

AMENDED IN SENATE MAY 27, 2010

SENATE BILL

No. 1197

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 amended, 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 *and, for credits allocated on or after the 2010–11 fiscal year, specify the taxable year in which the credit is allowed.*

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3 Extraordinary Session of the Statutes of 2009, is repealed.

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

7 17053.85. (a) (1) For taxable years beginning on or after
8 January 1, 2011, 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, as specified in
11 paragraph (4), of the qualified expenditures for the production of
12 a qualified motion picture in California.

13 (2) ~~The Subject to paragraph (5),~~ the credit shall be allowed
14 for the taxable year in which the California Film Commission
15 issues the credit certificate pursuant to subdivision (g) for the
16 qualified motion picture, and shall be for the applicable percentage
17 of all qualified expenditures paid or incurred by the qualified
18 taxpayer in all taxable years for that qualified motion picture.

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

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

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

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

31 (5) *If a qualified taxpayer is allocated a credit amount under*
32 *paragraph (2) of subdivision (i), the credit shall be allowed for*
33 *the taxable year specified by the California Film Commission in*
34 *the credit certificate issued by the commission pursuant to*
35 *subdivision (g).*

36 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

38 (9) (A) “Postproduction” means the final activities in a qualified
39 motion picture’s production, including editing, foley recording,
40 automatic dialogue replacement, sound editing, scoring and music

1 editing, beginning and end credits, negative cutting, negative
2 processing and duplication, the addition of sound and visual effects,
3 soundmixing, film-to-tape transfers, encoding, and color correction.

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

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

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

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

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

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

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

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

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

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

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

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

4 (iv) An independent film.

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

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

8 (i) At least 75 percent of the production days occur wholly in
9 California or 75 percent of the production budget is incurred for
10 payment for services performed within the state and the purchase
11 or rental of property used within the state.

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

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

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

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

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

1 (16) “Qualified expenditure” means amounts paid or incurred
2 to purchase or lease tangible personal property used within this
3 state in the production of a qualified motion picture and payments,
4 including qualified wages, for services performed within this state
5 in the production of a qualified motion picture.

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

10 (B) In the case of any passthrough entity, the determination of
11 whether a taxpayer is a qualified taxpayer under this section shall
12 be made at the entity level and any credit under this section is not
13 allowed to the passthrough entity, but shall be passed through to
14 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 (18) (A) “Qualified wages” means all of the following:

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

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

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

32 (iv) Remuneration paid to an independent contractor who is a
33 qualified individual for services performed within this state by that
34 qualified individual.

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

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

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

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

5 (iv) Expenses, including wages, paid per person per qualified
6 motion picture for writers, directors, music directors, music
7 composers, music supervisors, producers, and performers, other
8 than background actors with no scripted lines.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (1) Identification of each qualified individual.

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

25 (3) The total wages paid.

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

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

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

36 (7) Information to substantiate its qualified expenditures.

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

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

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

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

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

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

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

21 (ii) The number of production days.

22 (iii) A financing plan for the production.

23 (iv) The diversity of the workforce employed by the applicant,
24 including, but not limited to, the ethnic and racial makeup of the
25 individuals employed by the applicant during the production of
26 the qualified motion picture, to the extent possible.

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

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

31 (C) Determine and designate applicants who meet the
32 requirements of this section.

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

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

39 (ii) *If a qualified taxpayer is allocated a credit amount under*
40 *paragraph (2) of subdivision (i), specify the taxable year in which*

1 *the credit is allowed. The California Film Commission shall*
2 *establish a procedure to, on a first-come-first served basis, assign*
3 *a qualified taxpayer the taxable year in which the credit shall be*
4 *allowed. The aggregate credit amount allowed for any taxable*
5 *year shall not exceed the annual cap for that taxable year, plus*
6 *any carryover of unallocated credits from prior years.*

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

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

10 (B) Establish audit requirements that must be satisfied before
11 a credit certificate may be issued by the California Film
12 Commission.

13 (C) (i) Issue a credit certificate to a qualified taxpayer upon
14 completion of the qualified motion picture reflecting the credit
15 amount allocated after qualified expenditures have been verified
16 under this section. The amount of credit shown in the credit
17 certificate shall not exceed the amount of credit allocated to that
18 qualified taxpayer pursuant to this section.

19 (ii) *For credit certificates issued on or after July 1, 2010, the*
20 *credit certificate shall specify the taxable year for which the credit*
21 *is allowed.*

22 (h) 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. The list shall include the names and
26 taxpayer identification numbers, including taxpayer identification
27 numbers of each partner or shareholder, as applicable, of the
28 qualified taxpayers.

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

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

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

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

38 (2) ~~If Beginning in the 2010–11 fiscal year, if~~ the amount of
39 credits applied for in any particular fiscal year exceeds the
40 aggregate amount of tax credits authorized to be allocated under

1 this section, such excess shall be treated as having been applied
2 for on the first day of the next fiscal year in which credits are
3 available.

