual deposits and
33 option payments. To the extent of costs allocated, whether or not
34 currently deductible or depreciable for tax purposes, to a period
35 prior to January 1, 2007, the cost shall be deemed allocated to
36 property acquired before January 1, 2007, and is thus not a
37 "qualified cost."

38 (B) Except for capitalized labor costs as described in
39 subparagraph (B) of paragraph (1) of subdivision (d), is an amount
40 upon which the qualified taxpayer has paid, directly or indirectly,

1 as a separately stated contract amount or as determined from the
2 records of the qualified taxpayer, sales or use tax under Part 1
3 (commencing with Section 6001).

4 (C) Is an amount properly chargeable to the capital account of
5 the qualified taxpayer.

6 (2) (A) For purposes of this subdivision, any contract entered
7 into on or after January 1, 2007, that is a successor or replacement
8 contract to a contract that was binding before January 1, 2007,
9 shall be treated as a binding contract in existence before January
10 1, 2007.

11 (B) If a successor or replacement contract is entered into on or
12 after January 1, 2007, and the subject of the successor or
13 replacement contract relates both to amounts for the construction,
14 reconstruction, or acquisition of qualified property described in
15 the original binding contract and to costs for the construction,
16 reconstruction, or acquisition of qualified property not described
17 in the original binding contract, then the portion of those amounts
18 described in the successor or replacement contract that were not
19 described in the original binding contract shall not be treated as
20 costs paid or incurred pursuant to a binding contract in existence
21 on or prior to January 1, 2007, under subparagraph (A) of
22 paragraph (1).

23 (3) (A) For purposes of this section, an option contract in
24 existence before January 1, 2007, under which a qualified taxpayer,
25 or any other person related to the qualified taxpayer within the
26 meaning of Section 267 or 707 of the Internal Revenue Code, had
27 an option to acquire qualified property, shall be treated as a
28 binding contract under the rules in paragraph (2). For purposes
29 of this subparagraph, an option contract shall not include an option
30 under which the optionholder will forfeit an amount less than 10
31 percent of the fixed option price in the event the option is not
32 exercised.

33 (B) For purposes of this section, a contract shall be treated as
34 binding even if the contract is subject to a condition.

35 (c) (1) For purposes of this section, “qualified taxpayer” means
36 any taxpayer under an initial contract or subcontract to
37 manufacture property for ultimate use in a Joint Strike Fighter or
38 a Crew Exploration Vehicle.

39 (2) In the case of any passthrough entity, the determination of
40 whether a taxpayer is a qualified taxpayer under this section shall

1 *be made at the entity level and any credit under this section or*
2 *Section 17053.37 shall be allowed to the passthrough entity and*
3 *passed through to the partners or shareholders in accordance with*
4 *applicable provisions of Part 10 (commencing with Section 17001)*
5 *or Part 11 (commencing with Section 23001). For purposes of this*
6 *paragraph, the term “passthrough entity” means any partnership*
7 *or “S” corporation.*

8 (3) *The Franchise Tax Board may prescribe regulations to carry*
9 *out the purposes of this section, including any regulations*
10 *necessary to prevent the avoidance of the effect of this section*
11 *through splitups, shell corporations, partnerships, tiered ownership*
12 *structures, sale-leaseback transactions, or otherwise.*

13 (d) (1) *For purposes of this section, “qualified property” means*
14 *property that is described as either of the following:*

15 (A) *Tangible personal property that is defined in Section*
16 *1245(a)(3)(A) of the Internal Revenue Code for use by a qualified*
17 *taxpayer primarily in qualified activities to manufacture a product*
18 *for ultimate use in a Joint Strike Fighter or a Crew Exploration*
19 *Vehicle.*

20 (B) *The value of any capitalized labor costs that are direct costs*
21 *as defined in Section 263A of the Internal Revenue Code allocable*
22 *to the construction or modification of property described in*
23 *subparagraph (A).*

24 (2) *Qualified property does not include any of the following:*

25 (A) *Furniture.*

26 (B) *Inventory.*

27 (C) *Equipment used to store finished products that have*
28 *completed the manufacturing process.*

29 (D) *Any tangible personal property that is used in*
30 *administration, general management, or marketing.*

31 (e) *For purposes of this section:*

32 (1) *“Crew Exploration Vehicle” means the next generation*
33 *spacecraft being planned by the National Aeronautics and Space*
34 *Administration.*

35 (2) *“Fabricating” means to make, build, create, produce, or*
36 *assemble components or property to work in a new or different*
37 *manner.*

38 (3) *“Joint Strike Fighter” means the next generation air combat*
39 *strike aircraft developed and produced under the Joint Strike*
40 *Fighter program.*

1 (4) “Joint Strike Fighter program” means the multiservice,
2 multinational project conducted by the United States government
3 to develop and produce the next generation of air combat strike
4 aircraft.

5 (5) “Manufacturing” means the activity of converting or
6 conditioning property by changing the form, composition, quality,
7 or character of the property for ultimate use in a Joint Strike
8 Fighter or a Crew Exploration Vehicle. Manufacturing includes
9 any improvements to tangible personal property that result in a
10 greater service life or greater functionality than that of the original
11 property.

12 (6) “Primarily” means tangible personal property used 50
13 percent or more of the time in an activity described in
14 subparagraph (A) of paragraph (1) of subdivision (d).

