

Introduced by Senator Calderon

February 18, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1197, as introduced, Calderon. Income and corporation 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, including a credit, for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of the qualified expenditures, 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, as provided. Existing law limits the amount of credits that may be allocated in any fiscal year, as specified, and prohibits the allocation of any credits from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year.

This bill would delete that prohibition.

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:

SECTION 1. Section 17053.85 of the Revenue and Taxation Code, as added by Section 4 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

~~17053.85. (a) (1) For taxable years beginning on or after January 1, 2011, there shall be allowed to a qualified taxpayer a credit against the “net tax,” as defined in Section 17039, in an amount equal to the applicable percentage, as specified in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California.~~

~~(2) The credit shall be allowed for the taxable year in which the California Film Commission issues the credit certificate pursuant to subdivision (g) for the qualified motion picture, and shall be for the applicable percentage of all qualified expenditures paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.~~

~~(3) The amount of the credit allowed to a qualified taxpayer shall be limited to the amount specified in the credit certificate issued to the qualified taxpayer by the California Film Commission pursuant to subdivision (g).~~

~~(4) For purposes of paragraphs (1) and (2), the applicable percentage shall be:~~

~~(A) Twenty percent of the qualified expenditures attributable to the production of a qualified motion picture in California.~~

~~(B) Twenty-five percent of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is a television series that relocated to California or an independent film.~~

~~(b) For purposes of this section:~~

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

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

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

1 ~~(4) “Credit certificate” means the certificate issued by the~~
2 ~~California Film Commission pursuant to subparagraph (C) of~~
3 ~~paragraph (2) of subdivision (g).~~

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

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

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

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

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

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

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

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

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

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

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

1 but is not limited to, activities that include location scouting and
2 execution of contracts with vendors of equipment and stage space.

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

6 (12) “Production period” means the period beginning with
7 preproduction and ending upon completion of postproduction.

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

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

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

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

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

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 produced in California with a
31 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 production days occur wholly in
38 California or 75 percent of the production budget is incurred for
39 payment for services performed within the state and the purchase
40 or rental of property used within the state.

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 is 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~~
10 ~~commences after the date on which the application is approved by~~
11 ~~the California Film Commission, but no later than 180 days after~~
12 ~~the date of that approval.~~

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

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

30 (16) ~~"Qualified expenditure" means amounts paid or incurred~~
31 ~~to purchase or lease tangible personal property used within this~~
32 ~~state in the production of a qualified motion picture and payments,~~
33 ~~including qualified wages, for services performed within this state~~
34 ~~in the production of a qualified motion picture.~~

35 (17) (A) ~~"Qualified taxpayer" means a taxpayer who has paid~~
36 ~~or incurred qualified expenditures and has been issued a credit~~
37 ~~certificate by the California Film Commission pursuant to~~
38 ~~subdivision (g).~~

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

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

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

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

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

18 (iii) Any payments made to a qualified entity for services
19 performed in this state by qualified individuals within the meaning
20 of paragraph (14).

21 (iv) Remuneration paid to an independent contractor who is a
22 qualified individual for services performed within this state by that
23 qualified individual.

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

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

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

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

33 (iv) Expenses, including wages, paid per person per qualified
34 motion picture for writers, directors, music directors, music
35 composers, music supervisors, producers, and performers, other
36 than background actors with no-scripted lines.

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

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

4 ~~(21) “Secondary markets” means media in which a qualified~~
5 ~~motion picture is exhibited following the initial media in which it~~
6 ~~is exhibited.~~

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

13 ~~(c) (1) Notwithstanding any other law, a qualified taxpayer~~
14 ~~may sell any credit allowed under this section that is attributable~~
15 ~~to an independent film, as defined in paragraph (6) of subdivision~~
16 ~~(b), to an unrelated party.~~

17 ~~(2) The qualified taxpayer shall report to the Franchise Tax~~
18 ~~Board prior to the sale of the credit, in the form and manner~~
19 ~~specified by the Franchise Tax Board, all required information~~
20 ~~regarding the purchase and sale of the credit, including the social~~
21 ~~security or other taxpayer identification number of the unrelated~~
22 ~~party to whom the credit has been sold, the face amount of the~~
23 ~~credit sold, and the amount of consideration received by the~~
24 ~~qualified taxpayer for the sale of the credit.~~

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

29 ~~(4) A credit shall not be sold pursuant to this subdivision to~~
30 ~~more than one taxpayer, nor may the credit be resold by the~~
31 ~~unrelated party to another taxpayer or other party.~~

32 ~~(5) A party that has acquired tax credits under this section shall~~
33 ~~be subject to the requirements of this section.~~

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

37 ~~(7) In the event that both the taxpayer originally allocated a~~
38 ~~credit under this section by the California Film Commission and~~
39 ~~a taxpayer to whom the credit has been sold both claim the same~~
40 ~~amount of credit on their tax returns, the Franchise Tax Board may~~

1 disallow the credit of either taxpayer, so long as the statute of
2 limitations upon assessment remains open.

3 (8) Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code does not apply to
5 any standard, criterion, procedure, determination, rule, notice, or
6 guideline established or issued by the Franchise Tax Board
7 pursuant to this subdivision.

8 (d) No credit shall be allowed pursuant to this section unless
9 the qualified taxpayer provides the following to the California
10 Film Commission:

11 (1) Identification of each qualified individual.

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

13 (3) The total wages paid.

14 (4) The amount of qualified wages paid to each qualified
15 individual.

