

AMENDED IN SENATE JULY 5, 2007

AMENDED IN SENATE JUNE 5, 2007

SENATE BILL

No. 740

Introduced by Senator Calderon
(Principal coauthor: Assembly Member Portantino)

February 23, 2007

An act to add Sections 6902.5, 17053.85, and 23685 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 740, as amended, Calderon. Taxes: credits: qualified motion picture production.

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 for taxable years beginning on or after January 1, 2008, in an amount equal to the direct tax revenues, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture has relocated to California or is an independent film, 125% of the direct tax revenues. This bill would authorize the sale of credits, attributable to an independent film, to an unrelated party.

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 economic impact of the tax incentives created by the bill.

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

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

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~ *no*.

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

1 SECTION 1. Section 6902.5 is added to the Revenue and
2 Taxation Code, to read:

3 6902.5. (a) (1) A qualified taxpayer, as verified by the
4 California Film Commission pursuant to subdivision (g) of Section
5 17053.85 or 23685, may make an irrevocable election to claim the
6 credit authorized by this section, or a member of the qualified
7 taxpayer’s commonly controlled group that has been assigned any
8 portion of the tax credit *amount* by the qualified taxpayer pursuant
9 to subdivision (c) of Section ~~17053.85~~ or 23685, may claim that
10 credit as a credit against liability for sales or use taxes due under
11 this part, that is equal to the credit amount that would otherwise
12 be allowed pursuant to those sections *but for this election*.

13 (2) A qualified taxpayer or a member of the qualified taxpayer’s
14 commonly controlled group that has been assigned any portion of
15 the tax credit *amount* by the qualified taxpayer pursuant to
16 subdivision (c) of Section ~~17053.85~~ or 23685 that claims a credit
17 pursuant to this section shall submit a claim for a credit, in a form
18 as shall be prescribed by the board, that shall include the following
19 information:

20 (A) Where the qualified taxpayer or member of the qualified
21 taxpayer’s commonly controlled group has reported use tax liability
22 to the board, any amount of use tax paid by the qualified taxpayer

1 or member of the qualified taxpayer's commonly controlled group
2 and the period for which that tax was remitted to the board.

3 (B) A copy of the tax return filed with the board for which a
4 credit is being claimed pursuant to this section.

5 (3) *In the case where the credit allowed under this section*
6 *exceeds the liability for sales and use taxes due under this part,*
7 *the excess credit shall not be treated as an overpayment of tax*
8 *due, but may be carried over to reduce the sales and use taxes due*
9 *in the following taxable year, and succeeding five taxable years,*
10 *if necessary, until the credit has been exhausted.*

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

20 (c) The board shall provide an annual listing to the Franchise
21 Tax Board, in a form and manner agreed upon by the board and
22 the Franchise Tax Board, of the qualified taxpayers, or members
23 of the qualified taxpayer's commonly controlled group that have
24 been assigned a portion of the credit allowed under Section
25 ~~17053.85 or 23685 pursuant to subdivision (e) of Section 17053.85~~
26 ~~or 23685 pursuant to subdivision (c) of Section 23685,~~ who, during
27 the year, have claimed a credit of sales or use tax under this section
28 and the amount of the credit allowed to each qualified taxpayer or
29 members of the qualified taxpayer's commonly controlled group.

30 (d) The California Film Commission shall provide a list, at least
31 annually, to the State Board of Equalization, in the form and
32 manner as shall be determined by the California Film Commission
33 and the State Board of Equalization, of the names, taxpayer
34 identification numbers, including taxpayer identification numbers
35 of each partner or shareholder, as applicable, designated, pursuant
36 to subdivision (g) of Section 17053.85 or 23685, as a qualified
37 taxpayer.

38 (e) The board may prescribe rules and regulations necessary to
39 administer this section.

1 SEC. 2. Section 17053.85 is added to the Revenue and Taxation
2 Code, to read:

3 17053.85. (a) (1) For taxable years beginning on or after
4 January 1, 2008, there shall be allowed to a qualified taxpayer a
5 credit against the “net tax,” as defined in Section 17039, in an
6 amount equal to the applicable percentage of the direct tax revenues
7 attributable to the production of a qualified motion picture in
8 California.

