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.~~

Corrected 4-18-13—See last page.

~~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:

SECTION 1. Section 17053.89 is added to the Revenue and Taxation Code, to read:

17053.89. (a) For taxable years beginning on or after January 1, 2013, there shall be allowed to a qualified taxpayer a credit against the "net tax," as defined in Section 17039, an amount equal to 15 percent, except as otherwise provided, of the qualified expenditures credit base for the production of a qualified commercial within the studio zone.

(b) For purposes of this section:

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

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

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

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

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

(C) For the purposes of this paragraph, "employee" means a qualified individual.

(2) (A) "Qualified commercial" means a commercial or advertisement composed of moving images and sounds that is recorded on film, videotape, or other digital medium, created for display on a network, regional channel, cable, or interactive media, including, but not limited to, the Internet, mobile devices, in-game advertising, and experiential advertising where at least 75 percent of the total qualified expenditures occur wholly within the studio

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

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

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

(4) "Qualified expenditures credit base" means the amount over five hundred thousand dollars ($500,000) paid or incurred during the taxable year within the studio zone in qualified expenditures.

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

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

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

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

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

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

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

(7) (A) "Qualified wages" means all of the following:

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

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

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

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

(B) "Qualified wages" shall not include expenses, including wages, paid per person per qualified commercial for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines.

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

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

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

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

(B) For the following taxable year, if the credit remaining exceeds the "net tax" for that taxable year, the excess credit shall be refunded.

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

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

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

(2) Total qualified expenditures.

(3) Total qualified wages paid.

(4) Total nonqualified expenditures incurred in California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

(C) For the purposes of this paragraph, "employee" means a qualified individual.

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

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

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

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

(4) "Qualified expenditures credit base" means the amount over two hundred fifty thousand dollars ($250,000) paid or incurred during the taxable year outside the studio zone in qualified expenditures.

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

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

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

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

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

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

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

(7) (A) "Qualified wages" means all of the following:

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

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

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

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

(B) "Qualified wages" shall not include expenses, including wages, paid per person per qualified commercial for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines.

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

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

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

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

(B) For the following taxable year, if the credit remaining exceeds the "net tax" for that taxable year, the excess credit shall be refunded.

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

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

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

(2) Total qualified expenditures.

(3) Total qualified wages paid.

(4) Total nonqualified expenditures incurred in California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

(C) For the purposes of this paragraph, "employee" means a qualified individual.

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

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

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

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

(4) "Qualified expenditures credit base" means the amount over five hundred thousand dollars ($500,000) paid or incurred during the taxable year within the studio zone in qualified expenditures.

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

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

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

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

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

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

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

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

(7) (A) "Qualified wages" means all of the following:

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

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

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

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

(B) "Qualified wages" shall not include expenses, including wages, paid per person per qualified commercial for writers, directors, music directors, music composers, music supervisors,

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

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

(c) In the case where the credit allowed under this section exceeds the "tax," either of the following may occur:

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

(2) (A) For the taxable year, 50 percent of the excess credit shall be refunded to the qualified taxpayer, and 50 percent of the excess credit shall be carried over to reduce the "tax" in the following taxable year.

(B) For the following taxable year, if the credit remaining exceeds the "tax" for that taxable year, the excess credit shall be refunded.

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

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

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

(2) Total qualified expenditures.

(3) Total qualified wages paid.

(4) Total nonqualified expenditures incurred in California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the amount of credits applied for in any particular fiscal year exceeds the aggregate amount of tax credits authorized to be allocated under this section and Section 17053.89, the aggregate

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

(C) For the purposes of this paragraph, "employee" means a qualified individual.

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

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

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

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

(4) "Qualified expenditures credit base" means the amount over two hundred fifty thousand dollars ($250,000) paid or incurred during the taxable year outside of the studio zone in qualified expenditures.

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

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

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

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

(6) (A) "Qualified taxpayer" means a taxpayer that is principally engaged in the production of a qualified commercial, has control over the selection of production location, deployment, or management of the production equipment, directly employs the production crew as the person that has control over the hiring and firing of the crew on the qualified commercial, and paid or incurred at least two hundred fifty thousand dollars ($250,000) in qualified expenditures outside of the studio zone and within the state during the taxable year. All members of a commonly controlled group, as defined by subdivision (b) of Section 25105, shall be treated as a single qualified taxpayer for the purposes of computing qualified expenditures.

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

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

(7) (A) "Qualified wages" means all of the following:

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

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

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

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

(B) "Qualified wages" shall not include expenses, including wages, paid per person per qualified commercial for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines.

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

(c) In the case where the credit allowed under this section exceeds the "tax," either of the following may occur:

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

(2) (A) For the taxable year, 50 percent of the excess credit shall be refunded to the qualified taxpayer, and 50 percent of the excess credit shall be carried over to reduce the "tax" in the following taxable year.

(B) For the following taxable year, if the credit remaining exceeds the "tax" for that taxable year, the excess credit shall be refunded.

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

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

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

(2) Total qualified expenditures.

(3) Total qualified wages paid.

(4) Total nonqualified expenditures incurred in California.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SECTION 1. It is 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.~~

CORRECTIONS:

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