

AMENDED IN ASSEMBLY MAY 18, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1069

Introduced by Assembly Member Fuentes
(Principal coauthors: Assembly Members Gatto, Hall, and Smyth)
(Coauthors: Assembly Members Butler, Ma, and Portantino)

February 18, 2011

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

AB 1069, as amended, Fuentes. Income taxes: credits: film: extension.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by laws, including a credit against those taxes 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 requires the California Film Commission to allocate the tax credits until July 1, 2014, and limits the aggregate amount of qualified motion pictures credits that may be allocated in any fiscal year to \$100,000,000, through the 2013–14 fiscal year.

This bill, under the Personal Income Tax Law and the Corporation Tax Law, would extend the California Film Commission's requirement to allocate the tax credits 5 additional years, until July 1, 2019. This bill would also extend the limit on the aggregate amount of credits that may be allocated through the 2018–19 fiscal year.

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 3rd Extraordinary
3 Session of the Statutes of 2009, is repealed.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 3rd 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 credit shall be allowed for the taxable year in which the
14 California Film Commission issues the credit certificate pursuant
15 to subdivision (g) for the qualified motion picture, and shall be for
16 the applicable percentage of all qualified expenditures paid or
17 incurred by the qualified taxpayer in all taxable years for that
18 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 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (B) “Qualified individual” shall not include either of the
23 following:

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

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

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

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

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

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

40 (iv) An independent film.

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

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

4 (i) At least 75 percent of the production days occur wholly in
5 California or 75 percent of the production budget is incurred for
6 payment for services performed within the state and the purchase
7 or rental of property used within the state.

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

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

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

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

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

37 (16) “Qualified expenditure” means amounts paid or incurred
38 to purchase or lease tangible personal property used within this
39 state in the production of a qualified motion picture and payments,

1 including qualified wages, for services performed within this state
2 in the production of a qualified motion picture.

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

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

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

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

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

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

29 (iv) Remuneration paid to an independent contractor who is a
30 qualified individual for services performed within this state by that
31 qualified individual.

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

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

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

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

1 (iv) Expenses, including wages, paid per person per qualified
2 motion picture for writers, directors, music directors, music
3 composers, music supervisors, producers, and performers, other
4 than background actors with no scripted lines.

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

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

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

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

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

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

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

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

- 1 (5) A party that has acquired tax credits under this section shall
 2 be subject to the requirements of this section.
- 3 (6) In no event may a qualified taxpayer assign or sell any tax
 4 credit to the extent the tax credit allowed by this section is claimed
 5 on any tax return of the qualified taxpayer.
- 6 (7) In the event that both the taxpayer originally allocated a
 7 credit under this section by the California Film Commission and
 8 a taxpayer to whom the credit has been sold both claim the same
 9 amount of credit on their tax returns, the Franchise Tax Board may
 10 disallow the credit of either taxpayer, so long as the statute of
 11 limitations upon assessment remains open.
- 12 (8) Chapter 3.5 (commencing with Section 11340) of Part 1 of
 13 Division 3 of Title 2 of the Government Code does not apply to
 14 any standard, criterion, procedure, determination, rule, notice, or
 15 guideline established or issued by the Franchise Tax Board
 16 pursuant to this subdivision.
- 17 (9) *Subdivision (g) of Section 17039 shall not apply to any credit*
 18 *sold pursuant to this subdivision.*
- 19 (10) *For purposes of this subdivision, the unrelated party or*
 20 *parties that purchase a credit pursuant to this subdivision shall*
 21 *be treated as a qualified taxpayer pursuant to paragraph (1) of*
 22 *subdivision (a).*
- 23 (d) No credit shall be allowed pursuant to this section unless
 24 the qualified taxpayer provides the following to the California
 25 Film Commission:
- 26 (1) Identification of each qualified individual.
 - 27 (2) The specific start and end dates of production.
 - 28 (3) The total wages paid.
 - 29 (4) The amount of qualified wages paid to each qualified
 30 individual.
 - 31 (5) The copyright registration number, as reflected on the
 32 certificate of registration issued under the authority of Section 410
 33 of Title 17 of the United States Code, relating to registration of
 34 claim and issuance of certificate. The registration number shall be
 35 provided on the return claiming the credit.
 - 36 (6) The total amounts paid or incurred to purchase or lease
 37 tangible personal property used in the production of a qualified
 38 motion picture.
 - 39 (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, 2019, 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) Subject to the annual cap established as provided in
39 subdivision (i), allocate an aggregate amount of credits under this

1 section and Section 23685, and allocate any carryover of
2 unallocated credits from prior years.

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

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

6 (B) Establish audit requirements that must be satisfied before
7 a credit certificate may be issued by the California Film
8 Commission.