9 (2) For purposes of paragraph (1), the applicable percentage
10 shall be:

11 (A) One hundred percent of the direct tax revenues attributable
12 to the production of a qualified motion picture in California.

13 (B) One hundred twenty-five percent of the direct tax revenues
14 attributable to the production of the qualified motion picture in
15 California where the qualified motion picture is a ~~film~~ *television*
16 *series* that relocated to California or an independent film.

17 (b) For purposes of this section:

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

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

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

28 (4) “Direct tax revenues” means those state and local revenues
29 derived from the imposition of California state taxes, as calculated
30 in subparagraphs (A) and (B):

31 (A) Revenues derived from the imposition of state income taxes
32 on qualified wages, as determined by applying a rate of 7½ percent
33 to the qualified wage amounts.

34 (B) Revenues derived from the imposition of state and local
35 sales and use taxes on qualified ~~property and qualified taxable~~
36 *property and qualified taxable* services, as determined by applying
37 the state and local sales and use tax rates to the sale price of ~~the~~
38 ~~qualified property and qualified~~ *qualified taxable property and*
39 *qualified taxable* services.

1 (5) (A) “Employee fringe benefits” means the amount allowable
2 as a deduction under this part to the qualified taxpayer involved
3 in the production of the qualified motion picture, *exclusive of any*
4 *amounts contributed by employees*, for any year during the
5 production period with respect to any of the following:

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

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

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

12 (B) Any amount treated as wages under clause (i) of
13 subparagraph (A) of paragraph ~~(19)~~ (18) shall not be taken into
14 account under this paragraph.

15 ~~(6) “Film that relocated to California” means a television series,~~
16 ~~without regard to episode length or initial media exhibition, that~~
17 ~~filmed all of its prior season or seasons outside of California and~~
18 ~~that certifies that the credit provided pursuant to this section is the~~
19 ~~primary reason for relocating to California.~~

20 ~~(7)~~

21 (6) “Independent film” means a motion picture with a *minimum*
22 *budget of one million dollars (\$1,000,000) and a maximum budget*
23 *of ten million dollars (\$10,000,000) that is produced by a company*
24 *that is not publicly traded and a publicly traded company does*
25 *publicly traded companies do not own, directly or indirectly, more*
26 *than 25 percent of the producing company.*

27 ~~(8)~~

28 (7) “Licensing” means any grant of rights to distribute the
29 qualified motion picture, in whole or in part.

30 ~~(9)~~

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

33 ~~(10)~~

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

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

3 ~~(11)~~

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

11 ~~(12)~~

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

15 ~~(13)~~

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

20 ~~(14)~~

21 (13) (A) “Qualified individual” means any individual who
22 performs services during the production period in an activity related
23 to the production of a qualified motion picture.

24 (B) “Qualified individual” shall not include either of the
25 following:

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

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

31 ~~(15)~~

32 (14) (A) “Qualified motion picture” means a motion picture
33 that is produced for distribution to the general public, regardless
34 of medium that is one of the following:

35 (i) A feature with a minimum budget of one million dollars
36 (\$1,000,000) and a maximum budget of seventy-five million dollars
37 (\$75,000,000).

38 (ii) A movie of the week or miniseries with a minimum budget
39 of five hundred thousand dollars (\$500,000).

1 (iii) A television series new to California *with a minimum budget*
2 *of one million dollars (\$1,000,000)* licensed for original distribution
3 on basic cable.

4 (iv) An independent film.

5 (v) A ~~film~~ *television series* that relocated to California.

6 (B) To qualify as a “qualified motion picture,” all of the
7 following conditions shall be satisfied:

8 (i) At least 75 percent of the total production days, on or after
9 January 1, 2008, occur wholly in California or 75 percent of the
10 use of the total production budget occurs within California.

11 (ii) Production of the qualified motion picture is completed
12 within 30 months from the date on which the qualified taxpayer’s
13 application was approved by the California Film Commission. For
14 purposes of this section, a qualified motion picture is “completed”
15 when the process of postproduction has been finished.