16 (5) The copyright registration number, as reflected on the
17 certificate of registration issued under the authority of Section 410
18 of Title 17 of the United States Code, relating to registration of
19 claim and issuance of certificate. The registration number shall be
20 provided on the return claiming the credit.

21 (6) The total amounts paid or incurred to purchase or lease
22 tangible personal property used in the production of a qualified
23 motion picture.

24 (7) Information to substantiate its qualified expenditures.

25 (8) Information required by the California Film Commission
26 under regulations promulgated pursuant to subdivision (g)
27 necessary to verify the amount of credit claimed.

28 (e) The California Film Commission may prescribe rules and
29 regulations to carry out the purposes of this section including any
30 rules and regulations necessary to establish procedures, processes,
31 requirements, and rules identified in or required to implement this
32 section. The regulations shall include provisions to set aside a
33 percentage of annual credit allocations for independent films.

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

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

1 ~~(1) On, or after, July 1, 2009, and before July 1, 2014, allocate~~
2 ~~tax credits to applicants:~~

3 ~~(A) Establish a procedure for applicants to file with the~~
4 ~~commission a written application, on a form jointly prescribed by~~
5 ~~the commission and the Franchise Tax Board for the allocation of~~
6 ~~the tax credit. The application shall include, but not be limited to,~~
7 ~~the following information:~~

8 ~~(i) The budget for the motion picture production:~~

9 ~~(ii) The number of production days:~~

10 ~~(iii) A financing plan for the production:~~

11 ~~(iv) The diversity of the workforce employed by the applicant,~~
12 ~~including, but not limited to, the ethnic and racial makeup of the~~
13 ~~individuals employed by the applicant during the production of~~
14 ~~the qualified motion picture, to the extent possible:~~

15 ~~(v) Any other information deemed relevant by the commission~~
16 ~~or the Franchise Tax Board:~~

17 ~~(B) Establish criteria, consistent with the requirements of this~~
18 ~~section, for allocating tax credits:~~

19 ~~(C) Determine and designate applicants who meet the~~
20 ~~requirements of this section:~~

21 ~~(D) Process and approve, or reject, all applications on a~~
22 ~~first-come-first-served basis:~~

23 ~~(E) Subject to the annual cap established as provided in~~
24 ~~subdivision (i), allocate an aggregate amount of credits under this~~
25 ~~section and Section 23685, and allocate any carryover of~~
26 ~~unallocated credits from prior years:~~

27 ~~(2) Certify tax credits allocated to qualified taxpayers:~~

28 ~~(A) Establish a verification procedure for the amount of qualified~~
29 ~~expenditures paid or incurred by the applicant:~~

30 ~~(B) Establish audit requirements that must be satisfied before~~
31 ~~a credit certificate may be issued by the California Film~~
32 ~~Commission:~~

33 ~~(C) Issue a credit certificate to a qualified taxpayer upon~~
34 ~~completion of the qualified motion picture reflecting the credit~~
35 ~~amount allocated after qualified expenditures have been verified~~
36 ~~under this section. The amount of credit shown in the credit~~
37 ~~certificate shall not exceed the amount of credit allocated to that~~
38 ~~qualified taxpayer pursuant to this section:~~

39 ~~(h) The California Film Commission shall provide the Franchise~~
40 ~~Tax Board annually with a list of qualified taxpayers and the tax~~

1 ~~credit amounts allocated to each qualified taxpayer by the~~
2 ~~California Film Commission. The list shall include the names and~~
3 ~~taxpayer identification numbers, including taxpayer identification~~
4 ~~numbers of each partner or shareholder, as applicable, of the~~
5 ~~qualified taxpayers.~~

6 ~~(i) (1) The aggregate amount of credits that may be allocated~~
7 ~~in any fiscal year pursuant to this section and Section 23686 shall~~
8 ~~be an amount equal to the sum of all of the following:~~

9 ~~(A) One hundred million dollars (\$100,000,000) in credits for~~
10 ~~the 2009–10 fiscal year and each fiscal year thereafter, through~~
11 ~~and including the 2013–14 fiscal year.~~

12 ~~(B) The unused allocation credit amount, if any, for the~~
13 ~~preceding fiscal year.~~

14 ~~(C) The amount of previously allocated credits not certified.~~

15 ~~(2) If the amount of credits applied for in any particular fiscal~~
16 ~~year exceeds the aggregate amount of tax credits authorized to be~~
17 ~~allocated under this section, such excess shall be treated as having~~
18 ~~been applied for on the first day of the subsequent fiscal year.~~
19 ~~However, credits may not be allocated from a fiscal year other~~
20 ~~than the fiscal year in which the credit was originally applied for~~
21 ~~or the immediately succeeding fiscal year.~~

22 ~~(3) Notwithstanding the foregoing, the Film Commission shall~~
23 ~~set aside up to ten million (\$10,000,000) of tax credits each fiscal~~
24 ~~year for independent films allocated in accordance with rules and~~
25 ~~regulations developed pursuant to subdivision (e).~~

26 ~~(4) Any act that reduces the amount that may be allocated~~
27 ~~pursuant to paragraph (1) constitutes a change in state taxes for~~
28 ~~the purpose of increasing revenues within the meaning of Section~~
29 ~~3 of Article XIII A of the California Constitution and may be passed~~
30 ~~by not less than two-thirds of all Members elected to each of the~~
31 ~~two houses of the Legislature.~~

32 ~~(j) The film commission shall have the authority to allocate tax~~
33 ~~credits in accordance with this section and in accordance with any~~
34 ~~regulations prescribed pursuant to subdivision (e) upon adoption.~~

35 SEC. 2. Section 17053.85 of the Revenue and Taxation Code,
36 as added by Section 4 of Chapter 17 of the Third Extraordinary
37 Session of the Statutes of 2009, is amended to read:

38 17053.85. (a) (1) For taxable years beginning on or after
39 January 1, 2011, there shall be allowed to a qualified taxpayer a
40 credit against the “net tax,” as defined in Section 17039, in an

1 amount equal to the applicable percentage, as specified in
2 paragraph (4), of the qualified expenditures for the production of
3 a qualified motion picture in California.

