

AMENDED IN SENATE JULY 25, 2007

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.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. Section 6902.5 is added to the Revenue and
 2 Taxation Code, to read:
 3 6902.5. (a) (1) A qualified taxpayer, as ~~verified determined~~
 4 by the California Film Commission pursuant to subdivision (g) of
 5 Section 17053.85 or 23685, *or a qualified taxpayer's affiliated*
 6 *corporation that has been assigned any portion of the tax credit*
 7 *amount by the qualified taxpayer pursuant to subdivision (c) of*
 8 *Section 23685, may make an irrevocable election to ~~claim apply~~*
 9 *the credit authorized by this section, ~~or a member of the qualified~~*
 10 *taxpayer's commonly controlled group that has been assigned any*
 11 *portion of the tax credit amount by the qualified taxpayer pursuant*
 12 *to subdivision (e) of Section 23685, may claim that credit as a*
 13 *credit against liability for sales or use taxes due under this part,*
 14 *that is equal to the credit amount that would otherwise be allowed*
 15 *pursuant to those sections but for this election.*
 16 (2) A qualified taxpayer or a ~~member of the~~ qualified taxpayer's
 17 ~~commonly controlled group~~ *affiliated corporation* that has been
 18 assigned any portion of the tax credit amount by the qualified
 19 taxpayer pursuant to subdivision (c) of Section 23685 that claims
 20 a credit pursuant to this section shall submit a claim for a credit,
 21 in a form as shall be prescribed by the board, that shall include the
 22 following information:
 23 (A) Where the qualified taxpayer or ~~member of the~~ a qualified
 24 taxpayer's ~~commonly controlled group~~ *affiliated corporation* has
 25 reported *sales or use tax liability* to the board, any amount of *sales*
 26 *or use tax* paid by the qualified taxpayer or ~~member of the~~ qualified
 27 taxpayer's ~~commonly controlled group~~ *or a qualified taxpayer's*
 28 *affiliated corporation* and the period for which that tax was
 29 remitted to the board.

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

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

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

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

34 (d) 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, designated, pursuant

1 to subdivision (g) of Section 17053.85 or 23685, as a qualified
 2 taxpayer.

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

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

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

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

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

17 (B) One hundred twenty-five percent of the direct tax revenues
 18 attributable to the production of ~~the a~~ qualified motion picture in
 19 California where the qualified motion picture is a television series
 20 that relocated to California or an independent film.

21 (b) For purposes of this section:

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

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

29 ~~(3)~~

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

33 ~~(4)~~

34 (3) “Direct tax revenues” means those state and local revenues
 35 derived from the imposition of California state taxes, as calculated
 36 in subparagraphs (A) and (B):

37 (A) Revenues derived from the imposition of state income taxes
 38 on qualified wages, as determined by applying a rate of 7 ½ percent
 39 to the qualified wage amounts.

1 (B) Revenues derived from the imposition of state and local
2 sales and use taxes on qualified ~~taxable~~ property and qualified
3 ~~taxable~~ services, as determined by applying the state and local
4 sales and use tax rates to the sale price of qualified ~~taxable~~ property
5 and qualified ~~taxable~~ services.

6 ~~(5)~~

7 (4) (A) “Employee fringe benefits” means the amount allowable
8 as a deduction under this part to the qualified taxpayer involved
9 in the production of the qualified motion picture *and allocable to*
10 *qualified wages*, exclusive of any amounts contributed by
11 employees *either directly or indirectly*, for any year during the
12 production period with respect to any of the following:

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

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

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

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

22 ~~(6)~~

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

29 ~~(7)~~

30 (6) “Licensing” means any grant of rights to distribute the
31 qualified motion picture, in whole or in part.

32 ~~(8)~~

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

35 ~~(9)~~

36 (8) (A) “Postproduction” means the final activities in a qualified
37 motion picture’s production, including editing, foley recording,
38 automatic dialogue replacement, sound editing, scoring and music
39 editing, beginning and end credits, negative cutting, negative

1 processing and duplication, the addition of sound and visual effects,
2 soundmixing, film-to-tape transfers, encoding, and color correction.