16 (iii) The copyright for the motion picture is registered with the
17 United States Copyright Office pursuant to Title 17 of the United
18 States Code.

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

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

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

28 ~~(ii) In the case of an episodic television series, each episode~~
29 ~~shall be treated as a separate qualified motion picture.~~

30 ~~(D) For purposes of computing the limitations under this~~
31 ~~paragraph, “wages” means all amounts described in subparagraph~~
32 ~~(A) of paragraph (19), provided that these amounts are paid for~~
33 ~~services performed or rendered within this state.~~

34 *(C) For the purposes of subparagraph (A), in computing the*
35 *total wages paid or incurred for the production of a qualified*
36 *motion picture, all amounts paid or incurred by all persons or*
37 *entities that share in the costs of the qualified motion picture shall*
38 *be aggregated.*

39 ~~(E)~~

1 (D) “Qualified motion picture” shall not include commercial
 2 advertising, music videos, a motion picture produced for private
 3 noncommercial use, such as weddings, graduations, or as part of
 4 an educational course and made by students, a news program,
 5 current events or public events program, talk show, game show,
 6 sporting event or activity, awards show, telethon or other
 7 production that solicits funds, reality television program, clip-based
 8 programming if more than 50 percent of the content is comprised
 9 of licensed footage, documentaries, variety programs, daytime
 10 dramas, strip shows, one-half hour (air time) episodic television
 11 shows, or any production that falls within the recordkeeping
 12 requirements of Section 2257 of Title 18 of the United States Code.

13 ~~(16) “Qualified~~

14 (15) “*Qualified taxable property*” for purposes of this section
 15 means purchased or leased tangible personal property used within
 16 this state in the production of a qualified motion picture.

17 ~~(17) “Qualified~~

18 (16) “*Qualified taxable services*” means services performed
 19 within this state in the production of a qualified motion picture.

20 ~~(18)~~

21 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
 22 or incurred the expenses for qualified wages, qualified *taxable*
 23 property, and qualified *taxable services* and has been designated
 24 as a qualified taxpayer by the California Film Commission pursuant
 25 to subdivision (g).

26 (B) ~~(i)~~—In the case of any passthrough entity, the determination
 27 of whether a taxpayer is a qualified taxpayer under this section
 28 shall be made at the entity level and any credit under this section
 29 is not allowed to the passthrough entity, but shall be passed through
 30 to the partners or shareholders in accordance with applicable
 31 provisions of Part 10 (commencing with Section 17001) or Part
 32 11 (commencing with Section 23001). For purposes of this
 33 paragraph, “passthrough entity” means any entity taxed as a
 34 partnership or “S” corporation.

35 ~~(ii) In the case of an “S” corporation, the credit allowed under~~
 36 ~~this section shall not be used by an “S” corporation as a credit~~
 37 ~~against a tax imposed under Chapter 4.5 (commencing with Section~~
 38 ~~23800) of Part 11 of Division 2.~~

39 ~~(19)~~

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

1 (i) Any wages required to be reported under Section 13050 of
2 the Unemployment Insurance Code that were paid or incurred by
3 any taxpayer involved in the production of a qualified motion
4 picture with respect to a qualified individual for services performed
5 on the qualified motion picture production within this state.

6 (ii) The portion of any employee fringe benefits paid or incurred
7 by any taxpayer involved in the production of the qualified motion
8 picture that are properly allocable to qualified wage amounts
9 described in clause (i).

10 (iii) Any payments made to a qualified entity for services
11 performed in this state by qualified individuals within the meaning
12 of paragraph ~~(13)~~ (12).

13 (iv) Remuneration paid to an independent contractor who is a
14 qualified individual for services performed within this state by that
15 qualified individual.

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

17 (i) Expenses, including wages, related to new use, reuse, clip
18 use, licensing, secondary markets, or residual compensation, or
19 the creation of any ancillary product, including, but not limited to,
20 a soundtrack album, toy, game, trailer, or teaser.

