

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 370

Introduced by Senator Lieu

February 20, 2013

~~An act to relating to state government. An act to add Sections 17053.89, 17053.90, 23680, and 23681 to the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 370, as amended, Lieu. ~~State government: incentives for production of commercials. Income tax: credits: qualified commercial production.~~

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill would, for each taxable year beginning on or after January 1, 2013, allow credits under both laws in an amount equal to 15% of a specified amount paid or incurred by a qualified taxpayer, as defined, for the production of a qualified commercial, as defined, inside or outside of the studio zone, not to exceed \$13,000,000 annually for credits for qualified commercials produced within a studio zone and not to exceed \$2,000,000 annually for credits for qualified commercials produced outside of a studio zone in California, as specified. This bill would give the qualified taxpayer the option to carry over the credit or receive a refund, as specified. This bill would make a continuous appropriation from the General Fund to the Franchise Tax Board in the amount allowed for refunds for the purpose of making those refunds.

~~Existing law authorizes the state and local agencies to provide incentives to businesses that engage in specified activities within specified geographic areas.~~

This bill would express the intent of the Legislature to enact legislation that would strengthen the California economy and stimulate job growth by providing incentives for the production of commercials.

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 SECTION 1. Section 17053.89 is added to the Revenue and
 2 Taxation Code, to read:
 3 17053.89. (a) For taxable years beginning on or after January
 4 1, 2013, there shall be allowed to a qualified taxpayer a credit
 5 against the “net tax,” as defined in Section 17039, an amount
 6 equal to 15 percent, except as otherwise provided, of the qualified
 7 expenditures credit base for the production of a qualified
 8 commercial within the studio zone.
 9 (b) For purposes of this section:
 10 (1) (A) “Employee fringe benefits” means the amount allowable
 11 as a deduction under this part to the qualified taxpayer involved
 12 in the production of the qualified commercial, exclusive of any
 13 amounts contributed by employees, for any year during the
 14 production period with respect to any of the following:
 15 (i) Qualified taxpayer contributions under any pension,
 16 profit-sharing, annuity, or similar plan.
 17 (ii) Qualified taxpayer-provided coverage under any accident
 18 or health plan for employees.
 19 (iii) The qualified taxpayer’s cost of life or disability insurance
 20 provided to employees.
 21 (B) Any amount treated as wages under clause (i) of
 22 subparagraph (A) of paragraph (7) shall not be taken into account
 23 under this paragraph.
 24 (C) For the purposes of this paragraph, “employee” means a
 25 qualified individual.
 26 (2) (A) “Qualified commercial” means a commercial or
 27 advertisement composed of moving images and sounds that is
 28 recorded on film, videotape, or other digital medium, created for
 29 display on a network, regional channel, cable, or interactive media,
 30 including, but not limited to, the Internet, mobile devices, in-game
 31 advertising, and experiential advertising where at least 75 percent
 32 of the total qualified expenditures occur wholly within the studio

1 zone. For purposes of this paragraph, mobile devices include
2 cellphones, smartphones, personal digital assistants, and other
3 portable devices with a screen.

4 (B) “Qualified commercial” shall not include any
5 program-length production with an advertising component in
6 excess of five minutes, including an infomercial, news, or current
7 affairs program, interview or talk program, network promotion
8 (short-form content intended to promote other programming),
9 feature film promotion (trailers and teasers), sporting event, game
10 show, award ceremony, daytime drama, reality entertainment
11 program, program intended primarily for industrial, corporate,
12 or institutional end users, public service announcements,
13 fundraising commercial or commercial promoting a political
14 candidate or political issue, a program consisting of more than
15 one-half of the screen time of stock footage, a program produced
16 by an organization described in Section 527 of the Internal Revenue
17 Code, or any production that falls within the recordkeeping
18 requirements of Section 2257 of Title 18 of the United States Code.

19 (3) “Qualified expenditures” means the amount paid or incurred
20 during the taxable year to purchase or lease tangible personal
21 property within the studio zone in the production of a qualified
22 commercial, and to pay for services, including qualified wages,
23 performed within the studio zone in the production of a qualified
24 commercial.

25 (4) “Qualified expenditures credit base” means the amount
26 over five hundred thousand dollars (\$500,000) paid or incurred
27 during the taxable year within the studio zone in qualified
28 expenditures.

29 (5) (A) “Qualified individual” means an individual who
30 performs services during the production period in an activity
31 related to the production of a qualified commercial.

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

34 (i) Any individual related to the qualified taxpayer as described
35 in Section 51(i)(1) of the Internal Revenue Code.

