Introduced by Assembly Member Fuentes  
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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

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 require the California Film Commission to provide the Legislative Analyst’s Office with specified application materials, and would require the Legislative Analyst’s Office to conduct a study relating to the economic activity created by this credit, as prescribed. By expanding the crime relating to the disclosure of information from specified returns, reports, or documents, this bill would impose a state-mandated local program.

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

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

This bill would take effect immediately as a tax levy.

State-mandated local program: no–yes.

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

SECTION 1. Section 17053.85 of the Revenue and Taxation Code, as added by Section 4 of Chapter 10 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 2. Section 17053.85 of the Revenue and Taxation Code, as added by Section 4 of Chapter 17 of the 3rd Extraordinary Session of the Statutes of 2009, is amended to read:

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

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

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

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

(B) Any amount treated as wages under clause (i) of subparagraph (A) of paragraph (18) shall not be taken into account under this paragraph.
(6) “Independent film” means a motion picture with a minimum budget of one million dollars ($1,000,000) and a maximum budget of ten million dollars ($10,000,000) that is produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than 25 percent of the producing company.

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

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

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

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

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

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

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

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

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

(B) “Qualified individual” shall not include either of the following:
(i) Any individual related to the qualified taxpayer as described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.

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

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

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

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

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

(iv) An independent film.

(v) A television series that relocated to California.

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

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

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

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

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

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

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

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

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

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

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

(i) Any wages required to be reported under Section 13050 subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code that were paid or incurred by any taxpayer involved in the production of a qualified motion picture with respect to a qualified individual for services performed on the qualified motion picture production within this state.
(ii) The portion of any employee fringe benefits paid or incurred by any taxpayer involved in the production of the qualified motion picture that are properly allocable to qualified wage amounts described in clause (i).

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

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

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

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

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

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

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

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

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

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

(22) “Television series that relocated to California” means a television series, without regard to episode length or initial media exhibition, that filmed all of its prior season or seasons outside of California and for which the taxpayer certifies that the credit provided pursuant to this section is the primary reason for relocating to California.
(c) (1) Notwithstanding any other law, a qualified taxpayer may sell any credit allowed under this section that is attributable to an independent film, as defined in paragraph (6) of subdivision (b), to an unrelated party.

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

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

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

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

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

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

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

(9) Subdivision (g) of Section 17039 shall not apply to any credit sold pursuant to this subdivision.

(10) For purposes of this subdivision, the unrelated party or parties that purchase a credit pursuant to this subdivision shall be
treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

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

(1) Identification of each qualified individual.
(2) The specific start and end dates of production.
(3) The total wages paid.
(4) The amount of qualified wages paid to each qualified individual.
(5) The copyright registration number, as reflected on the certificate of registration issued under the authority of Section 410 of Title 17 of the United States Code, relating to registration of claim and issuance of certificate. The registration number shall be provided on the return claiming the credit.
(6) The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.
(7) Information to substantiate its qualified expenditures.
(8) Information required by the California Film Commission under regulations promulgated pursuant to subdivision (g) necessary to verify the amount of credit claimed.

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

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

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

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

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

(i) The budget for the motion picture production.
(ii) The number of production days.
(iii) A financing plan for the production.
(iv) The diversity of the workforce employed by the applicant, including, but not limited to, the ethnic and racial makeup of the individuals employed by the applicant during the production of the qualified motion picture, to the extent possible.
(v) Any other information deemed relevant by the commission.

California Film Commission or the Franchise Tax Board.

(B) Establish criteria, consistent with the requirements of this section, for allocating tax credits.
(C) Determine and designate applicants who meet the requirements of this section.
(D) Process and approve, or reject, all applications on a first-come-first-served basis.
(E) Subject to the annual cap established as provided in subdivision (i), allocate an aggregate amount of credits under this section and Section 23685, and allocate any carryover of unallocated credits from prior years.

(2) Certify tax credits allocated to qualified taxpayers.

(A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant.
(B) Establish audit requirements that must be satisfied before a credit certificate may be issued by the California Film Commission.
(C) Issue a credit certificate to a qualified taxpayer upon completion of the qualified motion picture reflecting the credit amount allocated after qualified expenditures have been verified under this section. The amount of credit shown in the credit certificate shall not exceed the amount of credit allocated to that qualified taxpayer pursuant to this section.

(3) (A) Provide the Legislative Analyst’s Office with all application materials sent to the film commission, including, but not limited to, all of the following:

(i) The expenditures of the applicants, by type of production and recipient, for both those qualified for the credit and those not qualified.
(ii) The applicant’s amount of sales and use tax paid and financial situation, including, but not limited to, earnings, profits and losses, United States Security and Exchange Commission filings, and annual reports for all subsidiaries and principals, and competitive environment.