21 (ii) Expenses, including wages, paid or incurred with respect to
22 acquisition, development, turnaround, or any rights thereto.

23 (iii) Expenses, including wages, related to financing, overhead,
24 marketing, promotion, or distribution of a qualified motion picture.

25 ~~(20)~~

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

30 ~~(21)~~

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

34 ~~(22)~~

35 (21) “Secondary markets” means media in which a qualified
36 motion picture is exhibited following the initial media in which it
37 is exhibited.

38 (22) “Television series that relocated to California” means a
39 television series, without regard to episode length or initial media
40 exhibition, that filmed all of its prior season or seasons outside of

1 *California and that certifies that the credit provided pursuant to*
2 *this section is the primary reason for relocating to California.*

3 ~~(e) (1) Notwithstanding subdivision (g) of Section 17039,~~
4 ~~relating to credits attributable to a passthrough business entity, in~~
5 ~~the case where the credit allowed by this section exceeds the~~
6 ~~taxpayer's tax liability computed under this part, a qualified~~
7 ~~taxpayer may elect to assign any portion of any credit allowed~~
8 ~~under this section to one or more members of its commonly~~
9 ~~controlled group for each taxable year in which the credit is~~
10 ~~allowed. For purposes of this subdivision, "commonly controlled~~
11 ~~group" has the meaning provided in subdivision (b) of Section~~
12 ~~25105, as of the last day of the taxable year in which the credit is~~
13 ~~allowed.~~

14 ~~(2) The election provided in paragraph (1):~~

15 ~~(A) May be based on any method selected by the qualified~~
16 ~~taxpayer that originally receives the credit.~~

17 ~~(B) Shall be irrevocable for the taxable year the credit is allowed,~~
18 ~~once made.~~

19 ~~(C) May be changed for any subsequent taxable year if the~~
20 ~~election to make the assignment is expressly shown on each of the~~
21 ~~returns of the commonly controlled corporations that assign and~~
22 ~~receive the credits.~~

23 ~~(3) (A)–~~

24 ~~(c) (1) Notwithstanding any other provision of law, a qualified~~
25 ~~taxpayer, may sell any credit allowed under this section that is~~
26 ~~attributable to an independent film, as defined in paragraph (7) (6)~~
27 ~~of Subdivision subdivision (b), to an unrelated party.~~

28 ~~(B)~~

29 ~~(2) The qualified taxpayer shall report to the Franchise Tax~~
30 ~~Board prior to the sale of the credit, in the form and manner~~
31 ~~specified by the Franchise Tax Board, all required information~~
32 ~~regarding the purchase and sale of the credit.~~

33 ~~(C)~~

34 ~~(3) The party acquiring tax credits under this paragraph shall~~
35 ~~be subject to the requirements of this subdivision.~~

36 ~~(4) In the case where the credit allowed under this section~~
37 ~~exceeds the "net tax," the excess credit may be carried over to~~
38 ~~reduce the "net tax" in the following taxable year, and succeeding~~
39 ~~five taxable years, if necessary, until the credit has been exhausted.~~

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

3 (d) No credit shall be allowed pursuant to this section unless
4 the qualified taxpayer substantiates, by adequate books and records,
5 ~~or by sufficient evidence corroborating his or her own statement,~~
6 that:

7 (1) The qualified wages on which the credit is calculated were
8 actually paid or incurred in the amount claimed. Substantiation of
9 this item shall include proof that the services were performed in
10 California.

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

14 (A) Identification of each qualified individual.

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

16 (C) The total wages paid and amount and type of qualified
17 *taxable* property purchased.

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

20 (E) The copyright registration number, as reflected on the
21 certificate of registration issued under the authority of Section 410
22 of Title 17 of the United States Code, relating to registration if
23 claim and issuance of certificate. The registration number shall be
24 provided on the return claiming the credit.

25 (e) The Franchise Tax Board may prescribe rules and regulations
26 to carry out the purposes of this section including any rules and
27 regulations necessary to establish procedures, processes,
28 requirements, and rules identified in or required to implement this
29 section.