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

5 ~~(10)~~

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

13 ~~(11)~~

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

17 (11) “*Production budget*” means an estimate of all expenses
18 paid or incurred during the production period of a qualified motion
19 picture. It shall be the same budget used by the qualified taxpayer
20 and the production company for all qualified motion picture
21 purposes.

22 (12) “*Production period*” means the period beginning with
23 preproduction and ending upon completion of postproduction.

24 ~~(12)~~

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

29 ~~(13)~~

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

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

35 (i) Any individual related to the qualified taxpayer as described
36 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
37 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 taxpayer.

40 ~~(14)~~

1 (15) (A) “Qualified motion picture” means a motion picture
2 that is produced for distribution to the general public, regardless
3 of medium that is one of the following:

4 (i) A feature with a minimum *production* budget of one million
5 dollars (\$1,000,000) and a maximum *production* budget of
6 seventy-five million dollars (\$75,000,000).

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

9 (iii) A *new* television series ~~new to~~ *produced in* California with
10 a minimum *production* budget of one million dollars (\$1,000,000)
11 licensed for original distribution on basic cable.

12 (iv) An independent film.

13 (v) A television series that relocated to California.

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

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

19 (i) *On and after January 1, 2008, at least 75 percent of the*
20 *production days occur wholly in California or 75 percent of the*
21 *production budget is incurred for payment for services performed*
22 *within the state and the purchase or rental of property used within*
23 *the state.*

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

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

32 (iv) Principal photography of the qualified motion picture begins
33 within 180 days of the designation of the taxpayer as a qualified
34 taxpayer by the California Film Commission.

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

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 ~~(15) “Qualified taxable~~

14 (16) “*Qualified* property” for purposes of this section means
15 purchased or leased tangible personal property used within this
16 state in the production of a qualified motion picture *and subject*
17 *to California sales or use tax.*

18 ~~(16) “Qualified taxable~~

19 (17) “*Qualified services*” means services performed within this
20 state in the production of a qualified motion picture *and subject*
21 *to California sales or use tax.*

22 ~~(17)~~

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

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

37 ~~(18)~~

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

39 (i) Any wages required to be reported under Section 13050 of
40 the Unemployment Insurance Code that were paid or incurred by

1 any taxpayer involved in the production of a qualified motion
2 picture with respect to a qualified individual for services performed
3 on the qualified motion picture production within this state.

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

8 (iii) Any payments made to a qualified entity for services
9 performed in this state by qualified individuals within the meaning
10 of paragraph ~~(12)~~ (14).

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

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

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

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

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

23 ~~(19)~~

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

28 ~~(20)~~

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

32 ~~(21)~~

33 (22) “Secondary markets” means media in which a qualified
34 motion picture is exhibited following the initial media in which it
35 is exhibited.

36 ~~(22)~~

37 (23) “Television series that relocated to California” means a
38 television series, without regard to episode length or initial media
39 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 (c) (1) Notwithstanding any other provision of law, a qualified
 4 taxpayer, may sell any credit allowed under this section that is
 5 attributable to an independent film, as defined in paragraph ~~(6)~~ (5)
 6 of subdivision (b), to an unrelated party.

7 (2) The qualified taxpayer shall report to the Franchise Tax
 8 Board prior to the sale of the credit, in the form and manner
 9 specified by the Franchise Tax Board, all required information
 10 regarding the purchase and sale of the credit.

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

13 ~~(4)~~

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

18 ~~(5)~~

19 (4) A credit shall not be assigned or sold pursuant to this
 20 subdivision to more than ~~two successive taxpayers~~ *one taxpayer*.

21 (6) *A party that has been assigned or acquired tax credits under*
 22 *this paragraph shall be subject to the requirements of this section.*

23 (7) *In no case may a qualified taxpayer assign or sell tax credits*
 24 *until the California Film Commission allocates those credits.*

25 (8) *In no event may a qualified taxpayer assign or sell any tax*
 26 *credit to the extent the tax credit allowed by this section is claimed*
 27 *on any tax return of the qualified taxpayer.*

28 (d) No credit shall be allowed pursuant to this section unless
 29 ~~the qualified taxpayer substantiates, by adequate books and records,~~
 30 ~~that the qualified taxpayer provides the following to the California~~
 31 *Film Commission:*

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

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

39 ~~(A)~~

40 (1) Identification of each qualified individual.