4 (2) The credit shall be allowed for the taxable year in which the
5 California Film Commission issues the credit certificate pursuant
6 to subdivision (g) for the qualified motion picture, and shall be for
7 the applicable percentage of all qualified expenditures paid or
8 incurred by the qualified taxpayer in all taxable years for that
9 qualified motion picture.

10 (3) The amount of the credit allowed to a qualified taxpayer
11 shall be limited to the amount specified in the credit certificate
12 issued to the qualified taxpayer by the California Film Commission
13 pursuant to subdivision (g).

14 (4) For purposes of paragraphs (1) and (2), the applicable
15 percentage shall be:

16 (A) Twenty percent of the qualified expenditures attributable
17 to the production of a qualified motion picture in California.

18 (B) Twenty-five percent of the qualified expenditures
19 attributable to the production of a qualified motion picture in
20 California where the qualified motion picture is a television series
21 that relocated to California or an independent film.

22 (b) For purposes of this section:

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

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

30 (3) “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) “Credit certificate” means the certificate issued by the
34 California Film Commission pursuant to subparagraph (C) of
35 paragraph (2) of subdivision (g).

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

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

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

5 (iii) The employer's cost of life or disability insurance provided
6 to employees.

7 (B) Any amount treated as wages under clause (i) of
8 subparagraph (A) of paragraph (18) shall not be taken into account
9 under this paragraph.

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

16 (7) "Licensing" means any grant of rights to distribute the
17 qualified motion picture, in whole or in part.

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

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

26 (B) "Postproduction" does not include the manufacture or
27 shipping of release prints.

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

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

38 (12) "Production period" means the period beginning with
39 preproduction and ending upon completion of postproduction.

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

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

8 (B) “Qualified individual” shall not include either of the
9 following:

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

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

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

18 (i) A feature with a minimum production budget of one million
19 dollars (\$1,000,000) and a maximum production budget of
20 seventy-five million dollars (\$75,000,000).

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

23 (iii) A new television series produced in California with a
24 minimum production budget of one million dollars (\$1,000,000)
25 licensed for original distribution on basic cable.

26 (iv) An independent film.

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

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

30 (i) At least 75 percent of the production days occur wholly in
31 California or 75 percent of the production budget is incurred for
32 payment for services performed within the state and the purchase
33 or rental of property used within the state.

34 (ii) Production of the qualified motion picture is completed
35 within 30 months from the date on which the qualified taxpayer’s
36 application is approved by the California Film Commission. For
37 purposes of this section, a qualified motion picture is “completed”
38 when the process of postproduction has been finished.

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

4 (iv) Principal photography of the qualified motion picture
5 commences after the date on which the application is approved by
6 the California Film Commission, but no later than 180 days after
7 the date of that approval.

8 (C) For the purposes of subparagraph (A), in computing the
9 total wages paid or incurred for the production of a qualified
10 motion picture, all amounts paid or incurred by all persons or
11 entities that share in the costs of the qualified motion picture shall
12 be aggregated.

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

25 (16) “Qualified expenditure” means amounts paid or incurred
26 to purchase or lease tangible personal property used within this
27 state in the production of a qualified motion picture and payments,
28 including qualified wages, for services performed within this state
29 in the production of a qualified motion picture.

30 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
31 or incurred qualified expenditures and has been issued a credit
32 certificate by the California Film Commission pursuant to
33 subdivision (g).

34 (B) In the case of any passthrough entity, the determination of
35 whether a taxpayer is a qualified taxpayer under this section shall
36 be made at the entity level and any credit under this section is not
37 allowed to the passthrough entity, but shall be passed through to
38 the partners or shareholders in accordance with applicable
39 provisions of Part 10 (commencing with Section 17001) or Part
40 11 (commencing with Section 23001). For purposes of this

1 paragraph, “passthrough entity” means any entity taxed as a
2 partnership or “S” corporation.

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

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

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

13 (iii) Any payments made to a qualified entity for services
14 performed in this state by qualified individuals within the meaning
15 of paragraph (14).

16 (iv) Remuneration paid to an independent contractor who is a
17 qualified individual for services performed within this state by that
18 qualified individual.

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

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

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

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

28 (iv) Expenses, including wages, paid per person per qualified
29 motion picture for writers, directors, music directors, music
30 composers, music supervisors, producers, and performers, other
31 than background actors with no scripted lines.

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

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

1 (21) “Secondary markets” means media in which a qualified
2 motion picture is exhibited following the initial media in which it
3 is exhibited.

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

10 (c) (1) Notwithstanding any other law, a qualified taxpayer
11 may sell any credit allowed under this section that is attributable
12 to an independent film, as defined in paragraph (6) of subdivision
13 (b), to an unrelated party.

14 (2) The qualified taxpayer shall report to the Franchise Tax
15 Board prior to the sale of the credit, in the form and manner
16 specified by the Franchise Tax Board, all required information
17 regarding the purchase and sale of the credit, including the social
18 security or other taxpayer identification number of the unrelated
19 party to whom the credit has been sold, the face amount of the
20 credit sold, and the amount of consideration received by the
21 qualified taxpayer for the sale of the credit.