30 (f) If the qualified taxpayer fails to provide the copyright
31 registration number as required in subparagraph (E) of paragraph
32 ~~(3)~~ (2) of subdivision (d), the credit shall be disallowed and
33 assessed and collected under Section 19051 until the procedures
34 are satisfied.

35 (g) For purposes of this section, the California Film Commission
36 shall do ~~both~~ of the following:

37 (1) Establish a procedure for qualified taxpayers to file with the
38 commission a written verification, on a form jointly prescribed by
39 the commission and the Franchise Tax Board. The verification

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

3 (A) The budget for the motion picture production.

4 (B) The number of production days.

5 (C) A financing plan for the production.

6 (D) An economic impact analysis of the applicant's qualified
7 motion picture and its anticipated effect on the California economy.

8 The report shall include, but is not limited to, the identification at
9 least two other locations outside of the state that were analyzed as
10 production locations and the projected direct and indirect tax
11 revenues attributable to the qualified motion picture.

12 (E) Any other information deemed relevant by the commission
13 or the Franchise Tax Board.

14 (2) Determine and designate who is a qualified taxpayer meeting
15 the requirements of this section.

16 (3) *Establish criteria, consistent with the requirements of this*
17 *section, for allocating tax credits.*

18 (h) *The aggregate amount of credits that may be allocated in*
19 *any calendar year pursuant to this section and Section 23685 shall*
20 *be one hundred million dollars (\$100,000,000).*

21 (1) *Qualified taxpayers submitting applications for tax credits*
22 *in a year in which all tax credits have been allocated shall be*
23 *treated as having filed their applications on the first day of the*
24 *next calendar year in which tax credits are available. Tax credits*
25 *shall not be issued prior to the calendar year in which the credits*
26 *are allocated.*

27 (2) *The California Film Commission shall give priority, when*
28 *allocating tax credits, to qualified motion pictures in the following*
29 *order:*

30 (A) *Television series that relocated to California.*

31 (B) *Independent films.*

32 (C) *All other applicants that qualify as qualified motion pictures.*

33 SEC. 3. Section 23685 is added to the Revenue and Taxation
34 Code, to read:

35 23685. (a) (1) For taxable years beginning on or after January
36 1, 2008, there shall be allowed to a qualified taxpayer a credit
37 against the "tax," as defined in Section 23036, in an amount equal
38 to the applicable percentage of the direct tax revenues attributable
39 to the production of a qualified motion picture in California.

1 (2) For purposes of paragraph (1), the applicable percentage
2 shall be:

3 (A) One hundred percent of the direct tax revenues attributable
4 to the production of a qualified motion picture in California.

5 (B) One hundred twenty-five percent of the direct tax revenues
6 attributable to the production of the qualified motion picture in
7 California where the qualified motion picture is a ~~film~~ *television*
8 *series* that relocated to California or an independent film.

9 (b) For purposes of this section:

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

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

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

20 (4) “Direct tax revenues” means those state and local revenues
21 derived from the imposition of California state taxes, as calculated
22 in subparagraphs (A) and (B):

23 (A) Revenues derived from the imposition of state income taxes
24 on qualified wages, as determined by applying a rate of 7½ percent
25 to the qualified wage amounts.

26 (B) Revenues derived from the imposition of state and local
27 sales and use taxes on ~~qualified property and qualified taxable~~
28 *property and qualified taxable* services, as determined by applying
29 the state and local sales and use tax rates to the sale price of ~~the~~
30 ~~qualified property and qualified~~ *qualified taxable property and*
31 *qualified taxable* services.

32 (5) (A) “Employee fringe benefits” means the amount allowable
33 as a deduction under this part to the qualified taxpayer involved
34 in the production of the qualified motion picture, *exclusive of any*
35 *amounts contributed by employees*, for any year during the
36 production period with respect to any of the following:

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

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

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

3 (B) Any amount treated as wages under clause (i) of
4 subparagraph (A) of paragraph ~~(19)~~ (18) shall not be taken into
5 account under this paragraph.