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

15 (h) The California Film Commission shall provide the Franchise
16 Tax Board annually with a list of qualified taxpayers and the tax
17 credit amounts allocated to each qualified taxpayer by the
18 California Film Commission. The list shall include the names and
19 taxpayer identification numbers, including taxpayer identification
20 numbers of each partner or shareholder, as applicable, of the
21 qualified taxpayers.

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

25 (A) One hundred million dollars (\$100,000,000) in credits for
26 the 2009–10 fiscal year and each fiscal year thereafter, through
27 and including the 2018–19 fiscal year.

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

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

31 (2) If the amount of credits applied for in any particular fiscal
32 year exceeds the aggregate amount of tax credits authorized to be
33 allocated under this section, such excess shall be treated as having
34 been applied for on the first day of the subsequent fiscal year.
35 However, credits may not be allocated from a fiscal year other
36 than the fiscal year in which the credit was originally applied for
37 or the immediately succeeding fiscal year.

38 (3) Notwithstanding the foregoing, the Film Commission shall
39 set aside up to ten million (\$10,000,000) of tax credits each fiscal

1 year for independent films allocated in accordance with rules and
2 regulations developed pursuant to subdivision (e).

3 (4) Any act that reduces the amount that may be allocated
4 pursuant to paragraph (1) constitutes a change in state taxes for
5 the purpose of increasing revenues within the meaning of Section
6 3 of Article XIII A of the California Constitution and may be passed
7 by not less than two-thirds of all Members elected to each of the
8 two houses of the Legislature.

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

12 SEC. 3. Section 23685 of the Revenue and Taxation Code, as
13 added by Section 9 of Chapter 10 of the 3rd Extraordinary Session
14 of the Statutes of 2009, is repealed.

15 SEC. 4. Section 23685 of the Revenue and Taxation Code, as
16 added by Section 9 of Chapter 17 of the 3rd Extraordinary Session
17 of the Statutes of 2009, is amended to read:

18 23685. (a) (1) For taxable years beginning on or after January
19 1, 2011, there shall be allowed to a qualified taxpayer a credit
20 against the “tax,” as defined in Section 23036, in an amount equal
21 to the applicable percentage, as specified in paragraph (4), of the
22 qualified expenditures for the production of a qualified motion
23 picture in California.

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

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

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

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

38 (B) Twenty-five percent of the qualified expenditures
39 attributable to the production of a qualified motion picture in

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

3 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (B) “Qualified individual” shall not include either of the
29 following:

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

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

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

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

- 1 (ii) A movie of the week or miniseries with a minimum
- 2 production budget of five hundred thousand dollars (\$500,000).
- 3 (iii) A new television series produced in California with a
- 4 minimum production budget of one million dollars (\$1,000,000)
- 5 licensed for original distribution on basic cable.
- 6 (iv) An independent film.
- 7 (v) A television series that relocated to California.
- 8 (B) To qualify as a “qualified motion picture,” all of the
- 9 following conditions shall be satisfied:
- 10 (i) At least 75 percent of the production days occur wholly in
- 11 California or 75 percent of the production budget is incurred for
- 12 payment for services performed within the state and the purchase
- 13 or rental of property used within the state.
- 14 (ii) Production of the qualified motion picture is completed
- 15 within 30 months from the date on which the qualified taxpayer’s
- 16 application is approved by the California Film Commission. For
- 17 purposes of this section, a qualified motion picture is “completed”
- 18 when the process of postproduction has been finished.
- 19 (iii) The copyright for the motion picture is registered with the
- 20 United States Copyright Office pursuant to Title 17 of the United
- 21 States Code.
- 22 (iv) Principal photography of the qualified motion picture
- 23 commences after the date on which the application is approved by
- 24 the California Film Commission, but no later than 180 days after
- 25 the date of that approval.
- 26 (C) For the purposes of subparagraph (A), in computing the
- 27 total wages paid or incurred for the production of a qualified
- 28 motion picture, all amounts paid or incurred by all persons or
- 29 entities that share in the costs of the qualified motion picture shall
- 30 be aggregated.
- 31 (D) “Qualified motion picture” shall not include commercial
- 32 advertising, music videos, a motion picture produced for private
- 33 noncommercial use, such as weddings, graduations, or as part of
- 34 an educational course and made by students, a news program,
- 35 current events or public events program, talk show, game show,
- 36 sporting event or activity, awards show, telethon or other
- 37 production that solicits funds, reality television program, clip-based
- 38 programming if more than 50 percent of the content is comprised
- 39 of licensed footage, documentaries, variety programs, daytime
- 40 dramas, strip shows, one-half hour (air time) episodic television