(iii) Evidence, when possible, that filming or activity would have occurred elsewhere but for the credit.

(iv) For all qualified taxpayers that are part of the controlled group, for every year it applies and in the year the credit is received, a list of all other members of the commonly controlled group, as defined in Section 25105, or members of the combined reporting group, as defined in Section 25106.5(b)(3) of Title 18 of the California Code of Regulations, that filmed productions or planned to film productions.

(v) The number of applicants that have applied for the credit and the number of qualified taxpayers that have received the credit.

(vi) The total amount of qualified wages paid on the qualified motion picture project when the credit is applied for and when the tax credit certificate is received.

(B) All information shared with the Legislative Analyst’s Office shall be confidential.

(C) To the extent the film commission is required to amend its application form to collect the information required by this paragraph, the film commission shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of adopting those amendments to the application form.

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

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

(A) One hundred million dollars ($100,000,000) in credits for the 2009–10 fiscal year and each fiscal year thereafter, through and including the 2018–19 fiscal year.
(B) The unused allocation credit amount, if any, for the preceding fiscal year.

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

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

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

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

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

(k) (1) The Legislative Analyst’s Office shall conduct a study to assess the total economic activity generated by productions that have received a tax certificate and productions that were allocated a tax credit certificate pursuant to this section and Section 23685. The total economic activity includes, but is not limited to, output, employment, labor income, and payments for goods and services utilized in productions. The study shall report the statewide direct, indirect, and induced activity and shall include the impact of the deferred claiming of the credit.

(2) In the conduct of the study, the State Board of Equalization, the Franchise Tax Board, the Employment Development Department, and other relevant agencies are authorized to share information, including the listing under subdivision (g) of Section 6902.5, but shall retain taxpayer confidentiality. The information
provided subject to this subdivision shall be subject to Section 19542.

(3) The studies shall be reported to the appropriate Assembly and Senate committees relating to revenue and taxation.

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

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

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

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

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

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

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

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

(b) For purposes of this section:

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

(2) “Budget” means an estimate of all expenses paid or incurred during the production period of a qualified motion picture. It shall
be the same budget used by the qualified taxpayer and production
company for all qualified motion picture purposes.
(3) “Clip use” means a use of any portion of a motion picture,
other than the qualified motion picture, used in the qualified motion
picture.
(4) “Credit certificate” means the certificate issued by the
California Film Commission pursuant to subparagraph (C) of
paragraph (2) of subdivision (g).
(5) (A) “Employee fringe benefits” means the amount allowable
as a deduction under this part to the qualified taxpayer involved
in the production of the qualified motion picture, exclusive of any
amounts contributed by employees, for any year during the
production period with respect to any of the following:
(i) Employer contributions under any pension, profit-sharing,
annuity, or similar plan.
(ii) Employer-provided coverage under any accident or health
plan for employees.
(iii) The employer’s cost of life or disability insurance provided
to employees.
(B) Any amount treated as wages under clause (i) of
subparagraph (A) of paragraph (18) shall not be taken into account
under this paragraph.
(6) “Independent film” means a motion picture with a minimum
budget of one million dollars ($1,000,000) and a maximum budget
of ten million dollars ($10,000,000) that is produced by a company
that is not publicly traded and publicly traded companies do not
own, directly or indirectly, more than 25 percent of the producing
company.
(7) “Licensing” means any grant of rights to distribute the
qualified motion picture, in whole or in part.
(8) “New use” means any use of a motion picture in a medium
other than the medium for which it was initially created.
(9) (A) “Postproduction” means the final activities in a qualified
motion picture’s production, including editing, foley recording,
automatic dialogue replacement, sound editing, scoring and music
editing, beginning and end credits, negative cutting, negative
processing and duplication, the addition of sound and visual effects,
soundmixing, film-to-tape transfers, encoding, and color correction.
(B) “Postproduction” does not include the manufacture or
shipping of release prints.
“Preproduction” means the process of preparation for actual physical production which begins after a qualified motion picture has received a firm agreement of financial commitment, or is greenlit, with, for example, the establishment of a dedicated production office, the hiring of key crew members, and includes, but is not limited to, activities that include location scouting and execution of contracts with vendors of equipment and stage space.

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

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

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

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

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

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

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

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

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

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

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

(iv) An independent film.