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

26 (4) A credit shall not be sold pursuant to this subdivision to
27 more than one taxpayer, nor may the credit be resold by the
28 unrelated party to another taxpayer or other party.

29 (5) A party that has acquired tax credits under this section shall
30 be subject to the requirements of this section.

31 (6) In no event may a qualified taxpayer assign or sell any tax
32 credit to the extent the tax credit allowed by this section is claimed
33 on any tax return of the qualified taxpayer.

34 (7) In the event that both the taxpayer originally allocated a
35 credit under this section by the California Film Commission and
36 a taxpayer to whom the credit has been sold both claim the same
37 amount of credit on their tax returns, the Franchise Tax Board may
38 disallow the credit of either taxpayer, so long as the statute of
39 limitations upon assessment remains open.

(8) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.

(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

- (1) Identification of each qualified individual.
- (2) The specific start and end dates of production.
- (3) The total wages paid.
- (4) The amount of qualified wages paid to each qualified individual.

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

(6) The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.

(7) Information to substantiate its qualified expenditures.

(8) Information required by the California Film Commission under regulations promulgated pursuant to subdivision (g) necessary to verify the amount of credit claimed.

(e) The California Film Commission may prescribe rules and regulations to carry out the purposes of this section including any rules and regulations necessary to establish procedures, processes, requirements, and rules identified in or required to implement this section. The regulations shall include provisions to set aside a percentage of annual credit allocations for independent films.

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

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

- (1) On, or after, July 1, 2009, and before July 1, 2014, allocate tax credits to applicants.

1 (A) Establish a procedure for applicants to file with the
2 commission a written application, on a form jointly prescribed by
3 the commission and the Franchise Tax Board for the allocation of
4 the tax credit. The application shall include, but not be limited to,
5 the following information:

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

7 (ii) The number of production days.

8 (iii) A financing plan for the production.

9 (iv) The diversity of the workforce employed by the applicant,
10 including, but not limited to, the ethnic and racial makeup of the
11 individuals employed by the applicant during the production of
12 the qualified motion picture, to the extent possible.

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

15 (B) Establish criteria, consistent with the requirements of this
16 section, for allocating tax credits.

17 (C) Determine and designate applicants who meet the
18 requirements of this section.

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

21 (E) Subject to the annual cap established as provided in
22 subdivision (i), allocate an aggregate amount of credits under this
23 section and Section 23685, and allocate any carryover of
24 unallocated credits from prior years.

25 (2) Certify tax credits allocated to qualified taxpayers.

26 (A) Establish a verification procedure for the amount of qualified
27 expenditures paid or incurred by the applicant.

28 (B) Establish audit requirements that must be satisfied before
29 a credit certificate may be issued by the California Film
30 Commission.

31 (C) Issue a credit certificate to a qualified taxpayer upon
32 completion of the qualified motion picture reflecting the credit
33 amount allocated after qualified expenditures have been verified
34 under this section. The amount of credit shown in the credit
35 certificate shall not exceed the amount of credit allocated to that
36 qualified taxpayer pursuant to this section.

37 (h) The California Film Commission shall provide the Franchise
38 Tax Board annually with a list of qualified taxpayers and the tax
39 credit amounts allocated to each qualified taxpayer by the
40 California Film Commission. The list shall include the names and

1 taxpayer identification numbers, including taxpayer identification
2 numbers of each partner or shareholder, as applicable, of the
3 qualified taxpayers.

4 (i) (1) The aggregate amount of credits that may be allocated
5 in any fiscal year pursuant to this section and Section 23686 shall
6 be an amount equal to the sum of all of the following:

7 (A) One hundred million dollars (\$100,000,000) in credits for
8 the 2009–10 fiscal year and each fiscal year thereafter, through
9 and including the 2013–14 fiscal year.

10 (B) The unused allocation credit amount, if any, for the
11 preceding fiscal year.

12 (C) The amount of previously allocated credits not certified.

13 (2) If the amount of credits applied for in any particular fiscal
14 year exceeds the aggregate amount of tax credits authorized to be
15 allocated under this section, such excess shall be treated as having
16 been applied for on the first day of the ~~subsequent~~ *next* fiscal year
17 *in which credits are available.* ~~However, credits may not be~~
18 ~~allocated from a fiscal year other than the fiscal year in which the~~
19 ~~credit was originally applied for or the immediately succeeding~~
20 ~~fiscal year.~~

21 (3) Notwithstanding the foregoing, the Film Commission shall
22 set aside up to ten million (\$10,000,000) of tax credits each fiscal
23 year for independent films allocated in accordance with rules and
24 regulations developed pursuant to subdivision (e).

25 (4) Any act that reduces the amount that may be allocated
26 pursuant to paragraph (1) constitutes a change in state taxes for
27 the purpose of increasing revenues within the meaning of Section
28 3 of Article XIII A of the California Constitution and may be passed
29 by not less than two-thirds of all Members elected to each of the
30 two houses of the Legislature.

31 (j) The film commission shall have the authority to allocate tax
32 credits in accordance with this section and in accordance with any
33 regulations prescribed pursuant to subdivision (e) upon adoption.

34 SEC. 3. Section 23685 of the Revenue and Taxation Code, as
35 added by Section 9 of Chapter 10 of the Third Extraordinary
36 Session of the Statutes of 2009, is repealed.