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

38 (6) (A) “Qualified taxpayer” means a taxpayer that is
39 principally engaged in the production of a qualified commercial,
40 has control over the selection of production location, deployment,

1 *or management of the production equipment, directly employs the*
2 *production crew as the person that has control over the hiring and*
3 *firing of the crew on the qualified commercial, and paid or incurred*
4 *at least five hundred thousand dollars (\$500,000) in qualified*
5 *expenditures within the studio zone during the taxable year. All*
6 *members of a commonly controlled group, as defined by*
7 *subdivision (b) of Section 25105, shall be treated as a single*
8 *qualified taxpayer for the purposes of computing qualified*
9 *expenditures.*

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

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

19 *(i) Any wages required to be reported under Section 13050 of*
20 *the Unemployment Insurance Code that were paid or incurred by*
21 *a qualified taxpayer involved in the production of a qualified*
22 *commercial with respect to a qualified individual for services*
23 *performed on the qualified commercial produced within the studio*
24 *zone.*

25 *(ii) Any payments made to a qualified taxpayer for services*
26 *performed in the studio zone by a qualified individual.*

27 *(iii) Remuneration paid to an independent contractor who is a*
28 *qualified individual for services performed within the studio zone*
29 *by that qualified individual.*

30 *(iv) The portion of any employee fringe benefits paid or incurred*
31 *by a qualified taxpayer involved in the production of the qualified*
32 *commercial that are properly allocable to qualified wage amounts*
33 *described in clauses (i), (ii), and (iii).*

34 *(B) “Qualified wages” shall not include expenses, including*
35 *wages, paid per person per qualified commercial for writers,*
36 *directors, music directors, music composers, music supervisors,*
37 *producers, and performers, other than background actors with no*
38 *scripted lines.*

1 (8) “Studio zone” means the area within a circle of 30 miles in
2 radius from the intersection of Beverly Boulevard and La Cienega
3 Boulevard in Los Angeles, California.

4 (c) In the case where the credit allowed under this section
5 exceeds the “net tax,” either of the following may occur:

6 (1) The excess credit may be carried over to reduce the “net
7 tax” in the following taxable year, and succeeding five taxable
8 years, if necessary, until the credit has been exhausted.

9 (2) (A) For the taxable year, 50 percent of the excess credit
10 shall be refunded to the qualified taxpayer, and 50 percent of the
11 excess credit shall be carried over to reduce the “net tax” in the
12 following taxable year.

13 (B) For the following taxable year, if the credit remaining
14 exceeds the “net tax” for that taxable year, the excess credit shall
15 be refunded.

16 (3) There shall be continuously appropriated from the General
17 Fund to the Franchise Tax Board an amount equal to the refunds
18 allowed by this section for the purpose of making those refunds.

19 (d) A credit shall be allowed pursuant to this section only if the
20 qualified taxpayer provides the following to the California Film
21 Commission:

22 (1) The production schedule for each commercial produced in
23 a taxable year.

24 (2) Total qualified expenditures.

25 (3) Total qualified wages paid.

26 (4) Total nonqualified expenditures incurred in California.

27 (5) Agreed upon procedures as prescribed by the California
28 Film Commission and performed by a licensed certified public
29 accountant who performs attest services in California and who
30 has attended a certified public accountant orientation meeting
31 conducted by the California Film Commission.

32 (6) Number of cast and crew members hired for each
33 commercial.

34 (7) Number of days worked by each cast and crew member for
35 each commercial.

36 (8) Number of vendors used during the taxable year.

37 (9) Any other information as requested by the California Film
38 Commission.

39 (e) The California Film Commission may prescribe rules and
40 regulations to carry out the purposes of this section including any

1 rules and regulations necessary to establish procedures, processes,
2 requirements, and rules identified in, or required to, implement
3 this section.

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

6 (1) Establish a procedure for applicants to file with the
7 commission a written application due on or before April 1, 2014,
8 and each April 1 thereafter, on a form jointly prescribed by the
9 commission and the Franchise Tax Board for the allocation of the
10 tax credit.

11 (2) Subject to the annual cap established as provided in
12 subdivision (h), allocate and certify an aggregate amount of credits
13 to qualified taxpayers under this section and Section 23680.

14 (3) Establish a verification procedure for the amount of qualified
15 expenditures paid or incurred by the applicant.

16 (4) Establish audit requirements that must be satisfied before
17 a credit certificate may be issued by the California Film
18 Commission.

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

26 (h) (1) The aggregate amount of credits that may be allocated
27 in any fiscal year pursuant to this section and Section 23680 shall
28 be an amount equal to the sum of all of the following:

29 (A) Thirteen million dollars (\$13,000,000) in credits for the
30 2012–13 fiscal year and each fiscal year thereafter.

