

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2700

Introduced by Assembly Member Nazarian

February 21, 2014

An act to ~~amend Section 17053.85 of~~ *add Sections 17053.96 and 23696 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2700, as amended, Nazarian. ~~Personal income taxes: credits: film.~~ *Income taxes: credits: motion pictures: qualified post production costs.*

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to an applicable percentage of either 20% or 25%, respectively, of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture is a television series that relocated to California or is an independent film, as provided. Existing law imposes specified duties on the California Film Commission related to the administration of the credits, including a requirement to allocate the tax credits until July 1, 2017, and limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$100,000,000 through the 2016–17 fiscal year.

This bill would allow credits under the Personal Income Tax Law and the Corporation Tax Law for taxable years beginning on or after January 1, 2015, to be allocated by the California Film Commission

on and after July 1, 2015 and before July 1, 2020, in an amount equal to 25% of qualified post production costs, as defined, for qualified motion pictures. This bill would limit the aggregate amount of these new credits to be allocated in each fiscal year to an unspecified amount, and would impose specified duties on the California Film Commission related to the administration of the credits, including a requirement to allocate the tax credits until July 1, 2020.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law allows various credits against the taxes imposed by that law, 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.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

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

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

1 SECTION 1. Section 17053.96 is added to the Revenue and
2 Taxation Code, to read:
3 17053.96. (a) (1) For taxable years beginning on or after
4 January 1, 2015, there shall be allowed to a qualified taxpayer a
5 credit against the "net tax," as defined in Section 17039, in an
6 amount equal to 25 percent of the qualified post production costs
7 for the post production of a qualified motion picture at a qualified
8 production facility. A credit shall not be allowed under this section
9 for any qualified post production costs for the post production of
10 a qualified motion picture at a qualified production facility if a
11 credit has been claimed for those same costs under Section
12 17053.85.
13 (2) The credit shall be allowed for the taxable year in which
14 the California Film Commission issues the credit certificate
15 pursuant to subdivision (f) for the qualified post production costs,
16 and shall be for the applicable percentage of all qualified post
17 production costs paid or incurred by the qualified taxpayer in all
18 taxable years for that qualified motion picture.

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

5 (b) *For purposes of this section:*

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

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

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

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

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

20 (2) (A) *“Post production” means the final activities in a*
21 *qualified motion picture’s production, including editing, foley*
22 *recording, automatic dialogue replacement, sound editing, scoring,*
23 *music track recording by musicians and music editing, beginning*
24 *and end credits, negative cutting, negative processing and*
25 *duplication, the addition of sound and visual effects, sound mixing,*
26 *film-to-tape transfers, encoding, and color correction.*

27 (B) *“Post production” does not include the manufacture or*
28 *shipping of release prints.*

29 (3) *“Post production facility” means a building, a complex or*
30 *buildings, or both, and their improvements in which films are*
31 *intended to be post produced.*

32 (4) (A) *“Qualified individual” means any individual who*
33 *performs services in an activity related to the post production of*
34 *a qualified motion picture.*

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

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

- 1 (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of
2 the Internal Revenue Code, of the qualified taxpayer.
- 3 (5) (A) “Qualified motion picture” means a motion picture that
4 is produced for distribution to the general public, regardless of
5 medium, that is one of the following:
- 6 (i) A feature with a minimum production budget of one million
7 dollars (\$1,000,000).
- 8 (ii) A movie of the week or miniseries with a minimum
9 production budget of five hundred thousand dollars (\$500,000).
- 10 (iii) A new one-hour television series of episodes longer than
11 40 minutes each of running time, exclusive of commercials, that
12 is produced in California, with a minimum production budget of
13 one million dollars (\$1,000,000) per episode.
- 14 (iv) An independent film.
- 15 (v) A television series that relocated to California.
- 16 (vi) A television series.
- 17 (vii) A pilot for a new television series that is longer than 40
18 minutes of running time, exclusive of commercials, that is produced
19 in California, and with a minimum production budget of one
20 million dollars (\$1,000,000).
- 21 (B) A “qualified motion picture” shall satisfy all of the following
22 conditions:
- 23 (i) At least 75 percent of the post production work must occur
24 wholly in California or 75 percent of the post production budget
25 is incurred for payment for services performed within the state
26 and the purchase or rental of property used within the state.
- 27 (ii) Post production of the qualified motion picture is completed
28 within 30 months from the date on which the qualified taxpayer’s
29 application is approved by the California Film Commission. For
30 purposes of this section, a qualified motion picture is “completed”
31 when the process of post production has been finished.
- 32 (C) “Qualified motion picture” shall not include commercial
33 advertising, music videos, a motion picture produced for private
34 noncommercial use, such as weddings, graduations, or as part of
35 an educational course and made by students, a news program,
36 current events or public events program, talk show, game show,
37 reality television program, documentaries, or any production that
38 falls within the record keeping requirements of Section 2257 of
39 Title 18 of the United States Code.