6 ~~(6) “Film that relocated to California” means a television series,
7 without regard to episode length or initial media exhibition, that
8 filmed all of its prior season or seasons outside of California and
9 that certifies that the credit provided pursuant to this section is the
10 primary reason for relocating to California.~~

11 ~~(7)~~
12 (6) “Independent film” means a motion picture with a *minimum*
13 *budget of one million dollars (\$1,000,000) and a maximum budget*
14 *of ten million dollars (\$10,000,000) that is produced by a company*
15 *that is not publicly traded and a publicly traded company does*
16 *publicly traded companies do not own, directly or indirectly, more*
17 *than 25 percent of the producing company.*

18 ~~(8)~~
19 (7) “Licensing” means any grant of rights to distribute the
20 qualified motion picture, in whole or in part.

21 ~~(9)~~
22 (8) “New use” means any use of a motion picture in a medium
23 other than the medium for which it was initially created.

24 ~~(10)~~
25 (9) (A) “Postproduction” means the final activities in a qualified
26 motion picture’s production, including editing, foley recording,
27 automatic dialogue replacement, sound editing, scoring and music
28 editing, beginning and end credits, negative cutting, negative
29 processing and duplication, the addition of sound and visual effects,
30 soundmixing, film-to-tape transfers, encoding, and color correction.

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

33 ~~(11)~~
34 (10) “Preproduction” means the process of preparation for actual
35 physical production which begins after a qualified motion picture
36 has received a firm agreement of financial commitment, or is
37 greenlit, with, for example, the establishment of a dedicated
38 production office, the hiring of key crew members, and includes,
39 but is not limited to, activities that include location scouting and
40 execution of contracts with vendors of equipment and stage space.

1 ~~(12)~~

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

5 ~~(13)~~

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

10 ~~(14)~~

11 (13) (A) “Qualified individual” means any individual who
12 performs services during the production period in an activity related
13 to the production of a qualified motion picture.

14 (B) “Qualified individual” shall not include either of the
15 following:

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

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

21 ~~(15)~~

22 (14) (A) “Qualified motion picture” means a motion picture
23 that is produced for distribution to the general public, regardless
24 of medium that is one of the following:

25 (i) A feature with a minimum budget of one million dollars
26 (\$1,000,000) and a maximum budget of seventy-five million dollars
27 (\$75,000,000).

28 (ii) A movie of the week or miniseries with a minimum budget
29 of five hundred thousand dollars (\$500,000).

30 (iii) A television series new to California *with a minimum budget*
31 *of one million dollars (\$1,000,000)* licensed for original distribution
32 on basic cable.

33 (iv) An independent film.

34 (v) A ~~film~~ *television series* that relocated to California.

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

37 (i) At least 75 percent of the total production days, on or after
38 January 1, 2008, occur wholly in California or 75 percent of the
39 use of the total production budget occurs within California.

1 (ii) Production of the qualified motion picture is completed
2 within 30 months from the date on which the qualified taxpayer's
3 application was approved by the California Film Commission. For
4 purposes of this section, a qualified motion picture is "completed"
5 when the process of postproduction has been finished.

6 (iii) The copyright for the motion picture is registered with the
7 United States Copyright Office pursuant to Title 17 of the United
8 States Code.

9 (iv) Principal photography of the qualified motion picture begins
10 within 180 days of the designation of the taxpayer as a qualified
11 taxpayer by the California Film Commission.

12 ~~(C) For the purposes of clause (i) and (ii) of subparagraph (A),~~
13 ~~the following additional rules apply:~~

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

18 ~~(ii) In the case of an episodic television series, each episode~~
19 ~~shall be treated as a separate qualified motion picture.~~

20 ~~(D) For purposes of computing the limitations under this~~
21 ~~paragraph, "wages" means all amounts described in subparagraph~~
22 ~~(A) of paragraph (19), provided that these amounts are paid for~~
23 ~~services performed or rendered within this state.~~

24 *(C) For the purposes of subparagraph (A), in computing the*
25 *total wages paid or incurred for the production of a qualified*
26 *motion picture, all amounts paid or incurred by all persons or*
27 *entities that share in the costs of the qualified motion picture shall*
28 *be aggregated.*