15 (7) “Process” means the period beginning at the point at which
16 any raw materials are received by the qualified taxpayer and
17 introduced into the manufacturing, processing, or fabricating
18 activity of the qualified taxpayer and ending at the point at which
19 the manufacturing, processing, or fabricating activity of the
20 qualified taxpayer has altered tangible personal property to its
21 completed form, including packaging, if required. Raw materials
22 shall be considered to have been introduced into the process when
23 the raw materials are stored on the same premises where the
24 qualified taxpayer’s manufacturing, processing, or fabricating
25 activity is conducted. Raw materials that are stored on premises
26 other than where the qualified taxpayer’s manufacturing,
27 processing, or fabricating activity is conducted, shall not be
28 considered to have been introduced into the manufacturing,
29 processing, or fabricating process.

30 (8) “Processing” means the physical application of the materials
31 and labor necessary to modify or change the characteristics of
32 property.

33 (9) “Qualified activities” means manufacturing, processing, or
34 fabricating of property, beginning at the point at which any raw
35 materials are received by the qualified taxpayer and introduced
36 into the process and ending at the point at which the
37 manufacturing, processing, or fabricating has altered tangible
38 personal property to its completed form, including packaging, if
39 required.

1 (f) *The credit allowed under subdivision (a) shall apply to*
2 *qualified property that is acquired by or subject to lease by a*
3 *qualified taxpayer, subject to the following special rules:*

4 (1) *A lessor of qualified property, irrespective of whether the*
5 *lessor is a qualified taxpayer, shall not be allowed the credit*
6 *provided under subdivision (a) with respect to any qualified*
7 *property leased to another qualified taxpayer.*

8 (2) *For purposes of paragraphs (2) and (3) of subdivision (b),*
9 *“binding contract” includes any lease agreement with respect to*
10 *the qualified property.*

11 (3) (A) *For purposes of determining the qualified cost paid or*
12 *incurred by a lessee in any leasing transaction that is not treated*
13 *as a sale under Part 1 (commencing with Section 6001) of Division*
14 *2, the following rules shall apply:*

15 (i) *Except as provided by subparagraph (C) of this paragraph,*
16 *subparagraphs (A) and (C) of paragraph (1) of subdivision (b)*
17 *shall not apply.*

18 (ii) *Except as provided in subparagraph (B) and clause (iii),*
19 *the “qualified cost” upon which the lessee shall compute the credit*
20 *provided under this section shall be equal to the original cost to*
21 *the lessor, within the meaning of Section 18031, of the qualified*
22 *property that is the subject of the lease.*

23 (iii) *The requirement of subparagraph (B) of paragraph (1) of*
24 *subdivision (b) shall be treated as satisfied only if the lessor has*
25 *made a timely election under either Section 6094.1 or subdivision*
26 *(d) of Section 6244 and has paid sales tax reimbursement or use*
27 *tax measured by the purchase price of the qualified property within*
28 *the meaning of paragraph (5) of subdivision (g) of Section 6006.*
29 *For purposes of this subdivision, the amount of original cost to*
30 *the lessor which may be taken into account under clause (ii) shall*
31 *not exceed the purchase price upon which sales tax reimbursement*
32 *or use tax has been paid under the preceding sentence.*

33 (B) *For purposes of applying subparagraph (A) only, the*
34 *following special rules shall apply:*

35 (i) *The original cost to the lessor of the qualified property shall*
36 *be reduced by the amount of any original cost of that property that*
37 *was taken into account by a predecessor lessee in computing the*
38 *credit allowable under this section.*

1 (ii) Clause (i) shall not apply in any case where the predecessor
2 lessee was required to recapture the credit provided under this
3 section pursuant to the provisions of subdivision (g).

4 (iii) For purposes of this section only, in any case where a
5 successor lessor has acquired qualified property from a
6 predecessor lessor in a transaction not treated as a sale under
7 Part 1 (commencing with Section 6001) of Division 2, the original
8 cost to the successor lessor of the qualified property shall be
9 reduced by the amount of the original cost of the qualified property
10 that was taken into account by any lessee of the predecessor lessor
11 in computing the credit allowable under this section.

12 (C) In determining the original cost of any qualified property
13 under this paragraph, only amounts paid or incurred by the lessor
14 on or after January 1, 2007, and before January 1, 2017, shall be
15 taken into account. In the case of any qualified property
16 constructed, reconstructed, or acquired by a lessor pursuant to a
17 binding contract in existence on or prior to January 1, 2007, the
18 allocation rule specified in subparagraph (A) of paragraph (1) of
19 subdivision (b) shall apply in determining the original cost to the
20 lessor of qualified property.

21 (D) Notwithstanding subparagraph (A), in the case of any
22 leasing transaction for which the lessee is allowed the credit under
23 this section and thereafter the lessee, or any party related to the
24 lessee within the meaning of Section 267 or 318 of the Internal
25 Revenue Code, acquires the qualified property from the lessor (or
26 any successor lessor) within one year from the date the qualified
27 property is first used by the lessee under the terms of the lease,
28 the lessee's (or related party's) acquisition of the qualified property
29 from the lessor, or successor lessor, shall be treated as a
30 disposition by the lessee of the qualified property that was subject
31 to the lease under subdivision (g).

32 (4) For purposes of determining the qualified cost paid or
33 incurred by a lessee in any leasing transaction that is treated as
34 a sale under Part 1 (commencing with Section 6001), the following
35 rules shall apply:

36 (A) Subparagraph (A) of paragraph (1) of subdivision (b) shall
37 be applied by substituting the term "purchase" for the term
38 "construction, reconstruction, or acquisition."

39 (B) Subparagraph (C) of paragraph (1) of subdivision (b) shall
40 apply.

1 (C) The requirement of subparagraph (B) of paragraph (1) of
2 subdivision (b) shall be treated as satisfied at the time that either
3 the lessor or the qualified taxpayer pays sales or use tax under
4 Part 1 (commencing with Section 6001).