37 ~~23685. (a) (1) For taxable years beginning on or after January~~
38 ~~1, 2011, there shall be allowed to a qualified taxpayer a credit~~
39 ~~against the “tax,” as defined in Section 23036, in an amount equal~~
40 ~~to the applicable percentage, as specified in paragraph (4), of the~~

1 qualified expenditures for the production of a qualified motion
2 picture in California.

3 (2) The credit shall be allowed for the taxable year in which the
4 California Film Commission issues the credit certificate pursuant
5 to subdivision (g) for the qualified motion picture, and shall be for
6 the applicable percentage of all qualified expenditures paid or
7 incurred by the qualified taxpayer in all taxable years for that
8 qualified motion picture.

9 (3) The amount of the credit allowed to a qualified taxpayer
10 shall be limited to the amount specified in the credit certificate
11 issued to the qualified taxpayer by the California Film Commission
12 pursuant to subdivision (g).

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

15 (A) Twenty percent of the qualified expenditures attributable
16 to the production of a qualified motion picture in California.

17 (B) Twenty-five percent of the qualified expenditures
18 attributable to the production of 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) “Clip use” means a use of any portion of a motion picture,
30 other than the qualified motion picture, used in the qualified motion
31 picture.

32 (4) “Credit certificate” means the certificate issued by the
33 California Film Commission pursuant to subparagraph (C) of
34 paragraph (2) of subdivision (g).

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

1 (i) ~~Employer contributions under any pension, profit-sharing,~~
2 ~~annuity, or similar plan.~~

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

5 (iii) ~~The employer's cost of life or disability insurance provided~~
6 ~~to employees.~~

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

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

16 (7) ~~"Licensing" means any grant of rights to distribute the~~
17 ~~qualified motion picture, in whole or in part.~~

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

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

26 (B) ~~"Postproduction" does not include the manufacture or~~
27 ~~shipping of release prints.~~

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

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

38 (12) ~~"Production period" means the period beginning with~~
39 ~~preproduction and ending upon completion of postproduction.~~

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

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

8 ~~(B) “Qualified individual” shall not include either of the~~
9 ~~following:~~

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

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

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

18 ~~(i) A feature with a minimum production budget of one million~~
19 ~~dollars (\$1,000,000) and a maximum production budget of~~
20 ~~seventy-five million dollars (\$75,000,000).~~

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

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

26 ~~(iv) An independent film.~~

27 ~~(v) A television series that relocated to California.~~

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

30 ~~(i) At least 75 percent of the production days occur wholly in~~
31 ~~California or 75 percent of the production budget is incurred for~~
32 ~~payment for services performed within the state and the purchase~~
33 ~~or rental of property used within the state.~~

34 ~~(ii) Production of the qualified motion picture is completed~~
35 ~~within 30 months from the date on which the qualified taxpayer’s~~
36 ~~application is approved by the California Film Commission. For~~
37 ~~purposes of this section, a qualified motion picture is “completed”~~
38 ~~when the process of postproduction has been finished.~~

1 ~~(iii) The copyright for the motion picture is registered with the~~
2 ~~United States Copyright Office pursuant to Title 17 of the United~~
3 ~~States Code.~~

4 ~~(iv) Principal photography of the qualified motion picture~~
5 ~~commences after the date on which the application is approved by~~
6 ~~the California Film Commission, but no later than 180 days after~~
7 ~~the date of that approval.~~

8 ~~(C) For the purposes of subparagraph (A), in computing the~~
9 ~~total wages paid or incurred for the production of a qualified~~
10 ~~motion picture, all amounts paid or incurred by all persons or~~
11 ~~entities that share in the costs of the qualified motion picture shall~~
12 ~~be aggregated.~~

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

25 ~~(16) “Qualified expenditures” means amounts paid or incurred~~
26 ~~to purchase or lease tangible personal property used within this~~
27 ~~state in the production of a qualified motion picture and payments,~~
28 ~~including qualified wages, for services performed within this state~~
29 ~~in the production of a qualified motion picture.~~

30 ~~(17) (A) “Qualified taxpayer” means a taxpayer who has paid~~
31 ~~or incurred qualified expenditures and has been issued a credit~~
32 ~~certificate by the California Film Commission pursuant to~~
33 ~~subdivision (g).~~

34 ~~(B) (i) In the case of any passthrough entity, the determination~~
35 ~~of whether a taxpayer is a qualified taxpayer under this section~~
36 ~~shall be made at the entity level and any credit under this section~~
37 ~~is not allowed to the passthrough entity, but shall be passed through~~
38 ~~to the partners or shareholders in accordance with applicable~~
39 ~~provisions of Part 10 (commencing with Section 17001) or Part~~
40 ~~11 (commencing with Section 23001). For purposes of this~~

1 paragraph, “passthrough entity” means any entity taxed as a
2 partnership or “S” corporation.

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

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

8 (i) Any wages required to be reported under Section 13050 of
9 the Unemployment Insurance Code that were paid or incurred by
10 any taxpayer involved in the production of a qualified motion
11 picture with respect to a qualified individual for services performed
12 on the qualified motion picture production within California.

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

17 (iii) Any payments made to a qualified entity for services
18 performed in California by qualified individuals within the meaning
19 of paragraph (14).

20 (iv) Remuneration paid to an independent contractor who is a
21 qualified individual for services performed within California by
22 that qualified individual.

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

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

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

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

32 (iv) Expenses, including wages, paid per person per qualified
33 motion picture for writers, directors, music directors, music
34 composers, music supervisors, producers, and performers, other
35 than background actors with no scripted lines.