1 (6) “*Qualified post production costs*” means amounts paid or
2 incurred to perform post production work on a qualified motion
3 picture including, but not limited to, amounts paid or incurred for
4 tangible personal property purchased or leased, and used, within
5 this state in the post production of a qualified motion picture and
6 any payments, including qualified wages, for services performed
7 within this state in the post production of a qualified motion
8 picture.

9 (7) “*Qualified post production facility*” means a post production
10 facility located in the state and engaged in finishing a qualified
11 motion picture.

12 (8) (A) “*Qualified taxpayer*” means a taxpayer who has paid
13 or incurred qualified post production costs and has been issued a
14 credit certificate by the California Film Commission pursuant to
15 subdivision (f).

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

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

26 (i) Any wages subject to withholding under Division 6
27 (commencing with Section 13000) of the Unemployment Insurance
28 Code that were paid or incurred by any taxpayer involved in the
29 post production of a qualified motion picture with respect to a
30 qualified individual for services performed on the post production
31 of a qualified motion picture within this state.

32 (ii) The portion of any employee fringe benefits paid or incurred
33 by any taxpayer involved in the post production of the qualified
34 motion picture that are properly allocable to qualified wage
35 amounts described in clauses (i), (iii), and (iv).

36 (iii) Any payments made to a qualified entity for services
37 performed in this state by qualified individuals within the meaning
38 of paragraph (3).

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

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

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

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

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

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

17 (c) (1) *Notwithstanding any other law, a qualified taxpayer*
18 *may sell any credit allowed under this section to an unrelated*
19 *party.*

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

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

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

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

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

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

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

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

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

17 (1) Identification of each qualified individual.

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

19 (3) The total wages paid.

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

22 (5) Verification of completion of the post production of the
23 qualified motion picture.

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

27 (7) Information to substantiate its qualified post production
28 costs.

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

32 (e) The California Film Commission may prescribe rules and
33 regulations to carry out the purposes of this section including any
34 rules and regulations necessary to establish procedures, processes,
35 requirements, application fee structure, and rules identified in or
36 required to implement this section, including credit and logo
37 requirements.

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

1 (I) On or and after July 1, 2015, and before July 1, 2020,
2 allocate tax credits to applicants.

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

9 (i) The budget for the post production of the qualified motion
10 picture.

11 (ii) The number of post production days.

12 (iii) All members of a combined reporting group, if known at
13 the time of the application.

14 (iv) Financial information, if available, including, but not limited
15 to, the most recently produced balance sheets, annual statements
16 of profits and losses, audited or unaudited financial statements,
17 summary budget projections or results, or the functional equivalent
18 of these documents of a partnership or owner of a single member
19 limited liability company that is disregarded pursuant to Section
20 23038. The information provided pursuant to this clause shall be
21 confidential and shall not be subject to public disclosure.

22 (v) The names of all partners in a partnership not publicly
23 traded or the names of all members of a limited liability company
24 classified as a partnership not publicly traded for California
25 income tax purposes that have a financial interest in the applicant's
26 qualified motion picture. The information provided pursuant to
27 this clause shall be confidential and shall not be subject to public
28 disclosure.

29 (vi) Any other information deemed relevant by the California
30 Film Commission or the Franchise Tax Board.

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

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

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

37 (E) Subject to the annual cap established as provided in
38 subdivision (i), allocate an aggregate amount of credits under this
39 section and Section 23696, and allocate any carryover of
40 unallocated credits from prior years.