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

33 (2) If the amount of credits applied for in any particular fiscal
34 year exceeds the aggregate amount of tax credits authorized to be
35 allocated under this section and Section 23680, the aggregate
36 amount of tax credits shall be allocated to each qualified taxpayer
37 on a pro rata basis.

38 (3) If the amount of credits allocated in a fiscal year is less than
39 the aggregate amount of tax credits authorized to be allocated
40 under this section and Section 23680, the remaining amount shall

1 *be allocated to qualified taxpayers on a pro rata basis, not to*
2 *exceed 15 percent of the amount of the qualified expenditures*
3 *credit base.*

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

8 *SEC. 2. Section 17053.90 is added to the Revenue and Taxation*
9 *Code, to read:*

10 *17053.90. (a) For taxable years beginning on or after January*
11 *1, 2013, there shall be allowed to a qualified taxpayer a credit*
12 *against the “net tax,” as defined in Section 17039, an amount*
13 *equal to 15 percent, except as otherwise provided, of the qualified*
14 *expenditures credit base for the production of a qualified*
15 *commercial outside of the studio zone and within the state.*

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

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

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

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

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

28 *(B) Any amount treated as wages under clause (i) of*
29 *subparagraph (A) of paragraph (7) shall not be taken into account*
30 *under this paragraph.*

31 *(C) For the purposes of this paragraph, “employee” means a*
32 *qualified individual.*

33 *(2) (A) “Qualified commercial” means a commercial or*
34 *advertisement composed of moving images and sounds that is*
35 *recorded on film, videotape, or other digital medium, created for*
36 *display on a network, regional channel, cable, or interactive media,*
37 *including, but not limited to, the Internet, mobile devices, in-game*
38 *advertising, and experiential advertising where at least 75 percent*
39 *of the total qualified expenditures occur wholly outside of the*
40 *studio zone and within the state. For purposes of this paragraph,*

1 *mobile devices include cellphones, smartphones, personal digital*
2 *assistants, and other portable devices with a screen.*

3 (B) *“Qualified commercial” shall not include any*
4 *program-length production with an advertising component in*
5 *excess of five minutes, including an infomercial, news, or current*
6 *affairs program, interview or talk program, network promotion*
7 *(short-form content intended to promote other programming),*
8 *feature film promotion (trailers and teasers), sporting event, game*
9 *show, award ceremony, daytime drama, reality entertainment*
10 *program, program intended primarily for industrial, corporate,*
11 *or institutional end users, public service announcements,*
12 *fundraising commercial or commercial promoting a political*
13 *candidate or political issue, a program consisting of more than*
14 *one-half of the screen time of stock footage, a program produced*
15 *by an organization described in Section 527 of the Internal Revenue*
16 *Code, or any production that falls within the recordkeeping*
17 *requirements of Section 2257 of Title 18 of the United States Code.*

18 (3) *“Qualified expenditures” means the amount paid or incurred*
19 *during the taxable year to purchase or lease tangible personal*
20 *property outside of the studio zone and within the state in the*
21 *production of a qualified commercial, and to pay for services,*
22 *including qualified wages, performed outside of the studio zone*
23 *and within the state in the production of a qualified commercial.*

24 (4) *“Qualified expenditures credit base” means the amount*
25 *over two hundred fifty thousand dollars (\$250,000) paid or*
26 *incurred during the taxable year outside the studio zone in qualified*
27 *expenditures.*

28 (5) (A) *“Qualified individual” means an individual who*
29 *performs services during the production period in an activity*
30 *related to the production of a qualified commercial.*

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

33 (i) *Any individual related to the qualified taxpayer as described*
34 *in Section 51(i)(1) of the Internal Revenue Code.*

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

37 (6) (A) *“Qualified taxpayer” means a taxpayer that is*
38 *principally engaged in the production of a qualified commercial,*
39 *has control over the selection of production location, deployment,*
40 *or management of the production equipment, directly employs the*

1 *production crew as the person that has control over the hiring and*
2 *firing of the crew on the qualified commercial, and paid or incurred*
3 *at least two hundred fifty thousand dollars (\$250,000) in qualified*
4 *expenditures outside of the studio zone and within the state during*
5 *the taxable year. All members of a commonly controlled group,*
6 *as defined by subdivision (b) of Section 25105, shall be treated as*
7 *a single qualified taxpayer for the purposes of computing qualified*
8 *expenditures.*