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

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

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

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

(c) (1) Notwithstanding subdivision (i) of Section 23036, relating to credits attributable to a passthrough business entity, in the case where the credit allowed by this section exceeds the taxpayer’s tax liability computed under this part, a qualified taxpayer may elect to assign any portion of the credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, “affiliated corporation” has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that “100 percent” is substituted for “more than 50 percent” wherever it appears in the section, and “voting common stock” is substituted for “voting stock” wherever it appears in the section.

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

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

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

(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of qualified taxpayer and a qualified taxpayer’s affiliated corporations that assign and receive the credits.

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

~~(B) The qualified taxpayer shall report to the Franchise Tax Board prior to the sale of the credit, in the form and manner specified by the Franchise Tax Board, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.~~

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

~~(5) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.~~

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

~~(7) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed on any tax return of the qualified taxpayer.~~

~~(8) In the event that both the taxpayer originally allocated a credit under this section by the California Film Commission and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the Franchise Tax Board may disallow the credit of either taxpayer, so long as the statute of limitations upon assessment remains open.~~

~~(9) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.~~

~~(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:~~

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

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

~~(3) The total wages paid.~~

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

1 ~~(5) The copyright registration number, as reflected on the~~
2 ~~certificate of registration issued under the authority of Section 410~~
3 ~~of Title 17 of the United States Code, relating to registration of~~
4 ~~claim and issuance of certificate. The registration number shall be~~
5 ~~provided on the return claiming the credit.~~

6 ~~(6) The total amounts paid or incurred to purchase or lease~~
7 ~~tangible personal property used in the production of a qualified~~
8 ~~motion picture.~~

9 ~~(7) Information to substantiate its qualified expenditures.~~

10 ~~(8) Information required by the California Film Commission~~
11 ~~under regulations promulgated pursuant to subdivision (g)~~
12 ~~necessary to verify the amount of credit claimed.~~

13 ~~(e) The California Film Commission may prescribe rules and~~
14 ~~regulations to carry out the purposes of this section including any~~
15 ~~rules and regulations necessary to establish procedures, processes,~~
16 ~~requirements, and rules identified in or required to implement this~~
17 ~~section. The regulations shall include provisions to set aside a~~
18 ~~percentage of annual credit allocations for independent films.~~

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

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

25 ~~(1) On or after July 1, 2009, and before July 1, 2014, allocate~~
26 ~~tax credits to applicants:~~

27 ~~(A) Establish a procedure for applicants to file with the~~
28 ~~commission a written application, on a form jointly prescribed by~~
29 ~~the commission and the Franchise Tax Board for the allocation of~~
30 ~~the tax credit. The application shall include, but not be limited to,~~
31 ~~the following information:~~

32 ~~(i) The budget for the motion picture production.~~

33 ~~(ii) The number of production days.~~

34 ~~(iii) A financing plan for the production.~~

35 ~~(iv) The diversity of the workforce employed by the applicant,~~
36 ~~including, but not limited to, the ethnic and racial makeup of the~~
37 ~~individuals employed by the applicant during the production of~~
38 ~~the qualified motion picture, to the extent possible.~~

39 ~~(v) Any other information deemed relevant by the commission~~
40 ~~or the Franchise Tax Board.~~

1 ~~(B) Establish criteria, consistent with the requirements of this~~
2 ~~section, for allocating tax credits.~~

3 ~~(C) Determine and designate applicants who meet the~~
4 ~~requirements of this section.~~

5 ~~(D) Process and approve, or reject, all applications on a~~
6 ~~first-come-first-served basis.~~

7 ~~(E) Subject to the annual cap established as provided in~~
8 ~~subdivision (i), allocate an aggregate amount of credits under this~~
9 ~~section and Section 17053.85, and allocate any carryover of~~
10 ~~unallocated credits from prior years.~~

11 ~~(2) Certify tax credits allocated to qualified taxpayers.~~

12 ~~(A) Establish a verification procedure for the amount of qualified~~
13 ~~expenditures paid or incurred by the applicant.~~

14 ~~(B) Establish audit requirements that must be satisfied before~~
15 ~~a credit certificate maybe issued by the California Film~~
16 ~~Commission.~~

17 ~~(C) Issue a credit certificate to a qualified taxpayer upon~~
18 ~~completion of the qualified motion picture, reflecting the credit~~
19 ~~amount allocated after qualified expenditures have been verified~~
20 ~~under this section. The amount of a credit shown in the credit~~
21 ~~certificate shall not exceed the amount of credit allocated to that~~
22 ~~qualified taxpayer pursuant to this section.~~

23 ~~(h) The California Film Commission shall provide the Franchise~~
24 ~~Tax Board and the board annually with a list of qualified taxpayers~~
25 ~~and the tax credit amounts allocated to each qualified taxpayer by~~
26 ~~the California Film Commission. The list shall include the names~~
27 ~~and taxpayer identification numbers, including taxpayer~~
28 ~~identification numbers of each partner or shareholder, as applicable,~~
29 ~~of the qualified taxpayer.~~

30 ~~(i) (1) The aggregate amount of credits that may be allocated~~
31 ~~in any fiscal year pursuant to this section and Section 17053.85~~
32 ~~shall be an amount equal to the sum of all of the following:~~

33 ~~(A) One hundred million dollars (\$100,000,000) in credits for~~
34 ~~the 2009-10 fiscal year and each fiscal year thereafter, through~~
35 ~~and including the 2013-14 fiscal year.~~