5 (5) (A) In the case of any leasing transaction described in
6 paragraph (3), the lessor shall provide a statement to the lessee
7 specifying the amount of the lessor's original cost of the qualified
8 property and the amount of that cost upon which a sales or use
9 tax was paid within 45 days after the close of the lessee's taxable
10 year in which the credit is allowable to the lessee under this
11 section.

12 (B) The statement required under subparagraph (A) shall be
13 made available to the Franchise Tax Board upon request.

14 (g) No credit shall be allowed if the qualified property is
15 removed from the state, is disposed of to an unrelated party, or is
16 used for any purpose not qualifying for the credit provided in this
17 section in the same taxable year in which the taxpayer first places
18 the qualified property in service in this state. If any qualified
19 property for which a credit is allowed pursuant to this section is
20 thereafter removed from this state, disposed of to an unrelated
21 party, or used for any purpose not qualifying for the credit provided
22 in this section within one year from the date the taxpayer first
23 places the qualified property in service in this state, the amount
24 of the credit allowed by this section for that qualified property
25 shall be recaptured by adding that credit amount to the tax of the
26 qualified taxpayer for the taxable year in which the qualified
27 property is disposed of, removed, or put to an ineligible use.

28 (h) In the case where the credit allowed by this section exceeds
29 the "tax," the excess may be carried over to reduce the "tax" in
30 the following year, and the succeeding years if necessary, until
31 the credit is exhausted.

32 (i) (1) No credit shall be allowed under this section if a credit
33 is claimed under Section 23649 in connection with the same
34 property.

35 (2) No credit shall be allowed unless the credit is reflected
36 within the bid upon which the qualified taxpayer's contract or
37 subcontract to manufacture property for ultimate use in a Joint
38 Strike Fighter or a Crew Exploration Vehicle is based by reducing
39 the amount of the bid by the amount of the credit allowable.

1 (j) All references to the credit and ultimate cost reductions
2 incorporated into any successful bid that was awarded a contract
3 or subcontract and for which a qualified taxpayer is making a
4 claim shall be made available to the Franchise Tax Board upon
5 request.

6 (k) This section shall remain in effect only until January 1, 2017,
7 and as of that date is repealed.

8 SEC. 12. Section 23685 is added to the Revenue and Taxation
9 Code, to read:

10 23685. (a) (1) For taxable years beginning on or after January
11 1, 2007, subject to the limitation in paragraph (2), there shall be
12 allowed to a qualified taxpayer, as designated by the California
13 Film Commission pursuant to subdivision (h), that makes an
14 irrevocable election pursuant to subdivision (h) to claim the credit
15 authorized by this section, as a credit against the "tax," as defined
16 in Section 23036, an amount equal to 12 percent of the qualified
17 amount. A movie of the week and a miniseries, for which an
18 executed licensing agreement from a network or basic cable entity
19 is provided, shall be entitled to an additional 3 percent of the
20 qualified amount.

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

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

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

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

29 (b) For purposes of this section:

30 (1) "Ancillary product" means any article for sale to the public
31 that contains a portion of, or any element of, the motion picture.

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

36 (3) "Clip use" means a use of any portion of a motion picture,
37 other than the qualified motion picture, used in the qualified motion
38 picture.

39 (4) (A) "Employee fringe benefits" means the amount allowable
40 as a deduction under this part to the qualified taxpayer involved

1 *in the production of the qualified motion picture for any year*
2 *during the production period with respect to any of the following:*

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

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

7 *(iii) The employer's cost of life or disability insurance provided*
8 *to employees.*

9 *(B) Any amount treated as wages under clause (i) of*
10 *subparagraph (A) of paragraph (21) shall not be taken into account*
11 *under this paragraph.*

12 *(5) "Licensing" means any grant of rights to distribute the*
13 *qualified motion picture, in whole or in part.*

14 *(6) "Movie of the week" and "miniseries" both mean a motion*
15 *picture, produced for initial exploitation on television, which*
16 *contains a scripted storyline requiring two or more consecutive*
17 *hours of programming.*

18 *(7) "New to California" means a television series that has not*
19 *previously engaged in principal photography in this state, other*
20 *than for a production that is a pilot or presentation.*

21 *(8) "New use" means any use of a motion picture in a medium*
22 *other than the medium for which it was initially created.*

23 *(9) (A) "Postproduction" means the final activities in a*
24 *qualified motion picture's production, including editing, foley*
25 *recording, automatic dialogue replacement, sound editing, scoring*
26 *and music editing, beginning and end credits, negative cutting,*
27 *negative processing and duplication, the addition of sound and*
28 *visual effects, soundmixing, film to tape transfers, encoding, and*
29 *color correction.*

30 *(B) "Postproduction" does not include the manufacture or*
31 *shipping of release prints.*

32 *(10) "Preproduction" means the process of preparation for*
33 *actual physical production which begins after a qualified motion*
34 *picture has received a firm agreement of financial commitment,*
35 *or is greenlit, with, for example, the establishment of a dedicated*
36 *production office, the hiring of key crew members, and includes,*
37 *but is not limited to, activities that include location scouting and*
38 *execution of contracts with vendors of equipment and stage space.*

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

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

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

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

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

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

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

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

31 (B) Notwithstanding subparagraph (A), the term “qualified
32 amount” shall not include any qualified wages paid or incurred
33 for services performed nor any qualified property purchased or
34 leased before January 1, 2007.

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

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

4 (B) “Qualified individual” shall not include either of the
5 following:

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

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

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

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

24 (ii) “Qualified motion picture” shall not include a news
25 program, current events or public events program, talk show, game
26 show, sporting event or activity, awards show, telethon or other
27 production that solicits funds, reality television program, a feature
28 where 80 percent of more of the content consists of
29 computer-generated images, clip-based programming if more than
30 50 percent or the content is comprised of licensed footage,
31 documentaries, variety programs, daytime dramas, strip shows,
32 one-half-hour (air time) episodic television shows, or any
33 production that falls within the recordkeeping requirements of
34 Section 2257 of Title 18 of the United States Code.