- 1 (2) *Certify tax credits allocated to qualified taxpayers.*
2 (A) *Establish a verification procedure for the amount of*
3 *qualified post production costs paid or incurred by the applicant,*
4 *including, but not limited to, updates to the information in*
5 *subparagraph (A) of paragraph (1) of subdivision (f).*
6 (B) *Establish audit requirements that must be satisfied before*
7 *a credit certificate may be issued.*
8 (C) *Issue a credit certificate to a qualified taxpayer upon*
9 *completion of post production of the qualified motion picture*
10 *reflecting the credit amount allocated after qualified post*
11 *production costs have been verified under this section. The amount*
12 *of credit shown in the credit certificate shall not exceed the amount*
13 *of credit allocated to that qualified taxpayer pursuant to this*
14 *section.*
15 (3) *The information provided to the California Film Commission*
16 *pursuant to this section shall constitute confidential tax information*
17 *for purposes of Article 2 (commencing with Section 19542) of*
18 *Chapter 7 of Part 10.2.*
19 (g) *Notwithstanding paragraph (3) of subdivision (f), the*
20 *California Film Commission shall annually post on its Internet*
21 *Web site and make available for public release information relating*
22 *to the qualified taxpayers and qualified motion pictures that*
23 *received a tax credit allocation pursuant to this section. Nothing*
24 *in this subdivision shall be construed to make the information*
25 *submitted by an applicant for a tax credit under this section a*
26 *public record.*
27 (h) (1) *The aggregate amount of credits that may be allocated*
28 *in any fiscal year pursuant to this section and Section 23696 shall*
29 *be an amount equal to the sum of all of the following:*
30 (A) *_____dollars (\$_____) in credits for the 2015–16 fiscal year*
31 *and each fiscal year thereafter, through and including the 2019–20*
32 *fiscal year.*
33 (B) *The unused allocation credit amount, if any, for the*
34 *preceding fiscal year.*
35 (C) *The amount of previously allocated credits not certified.*
36 (2) *If the amount of credits applied for in any particular fiscal*
37 *year exceeds the aggregate amount of tax credits authorized to be*
38 *allocated under this section, that excess shall be treated as having*
39 *been applied for on the first day of the subsequent fiscal year.*
40 *However, credits may not be allocated from a fiscal year other*

1 *than the fiscal year in which the credit was originally applied for*
2 *or the immediately succeeding fiscal year.*

3 *SEC. 2. Section 23696 is added to the Revenue and Taxation*
4 *Code, to read:*

5 *23696. (a) (1) For taxable years beginning on or after January*
6 *1, 2015, there shall be allowed to a qualified taxpayer a credit*
7 *against the “tax,” as defined in Section 23036, in an amount equal*
8 *to 25 percent of the qualified post production costs for the post*
9 *production of a qualified motion picture at a qualified production*
10 *facility. A credit shall not be allowed under this section for any*
11 *qualified post production costs for the post production of a*
12 *qualified motion picture at a qualified production facility if a credit*
13 *has been claimed for those same costs under Section 23695.*

14 *(2) The credit shall be allowed for the taxable year in which*
15 *the California Film Commission issues the credit certificate*
16 *pursuant to subdivision (f) for the qualified post production costs,*
17 *and shall be for the applicable percentage of all qualified post*
18 *production costs paid or incurred by the qualified taxpayer in all*
19 *taxable years for that qualified motion picture.*

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

24 *(b) For purposes of this section:*

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

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

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

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

36 *(B) Any amount treated as wages under clause (i) of*
37 *subparagraph (A) of paragraph (9) shall not be taken into account*
38 *under this paragraph.*

39 *(2) (A) “Post production” means the final activities in a*
40 *qualified motion picture’s production, including editing, Foley*

1 recording, automatic dialogue replacement, sound editing, scoring,
2 music track recording by musicians and music editing, beginning
3 and end credits, negative cutting, negative processing and
4 duplication, the addition of sound and visual effects, sound mixing,
5 film-to-tape transfers, encoding, and color correction.

6 (B) “Post production” does not include the manufacture or
7 shipping of release prints.