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

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

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

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

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

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

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

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

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

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

1 (B) “Qualified wages” shall not include any of the following:
2 (i) Expenses, including wages, related to new use, reuse, clip
3 use, licensing, secondary markets, or residual compensation, or
4 the creation of any ancillary product, including, but not limited to,
5 a soundtrack album, toy, game, trailer, or teaser.
6 (ii) Expenses, including wages, paid or incurred with respect to
7 acquisition, development, turnaround, or any rights thereto.
8 (iii) Expenses, including wages, related to financing, overhead,
9 marketing, promotion, or distribution of a qualified motion picture.
10 (iv) Expenses, including wages, paid per person per qualified
11 motion picture for writers, directors, music directors, music
12 composers, music supervisors, producers, and performers, other
13 than background actors with no scripted lines.
14 (19) “Residual compensation” means supplemental
15 compensation paid at the time that a motion picture is exhibited
16 through new use, reuse, clip use, or in secondary markets, as
17 distinguished from payments made during production.
18 (20) “Reuse” means any use of a qualified motion picture in the
19 same medium for which it was created, following the initial use
20 in that medium.
21 (21) “Secondary markets” means media in which a qualified
22 motion picture is exhibited following the initial media in which it
23 is exhibited.
24 (22) “Television series that relocated to California” means a
25 television series, without regard to episode length or initial media
26 exhibition, that filmed all of its prior season or seasons outside of
27 California and for which the taxpayer certifies that the credit
28 provided pursuant to this section is the primary reason for
29 relocating to California.
30 (c) (1) Notwithstanding subdivision (i) of Section 23036,
31 relating to credits attributable to a passthrough business entity, in
32 the case where the credit allowed by this section exceeds the
33 taxpayer’s tax liability computed under this part, a qualified
34 taxpayer may elect to assign any portion of the credit allowed
35 under this section to one or more affiliated corporations for each
36 taxable year in which the credit is allowed. For purposes of this
37 subdivision, “affiliated corporation” has the meaning provided in
38 subdivision (b) of Section 25110, as that section was amended by
39 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
40 year in which the credit is allowed, except that “100 percent” is

1 substituted for “more than 50 percent” wherever it appears in the
2 section, and “voting common stock” is substituted for “voting
3 stock” wherever it appears in the section.

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

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

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

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

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

29 (5) A credit shall not be 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 (6) A party that has been assigned or acquired tax credits under
33 this paragraph shall be subject to the requirements of this section.

34 (7) 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 (8) 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 (9) 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 *(10) Subdivision (i) of Section 23036 shall not apply to any*
9 *credit sold pursuant to this subdivision.*

10 *(11) For purposes of this subdivision:*

11 *(A) An affiliated corporation or corporations that are assigned*
12 *a credit pursuant to paragraph (1) shall be treated as a qualified*
13 *taxpayer pursuant to paragraph (1) of subdivision (a).*

14 *(B) The unrelated party or parties that purchase a credit*
15 *pursuant to paragraph (3) shall be treated as a qualified taxpayer*
16 *pursuant to paragraph (1) of subdivision (a).*

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

20 (1) Identification of each qualified individual.

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

22 (3) The total wages paid.

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

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

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

33 (7) Information to substantiate its qualified expenditures.

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

37 (e) The California Film Commission may prescribe rules and
38 regulations to carry out the purposes of this section including any
39 rules and regulations necessary to establish procedures, processes,
40 requirements, and rules identified in or required to implement this

1 section. The regulations shall include provisions to set aside a
2 percentage of annual credit allocations for independent films.

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

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

9 (1) On or after July 1, 2009, and before July 1, 2019, allocate
10 tax credits to applicants.

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

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

17 (ii) The number of production days.

18 (iii) A financing plan for the production.

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

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

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

27 (C) Determine and designate applicants who meet the
28 requirements of this section.

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

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

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

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

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

1 (C) Issue a credit certificate to a qualified taxpayer upon
2 completion of the qualified motion picture, reflecting the credit
3 amount allocated after qualified expenditures have been verified
4 under this section. The amount of a credit shown in the credit
5 certificate shall not exceed the amount of credit allocated to that
6 qualified taxpayer pursuant to this section.

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

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

17 (A) One hundred million dollars (\$100,000,000) in credits for
18 the 2009–10 fiscal year and each fiscal year thereafter, through
19 and including the 2018–19 fiscal year.

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

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

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

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

34 (4) Any act that reduces the amount that may be allocated
35 pursuant to paragraph (1) constitutes a change in state taxes for
36 the purpose of increasing revenues within the meaning of Section
37 3 of Article XIII A of the California Constitution and may be passed
38 by not less than two-thirds of all Members elected to each of the
39 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.

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