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

37 (i) The qualified motion picture shall be a feature with a
38 minimum budget of three million dollars (\$3,000,000) and a
39 maximum budget of seventy-five million dollars (\$75,000,000), or
40 a movie of the week or miniseries with a minimum budget of five

1 *hundred thousand dollars (\$500,000) and a maximum budget of*
2 *seventy-five million dollars (\$75,000,000).*

3 *(ii) A qualified motion picture shall also include a single episode*
4 *in a single season, not to exceed 22 episodes per season, of a*
5 *television series new to California with a minimum budget of five*
6 *hundred thousand dollars (\$500,000) and a maximum budget of*
7 *one million eight hundred thousand dollars (\$1,800,000). This*
8 *clause shall only apply to the first three seasons of a television*
9 *series that is new to California.*

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

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

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

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

27 *(D) For the purposes of clauses (i) and (ii) of subparagraph*
28 *(C) the following additional rules apply:*

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

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

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

1 (19) (A) “Qualified property” means tangible personal property
2 purchased or leased in California and is used primarily in the
3 production of a qualified motion picture.

4 (B) “Qualified property” shall not include a story, script, or
5 scenario to be used for a qualified motion picture, or the literary,
6 dramatic, or musical material upon which the qualified motion
7 picture is based or may be adapted, or any rights related to the
8 foregoing.

9 (20) (A) “Qualified taxpayer” means an applicant who has
10 been allocated tax credits by the California Film Commission
11 pursuant to subdivision (h).

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

21 (ii) In the case of an “S” corporation, the credit allowed under
22 this section shall not be used by an “S” corporation as a credit
23 against a tax imposed under Chapter 4.5 (commencing with Section
24 23800) of Part 11 of Division 2.

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

26 (i) Any wages reported under Section 13050 of the
27 Unemployment Insurance Code that were paid or incurred by the
28 production company involved in the production of a qualified
29 motion picture with respect to a qualified individual for services
30 performed on the qualified motion picture within this state.

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

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

38 (iv) Remuneration paid to an independent contractor, as
39 described in Section 2750.5 of the Labor Code, who is a qualified

1 individual for services performed within this state by that qualified
2 individual.

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

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

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

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

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

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

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

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

26 (24) “Secondary markets” means media in which a qualified
27 motion picture is exhibited following the initial media in which it
28 is exhibited.

29 (c) (1) In the case where the credit allowed under this section
30 exceeds the “tax,” the excess may be carried over to reduce the
31 “tax” in the following year, and succeeding years if necessary,
32 until the credit has been exhausted.

33 (2) Notwithstanding Section 23803, the amount of credit claimed
34 by an “S” corporation pursuant to this section shall, be reduced
35 by an amount equal to the amount of credit claimed by the
36 shareholders of the “S” corporation.

37 (d) No credit shall be allowed pursuant to this section unless
38 the qualified taxpayer substantiates, by adequate books and records
39 or by sufficient evidence corroborating his or her own statement,
40 that:

- 1 (1) *The qualified wages and the qualified property on which*
2 *the credit was calculated were actually paid or incurred in the*
3 *amount claimed. Substantiation of this item shall include proof*
4 *that the services were performed in California and the qualified*
5 *property was purchased or leased in California.*
- 6 (2) *The motion picture was a qualified motion picture.*
7 *Substantiation of this item shall include, but not limited to, the*
8 *following:*
- 9 (A) *Identification of each qualified individual.*
- 10 (B) *The specific start and end dates of production.*
- 11 (C) *The total wages paid and the amount and type of qualified*
12 *property purchased.*
- 13 (D) *The amount of qualified wages paid to each qualified*
14 *individual.*
- 15 (E) *Certification from the Director of the California Film*
16 *Commission that identifies the motion picture as a qualified motion*
17 *picture.*
- 18 (e) *The Franchise Tax Board shall provide an annual listing to*
19 *the State Board of Equalization, in a form and manner agreed*
20 *upon by the Franchise Tax Board and the State Board of*
21 *Equalization, of the qualified taxpayers who, during that reporting*
22 *period, have claimed a credit under this section, including the*
23 *amount of the credit allowed to each qualified taxpayer.*
- 24 (f) *Subdivision (c) of Section 19341, relating to interest on*
25 *overpayments, shall not apply to any return claiming a credit under*
26 *this section.*
- 27 (g) *If the qualified taxpayer fails to attach the certification issued*
28 *by the California Film Commission, in accordance with subdivision*
29 *(h), the credit shall be disallowed and assessed and collected under*
30 *Section 19051.*
- 31 (h) (1) *For purposes of this section, the Director of the*
32 *California Film Commission shall do all of the following:*
- 33 (A) *Allocate tax credits to applicants.*
- 34 (B) *Establish a procedure for qualified taxpayers to file with*
35 *the California Film Commission a written application, on a form*
36 *jointly prescribed by the California Film Commission and the*
37 *Franchise Tax Board, for allocation of tax credits. The application*
38 *shall be filed under penalty of perjury and include, but not be*
39 *limited to, the following information:*
- 40 (i) *The budget for the motion picture production.*