8 (3) “Post production facility” means a building, a complex or
9 buildings, or both, and their improvements in which films are
10 intended to be post produced.

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

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

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

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

21 (5) (A) “qualified motion picture” means a motion picture that
22 is produced for distribution to the general public, regardless of
23 medium, that is one of the following:

24 (i) A feature with a minimum production budget of one million
25 dollars (\$1,000,000).

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

28 (iii) A new one-hour television series of episodes longer than
29 40 minutes each of running time, exclusive of commercials, that
30 is produced in California, with a minimum production budget of
31 one million dollars (\$1,000,000) per episode.

32 (iv) An independent film.

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

34 (vi) A television series.

35 (vii) A pilot for a new television series that is longer than 40
36 minutes of running time, exclusive of commercials, that is produced
37 in California, and with a minimum production budget of one
38 million dollars (\$1,000,000).

39 (B) A “qualified motion picture” shall satisfy all of the following
40 conditions:

- 1 (i) At least 75 percent of the post production work must occur
2 wholly in California or 75 percent of the post production budget
3 is incurred for payment for services performed within the state
4 and the purchase or rental of property used within the state.
- 5 (ii) Post production of the qualified motion picture is completed
6 within 30 months from the date on which the qualified taxpayer's
7 application is approved by the California Film Commission. For
8 purposes of this section, a qualified motion picture is "completed"
9 when the process of post production has been finished.
- 10 (C) "Qualified motion picture" shall not include commercial
11 advertising, music videos, a motion picture produced for private
12 noncommercial use, such as weddings, graduations, or as part of
13 an educational course and made by students, a news program,
14 current events or public events program, talk show, game show,
15 reality television program, documentaries, or any production that
16 falls within the record keeping requirements of Section 2257 of
17 Title 18 of the United States Code.
- 18 (6) "Qualified post production costs" means amounts paid or
19 incurred to perform post production work on a qualified motion
20 picture including, but not limited to, amounts paid or incurred for
21 tangible personal property purchased or leased, and used, within
22 this state in the post production of a qualified motion picture and
23 any payments, including qualified wages, for services performed
24 within this state in the post production of a qualified motion
25 picture.
- 26 (7) "Qualified post production facility" means a post production
27 facility located in the state and engaged in finishing a qualified
28 motion picture.
- 29 (8) (A) "Qualified taxpayer" means a taxpayer who has paid
30 or incurred qualified post production costs and has been issued a
31 credit certificate by the California Film Commission pursuant to
32 subdivision (f).
- 33 (B) In the case of any pass-thru entity, the determination of
34 whether a taxpayer is a qualified taxpayer under this section shall
35 be made at the entity level and any credit under this section is not
36 allowed to the pass-thru entity, but shall be passed through to the
37 partners or shareholders in accordance with applicable provisions
38 of Part 10 (commencing with Section 17001) or Part 11
39 (commencing with Section 23001). For purposes of this paragraph,

1 “pass-thru entity” means any entity taxed as a partnership or “S”
2 corporation.

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

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

10 (ii) The portion of any employee fringe benefits paid or incurred
11 by any taxpayer involved in the post production of the qualified
12 motion picture that are properly allocable to qualified wage
13 amounts described in clauses (i), (iii), and (iv).

14 (iii) Any payments made to a qualified entity for services
15 performed in this state by qualified individuals within the meaning
16 of paragraph (3).

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

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

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

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

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

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

33 (c) (1) Notwithstanding subdivision (i) of Section 23036, in the
34 case where the credit allowed by this section exceeds the taxpayer’s
35 tax liability computed under this part, a qualified taxpayer may
36 elect to assign any portion of the credit allowed under this section
37 to one or more affiliated corporations for each taxable year in
38 which the credit is allowed. For purposes of this subdivision,
39 “affiliated corporation” has the meaning provided in subdivision
40 (b) of Section 25110, as that section was amended by Chapter 881

1 of the Statutes of 1993, as of the last day of the taxable year in
2 which the credit is allowed, except that “100 percent” is substituted
3 for “more than 50 percent” wherever it appears in the section,
4 and “voting common stock” is substituted for “voting stock”
5 wherever it appears in the section.