(v) A television series that relocated to California.
(B) To qualify as a “qualified motion picture,” all of the following conditions shall be satisfied:

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

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

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

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

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

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

(16) “Qualified expenditures” means amounts paid or incurred to purchase or lease tangible personal property used within this state in the production of a qualified motion picture and payments, including qualified wages, for services performed within this state in the production of a qualified motion picture.
(17) (A) “Qualified taxpayer” means a taxpayer who has paid or incurred qualified expenditures and has been issued a credit certificate by the California Film Commission pursuant to subdivision (g).

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

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

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

(i) Any wages required to be reported under Section 13050 subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code that were paid or incurred by any taxpayer involved in the production of a qualified motion picture with respect to a qualified individual for services performed on the qualified motion picture production within California this state.

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

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

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

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

(i) Expenses, including wages, related to new use, reuse, clip use, licensing, secondary markets, or residual compensation, or the creation of any ancillary product, including, but not limited to, a soundtrack album, toy, game, trailer, or teaser.
(ii) Expenses, including wages, paid or incurred with respect to
collection, development, turnaround, or any rights thereto.
(iii) Expenses, including wages, related to financing, overhead,
marketing, promotion, or distribution of a qualified motion picture.
(iv) Expenses, including wages, paid per person per qualified
motion picture for writers, directors, music directors, music
composers, music supervisors, producers, and performers, other
than background actors with no scripted lines.
(19) “Residual compensation” means supplemental
compensation paid at the time that a motion picture is exhibited
through new use, reuse, clip use, or in secondary markets, as
distinguished from payments made during production.
(20) “Reuse” means any use of a qualified motion picture in the
same medium for which it was created, following the initial use
in that medium.
(21) “Secondary markets” means media in which a qualified
motion picture is exhibited following the initial media in which it
is exhibited.
(22) “Television series that relocated to California” means a
television series, without regard to episode length or initial media
exhibition, that filmed all of its prior season or seasons outside of
California and for which the taxpayer certifies that the credit
provided pursuant to this section is the primary reason for
relocating to California.
(c) (1) Notwithstanding subdivision (i) of Section 23036,
relating to credits attributable to a pass-through business entity, in
the case where the credit allowed by this section exceeds the
taxpayer’s tax liability computed under this part, a qualified
taxpayer may elect to assign any portion of the credit allowed
under this section to one or more affiliated corporations for each
taxable year in which the credit is allowed. For purposes of this
subdivision, “affiliated corporation” has the meaning provided in
subdivision (b) of Section 25110, as that section was amended by
Chapter 881 of the Statutes of 1993, as of the last day of the taxable
year in which the credit is allowed, except that “100 percent” is
substituted for “more than 50 percent” wherever it appears in the
section, and “voting common stock” is substituted for “voting
stock” wherever it appears in the section.
(2) The election provided in paragraph (1):
(A) May be based on any method selected by the qualified taxpayer that originally receives the credit.

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

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

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

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

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

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

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

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

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

(9) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to
any standard, criterion, procedure, determination, rule, notice, or
guideline established or issued by the Franchise Tax Board
pursuant to this subdivision.
(10) Subdivision (i) of Section 23036 shall not apply to any
credit sold pursuant to this subdivision.
(11) For purposes of this subdivision:
(A) An affiliated corporation or corporations that are assigned
a credit pursuant to paragraph (1) shall be treated as a qualified
taxpayer pursuant to paragraph (1) of subdivision (a).
(B) The unrelated party or parties that purchase a credit pursuant
to paragraph (3) shall be treated as a qualified taxpayer pursuant
to paragraph (1) of subdivision (a).
(d) No credit shall be allowed pursuant to this section unless
the qualified taxpayer provides the following to the California
Film Commission:
(1) Identification of each qualified individual.
(2) The specific start and end dates of production.
(3) The total wages paid.
(4) The amount of qualified wages paid to each qualified
individual.
(5) The copyright registration number, as reflected on the
certificate of registration issued under the authority of Section 410
of Title 17 of the United States Code, relating to registration of
claim and issuance of certificate. The registration number shall be
provided on the return claiming the credit.
(6) The total amounts paid or incurred to purchase or lease
tangible personal property used in the production of a qualified
motion picture.
(7) Information to substantiate its qualified expenditures.
(8) Information required by the California Film Commission
under regulations promulgated pursuant to subdivision (g)
necessary to verify the amount of credit claimed.
(e) The California Film Commission may prescribe rules and
regulations to carry out the purposes of this section including any
rules and regulations necessary to establish procedures, processes,
requirements, and rules identified in or required to implement this
section. The regulations shall include provisions to set aside a
percentage of annual credit allocations for independent films.
(f) If the qualified taxpayer fails to provide the copyright
registration number as required in paragraph (5) of subdivision
(d), the credit shall be disallowed and assessed and collected under Section 19051 until the procedures are satisfied.