- 1 (ii) *A one-line shooting schedule.*
2 (iii) *A financing plan for the production.*
3 (iv) *An application fee.*
4 (v) *The copyright registration number for the screenplay, as*
5 *reflected on the certificate of registration issued under the authority*
6 *of Section 410 of Title 17 of the United States Code, relating to*
7 *registration of claim and issuance of certificate.*
8 (vi) *Any other information deemed relevant by the California*
9 *Film Commission.*
10 (C) *Establish a procedure for qualified taxpayers to make an*
11 *irrevocable election to claim the tax credit allocation as a credit*
12 *pursuant to this section or as a credit pursuant to Section 6902.5.*
13 (D) *Determine and designate who is a qualified taxpayer*
14 *meeting the requirements of this section.*
15 (E) *Process and approve, or reject, all applications on a*
16 *first-come, first-served basis.*
17 (F) *Provide for the cancellation of the allocated credits if*
18 *principal photography on the qualified motion picture does not*
19 *begin within 180 days after notification of the credit allocation by*
20 *the California Film Commission in accordance with subdivision*
21 *(i).*
22 (G) *Establish specific audit requirements, in addition to those*
23 *provided under current law, that must be complied with prior to*
24 *the issuance of the certificate required by subparagraph (H), and*
25 *provide for the reallocation of previously approved credits that*
26 *are disallowed pursuant to the audit requirements, in accordance*
27 *with subdivision (i).*
28 (H) *Issue a certificate to the qualified taxpayer setting forth the*
29 *name of the qualified taxpayer, the identification of the qualified*
30 *motion picture, and the total amount of the tax credit allocated.*
31 (2) *No later than ____ 2007, the California Film Commission*
32 *shall promulgate rules and regulations necessary to establish*
33 *procedures, processes, requirements, and rules identified in or*
34 *required to implement this section. Rules and regulations may be*
35 *adopted on an emergency basis if necessary to meet the March 1,*
36 *2008, deadline. The California Film Commission may amend these*
37 *rules and regulations as necessary. The California Film*
38 *Commission may adopt rules and regulations to more narrowly*
39 *define the terms listed in subdivision (b) to limit their meaning,*

1 *but may not expand the definition of any terms defined in*
2 *subdivision (b).*

3 *(i) The aggregate amount of credits that may be allocated in*
4 *any calendar year pursuant to this section and Section 17053.85*
5 *shall be an amount equal to the sum of all of the following:*

6 *(1) Ten million dollars (\$10,000,000) for each calendar quarter,*
7 *and each calendar quarter thereafter.*

8 *(2) The unused credit ceiling, if any, for the preceding calendar*
9 *quarter.*

10 *(3) The amount of previously allocated credit canceled or*
11 *disallowed in the preceding calendar quarter by reason of*
12 *subparagraph (F) or subparagraph (G) of paragraph (1) of*
13 *subdivision (h).*

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

22 *(k) This section shall remain in effect only until January 1, 2017,*
23 *and as of that date is repealed, unless a later enacted statute, that*
24 *is enacted before January 1, 2017, deletes or extends that date.*

25 *SEC. 13. Section 23686 is added to the Revenue and Taxation*
26 *Code, to read:*

27 *23686. (a) (1) For taxable years beginning on or after January*
28 *1, 2007, subject to the limitation in paragraph (2), there shall be*
29 *allowed to a qualified commercial production company, as*
30 *designated by the California Film Commission pursuant to*
31 *subdivision (g), as a credit against the "tax," as defined in Section*
32 *23036, an amount equal to 12 percent of the incremental qualified*
33 *production costs.*

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

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

38 *(B) The amount of the credit allocated by the California Film*
39 *Commission to the qualified commercial production company*
40 *pursuant to subdivision (g).*

1 (b) For the purposes of this section:

2 (1) “Base year” is the taxable year preceding the taxable year
3 for which the credit is claimed.

4 (2) (A) “Employee fringe benefits” means the amount allowable
5 as a deduction under this part to the qualified commercial
6 production company involved in the production of the qualified
7 commercial for any year during the production period with respect
8 to any of the following:

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

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

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

15 (B) Any amount treated as wages under clause (i) of
16 subparagraph (A) of paragraph (10) shall not be taken into account
17 under this paragraph.

18 (3) “Incremental qualified production costs” are any qualified
19 production costs for the taxable year greater than the qualified
20 production costs for the base year.

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

23 (5) “Postproduction” means the final activities in a qualified
24 commercial’s production, including, but not limited to, offline
25 editorial, online editorial, dailies, color correction, compositing,
26 CGI, graphics, sound editorial, sound mixing, sound design,
27 automated dialogue replacement, foley recording, music
28 composition and scoring, and duplication associated with the
29 above process.

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

36 (B) “Qualified commercial” shall not include any program
37 length production with an advertising component including a
38 documentary length commercial, an infomercial, news, or current
39 affairs program, interview or talk program, network promotion
40 (short form content intended to promote other programming),

1 *sporting event, game show, award ceremony, daytime drama,*
2 *reality entertainment programming or program intended primarily*
3 *for industrial, corporate, or institutional end users, fundraising*
4 *or political commercial, a program consisting primarily of stock*
5 *footage, a program produced by an organization organized under*
6 *Section 527 of the Internal Revenue Code, or any production that*
7 *falls within the recordkeeping requirements of Section 2257 of*
8 *Title 18 of the United States Code.*

9 (7) (A) *“Qualified commercial production company” means a*
10 *taxpayer, allocated tax credits by the California Film Commission*
11 *pursuant to subdivision (g), that is principally engaged in the*
12 *production of a qualified commercial and has control over the*
13 *selection of production location, deployment, or management of*
14 *the production equipment, and directly employs the production*
15 *crew on the qualified commercial, or is a taxpayer who provides*
16 *qualified postproduction services.*

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

26 (ii) *In the case of an “S” corporation, the credit allowed under*
27 *this section shall not be used by an “S” corporation as a credit*
28 *against a tax imposed under Chapter 4.5 (commencing with Section*
29 *23800) of Part 11 of Division 2.*