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

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

18 *(i) Any wages required to be reported under Section 13050 of*
19 *the Unemployment Insurance Code that were paid or incurred by*
20 *a qualified taxpayer involved in the production of a qualified*
21 *commercial with respect to a qualified individual for services*
22 *performed on the qualified commercial produced outside of the*
23 *studio zone and within the state.*

24 *(ii) Any payments made to a qualified entity for services*
25 *performed outside of the studio zone and within the state by*
26 *qualified individuals.*

27 *(iii) Remuneration paid to an independent contractor who is a*
28 *qualified individual for services performed outside of the studio*
29 *zone and within the state by that qualified individual.*

30 *(iv) The portion of any employee fringe benefits paid or incurred*
31 *by a qualified taxpayer involved in the production of the qualified*
32 *commercial that are properly allocable to qualified wage amounts*
33 *described in clauses (i), (ii), and (iii).*

34 *(B) “Qualified wages” shall not include expenses, including*
35 *wages, paid per person per qualified commercial for writers,*
36 *directors, music directors, music composers, music supervisors,*
37 *producers, and performers, other than background actors with no*
38 *scripted lines.*

1 (8) “Studio zone” means the area within a circle of 30 miles in
2 radius from the intersection of Beverly Boulevard and La Cienega
3 Boulevard in Los Angeles, California.

4 (c) In the case where the credit allowed under this section
5 exceeds the “net tax,” either of the following may occur:

6 (1) The excess credit may be carried over to reduce the “net
7 tax” in the following taxable year, and succeeding five taxable
8 years, if necessary, until the credit has been exhausted.

9 (2) (A) For the taxable year, 50 percent of the excess credit
10 shall be refunded to the qualified taxpayer, and 50 percent of the
11 excess credit shall be carried over to reduce the “net tax” in the
12 following taxable year.

13 (B) For the following taxable year, if the credit remaining
14 exceeds the “net tax” for that taxable year, the excess credit shall
15 be refunded.

16 (3) There shall be continuously appropriated from the General
17 Fund to the Franchise Tax Board an amount equal to the refunds
18 allowed by this section for the purpose of making those refunds.

19 (d) A credit shall be allowed pursuant to this section only if the
20 qualified taxpayer provides the following to the California Film
21 Commission:

22 (1) The production schedule for each commercial produced in
23 a taxable year.

24 (2) Total qualified expenditures.

25 (3) Total qualified wages paid.

26 (4) Total nonqualified expenditures incurred in California.

27 (5) Agreed upon procedures as prescribed by the California
28 Film Commission and performed by a licensed certified public
29 accountant to who performs attest services in California and who
30 has attended a certified public accountant orientation meeting
31 conducted by the California Film Commission.

32 (6) Number of cast and crew members hired for each
33 commercial.

34 (7) Number of days worked by each cast and crew member for
35 each commercial.

36 (8) Number of vendors used during the taxable year.

37 (9) Any other information as requested by the California Film
38 Commission.

39 (e) The California Film Commission may prescribe rules and
40 regulations to carry out the purposes of this section including any

1 *rules and regulations necessary to establish procedures, processes,*
2 *requirements, and rules identified in or required to implement this*
3 *section.*

4 *(f) For purposes of this section, the California Film Commission*
5 *shall do the following:*

6 *(1) Establish a procedure for applicants to file with the*
7 *commission a written application due on or before April 1, 2014,*
8 *and each April 1 thereafter, on a form jointly prescribed by the*
9 *commission and the Franchise Tax Board for the allocation of the*
10 *tax credit.*

11 *(2) Subject to the annual cap established as provided in*
12 *subdivision (h), allocate and certify an aggregate amount of credits*
13 *to qualified taxpayers under this section and Section 23681.*

14 *(3) Establish a verification procedure for the amount of qualified*
15 *expenditures paid or incurred by the applicant.*

16 *(4) Establish audit requirements that must be satisfied before*
17 *a credit certificate may be issued by the California Film*
18 *Commission.*

19 *(g) The California Film Commission shall provide the Franchise*
20 *Tax Board annually with a list of qualified taxpayers and the tax*
21 *credit amounts allocated to each qualified taxpayer by the*
22 *California Film Commission. The list shall include the names and*
23 *taxpayer identification numbers, including taxpayer identification*
24 *numbers of each partner or shareholder, as applicable, of the*
25 *qualified taxpayers.*

26 *(h) (1) The aggregate amount of credits that may be allocated*
27 *in any fiscal year pursuant to this section and Section 23681 shall*
28 *be an amount equal to the sum of all of the following:*