1 ~~(B)~~

2 (2) The specific start and end dates of production.

3 ~~(C)~~

4 (3) The total wages paid and amount and type of qualified
5 taxable property purchased.

6 ~~(D)~~

7 (4) The amount of qualified wages paid to each qualified
8 individual.

9 ~~(E)~~

10 (5) The copyright registration number, as reflected on the
11 certificate of registration issued under the authority of Section 410
12 of Title 17 of the United States Code, relating to registration if
13 claim and issuance of certificate. The registration number shall be
14 provided on the return claiming the credit.

15 (e) ~~The Franchise Tax Board~~ *California Film Commission* may
16 prescribe rules and regulations to carry out the purposes of this
17 section including any rules and regulations necessary to establish
18 procedures, processes, requirements, and rules identified in or
19 required to implement this section.

20 (f) If the qualified taxpayer fails to provide the copyright
21 registration number as required in ~~subparagraph (E) of paragraph~~
22 ~~(2)~~ *paragraph (5)* of subdivision (d), the credit shall be disallowed
23 and assessed and collected under Section 19051 until the
24 procedures are satisfied.

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

27 (1) Establish a procedure for qualified taxpayers to file with the
28 commission a written verification, on a form ~~jointly~~ prescribed by
29 the commission ~~and the Franchise Tax Board~~. The verification
30 shall include, but not be limited to, the following information:

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

32 (B) The number of production days.

33 (C) A financing plan for the production.

34 (D) An economic impact analysis of the applicant's qualified
35 motion picture and its anticipated effect on the California economy.
36 The report shall include, but is not limited to, the identification at
37 least two other locations outside of the state that were analyzed as
38 production locations and the projected direct and indirect tax
39 revenues attributable to the qualified motion picture.

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

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

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

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

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

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

19 (A) Television series that relocated to California.

20 (B) Independent films.

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

22 (i) *The California Film Commission shall provide the Franchise*
23 *Tax Board annually with a list of qualified taxpayers and the tax*
24 *credit amounts allocated to each qualified taxpayer by the*
25 *California Film Commission.*

26 (j) *The Franchise Tax Board shall accept the tax credit amounts*
27 *as determined and provided for by the California Film Commission.*

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

30 23685. (a) (1) For taxable years beginning on or after January
31 1, 2008, there shall be allowed to a qualified taxpayer a credit
32 against the "tax," as defined in Section 23036, in an amount equal
33 to the applicable percentage of the direct tax revenues attributable
34 to the production of a qualified motion picture in California.

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

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

39 (B) One hundred twenty-five percent of the direct tax revenues
40 attributable to the production of ~~the~~ a qualified motion picture in

1 California where the qualified motion picture is a television series
2 that relocated to California or an independent film.

3 (b) For purposes of this section:

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

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

11 ~~(3)~~

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

15 ~~(4)~~

16 (3) “Direct tax revenues” means those state and local revenues
17 derived from the imposition of California state taxes, as calculated
18 in subparagraphs (A) and (B):

19 (A) Revenues derived from the imposition of state income taxes
20 on qualified wages, as determined by applying a rate of 7 ½ percent
21 to the qualified wage amounts.

22 (B) Revenues derived from the imposition of state and local
23 sales and use taxes on qualified ~~taxable~~ property and qualified
24 ~~taxable~~ services, as determined by applying the state and local
25 sales and use tax rates to the sale price of qualified ~~taxable~~ property
26 and qualified ~~taxable~~ services.

27 ~~(5)~~

28 (4) (A) “Employee fringe benefits” means the amount allowable
29 as a deduction under this part to the qualified taxpayer involved
30 in the production of the qualified motion picture *and allocable to*
31 *qualified wages*, exclusive of any amounts contributed by
32 employees *either directly or indirectly*, for any year during the
33 production period with respect to any of the following:

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

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

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

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

4 ~~(6)~~

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

11 ~~(7)~~

12 (6) “Licensing” means any grant of rights to distribute the
13 qualified motion picture, in whole or in part.