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

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

35 (i) *Any individual related to the qualified commercial production*
36 *company as described in subparagraph (A), (B), (C), or Section*
37 *51(i)(1) of the Internal Revenue Code.*

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

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

2 (A) *Costs for tangible property used and services performed*
3 *directly and predominately in the production of a qualified*
4 *commercial.*

5 (B) *Costs for qualified wages, technical and crew production*
6 *costs, allocable portions of depreciation on equipment directly*
7 *used in production, rental or other expenditures for commercial*
8 *production facilities, props, makeup, wardrobe, film processing,*
9 *camera rental, sound recording, set construction, lighting,*
10 *on-location meals, and lodging.*

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

13 (D) “*Qualified production costs*” does not include costs for
14 *story, script, or scenario to be used for a qualified commercial,*
15 *or any qualified wages paid or incurred before January 1, 2007.*

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

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

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

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

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

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

38 (c) (1) *In the case where the credit allowed under this section*
39 *exceeds the “tax,” the excess may be carried over to reduce the*

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

3 (2) Notwithstanding Section 23803, the amount of credit claimed
4 by an “S” corporation pursuant to this section shall be reduced
5 by an amount equal to the amount of credit claimed by the
6 shareholders of the “S” corporation.

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

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

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

16 (A) Identification of each qualified individual.

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

18 (C) The total wages paid.

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

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

23 (e) Subdivision (c) of Section 19341, relating to interest on
24 overpayments, shall not apply to any return claiming a credit under
25 this section.

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

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

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

36 (B) Establish a procedure for qualified commercial production
37 companies to file with the commission a written application, on a
38 form jointly prescribed by the commission and the Franchise Tax
39 Board, for allocation of tax credits. The application shall be filed

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

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

4 *(ii) The qualified production costs for the taxable year in which*
5 *the credit is claimed.*

6 *(iii) An application fee.*

7 *(iv) Any other information deemed relevant by the commission.*

8 *(C) Determine and designate who is a qualified commercial*
9 *production company meeting the requirements of this section.*

10 *(D) Process and approve, or reject, all applications.*

11 *(E) Establish specific audit requirements, in addition to those*
12 *provided under current law that must be complied with prior to*
13 *the issuance of the certificate required by subparagraph (f), and*
14 *to provide for the reallocation of previously approved credits that*
15 *are disallowed pursuant to the audit requirements, in accordance*
16 *with subdivision (h).*

17 *(F) Issue a certificate to the qualified taxpayer setting forth the*
18 *name of the qualified taxpayer and the total amount of the tax*
19 *credit allocated.*

20 *(2) No later than ____ 2007, the California Film Commission*
21 *shall promulgate rules and regulations necessary to establish*
22 *procedures, processes, requirements, and rules identified in or*
23 *required to implement this section. Rules and regulations may be*
24 *adopted on an emergency basis if necessary to meet the March 1,*
25 *2008, deadline. The California Film Commission may amend these*
26 *rules and regulations as necessary. The California Film*
27 *Commission may adopt rules and regulations to more narrowly*
28 *define the terms listed in subdivision (b) to limit their meaning,*
29 *but may not expand the definition of any terms defined in*
30 *subdivision (b).*

31 *(h) (1) The aggregate amount of credits that may be allocated*
32 *in any calendar year pursuant to this section and Section 17053.86*
33 *shall be an amount equal to the sum of all of the following:*

34 *(A) Twenty million dollars (\$20,000,000) for the 2008 calendar*
35 *year, and each calendar year thereafter.*

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

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

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

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

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

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

20 (j) *This section shall remain in effect only until January 1, 2017,*
21 *and as of that date is repealed, unless a later enacted statute, that*
22 *is enacted before January 1, 2017, deletes or extends that date.*

23 *SEC. 14. Section 25128 of the Revenue and Taxation Code is*
24 *amended to read:*

25 25128. (a) *Notwithstanding Section 38006, for taxable years*
26 *beginning before January 1, 2007, and for taxable years beginning*
27 *on or after January 1, 2017, all business income shall be*
28 *apportioned to this state by multiplying the business income by a*
29 *fraction, the numerator of which is the property factor plus the*
30 *payroll factor plus twice the sales factor, and the denominator of*
31 *which is four, except as provided in subdivision (b) or (c).*

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

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

1 (1) An agricultural business activity.

2 (2) An extractive business activity.

3 (3) A savings and loan activity.

4 (4) A banking or financial business activity.

5 (d) For purposes of this section:

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

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

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

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

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

34 (6) “Apportioning trade or business” means a distinct trade or
35 business whose business income is required to be apportioned
36 under Sections 25101 and 25120, limited, if applicable, by Section
37 25110, using the same denominator for each of the applicable
38 payroll, property, and sales factors.

39 (7) Paragraph (4) of subdivision (c) shall apply only if the
40 Franchise Tax Board adopts the Proposed Multistate Tax

1 Commission Formula for the Uniform Apportionment of Net
2 Income from Financial Institutions, or its substantial equivalent,
3 and shall become operative upon the same operative date as the
4 adopted formula.