36 ~~(B) The unused allocation credit amount, if any, for the~~
37 ~~preceding fiscal year.~~

38 ~~(C) The amount of previously allocated credits not certified.~~

39 ~~(2) If the amount of credits applied for in any particular fiscal~~
40 ~~year exceeds the aggregate amount of tax credits authorized to be~~

~~allocated for under this section, such excess shall be treated as having been applied for on the first day of the subsequent fiscal year. However, credits may not be allocated from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year.~~

~~(3) Notwithstanding the foregoing, the Film Commission shall set aside up to ten million (\$10,000,000) of tax credits each fiscal year for independent films allocated in accordance with rules and regulations developed pursuant to subdivision (e).~~

~~(4) Any act that reduces the amount that may be allocated pursuant to paragraph (1) constitutes a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution and may be passed by not less than two-thirds of all Members elected to each of the two houses of the Legislature.~~

~~(j) The film commission shall have the authority to allocate tax credits in accordance with this section and in accordance with any regulations prescribed pursuant to subdivision (e) upon adoption.~~

SEC. 4. Section 23685 of the Revenue and Taxation Code, as added by Section 9 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

23685. (a) (1) For taxable years beginning on or after January 1, 2011, there shall be allowed to a qualified taxpayer a credit against the "tax," as defined in Section 23036, in an amount equal to the applicable percentage, as specified in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California.

(2) The credit shall be allowed for the taxable year in which the California Film Commission issues the credit certificate pursuant to subdivision (g) for the qualified motion picture, and shall be for the applicable percentage of all qualified expenditures paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.

(3) The amount of the credit allowed to a qualified taxpayer shall be limited to the amount specified in the credit certificate issued to the qualified taxpayer by the California Film Commission pursuant to subdivision (g).

(4) For purposes of paragraphs (1) and (2), the applicable percentage shall be:

1 (A) Twenty percent of the qualified expenditures attributable
2 to the production of a qualified motion picture in California.

3 (B) Twenty-five percent of the qualified expenditures
4 attributable to the production of a qualified motion picture in
5 California where the qualified motion picture is a television series
6 that relocated to California or an independent film.

7 (b) For purposes of this section:

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

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

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

18 (4) “Credit certificate” means the certificate issued by the
19 California Film Commission pursuant to subparagraph (C) of
20 paragraph (2) of subdivision (g).

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

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

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

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

32 (B) Any amount treated as wages under clause (i) of
33 subparagraph (A) of paragraph (18) shall not be taken into account
34 under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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 produced in California with a
10 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 production days occur wholly in
17 California or 75 percent of the production budget is incurred for
18 payment for services performed within the state and the purchase
19 or rental of property used within the state.

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

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

28 (iv) Principal photography of the qualified motion picture
29 commences after the date on which the application is approved by
30 the California Film Commission, but no later than 180 days after
31 the date of that approval.

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

37 (D) “Qualified motion picture” shall not include commercial
38 advertising, music videos, a motion picture produced for private
39 noncommercial use, such as weddings, graduations, or as part of
40 an educational course and made by students, a news program,

1 current events or public events program, talk show, game show,
2 sporting event or activity, awards show, telethon or other
3 production that solicits funds, reality television program, clip-based
4 programming if more than 50 percent of the content is comprised
5 of licensed footage, documentaries, variety programs, daytime
6 dramas, strip shows, one-half hour (air time) episodic television
7 shows, or any production that falls within the recordkeeping
8 requirements of Section 2257 of Title 18 of the United States Code.

9 (16) “Qualified expenditures” means amounts paid or incurred
10 to purchase or lease tangible personal property used within this
11 state in the production of a qualified motion picture and payments,
12 including qualified wages, for services performed within this state
13 in the production of a qualified motion picture.

14 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
15 or incurred qualified expenditures and has been issued a credit
16 certificate by the California Film Commission pursuant to
17 subdivision (g).

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

27 (ii) In the case of an “S” corporation, the credit allowed under
28 this section shall not be used by an “S” corporation as a credit
29 against a tax imposed under Chapter 4.5 (commencing with Section
30 23800) of Part 11 of Division 2.

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

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

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

1 (iii) Any payments made to a qualified entity for services
2 performed in California by qualified individuals within the meaning
3 of paragraph (14).

4 (iv) Remuneration paid to an independent contractor who is a
5 qualified individual for services performed within California by
6 that 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 (iv) Expenses, including wages, paid per person per qualified
17 motion picture for writers, directors, music directors, music
18 composers, music supervisors, producers, and performers, other
19 than background actors with no scripted lines.

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

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

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

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

36 (c) (1) Notwithstanding subdivision (i) of Section 23036,
37 relating to credits attributable to a passthrough business entity, in
38 the case where the credit allowed by this section exceeds the
39 taxpayer’s tax liability computed under this part, a qualified
40 taxpayer may elect to assign any portion of the credit allowed

under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, “affiliated corporation” has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that “100 percent” is substituted for “more than 50 percent” wherever it appears in the section, and “voting common stock” is substituted for “voting stock” wherever it appears in the section.

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

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

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

(C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of qualified taxpayer and a qualified taxpayer’s affiliated corporations that assign and receive the credits.

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

(B) The qualified taxpayer shall report to the Franchise Tax Board prior to the sale of the credit, in the form and manner specified by the Franchise Tax Board, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.

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

(5) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.

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

1 (7) In no event may a qualified taxpayer assign or sell any tax
2 credit to the extent the tax credit allowed by this section is claimed
3 on any tax return of the qualified taxpayer.