29 *(A) Two million dollars (\$2,000,000) in credits for the 2012–13*
30 *fiscal year and each fiscal year thereafter.*

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

33 *(2) If the amount of credits applied for in any particular fiscal*
34 *year exceeds the aggregate amount of tax credits authorized to be*
35 *allocated under this section and Section 23681, the aggregate*
36 *amount of tax credits shall be allocated to each qualified taxpayer*
37 *on a pro rata basis.*

38 *(3) If the amount of credits allocated in a fiscal year is less than*
39 *the aggregate amount of tax credits authorized to be allocated*
40 *under this section and Section 23681, the remaining amount shall*

1 *be allocated to qualified taxpayers on a pro rata basis, not to*
2 *exceed 15 percent of the amount of the qualified expenditures*
3 *credit base.*

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

8 *SEC. 3. Section 23680 is added to the Revenue and Taxation*
9 *Code, to read:*

10 *23680. (a) For taxable years beginning on or after January*
11 *1, 2013, there shall be allowed to a qualified taxpayer a credit*
12 *against the “tax,” as defined in Section 23036, an amount equal*
13 *to 15 percent, except as otherwise provided, of the qualified*
14 *expenditures credit base for the production of a qualified*
15 *commercial within the studio zone.*

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

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

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

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

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

28 *(B) Any amount treated as wages under clause (i) of*
29 *subparagraph (A) of paragraph (7) shall not be taken into account*
30 *under this paragraph.*

31 *(C) For the purposes of this paragraph, “employee” means a*
32 *qualified individual.*

33 *(2) (A) “Qualified commercial” means a commercial or*
34 *advertisement composed of moving images and sounds that is*
35 *recorded on film, videotape, or other digital medium, created for*
36 *display on a network, regional channel, cable, or interactive media,*
37 *including, but not limited to, the Internet, mobile devices, in-game*
38 *advertising, and experiential advertising where at least 75 percent*
39 *of the total qualified expenditures occur wholly within the studio*
40 *zone. For purposes of this paragraph, mobile devices include*

1 cellphones, smartphones, personal digital assistants, and other
2 portable devices with a screen.

3 (B) “Qualified commercial” shall not include any
4 program-length production with an advertising component in
5 excess of five minutes, including an infomercial, news, or current
6 affairs program, interview or talk program, network promotion
7 (short-form content intended to promote other programming),
8 feature film promotion (trailers and teasers), sporting event, game
9 show, award ceremony, daytime drama, reality entertainment
10 program, program intended primarily for industrial, corporate,
11 or institutional end users, public service announcements,
12 fundraising commercial or commercial promoting a political
13 candidate or political issue, a program consisting of more than
14 one-half of the screen time of stock footage, a program produced
15 by an organization described in Section 527 of the Internal Revenue
16 Code, or any production that falls within the recordkeeping
17 requirements of Section 2257 of Title 18 of the United States Code.

18 (3) “Qualified expenditures” means the amount paid or incurred
19 during the taxable year to purchase or lease tangible personal
20 property within the studio zone in the production of a qualified
21 commercial, and to pay for services, including qualified wages,
22 performed within the studio zone in the production of a qualified
23 commercial.

24 (4) “Qualified expenditures credit base” means the amount
25 over five hundred thousand dollars (\$500,000) paid or incurred
26 during the taxable year within the studio zone in qualified
27 expenditures.

28 (5) (A) “Qualified individual” means an individual who
29 performs services during the production period in an activity
30 related to the production of a qualified commercial.

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

33 (i) Any individual related to the qualified taxpayer as described
34 in Section 51(i)(1) of the Internal Revenue Code.

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

37 (6) (A) “Qualified taxpayer” means a taxpayer that is
38 principally engaged in the production of a qualified commercial,
39 has control over the selection of production location, deployment,
40 or management of the production equipment, directly employs the

1 *production crew as the person that has control over the hiring and*
2 *firing of the crew on the qualified commercial, and paid or incurred*
3 *at least five hundred thousand dollars (\$500,000) in qualified*
4 *expenditures within the studio zone during the taxable year. All*
5 *members of a commonly controlled group, as defined by*
6 *subdivision (b) of Section 25105, shall be treated as a single*
7 *qualified taxpayer for the purposes of computing qualified*
8 *expenditures.*

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

17 *(ii) In the case of an “S” corporation, the credit allowed under*
18 *this section shall not be used by an “S” corporation as a credit*
19 *against a tax imposed under Chapter 4.5 (commencing with Section*
20 *23800) of Part 11 of Division 2.*