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

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

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

14 *SEC. 15. Section 25128 is added to the Revenue and Taxation*
15 *Code, to read:*

16 *25128. (a) Notwithstanding Section 38006, for taxable years*
17 *beginning on or after January 1, 2007, and before January 1,*
18 *2017, all business income of an apportioning trade or business*
19 *shall be apportioned to this state by multiplying the business*
20 *income by a fraction, the numerator of which is the property factor*
21 *plus the payroll factor plus twice the sales factor and the*
22 *denominator of which is four, except as provided in subdivision*
23 *(b), (c), or (e).*

24 *(b) (1) If an apportioning trade or business is a qualified*
25 *taxpayer, the qualified taxpayer may elect to have all business*
26 *income apportioned to this state for taxable years beginning on*
27 *or after January 1, 2007, and before January 1, 2017, by*
28 *multiplying the business income by a fraction, the numerator of*
29 *which is the property factor plus the payroll factor plus four times*
30 *the sales factor, and the denominator of which is six. The Franchise*
31 *Tax Board shall prescribe the form and manner for making the*
32 *election under this paragraph. No election may be made for a*
33 *taxable year beginning prior to January 1, 2007.*

34 *(2) A qualified taxpayer making the election under this*
35 *subdivision shall source sales of prewritten software as tangible*
36 *personal property pursuant to Section 25135, without regard to*
37 *method of delivery.*

38 *(3) (A) For purposes of this section, “qualified taxpayer” means*
39 *an apportioning trade or business that derives more than 50*
40 *percent of its “gross business receipts” from conducting a business*

1 activity, or combination of activities, described in Principal
2 Business Activity Code (PBAC) 312130, 325410, 333200 (to the
3 extent of semiconductor machinery manufacturing only), 334110,
4 334200, 334410, 339110, 511210, 517000, 512100, 515100,
5 515210, or 713100 as prescribed by the Internal Revenue Service.

6 (B) A taxpayer that does not satisfy the requirements of
7 subparagraph (A) and that derives more than one billion dollars
8 (\$1,000,000,000) of “gross business receipts” from conducting a
9 business activity or combination of activities described in PBAC
10 312130, 325410, 333200 (to the extent of semiconductor machinery
11 manufacturing only), 334110, 334200, 334410, 339110, 511210,
12 517000, 512100, 515100, 515210, or 713100 may elect, on a timely
13 filed original return, to be a qualified taxpayer and to multiply
14 business income by a fraction (hereinafter referred to as the
15 “applicable percentage”), the numerator and the denominator of
16 which shall be determined as set forth under paragraph (1) of
17 subdivision (b). The application of the more than one billion dollars
18 (\$1,000,000,000) test shall be made with respect to the combined
19 “gross business receipts” of all members of the apportioning trade
20 or business that are engaged in one or more activities described
21 in this subparagraph.

22 The one-time binding election under this subparagraph shall be
23 made by contract with the Franchise Tax Board in the original
24 return. The Franchise Tax Board shall prescribe the form and
25 manner for making the election under this subparagraph. No
26 election may be made for a taxable year beginning prior to January
27 1, 2007.

28 (C) For purposes of subparagraph (B), “qualified taxpayer”
29 includes all members of the apportioning trade or business that
30 are engaged in one or more activities described in subparagraph
31 (B).

32 (D) If a qualified taxpayer described in subparagraph (B) is
33 included in a single combined report under Section 25101 or 25110
34 with one or more taxpayers that are not qualified taxpayers, to
35 apportion the business income of the entire combined group, both
36 of the following shall apply:

37 (i) The numerator of each factor for the qualified taxpayer shall
38 be the denominator of the factor for the qualified taxpayer
39 multiplied by the applicable percentage described in subparagraph
40 (B) for that qualified taxpayer.

1 (ii) *The numerators for each of the factors under this*
2 *subparagraph shall be added to the numerators of the other*
3 *members of the combined group when determining the*
4 *apportionment factor that will be used by the combined group.*

5 (c) (1) *If an apportioning trade or business derives more than*
6 *50 percent of its “gross business receipts” from conducting a*
7 *business activity, or combination of activities, described in PBAC*
8 *211110, 221210, 324110, 324190, 424700, 425120, 447100,*
9 *454312, 486000, or 523130 as prescribed by the Internal Revenue*
10 *Service, the taxpayer may elect on a timely filed original return*
11 *to apportion all business income of the apportioning trade or*
12 *business to this state either in the same manner as a qualified*
13 *taxpayer pursuant to subdivision (b), or by multiplying business*
14 *income by a fraction, the numerator of which is the property factor*
15 *plus the payroll factor plus the sales factor and the denominator*
16 *of which is three.*

17 (2) *The one-time binding election under paragraph (1) shall be*
18 *made by contract with the Franchise Tax Board in the original*
19 *return. The Franchise Tax Board shall prescribe the form and*
20 *manner for making the election. No election may be made for a*
21 *taxable year beginning prior to January 1, 2007.*

22 (d) *An election under subdivision (b) or (c) may be terminated*
23 *by the taxpayer if either of the following occurs:*

24 (1) *The taxpayer is acquired directly or indirectly by a*
25 *nonelecting entity that alone or together with those affiliates*
26 *included in its combined report is larger than the taxpayer as*
27 *measured by equity capital.*

28 (2) *With the permission of the Franchise Tax Board.*

29 (e) *If an apportioning trade or business derives more than 50*
30 *percent of its gross business receipts from conducting one or more*
31 *qualified business activities, all business income of the*
32 *apportioning trade or business shall be apportioned to this state*
33 *by multiplying the business income by a fraction, the numerator*
34 *of which is the property factor plus the payroll factor plus the sales*
35 *factor and the denominator of which is three.*

36 *For purposes of this subdivision, a “qualified business activity”*
37 *means the following:*

38 (1) *An agricultural business activity.*

39 (2) *A savings and loan activity.*

40 (3) *A banking or financial business activity.*

1 (f) For purposes of this section, all of the following definitions
2 apply:

3 (1) (A) “Gross business receipts” means gross receipts
4 described in subdivision (e) of Section 25120, other than gross
5 receipts from sales or other transactions within an apportioning
6 trade or business between members of a group of corporations
7 whose income and apportionment factors are required to be
8 included in a combined report under Section 25101, limited, if
9 applicable, by Section 25110, whether or not the receipts are
10 excluded from the sales factor by operation of Section 25137.