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

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

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

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

15 (D) Shall be reported to the Franchise Tax Board, in the form
16 and manner specified by the Franchise Tax Board, along with all
17 required information regarding the assignment of the credit,
18 including the corporation number, the federal employer
19 identification number, or other taxpayer identification number of
20 the assignee, and the amount of the credit assigned.

21 (3) (A) Notwithstanding any other law, a qualified taxpayer
22 may sell any credit allowed under this section to an unrelated
23 party.

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

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

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

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

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

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

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

15 (10) *Subdivision (g) of Section 17039 shall not apply to any*
16 *credit sold pursuant to this subdivision.*

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 post production.*

22 (3) *The total wages paid.*

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

25 (5) *Verification of completion of the post production of the*
26 *qualified motion picture.*

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

30 (7) *Information to substantiate its qualified post production*
31 *costs.*

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

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

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

3 (1) On or and after July 1, 2015, and before July 1, 2020,
4 allocate tax credits to applicants.

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

11 (i) The budget for the post production of the qualified motion
12 picture.

13 (ii) The number of post production days.

14 (iii) All members of a combined reporting group, if known at
15 the time of the application.

16 (iv) Financial information, if available, including, but not limited
17 to, the most recently produced balance sheets, annual statements
18 of profits and losses, audited or unaudited financial statements,
19 summary budget projections or results, or the functional equivalent
20 of these documents of a partnership or owner of a single member
21 limited liability company that is disregarded pursuant to Section
22 23038. The information provided pursuant to this clause shall be
23 confidential and shall not be subject to public disclosure.

24 (v) The names of all partners in a partnership not publicly
25 traded or the names of all members of a limited liability company
26 classified as a partnership not publicly traded for California
27 income tax purposes that have a financial interest in the applicant's
28 qualified motion picture. The information provided pursuant to
29 this clause shall be confidential and shall not be subject to public
30 disclosure.

31 (vi) Any other information deemed relevant by the California
32 Film Commission or the Franchise Tax Board.

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

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

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

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

1 *section and Section 23696, 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*
5 *qualified post production costs paid or incurred by the applicant,*
6 *including, but not limited to, updates to the information in*
7 *subparagraph (A) of paragraph (1) of subdivision (f).*

8 *(B) Establish audit requirements that must be satisfied before*
9 *a credit certificate may be issued.*

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

17 *(3) The information provided to the California Film Commission*
18 *pursuant to this section shall constitute confidential tax information*
19 *for purposes of Article 2 (commencing with Section 19542) of*
20 *Chapter 7 of Part 10.2.*

21 *(g) Notwithstanding paragraph (3) of subdivision (f), the*
22 *California Film Commission shall annually post on its Internet*
23 *Web site and make available for public release information relating*
24 *to the qualified taxpayers and qualified motion pictures that*
25 *received a tax credit allocation pursuant to this section. Nothing*
26 *in this subdivision shall be construed to make the information*
27 *submitted by an applicant for a tax credit under this section a*
28 *public record.*

29 *(h) (1) The aggregate amount of credits that may be allocated*
30 *in any fiscal year pursuant to this section and Section 23696 shall*
31 *be an amount equal to the sum of all of the following:*

32 *(A) _____ dollars (\$_____) in credits for the 2015–16 fiscal year*
33 *and each fiscal year thereafter, through and including the 2019–20*
34 *fiscal year.*

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

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

38 *(2) If the amount of credits applied for in any particular fiscal*
39 *year exceeds the aggregate amount of tax credits authorized to be*
40 *allocated under this section, that excess shall be treated as having*

1 *been applied for on the first day of the subsequent fiscal year.*
2 *However, credits may not be allocated from a fiscal year other*
3 *than the fiscal year in which the credit was originally applied for*
4 *or the immediately succeeding fiscal year.*

5 *SEC. 3. This act provides for a tax levy within the meaning of*
6 *Article IV of the Constitution and shall go into immediate effect.*

7 ~~SECTION 1. Section 17053.85 of the Revenue and Taxation~~
8 ~~Code is amended to read:~~