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

1. On or after July 1, 2009, and before July 1, 2019, allocate tax credits to applicants.
   - (A) Establish a procedure for applicants to file with the California Film Commission a written application, on a form jointly prescribed by the California Film Commission and the Franchise Tax Board for the allocation of the tax credit. The application shall include, but not be limited to, the following information:
     1. The budget for the motion picture production.
     2. The number of production days.
     3. A financing plan for the production.
     4. The diversity of the workforce employed by the applicant, including, but not limited to, the ethnic and racial makeup of the individuals employed by the applicant during the production of the qualified motion picture, to the extent possible.
     5. Any other information deemed relevant by the California Film Commission or the Franchise Tax Board.
   - (B) Establish criteria, consistent with the requirements of this section, for allocating tax credits.
   - (C) Determine and designate applicants who meet the requirements of this section.
   - (D) Process and approve, or reject, all applications on a first-come-first-served basis.
   - (E) Subject to the annual cap established as provided in subdivision (i), allocate an aggregate amount of credits under this section and Section 17053.85, and allocate any carryover of unallocated credits from prior years.

2. Certify tax credits allocated to qualified taxpayers.
   - (A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant.
   - (B) Establish audit requirements that must be satisfied before a credit certificate may be issued by the California Film Commission.
   - (C) Issue a credit certificate to a qualified taxpayer upon completion of the qualified motion picture, reflecting the credit amount allocated after qualified expenditures have been verified.
under this section. The amount of a credit shown in the credit
certificate shall not exceed the amount of credit allocated to that
qualified taxpayer pursuant to this section.

(3) (A) Provide the Legislative Analyst’s Office with all
application materials sent to the film commission, including, but
not limited to, all of the following:

(i) The expenditures of the applicants, by type of production
and recipient, for both those qualified for the credit and those not
qualified.

(ii) The applicant’s amount of sales tax and financial situation,
including, but not limited to, earnings, profits and losses, United
States Security and Exchange Commission filings, and annual
reports for all subsidiaries and principals, and competitive
environment.

(iii) Evidence, when possible, that filming or activity would have
occurred elsewhere but for the credit.

(iv) For all qualified taxpayers that are part of the controlled
group for every year it applies and in the year the credit is
received, a list of all other members of the commonly controlled
group, as defined in Section 25105, or members of the combined
reporting group, as defined in paragraph (3) of subdivision (b) of
Section 25106.5 of Title 18 of the California Code of Regulations,
that filmed productions or planned to film productions.

(v) The number of applicants that have applied for the credit
and the number of qualified taxpayers that have received the credit.

(vi) The total amount of qualified wages paid on the qualified
motion picture when the credit is applied for and when the tax
credit certificate is received.

(B) All information shared with the Legislative Analyst’s Office
shall be confidential.

(C) To the extent the film commission is required to amend its
application form to collect the information required by this
paragraph, the film commission shall not be subject to the
requirements of Chapter 3.5 (commencing with Section 11340) of
Part 1 of Division 3 of Title 2 of the Government Code for purposes
of adopting those amendments to the application form.

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

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

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

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

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

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

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

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

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

(k) (1) The Legislative Analyst’s Office shall conduct a study to assess the total economic activity generated by productions that have received a tax credit certificate and productions that were allocated a tax credit certificate pursuant to this section and Section 17053.85. The total economic activity includes, but is not limited to, output, employment, labor income, and payments for
goods and services utilized in productions. The study shall report
the statewide direct, indirect, and induced activity and shall include
the impact of the deferred claiming of the credit.
(2) In the conduct of the study, the State Board of Equalization,
the Franchise Tax Board, the Employment Development
Department, and other relevant agencies are authorized to share
information, including the listing under subdivision (g) of Section
6902.5, but shall retain taxpayer confidentiality. The information
provided subject to this subdivision shall be subject to Section
19542.
(3) The studies shall be reported to the appropriate Assembly
and Senate committees relating to revenue and taxation.
SEC. 5. No reimbursement is required by this act pursuant to
Section 6 of Article XIII B of the California Constitution because
the only costs that may be incurred by a local agency or school
district will be incurred because this act creates a new crime or
infraction, eliminates a crime or infraction, or changes the penalty
for a crime or infraction, within the meaning of Section 17556 of
the Government Code, or changes the definition of a crime within
the meaning of Section 6 of Article XIII B of the California
Constitution.
SEC. 6. This act provides for a tax levy within the meaning of
Article IV of the Constitution and shall go into immediate effect.