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

8 (4) Any act that reduces the amount that may be allocated
9 pursuant to paragraph (1) constitutes a change in state taxes for
10 the purpose of increasing revenues within the meaning of Section
11 3 of Article XIII A of the California Constitution and may be passed
12 by not less than two-thirds of all Members elected to each of the
13 two houses of the Legislature.

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

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

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

23 23685. (a) (1) For taxable years beginning on or after January
24 1, 2011, there shall be allowed to a qualified taxpayer a credit
25 against the "tax," as defined in Section 23036, in an amount equal
26 to the applicable percentage, as specified in paragraph (4), of the
27 qualified expenditures for the production of a qualified motion
28 picture in California.

29 (2) ~~The Subject to paragraph (5),~~ the credit shall be allowed
30 for the taxable year in which the California Film Commission
31 issues the credit certificate pursuant to subdivision (g) for the
32 qualified motion picture, and shall be for the applicable percentage
33 of all qualified expenditures paid or incurred by the qualified
34 taxpayer in all taxable years for that qualified motion picture.

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

39 (4) For purposes of paragraphs (1) and (2), the applicable
40 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 *(5) If a qualified taxpayer is allocated a credit amount under*
8 *paragraph (2) of subdivision (i), the credit shall be allowed for*
9 *the taxable year specified by the California Film Commission in*
10 *the credit certificate issued by the commission pursuant to*
11 *subdivision (g).*

12 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (iv) An independent film.

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

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

21 (i) At least 75 percent of the production days occur wholly in
22 California or 75 percent of the production budget is incurred for
23 payment for services performed within the state and the purchase
24 or rental of property used within the state.

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

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

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

37 (C) For the purposes of subparagraph (A), in computing the
38 total wages paid or incurred for the production of a qualified
39 motion picture, all amounts paid or incurred by all persons or

1 entities that share in the costs of the qualified motion picture shall
2 be aggregated.

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

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

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21 or incurred qualified expenditures and has been issued a credit
22 certificate by the California Film Commission pursuant to
23 subdivision (g).

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

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

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

38 (i) Any wages required to be reported under Section 13050 of
39 the Unemployment Insurance Code that were paid or incurred by
40 any taxpayer involved in the production of a qualified motion

1 picture with respect to a qualified individual for services performed
2 on the qualified motion picture production within California.

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

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

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

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

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

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

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

22 (iv) Expenses, including wages, paid per person per qualified
23 motion picture for writers, directors, music directors, music
24 composers, music supervisors, producers, and performers, other
25 than background actors with no scripted lines.

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

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

33 (21) “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) “Television series that relocated to California” means a
37 television series, without regard to episode length or initial media
38 exhibition, that filmed all of its prior season or seasons outside of
39 California and for which the taxpayer certifies that the credit

1 provided pursuant to this section is the primary reason for
2 relocating to California.

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

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

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

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

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

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

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

38 (4) In the case where the credit allowed under this section
39 exceeds the "tax," the excess credit may be carried over to reduce

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

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

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

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

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

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

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

25 (1) Identification of each qualified individual.

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

27 (3) The total wages paid.

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

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

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

38 (7) Information to substantiate its qualified expenditures.

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

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

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

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

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

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

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

24 (ii) The number of production days.

25 (iii) A financing plan for the production.

26 (iv) The diversity of the workforce employed by the applicant,
27 including, but not limited to, the ethnic and racial makeup of the
28 individuals employed by the applicant during the production of
29 the qualified motion picture, to the extent possible.

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

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

34 (C) Determine and designate applicants who meet the
35 requirements of this section.

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

38 (E) (i) Subject to the annual cap established as provided in
39 subdivision (i), allocate an aggregate amount of credits under this

1 section and Section 17053.85, and allocate any carryover of
2 unallocated credits from prior years.

3 *(ii) If a qualified taxpayer is allocated a credit amount under*
4 *paragraph (2) of subdivision (i), specify the taxable year in which*
5 *the credit is allowed. The California Film Commission shall*
6 *establish a procedure to, on a first-come-first-served basis, assign*
7 *a qualified taxpayer the taxable year in which the credit shall be*
8 *allowed. The aggregate credit amount allowed for any taxable*
9 *year shall not exceed the annual cap for that taxable year, plus*
10 *any carryover of 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) (i) 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 *(ii) For credit certificates issued on or after July 1, 2010, the*
24 *credit certificate shall specify the taxable year for which the credit*
25 *is allowed.*

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

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

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

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

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

2 (2) ~~If~~ *Beginning in the 2010–11 fiscal year, if* the amount of
3 credits applied for in any particular fiscal year exceeds the
4 aggregate amount of tax credits authorized to be allocated under
5 this section, such excess shall be treated as having been applied
6 for on the first day of the next fiscal year in which credits are
7 available.

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

12 (4) Any act that reduces the amount that may be allocated
13 pursuant to paragraph (1) constitutes a change in state taxes for
14 the purpose of increasing revenues within the meaning of Section
15 3 of Article XIII A of the California Constitution and may be passed
16 by not less than two-thirds of all Members elected to each of the
17 two houses of the Legislature.

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

21 SEC. 5. This act provides for a tax levy within the meaning of
22 Article IV of the Constitution and shall go into immediate effect.