9 ~~17053.85. (a) (1) For taxable years beginning on or after~~
10 ~~January 1, 2011, there shall be allowed to a qualified taxpayer a~~
11 ~~credit against the “net tax,” as defined in Section 17039, in an~~
12 ~~amount equal to the applicable percentage, as specified in~~
13 ~~paragraph (4), of the qualified expenditures for the production of~~
14 ~~a qualified motion picture in California.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (10) ~~“Preproduction” means the process of preparation for actual~~
40 ~~physical production which begins after a qualified motion picture~~

1 has received a firm agreement of financial commitment, or is
2 greenlit, with, for example, the establishment of a dedicated
3 production office, the hiring of key crew members, and includes,
4 but is not limited to, activities that include location scouting and
5 execution of contracts with vendors of equipment and stage space.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 ~~(16) "Qualified expenditures" means amounts paid or incurred~~
35 ~~to purchase or lease tangible personal property used within this~~
36 ~~state in the production of a qualified motion picture and payments,~~
37 ~~including qualified wages, for services performed within this state~~
38 ~~in the production of a qualified motion picture.~~

39 ~~(17) (A) "Qualified taxpayer" means a taxpayer who has paid~~
40 ~~or incurred qualified expenditures and has been issued a credit~~

1 certificate by the California Film Commission pursuant to
2 subdivision (g):

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

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

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

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

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

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

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

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

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

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

38 (iv) Expenses, including wages, paid per person per qualified
39 motion picture for writers, directors, music directors, music

1 composers, music supervisors, producers, and performers, other
2 than background actors with no scripted lines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 ~~(1) On or after July 1, 2009, and before July 1, 2017, allocate~~
14 ~~tax credits to applicants:~~

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

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

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

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

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

27 ~~(v) All members of a combined reporting group, if known at~~
28 ~~the time of the application.~~

29 ~~(vi) Financial information, if available, including, but not limited~~
30 ~~to, the most recently produced balance sheets, annual statements~~
31 ~~of profits and losses, audited or unaudited financial statements,~~
32 ~~summary budget projections or results, or the functional equivalent~~
33 ~~of these documents of a partnership or owner of a single member~~
34 ~~limited liability company that is disregarded pursuant to Section~~
35 ~~23038. The information provided pursuant to this clause shall be~~
36 ~~confidential and shall not be subject to public disclosure.~~

37 ~~(vii) The names of all partners in a partnership not publicly~~
38 ~~traded or the names of all members of a limited liability company~~
39 ~~classified as a partnership not publicly traded for California income~~
40 ~~tax purposes that have a financial interest in the applicant's~~

1 qualified motion picture. The information provided pursuant to
2 this clause shall be confidential and shall not be subject to public
3 disclosure.

4 (viii) Detailed narratives, for use only by the Legislative
5 Analyst's Office in conducting a study of the effectiveness of this
6 credit, that describe the extent to which the credit is expected to
7 influence or affect filming and other business location decisions,
8 hiring decisions, salary decisions, and any other financial matters
9 of the applicant.

10 (ix) Any other information deemed relevant by the California
11 Film Commission or the Franchise Tax Board.

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

14 (C) Determine and designate applicants who meet the
15 requirements of this section.

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

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

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

23 (A) Establish a verification procedure for the amount of qualified
24 expenditures paid or incurred by the applicant, including, but not
25 limited to, updates to the information in subparagraph (A) of
26 paragraph (1) of subdivision (g).

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

30 (C) (i) Establish a procedure for a qualified taxpayer to report
31 to the California Film Commission, prior to the issuance of a credit
32 certificate, the following information:

33 (I) If readily available, a list of the states, provinces, or other
34 jurisdictions in which any member of the applicant's combined
35 reporting group in the same business unit as the qualified taxpayer
36 that, in the preceding calendar year, has produced a qualified
37 motion picture intended for release in the United States market.
38 For purposes of this clause, "qualified motion picture" shall not
39 include any episodes of a television series that were complete or
40 in production prior to July 1, 2009.