14 ~~(8)~~

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

17 ~~(9)~~

18 (8) (A) “Postproduction” means the final activities in a qualified
19 motion picture’s production, including editing, foley recording,
20 automatic dialogue replacement, sound editing, scoring and music
21 editing, beginning and end credits, negative cutting, negative
22 processing and duplication, the addition of sound and visual effects,
23 soundmixing, film-to-tape transfers, encoding, and color correction.

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

26 ~~(10)~~

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

34 ~~(11)~~

35 (10) “Principal photography” means the phase of production
36 during which the motion picture is actually shot, as distinguished
37 from preproduction and postproduction.

38 (11) “*Production budget*” means an estimate of all expenses
39 paid or incurred during the production period of a qualified motion
40 picture. It shall be the same budget used by the qualified taxpayer

1 *and the production company for all qualified motion picture*
2 *purposes.*

3 (12) “Production period” means the period beginning with
4 *preproduction and ending upon completion of postproduction.*

5 ~~(12)~~

6 (13) “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 ~~(13)~~

11 (14) (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 ~~(14)~~

22 (15) (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 *production* budget of one million
26 dollars (\$1,000,000) and a maximum *production* budget of
27 seventy-five million dollars (\$75,000,000).

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

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

33 (iv) An independent film.

34 (v) A 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 (i) On and after January 1, 2008, at least 75 percent of the
2 production days occur wholly in California or 75 percent of the
3 production budget is incurred for payment for services performed
4 within the state and the purchase or rental of property used within
5 the state.

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

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

14 (iv) Principal photography of the qualified motion picture begins
15 within 180 days of the designation of the taxpayer as a qualified
16 taxpayer by the California Film Commission.

17 (C) For the purposes of subparagraph (A), in computing the
18 total wages paid or incurred for the production of a qualified
19 motion picture, all amounts paid or incurred by all persons or
20 entities that share in the costs of the qualified motion picture shall
21 be aggregated.

22 (D) "Qualified motion picture" shall not include commercial
23 advertising, music videos, a motion picture produced for private
24 noncommercial use, such as weddings, graduations, or as part of
25 an educational course and made by students, a news program,
26 current events or public events program, talk show, game show,
27 sporting event or activity, awards show, telethon or other
28 production that solicits funds, reality television program, clip-based
29 programming if more than 50 percent of the content is comprised
30 of licensed footage, documentaries, variety programs, daytime
31 dramas, strip shows, one-half hour (air time) episodic television
32 shows, or any production that falls within the recordkeeping
33 requirements of Section 2257 of Title 18 of the United States Code.

34 ~~(15) "Qualified taxable~~

35 (16) "*Qualified* property" for purposes of this section means
36 purchased or leased tangible personal property used within this
37 state in the production of a qualified motion picture *and subject*
38 *to California sales or use tax.*

39 ~~(16) "Qualified taxable~~

1 (17) “*Qualified services*” means services performed within this
2 state in the production of a qualified motion picture *and subject*
3 *to California sales or use tax.*

4 ~~(17)~~

5 (18) (A) “Qualified taxpayer” means a taxpayer who has paid
6 or incurred the expenses for qualified wages, qualified taxable
7 property, and qualified taxable services and has been designated
8 as a qualified taxpayer by the California Film Commission pursuant
9 to subdivision (g).

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

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

23 ~~(18)~~

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

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

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

34 (iii) Any payments made to a qualified entity for services
35 performed in this state by qualified individuals within the meaning
36 of paragraph ~~(12)~~ (14).

37 (iv) Remuneration paid to an independent contractor who is a
38 qualified individual for services performed within this state by that
39 qualified individual.

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

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

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

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

9 ~~(19)~~

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

14 ~~(20)~~

15 (21) “Reuse” means any use of a qualified motion picture in the
 16 same medium for which it was created, following the initial use
 17 in that medium.

18 ~~(21)~~

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

22 ~~(22)~~

23 (23) “Television series that relocated to California” means a
 24 television series, without regard to episode length or initial media
 25 exhibition, that filmed all of its prior season or seasons outside of
 26 California and that certifies that the credit provided pursuant to
 27 this section is the primary reason for relocating to California.