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

22 *(i) Any wages required to be reported under Section 13050 of*
23 *the Unemployment Insurance Code that were paid or incurred by*
24 *a qualified taxpayer involved in the production of a qualified*
25 *commercial with respect to a qualified individual for services*
26 *performed on the qualified commercial produced within the studio*
27 *zone.*

28 *(ii) Any payments made to a qualified taxpayer for services*
29 *performed in the studio zone by a qualified individual.*

30 *(iii) Remuneration paid to an independent contractor who is a*
31 *qualified individual for services performed within the studio zone*
32 *by that qualified individual.*

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

37 *(B) “Qualified wages” shall not include expenses, including*
38 *wages, paid per person per qualified commercial for writers,*
39 *directors, music directors, music composers, music supervisors,*

1 *producers, and performers, other than background actors with no*
2 *scripted lines.*

3 (8) *“Studio zone” means the area within a circle of 30 miles in*
4 *radius from the intersection of Beverly Boulevard and La Cienega*
5 *Boulevard in Los Angeles, California.*

6 (c) *In the case where the credit allowed under this section*
7 *exceeds the “tax,” either of the following may occur:*

8 (1) *The excess credit may be carried over to reduce the “tax”*
9 *in the following taxable year, and succeeding five taxable years,*
10 *if necessary, until the credit has been exhausted.*

11 (2) (A) *For the taxable year, 50 percent of the excess credit*
12 *shall be refunded to the qualified taxpayer, and 50 percent of the*
13 *excess credit shall be carried over to reduce the “tax” in the*
14 *following taxable year.*

15 (B) *For the following taxable year, if the credit remaining*
16 *exceeds the “tax” for that taxable year, the excess credit shall be*
17 *refunded.*

18 (3) *There shall be continuously appropriated from the General*
19 *Fund to the Franchise Tax Board an amount equal to the refunds*
20 *allowed by this section for the ~~purpose~~ purpose of making those*
21 *refunds.*

22 (d) *A credit shall be allowed pursuant to this section only if the*
23 *qualified taxpayer provides the following to the California Film*
24 *Commission:*

25 (1) *The production schedule for each commercial produced in*
26 *a taxable year.*

27 (2) *Total qualified expenditures.*

28 (3) *Total qualified wages paid.*

29 (4) *Total nonqualified expenditures incurred in California.*

30 (5) *Agreed upon procedures as prescribed by the California*
31 *Film Commission and performed by a licensed certified public*
32 *accountant to perform attest services in California and who has*
33 *attended a certified public accountant orientation meeting*
34 *conducted by the California Film Commission.*

35 (6) *Number of cast and crew members hired for each*
36 *commercial.*

37 (7) *Number of days worked by each cast and crew member for*
38 *each commercial.*

39 (8) *Number of vendors used during the taxable year.*

1 (9) Any other information as requested by the California Film
2 Commission.

3 (e) The California Film Commission may prescribe rules and
4 regulations to carry out the purposes of this section including any
5 rules and regulations necessary to establish procedures, processes,
6 requirements, and rules identified in or required to implement this
7 section.

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

10 (1) Establish a procedure for applicants to file with the
11 commission a written application due on or before April 1, 2014,
12 and each April 1 thereafter, on a form jointly prescribed by the
13 commission and the Franchise Tax Board for the allocation of the
14 tax credit.

15 (2) Subject to the annual cap established as provided in
16 subdivision (h), allocate and certify an aggregate amount of credits
17 to qualified taxpayers under this section and Section 17053.89.

18 (3) Establish a verification procedure for the amount of qualified
19 expenditures paid or incurred by the applicant.

20 (4) Establish audit requirements that must be satisfied before
21 a credit certificate may be issued by the California Film
22 Commission.

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

30 (h) (1) The aggregate amount of credits that may be allocated
31 in any fiscal year pursuant to this section and Section 17053.89
32 shall be an amount equal to the sum of all of the following:

33 (A) Two million dollars (\$2,000,000) in credits for the 2012–13
34 fiscal year and each fiscal year thereafter.

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 and Section 17053.89, the aggregate

1 amount of tax credits shall be allocated to each qualified taxpayer
2 on a pro rata basis.

3 (3) If the amount of credits allocated in a fiscal year is less than
4 the aggregate amount of tax credits authorized to be allocated
5 under this section and Section 17053.89, the remaining amount
6 shall be allocated to qualified taxpayers on a pro rata basis, not
7 to exceed 15 percent of the amount of the qualified expenditures
8 credit base.