29 ~~(E)~~

30 *(D) "Qualified motion picture" shall not include commercial*
31 *advertising, music videos, a motion picture produced for private*
32 *noncommercial use, such as weddings, graduations, or as part of*
33 *an educational course and made by students, a news program,*
34 *current events or public events program, talk show, game show,*
35 *sporting event or activity, awards show, telethon or other*
36 *production that solicits funds, reality television program, clip-based*
37 *programming if more than 50 percent of the content is comprised*
38 *of licensed footage, documentaries, variety programs, daytime*
39 *dramas, strip shows, one-half hour (air time) episodic television*

1 shows, or any production that falls within the recordkeeping
2 requirements of Section 2257 of Title 18 of the United States Code.

3 ~~(16) “Qualified~~

4 (15) “*Qualified taxable* property” for purposes of this section
5 means purchased or leased tangible personal property used within
6 this state in the production of a qualified motion picture.

7 ~~(17) “Qualified~~

8 (16) “*Qualified taxable* services” means services performed
9 within this state in the production of a qualified motion picture.

10 ~~(18)~~

11 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
12 or incurred the expenses for qualified wages, qualified *taxable*
13 property, and qualified *taxable* services and has been designated
14 as a qualified taxpayer by the California Film Commission pursuant
15 to subdivision (g).

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

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

31 (i) Any wages required to be reported under Section 13050 of
32 the Unemployment Insurance Code that were paid or incurred by
33 any taxpayer involved in the production of a qualified motion
34 picture with respect to a qualified individual for services performed
35 on the qualified motion picture production within this state.

36 (ii) The portion of any employee fringe benefits paid or incurred
37 by any taxpayer involved in the production of the qualified motion
38 picture that are properly allocable to qualified wage amounts
39 described in clause (i).

1 (iii) Any payments made to a qualified entity for services
2 performed in this state by qualified individuals within the meaning
3 of paragraph ~~(13)~~ (12).

4 (iv) Remuneration paid to an independent contractor who is a
5 qualified individual for services performed within this state by that
6 qualified individual.

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

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

12 (ii) Expenses, including wages, paid or incurred with respect to
13 acquisition, development, turnaround, or any rights thereto.

14 (iii) Expenses, including wages, related to financing, overhead,
15 marketing, promotion, or distribution of a qualified motion picture.

16 ~~(20)~~

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

21 ~~(21)~~

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

25 ~~(22)~~

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

29 (22) *“Television series that relocated to California” means a*
30 *television series, without regard to episode length or initial media*
31 *exhibition, that filmed all of its prior season or seasons outside of*
32 *California and that certifies that the credit provided pursuant to*
33 *this section is the primary reason for relocating to California.*

34 (c) (1) Notwithstanding subdivision (i) of Section 23036,
35 relating to credits attributable to a passthrough business entity, in
36 the case where the credit allowed by this section exceeds the
37 taxpayer’s tax liability computed under this part, a qualified
38 taxpayer may elect to assign any portion of ~~any~~ *the excess* credit
39 allowed under this section to one or more members of its
40 commonly controlled group for each taxable year in which the

1 credit is allowed. For purposes of this subdivision, “commonly
2 controlled group” has the meaning provided in subdivision (b) of
3 Section 25105, as of the last day of the taxable year in which the
4 credit is allowed.

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

6 (A) May be based on any method selected by the qualified
7 taxpayer that originally receives the credit.

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

10 (C) May be changed for any subsequent taxable year if the
11 election to make the assignment is expressly shown on each of the
12 returns of the commonly controlled corporations that assign and
13 receive the credits.

14 (3) (A) Notwithstanding any other provision of law, a qualified
15 taxpayer, may sell any credit allowed under this section that is
16 attributable to an independent film, as defined in paragraph ~~(7)~~ (6)
17 of ~~Subdivision~~ *subdivision* (b), to an unrelated party.

18 (B) The qualified taxpayer shall report to the Franchise Tax
19 Board prior to the sale of the credit, in the form and manner
20 specified by the Franchise Tax Board, all required information
21 regarding the purchase and sale of the credit.