28 (c) (1) Notwithstanding subdivision (i) of Section 23036,
 29 relating to credits attributable to a passthrough business entity, in
 30 the case where the credit allowed by this section exceeds the
 31 taxpayer’s tax liability computed under this part, a qualified
 32 taxpayer may elect to assign any portion of the ~~excess~~ credit
 33 allowed under this section to one or more ~~members of its~~
 34 ~~commonly controlled group~~ *affiliated corporations* for each taxable
 35 year in which the credit is allowed. For purposes of this
 36 subdivision, ~~“commonly controlled group”~~ “*affiliated corporation*”
 37 has the meaning provided in subdivision (b) of ~~Section 25105, as~~
 38 ~~of the last day of the taxable year in which the credit is allowed.~~
 39 *Section 25110, as that section was amended by Chapter 881 of the*
 40 *Statutes of 1993, as of the last day of the taxable year in which the*

1 *credit is allowed, except that “100 percent” is substituted for*
2 *“more than 50 percent” wherever it appears in the section, and*
3 *“voting common stock” is substituted for “voting stock” wherever*
4 *it appears in the section.*

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~~ *qualified taxpayer and a*
13 *qualified taxpayer’s affiliated* corporations that assign and receive
14 the credits.

15 (3) (A) Notwithstanding any other provision of law, a qualified
16 taxpayer, may sell any credit allowed under this section that is
17 attributable to an independent film, as defined in paragraph ~~(6)~~ (5)
18 of subdivision (b), to an unrelated party.

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

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

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

29 (5) A credit shall not be assigned or sold pursuant to this
30 subdivision to more than ~~two successive taxpayers~~ *one taxpayer*.

31 (6) *A party that has been assigned or acquired tax credits under*
32 *this paragraph shall be subject to the requirements of this section.*

33 (7) *In no case may a qualified taxpayer assign or sell tax credits*
34 *until the California Film Commission allocates those credits.*

35 (8) *In no event may a qualified taxpayer assign or sell any tax*
36 *credit to the extent the tax credit allowed by this section is claimed*
37 *on any tax return of the qualified taxpayer.*

38 (d) No credit shall be allowed pursuant to this section unless
39 ~~the qualified taxpayer substantiates, by adequate books and records,~~

1 ~~that the qualified taxpayer provides the following to the California~~
2 ~~Film Commission:~~

3 ~~(1) The qualified wages on which the credit is calculated were~~
4 ~~actually paid or incurred in the amount claimed. Substantiation of~~
5 ~~this item shall include proof that the services were performed in~~
6 ~~California.~~

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

10 ~~(A)~~

11 ~~(1) Identification of each qualified individual.~~

12 ~~(B)~~

13 ~~(2) The specific start and end dates of production.~~

14 ~~(C)~~

15 ~~(3) The total wages paid and amount and type of qualified~~
16 ~~taxable property purchased.~~

17 ~~(D)~~

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

20 ~~(E)~~

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

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

31 ~~(f) If the qualified taxpayer fails to provide the copyright~~
32 ~~registration number as required in subparagraph (E) of paragraph~~
33 ~~(2) paragraph (5) of subdivision (d), the credit shall be disallowed~~
34 ~~and assessed and collected under Section 19051 until the~~
35 ~~procedures are satisfied.~~

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

38 ~~(1) Establish a procedure for qualified taxpayers to file with the~~
39 ~~commission a written verification, on a form jointly prescribed by~~

1 the commission ~~and the Franchise Tax Board~~. The verification
2 shall include, but not be 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 treated
23 as having filed their applications on the first day of the next
24 calendar year in which tax credits are available. Tax credits shall
25 not be issued prior to the calendar year in which the credits are
26 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 (i) *The California Film Commission shall provide the Franchise*
34 *Tax Board annually with a list of qualified taxpayers and the tax*
35 *credit amounts allocated to each qualified taxpayer by the*
36 *California Film Commission.*

37 (j) *The Franchise Tax Board shall accept the tax credit amounts*
38 *as determined and provided for by the California Film Commission.*

39 SEC. 4. (a) On or before December 31, 2010, the Business,
40 Transportation and Housing Agency shall report to the Legislature

1 on the economic impact of the tax incentives created by this act.
2 In preparing the report, the agency shall consider, but is not limited
3 to considering, all of the following:

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

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

8 (3) The level of employment in the production industry in
9 California

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

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

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

20

21

22 CORRECTIONS:

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24