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

13 SEC. 4. Section 23681 is added to the Revenue and Taxation
14 Code, to read:

15 23681. (a) For taxable years beginning on or after January
16 1, 2013, there shall be allowed to a qualified taxpayer a credit
17 against the “tax,” as defined in Section 23036, an amount equal
18 to 15 percent, except as otherwise provided, of the qualified
19 expenditures credit base for the production of a qualified
20 commercial outside of the studio zone and within this state.

21 (b) For purposes of this section:

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

27 (i) Qualified taxpayer contributions under any pension,
28 profit-sharing, annuity, or similar plan.

29 (ii) Qualified taxpayer-provided coverage under any accident
30 or health plan for employees.

31 (iii) The qualified taxpayer’s cost of life or disability insurance
32 provided to employees.

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

36 (C) For the purposes of this paragraph, “employee” means a
37 qualified individual.

38 (2) (A) “Qualified commercial” means a commercial or
39 advertisement composed of moving images and sounds that is
40 recorded on film, videotape, or other digital medium, created for

1 *display on a network, regional channel, cable, or interactive media,*
2 *including, but not limited to, the Internet, mobile devices, in-game*
3 *advertising, and experiential advertising where at least 75 percent*
4 *of the total qualified expenditures occur wholly outside of the*
5 *studio zone and within the state. For purposes of this paragraph,*
6 *mobile devices include cellphones, smartphones, personal digital*
7 *assistants, and other portable devices with a screen.*

8 (B) *“Qualified commercial” shall not include any*
9 *program-length production with an advertising component in*
10 *excess of five minutes, including an infomercial, news, or current*
11 *affairs program, interview or talk program, network promotion*
12 *(short-form content intended to promote other programming),*
13 *feature film promotion (trailers and teasers), sporting event, game*
14 *show, award ceremony, daytime drama, reality entertainment*
15 *program, program intended primarily for industrial, corporate,*
16 *or institutional end users, public service announcements,*
17 *fundraising commercial or commercial promoting a political*
18 *candidate or political issue, a program consisting of more than*
19 *one-half of the screen time of stock footage, a program produced*
20 *by an organization described in Section 527 of the Internal Revenue*
21 *Code, or any production that falls within the recordkeeping*
22 *requirements of Section 2257 of Title 18 of the United States Code.*

23 (3) *“Qualified expenditures” means the amount paid or incurred*
24 *during the taxable year to purchase or lease tangible personal*
25 *property outside of the studio zone and within the state in the*
26 *production of a qualified commercial, and to pay for services,*
27 *including qualified wages, performed outside of the studio zone*
28 *and within the state in the production of a qualified commercial.*

29 (4) *“Qualified expenditures credit base” means the amount*
30 *over two hundred fifty thousand dollars (\$250,000) paid or*
31 *incurred during the taxable year outside of the studio zone in*
32 *qualified expenditures.*

33 (5) (A) *“Qualified individual” means an individual who*
34 *performs services during the production period in an activity*
35 *related to the production of a qualified commercial.*

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

38 (i) *Any individual related to the qualified taxpayer as described*
39 *in Section 51(i)(1) of the Internal 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 (6) (A) “Qualified taxpayer” means a taxpayer that is
4 principally engaged in the production of a qualified commercial,
5 has control over the selection of production location, deployment,
6 or management of the production equipment, directly employs the
7 production crew as the person that has control over the hiring and
8 firing of the crew on the qualified commercial, and paid or incurred
9 at least two hundred fifty thousand dollars (\$250,000) in qualified
10 expenditures outside of the studio zone and within the state during
11 the taxable year. All members of a commonly controlled group,
12 as defined by subdivision (b) of Section 25105, shall be treated as
13 a single qualified taxpayer for the purposes of computing qualified
14 expenditures.

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

23 (ii) In the case of an “S” corporation, the credit allowed under
24 this section shall not be used by an “S” corporation as a credit
25 against a tax imposed under Chapter 4.5 (commencing with Section
26 23800) of Part 11 of Division 2.

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

28 (i) Any wages required to be reported under Section 13050 of
29 the Unemployment Insurance Code that were paid or incurred by
30 a qualified taxpayer involved in the production of a qualified
31 commercial with respect to a qualified individual for services
32 performed on the qualified commercial produced outside of the
33 studio zone and within the state.

34 (ii) Any payments made to a qualified entity for services
35 performed outside of the studio zone and within the state by
36 qualified individuals.

37 (iii) Remuneration paid to an independent contractor who is a
38 qualified individual for services performed outside of the studio
39 zone and within the state by that qualified individual.