4 (8) In the event that both the taxpayer originally allocated a
5 credit under this section by the California Film Commission and
6 a taxpayer to whom the credit has been sold both claim the same
7 amount of credit on their tax returns, the Franchise Tax Board may
8 disallow the credit of either taxpayer, so long as the statute of
9 limitations upon assessment remains open.

10 (9) Chapter 3.5 (commencing with Section 11340) of Part 1 of
11 Division 3 of Title 2 of the Government Code does not apply to
12 any standard, criterion, procedure, determination, rule, notice, or
13 guideline established or issued by the Franchise Tax Board
14 pursuant to this subdivision.

15 (d) No credit shall be allowed pursuant to this section unless
16 the qualified taxpayer provides the following to the California
17 Film Commission:

- 18 (1) Identification of each qualified individual.
19 (2) The specific start and end dates of production.
20 (3) The total wages paid.
21 (4) The amount of qualified wages paid to each qualified
22 individual.

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

28 (6) The total amounts paid or incurred to purchase or lease
29 tangible personal property used in the production of a qualified
30 motion picture.

31 (7) Information to substantiate its qualified expenditures.

32 (8) Information required by the California Film Commission
33 under regulations promulgated pursuant to subdivision (g)
34 necessary to verify the amount of credit claimed.

35 (e) The California Film Commission may prescribe rules and
36 regulations to carry out the purposes of this section including any
37 rules and regulations necessary to establish procedures, processes,
38 requirements, and rules identified in or required to implement this
39 section. The regulations shall include provisions to set aside a
40 percentage of annual credit allocations for independent films.

1 (f) If the qualified taxpayer fails to provide the copyright
2 registration number as required in paragraph (5) of subdivision
3 (d), the credit shall be disallowed and assessed and collected under
4 Section 19051 until the procedures are satisfied.

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

7 (1) On or after July 1, 2009, and before July 1, 2014, allocate
8 tax credits to applicants.

9 (A) Establish a procedure for applicants to file with the
10 commission a written application, on a form jointly prescribed by
11 the commission and the Franchise Tax Board for the allocation of
12 the tax credit. The application shall include, but not be limited to,
13 the following information:

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

15 (ii) The number of production days.

16 (iii) A financing plan for the production.

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

21 (v) Any other information deemed relevant by the commission
22 or the Franchise Tax Board.

23 (B) Establish criteria, consistent with the requirements of this
24 section, for allocating tax credits.

25 (C) Determine and designate applicants who meet the
26 requirements of this section.

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

29 (E) Subject to the annual cap established as provided in
30 subdivision (i), allocate an aggregate amount of credits under this
31 section and Section 17053.85, and allocate any carryover of
32 unallocated credits from prior years.

33 (2) Certify tax credits allocated to qualified taxpayers.

34 (A) Establish a verification procedure for the amount of qualified
35 expenditures paid or incurred by the applicant.

36 (B) Establish audit requirements that must be satisfied before
37 a credit certificate maybe issued by the California Film
38 Commission.

39 (C) Issue a credit certificate to a qualified taxpayer upon
40 completion of the qualified motion picture, reflecting the credit

1 amount allocated after qualified expenditures have been verified
2 under this section. The amount of a credit shown in the credit
3 certificate shall not exceed the amount of credit allocated to that
4 qualified taxpayer pursuant to this section.

5 (h) The California Film Commission shall provide the Franchise
6 Tax Board and the board annually with a list of qualified taxpayers
7 and the tax credit amounts allocated to each qualified taxpayer by
8 the California Film Commission. The list shall include the names
9 and taxpayer identification numbers, including taxpayer
10 identification numbers of each partner or shareholder, as applicable,
11 of the qualified taxpayer.

12 (i) (1) The aggregate amount of credits that may be allocated
13 in any fiscal year pursuant to this section and Section 17053.85
14 shall be an amount equal to the sum of all of the following:

15 (A) One hundred million dollars (\$100,000,000) in credits for
16 the 2009–10 fiscal year and each fiscal year thereafter, through
17 and including the 2013–14 fiscal year.

18 (B) The unused allocation credit amount, if any, for the
19 preceding fiscal year.

20 (C) The amount of previously allocated credits not certified.

21 (2) If the amount of credits applied for in any particular fiscal
22 year exceeds the aggregate amount of tax credits authorized to be
23 allocated under this section, such excess shall be treated as having
24 been applied for on the first day of the ~~subsequent~~ *next* fiscal year
25 *in which credits are available.* ~~However, credits may not be~~
26 ~~allocated from a fiscal year other than the fiscal year in which the~~
27 ~~credit was originally applied for or the immediately succeeding~~
28 ~~fiscal year.~~

29 (3) Notwithstanding the foregoing, the Film Commission shall
30 set aside up to ten million (\$10,000,000) of tax credits each fiscal
31 year for independent films allocated in accordance with rules and
32 regulations developed pursuant to subdivision (e).

33 (4) Any act that reduces the amount that may be allocated
34 pursuant to paragraph (1) constitutes a change in state taxes for
35 the purpose of increasing revenues within the meaning of Section
36 3 of Article XIII A of the California Constitution and may be passed
37 by not less than two-thirds of all Members elected to each of the
38 two houses of the Legislature.

- 1 (j) The film commission shall have the authority to allocate tax
- 2 credits in accordance with this section and in accordance with any
- 3 regulations prescribed pursuant to subdivision (e) upon adoption.
- 4 SEC. 5. This act provides for a tax levy within the meaning of
- 5 Article IV of the Constitution and shall go into immediate effect.

O