11 (B) “Gross business receipts” does not include sales arising
12 from a treasury function of the taxpayer’s trade or business, as
13 defined in subdivision (f) of Section 25120.

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

19 (B) In any case where the income and apportionment factors
20 of two or more savings and loan associations, banks, or
21 corporations as described in subdivision (b), (c), or (e) are
22 required to be included in a combined report under Section 25101,
23 limited, if applicable, by Section 25110, both of the following shall
24 apply:

25 (i) The application of the more than 50-percent test of
26 subdivision (b), (c), or (e) shall be made with respect to the “gross
27 business receipts” of the entire apportioning trade or business of
28 the group.

29 (ii) The entire business income of the group shall be apportioned
30 in accordance with subdivision (b), (c), or (e), as applicable.

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

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

3 (4) “Savings and loan activity” means any activities performed
4 by savings and loan associations or savings banks that have been
5 chartered by federal or state law.

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

9 (6) “Equity capital” means issued stock of any class, paid-in
10 capital and retained earnings, or earned surplus, as set forth on
11 the balance sheet of the taxpayer or the nonelecting entity, for the
12 immediately preceding year-end accounting period.

13 (7) All references to Principal Business Activity Codes are as
14 prescribed by the Internal Revenue Service on December 31, 2005.

15 (g) Any change in the apportionment formula caused by this
16 section is not consideration for granting a change of the
17 water’s-edge election pursuant to Section 25113.

18 (h) If this section or any portion of this section is held invalid,
19 or the application of this section to any person or circumstance is
20 held invalid, that invalidity shall not affect other provisions of the
21 act adding this section, or the provisions of this section that can
22 be reasonably separated pursuant to Section 23057.

23 (i) This section shall become operative on January 1, 2007, and
24 shall remain in effect only until January 1, 2017, and as of that
25 date is repealed unless a later enacted statute, that is enacted on
26 or before January 1, 2017, deletes or extends that date.

27 SEC. 16. (a) On and after January 1, 2010, the Business,
28 Transportation and Housing Agency, or an agency designated by
29 the Business, Transportation and Housing Agency, shall submit
30 an annual report to the Governor and the Legislature, on or before
31 March 1 of each year, evaluating the effectiveness of the film
32 production tax credits provided by Sections 6902.5, 17053.85,
33 17053.86, 23685, and 23686 of the Revenue and Taxation Code
34 in stimulating the growth of the film industry within this state. The
35 report shall include, but shall not be limited to, the following:

36 (1) The aggregate number of motion pictures and commercials
37 produced nationwide, and the number of motion pictures and
38 commercials attributable to California, for the year preceding the
39 implementation of the tax credit compared to the aggregate number
40 of motion pictures and commercials produced nationwide, and the

1 *number of motion pictures and commercials attributable to*
2 *California, for each year following the implementation of the tax*
3 *credit.*

4 *(2) A survey-based estimate of the number of*
5 *California-produced motion pictures and commercials that were*
6 *retained by the state because of the film production tax credit.*

7 *(3) An estimate from the Franchise Tax Board and the State*
8 *Board of Equalization of the amount of increased tax revenues*
9 *derived from California-produced motion pictures and commercials*
10 *retained by the state because of the film production tax credit.*

11 *(4) A comparison of the dollar amounts awarded pursuant to*
12 *the film production tax credit provided by Sections 6902.5,*
13 *17053.85, 17053.86, 23685, and 23686 of the Revenue and*
14 *Taxation Code as compared to the increased revenue estimates*
15 *provided by the Franchise Tax Board and the State Board of*
16 *Equalization.*

17 *(5) The total amount of qualified production costs and total*
18 *production costs.*

19 *(6) The total amount of tax credits issued under Sections 6902.5,*
20 *17053.85, 17053.86, 23685, and 23686 of the Revenue and*
21 *Taxation Code.*

22 *(7) The total amount of qualified payroll paid or incurred by*
23 *qualified taxpayers and qualified commercial production*
24 *companies.*

25 *(8) An estimated total amount of sales and use taxes paid and*
26 *the total amount of state and federal employee incomes taxes*
27 *withheld and paid by qualified taxpayers and qualified commercial*
28 *production companies who claimed and received a film production*
29 *tax credit under Section 6902.5, 17053.85, 17053.86, 23685, or*
30 *23686 of the Revenue and Taxation Code.*

31 *(9) The demographics and geographic distribution of the*
32 *workforce involved in the production of qualified motion pictures*
33 *and qualified commercials that received a film production tax*
34 *credit under Section 6902.5, 17053.85, 17053.86, 23685, or 23686*
35 *of the Revenue and Taxation Code, to the extent this information*
36 *is available.*

37 *(b) The Business, Transportation and Housing Agency may*
38 *consult with the Employment Development Department, the*
39 *Franchise Tax Board, the State Board of Equalization, and*
40 *agencies of local government before completing its report.*

1 SEC. 17. Any governing body of any county, city, or district
2 that votes to allow the exemption provided in Section 6357.7 of
3 the Revenue and Taxation Code shall notify the State Board of
4 Equalization on or before December 1, 2007.

5 SEC. 18. The provisions of this act are severable. If any
6 provision of this act or its application is held invalid, that invalidity
7 shall not affect other provisions or applications that can be given
8 effect without the invalid provision or application.

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

18 SEC. 20. This act provides for a tax levy within the meaning
19 of Article IV of the Constitution and shall go into immediate effect.

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**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 20, 2007. (JR11)**