1 (iv) *The portion of any employee fringe benefits paid or incurred*
2 *by a qualified taxpayer involved in the production of the qualified*
3 *commercial that are properly allocable to qualified wage amounts*
4 *described in clauses (i), (ii), and (iii).*

5 (B) *“Qualified wages” shall not include expenses, including*
6 *wages, paid per person per qualified commercial for writers,*
7 *directors, music directors, music composers, music supervisors,*
8 *producers, and performers, other than background actors with no*
9 *scripted lines.*

10 (8) *“Studio zone” means the area within a circle of 30 miles in*
11 *radius from the intersection of Beverly Boulevard and La Cienega*
12 *Boulevard in Los Angeles, California.*

13 (c) *In the case where the credit allowed under this section*
14 *exceeds the “tax,” either of the following may occur:*

15 (1) *The excess credit may be carried over to reduce the “tax”*
16 *in the following taxable year, and succeeding five taxable years,*
17 *if necessary, until the credit has been exhausted.*

18 (2) (A) *For the taxable year, 50 percent of the excess credit*
19 *shall be refunded to the qualified taxpayer, and 50 percent of the*
20 *excess credit shall be carried over to reduce the “tax” in the*
21 *following taxable year.*

22 (B) *For the following taxable year, if the credit remaining*
23 *exceeds the “tax” for that taxable year, the excess credit shall be*
24 *refunded.*

25 (3) *There shall be continuously appropriated from the General*
26 *Fund to the Franchise Tax Board an amount equal to the refunds*
27 *allowed by this section for the purpose of making those refunds.*

28 (d) *A credit shall be allowed pursuant to this section only if the*
29 *qualified taxpayer provides the following to the California Film*
30 *Commission:*

31 (1) *The production schedule for each commercial produced in*
32 *a taxable year.*

33 (2) *Total qualified expenditures.*

34 (3) *Total qualified wages paid.*

35 (4) *Total nonqualified expenditures incurred in California.*

36 (5) *Agreed upon procedures as prescribed by the California*
37 *Film Commission and performed by a licensed certified public*
38 *accountant to perform attest services in California and who has*
39 *attended a certified public accountant orientation meeting*
40 *conducted by the California Film Commission.*

1 (6) Number of cast and crew members hired for each
2 commercial.

3 (7) Number of days worked by each cast and crew member for
4 each commercial.

5 (8) Number of vendors used during the taxable year.

6 (9) Any other information as requested by the California Film
7 Commission.

8 (e) The California Film Commission may prescribe rules and
9 regulations to carry out the purposes of this section including any
10 rules and regulations necessary to establish procedures, processes,
11 requirements, and rules identified in or required to implement this
12 section.

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

15 (1) Establish a procedure for applicants to file with the
16 commission a written application due on or before April 1, 2014,
17 and each April 1 thereafter, on a form jointly prescribed by the
18 commission and the Franchise Tax Board for the allocation of the
19 tax credit.

20 (2) Subject to the annual cap established as provided in
21 subdivision (h), allocate and certify an aggregate amount of credits
22 to qualified taxpayers under this section and Section 23686.

23 (3) Establish a verification procedure for the amount of qualified
24 expenditures paid or incurred by the applicant.

25 (4) Establish audit requirements that must be satisfied before
26 a credit certificate may be issued by the California Film
27 Commission.

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

35 (h) (1) The aggregate amount of credits that may be allocated
36 in any fiscal year pursuant to this section and Section 17053.90
37 shall be an amount equal to the sum of all of the following:

38 (A) Two million dollars (\$2,000,000) in credits for the 2012–13
39 fiscal year and each fiscal year thereafter.

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

3 (2) If the amount of credits applied for in any particular fiscal
4 year exceeds the aggregate amount of tax credits authorized to be
5 allocated under this section and Section 17053.90, the aggregate
6 amount of tax credits shall be allocated to each qualified taxpayer
7 on a pro rata basis.

8 (3) If the amount of credits allocated in a fiscal year is less than
9 the aggregate amount of tax credits authorized to be allocated
10 under this section and Section 17053.90, the remaining amount
11 shall be allocated to qualified taxpayers on a pro rata basis, not
12 to exceed 15 percent of the amount of the qualified expenditures
13 credit base.

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

18 SEC. 5. The Legislature finds and declares that a special law
19 is necessary and that a general law cannot be made applicable
20 within the meaning of Section 16 of Article IV of the California
21 Constitution because of the unique need to support the commercial
22 industry in Los Angeles.

23 ~~SECTION 1. It is the intent of the Legislature to enact~~
24 ~~legislation that would strengthen the California economy and~~
25 ~~stimulate job growth by providing incentives for the production~~
26 ~~of commercials.~~

27
28
29 CORRECTIONS: _____
30 Text—Page 15.
31 _____