1 ~~(H) Whether a qualified motion picture described in subclause~~
2 ~~(I) was awarded any financial incentive by the state, province, or~~
3 ~~other jurisdiction that was predicated on the performance of~~
4 ~~primary principal photography or postproduction in that location.~~
5 ~~(ii) The California Film Commission may provide that the report~~
6 ~~required by this subparagraph be filed in a single report provided~~
7 ~~on a calendar year basis for those qualified taxpayers that receive~~
8 ~~multiple credit certificates in a calendar year.~~
9 ~~(D) 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 ~~(3) Obtain, when possible, the following information from~~
16 ~~applicants that do not receive an allocation of credit:~~
17 ~~(A) Whether the qualified motion picture that was the subject~~
18 ~~of the application was completed.~~
19 ~~(B) If completed, in which state or foreign jurisdiction was the~~
20 ~~primary principal photography completed.~~
21 ~~(C) Whether the applicant received any financial incentives~~
22 ~~from the state or foreign jurisdiction to make the qualified motion~~
23 ~~picture in that location.~~
24 ~~(4) Provide the Legislative Analyst's Office, upon request, any~~
25 ~~or all application materials or any other materials received from,~~
26 ~~or submitted by, the applicants, in electronic format when available,~~
27 ~~including, but not limited to, information provided pursuant to~~
28 ~~clauses (i) to (ix), inclusive, of subparagraph (A) of paragraph (1).~~
29 ~~(5) The information provided to the California Film Commission~~
30 ~~pursuant to this section shall constitute confidential tax information~~
31 ~~for purposes of Article 2 (commencing with Section 19542) of~~
32 ~~Chapter 7 of Part 10.2.~~
33 ~~(h) (1) The California Film Commission shall annually provide~~
34 ~~the Franchise Tax Board, the Legislative Analyst's Office, and the~~
35 ~~board with a list of qualified taxpayers and the tax credit amounts~~
36 ~~allocated to each qualified taxpayer by the California Film~~
37 ~~Commission. The list shall include the names and taxpayer~~
38 ~~identification numbers, including taxpayer identification numbers~~
39 ~~of each partner or shareholder, as applicable, of the qualified~~
40 ~~taxpayer.~~

1 ~~(2) (A) Notwithstanding paragraph (5) of subdivision (g), the~~
2 ~~California Film Commission shall annually post on its Internet~~
3 ~~Web site and make available for public release the following:~~

4 ~~(i) A table which includes all of the following information: a~~
5 ~~list of qualified taxpayers and the tax credit amounts allocated to~~
6 ~~each qualified taxpayer by the California Film Commission, the~~
7 ~~number of production days in California the qualified taxpayer~~
8 ~~represented in its application would occur, the number of California~~
9 ~~jobs that the qualified taxpayer represented in its application would~~
10 ~~be directly created by the production, and the total amount of~~
11 ~~qualified expenditures expected to be spent by the production.~~

12 ~~(ii) A narrative staff summary describing the production of the~~
13 ~~qualified taxpayer as well as background information regarding~~
14 ~~the qualified taxpayer contained in the qualified taxpayer's~~
15 ~~application for the credit.~~

16 ~~(B) Nothing in this subdivision shall be construed to make the~~
17 ~~information submitted by an applicant for a tax credit under this~~
18 ~~section a public record.~~

19 ~~(i) (1) The aggregate amount of credits that may be allocated~~
20 ~~in any fiscal year pursuant to this section and Section 23685 shall~~
21 ~~be an amount equal to the sum of all of the following:~~

22 ~~(A) One hundred million dollars (\$100,000,000) in credits for~~
23 ~~the 2009-10 fiscal year and each fiscal year thereafter, through~~
24 ~~and including the 2016-17 fiscal year.~~

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

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

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

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

1 ~~(4) Any act that reduces the amount that may be allocated~~
2 ~~pursuant to paragraph (1) constitutes a change in state taxes for~~
3 ~~the purpose of increasing revenues within the meaning of Section~~
4 ~~3 of Article XIII A of the California Constitution and may be passed~~
5 ~~by not less than two-thirds of all Members elected to each of the~~
6 ~~two houses of the Legislature.~~
7 ~~(j) The California Film Commission shall have the authority to~~
8 ~~allocate tax credits in accordance with this section and in~~
9 ~~accordance with any regulations prescribed pursuant to subdivision~~
10 ~~(e) upon adoption.~~

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