22 (C) The party acquiring tax credits under this paragraph shall
23 be subject to the requirements of this subdivision.

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

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

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

34 (1) The qualified wages on which the credit is calculated were
35 actually paid or incurred in the amount claimed. Substantiation of
36 this item shall include proof that the services were performed in
37 California.

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

- 1 (A) Identification of each qualified individual.
2 (B) The specific start and end dates of production.
3 (C) The total wages paid and amount and type of qualified
4 *taxable* property purchased.
5 (D) The amount of qualified wages paid to each qualified
6 individual.
7 (E) The copyright registration number, as reflected on the
8 certificate of registration issued under the authority of Section 410
9 of Title 17 of the United States Code, relating to registration if
10 claim and issuance of certificate. The registration number shall be
11 provided on the return claiming the credit.
- 12 (e) The Franchise Tax Board may prescribe rules and regulations
13 to carry out the purposes of this section including any rules and
14 regulations necessary to establish procedures, processes,
15 requirements, and rules identified in or required to implement this
16 section.
- 17 (f) If the qualified taxpayer fails to provide the copyright
18 registration number as required in subparagraph (E) of paragraph
19 ~~(3)~~ (2) of subdivision (d), the credit shall be disallowed and
20 assessed and collected under Section 19051 until the procedures
21 are satisfied.
- 22 (g) For purposes of this section, the California Film Commission
23 shall do ~~both~~ of the following:
- 24 (1) Establish a procedure for qualified taxpayers to file with the
25 commission a written verification, on a form jointly prescribed by
26 the commission and the Franchise Tax Board. The verification
27 shall ~~be filed under penalty of perjury and~~ include, but not be
28 limited to, the following information:
- 29 (A) The budget for the motion picture production.
30 (B) The number of production days.
31 (C) A financing plan for the production.
32 (D) An economic impact analysis of the applicant's qualified
33 motion picture and its anticipated effect on the California economy.
34 The report shall include, but is not limited to, the identification at
35 least two other locations outside of the state that were analyzed as
36 production locations and the projected direct and indirect tax
37 revenues attributable to the qualified motion picture.
- 38 (E) Any other information deemed relevant by the commission
39 or the Franchise Tax Board.

1 (2) Determine and designate who is a qualified taxpayer meeting
2 the requirements of this section.

3 (3) *Establish criteria, consistent with the requirements of this*
4 *section, for allocating tax credits.*

5 (h) *The aggregate amount of credits that may be allocated in*
6 *any calendar year pursuant to this section and Section 23685 shall*
7 *be one hundred million dollars (\$100,000,000).*

8 (1) *Qualified taxpayers submitting applications for tax credits*
9 *in a year in which all tax credits have been allocated shall be*
10 *treated as having filed their applications on the first day of the*
11 *next calendar year in which tax credits are available. Tax credits*
12 *shall not be issued prior to the calendar year in which the credits*
13 *are allocated.*

14 (2) *The California Film Commission shall give priority, when*
15 *allocating tax credits, to qualified motion pictures in the following*
16 *order:*

17 (A) *Television series that relocated to California.*

18 (B) *Independent films.*

19 (C) *All other applicants that qualify as qualified motion pictures.*

20 SEC. 4. (a) On or before December 31, 2010, the Business,
21 Transportation and Housing Agency shall report to the Legislature
22 on the economic impact of the tax incentives created by this act.
23 In preparing the report, the agency shall consider, but is not limited
24 to considering, all of the following:

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

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

29 (3) The level of employment in the production industry in
30 California

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

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

39 ~~SEC. 6. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~
 2 ~~district will be incurred because this act creates a new crime or~~
 3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
 4 ~~for a crime or infraction, within the meaning of Section 17556 of~~
 5 ~~the Government Code, or changes the definition of a crime within~~
 6 ~~the meaning of Section 6 of Article XIII B of the California~~
 7 ~~Constitution.~~

8 ~~SEC. 7.~~

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

11

12

13 **CORRECTIONS:**

14 **Text—Pages 15, 17, and 20.**

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