

AMENDED IN SENATE JANUARY 22, 2014

AMENDED IN SENATE JULY 3, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 370

Introduced by Senator Lieu

February 20, 2013

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 to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 370, as amended, Lieu. 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~~ 2015, 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, *with the credit* not to exceed \$13,000,000 annually for credits for qualified commercials produced within a studio zone, and *with the credit* 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 to sell the credit~~, 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.~~

This bill would provide that specified information provided to the California Film Commission shall constitute confidential taxpayer information, and would impose specified criminal penalties on the disclosure of that information. By expanding the crime of knowingly and wrongfully accessing, using, or disclosing specified information, this bill would impose a state-mandated local program.

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

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

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: yes.

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~~, 2015, there shall be allowed to a qualified taxpayer a
- 5 credit 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.

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

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

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

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

10 (2) (A) “Qualified commercial” means a commercial or
11 advertisement composed of moving images and sounds that is
12 recorded on film, videotape, or other digital medium, created for
13 display on a network, regional channel, cable, or interactive media,
14 including, but not limited to, the Internet, mobile devices, in-game
15 advertising, and experiential advertising ~~where at least 75 percent~~
16 ~~of the total expenditures occur wholly within the studio zone.~~ For
17 purposes of this paragraph, mobile devices include cellular
18 telephones, smartphones, personal digital assistants, and other
19 portable devices with a screen.

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

35 (3) “Qualified expenditures” means the amount paid or incurred
36 during the taxable year to purchase or lease tangible personal
37 property within the studio zone in the production of a qualified
38 commercial, and to pay for services performed within the studio
39 zone in the production of a qualified commercial.

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

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

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

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

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

13 (6) (A) “Qualified taxpayer” means a taxpayer that is principally
14 engaged in the production of a qualified commercial, has control
15 over the selection of production location, deployment, or
16 management of the production equipment, directly employs the
17 production crew as the person that has control over the hiring and
18 firing of the crew on the qualified commercial, and paid or incurred
19 at least five hundred thousand dollars (\$500,000) in qualified
20 expenditures within the studio zone during the taxable year.

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

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

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

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

38 (iii) Remuneration paid to an independent contractor who is a
39 qualified individual for services performed within the studio zone
40 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 “net tax,” ~~the following shall occur: a qualified~~
15 ~~taxpayer may do the following:~~

16 ~~(1) Fifty percent of the excess credit shall be carried over to~~
17 ~~reduce the “net tax” in the following taxable year:~~

18 ~~(2) With regard to the remaining 50 percent of the excess credit,~~
19 ~~the qualified taxpayer shall elect to do either of the following:~~

20 ~~(A) Receive a refund of the excess credit amount.~~

21 ~~(B) Carry over the excess credit to reduce the “net tax” in the~~
22 ~~following taxable year, and succeeding six taxable years, if~~
23 ~~necessary, until the credit has been exhausted.~~

24 ~~(1) Carry over the credit to reduce the “net tax” in the following~~
25 ~~taxable year, and succeeding six taxable years, if necessary, until~~
26 ~~the credit has been exhausted.~~

27 ~~(2) (A) Notwithstanding any other law, sell any credit allowed~~
28 ~~under this section to an unrelated party.~~

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

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

1 (D) An unrelated party that has acquired credits under this
2 section shall be subject to the requirements of this section.

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

6 (F) In the event that both the qualified taxpayer originally
7 allocated a credit under this section by the California Film
8 Commission and an unrelated party to whom the credit has been
9 sold both claim the credit on their tax returns, the Franchise Tax
10 Board may disallow the credit of either taxpayer if the statute of
11 limitations upon assessment remains open.

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

14 (H) For purposes of this subdivision, except as otherwise
15 specifically provided, the unrelated party that purchases a credit
16 pursuant to this subdivision shall be treated as a qualified taxpayer.

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

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

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

25 (2) Total qualified expenditures.

26 (3) Total qualified wages paid.

27 (4) Total nonqualified expenditures incurred in California.

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

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

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

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

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

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

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

8 (1) Establish a procedure for applicants to file with the
9 ~~commission~~ *California Film Commission* a written application
10 ~~due on or before April 1, 2014, and each April 1 thereafter, for~~
11 ~~work completed in the prior calendar year,~~ on a form jointly
12 prescribed by the ~~commission~~ *California Film Commission* and
13 the Franchise Tax Board for the allocation of the ~~tax~~ credit.

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

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

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

21 (5) Provide the Legislative Analyst's Office, upon request, any
22 or all application materials or any other materials received from,
23 or submitted by, the applicants, in electronic format when available,
24 including, but not limited to, information provided pursuant to
25 subdivision (d).

26 (6) The information provided to the California Film Commission
27 pursuant to this section shall constitute confidential tax information
28 for purposes of Article 2 (commencing with Section 19542) of
29 Chapter 7 of Part 10.2.

30 (g) (1) The California Film Commission shall provide the
31 Legislative Analyst's Office and the Franchise Tax Board annually
32 with a list of qualified taxpayers and the ~~tax~~ credit amounts
33 allocated to each qualified taxpayer by the California Film
34 Commission. The list shall include the names and taxpayer
35 identification numbers, ~~including taxpayer identification numbers~~
36 ~~of each partner or shareholder, as applicable,~~ of the qualified
37 taxpayers.

38 (2) (A) Notwithstanding subparagraph (B) *or paragraph (6) of*
39 *subdivision (f)*, the California Film Commission shall annually

1 post on its Internet Web site and make *a table* available for public
 2 release ~~the following: that includes all of the following information:~~
 3 ~~(i) A table which includes all of the following information:~~
 4 ~~(I)~~
 5 (i) A list of qualified taxpayers and the ~~tax~~ credit amounts
 6 allocated to each qualified taxpayer by the California Film
 7 Commission.
 8 ~~(II)~~
 9 (ii) The total number of production days in California reported
 10 by the qualified taxpayers in its application.
 11 ~~(III)~~
 12 (iii) The number of California jobs directly created by the
 13 production as reported by the qualified taxpayer in its application.
 14 ~~(IV)~~
 15 (iv) The total amount of qualified expenditures that were spent
 16 on submitted productions.
 17 ~~(ii) A summary describing the qualified taxpayer's production~~
 18 ~~and background information regarding the qualified taxpayer~~
 19 ~~contained in the qualified taxpayer's application for the credit.~~
 20 (B) This subdivision shall not be construed to make the
 21 information submitted by an applicant for a ~~tax~~ credit under this
 22 section a public record.
 23 (h) (1) The aggregate amount of credits that may be allocated
 24 in any fiscal year pursuant to this section and Section 23680 shall
 25 be an amount equal to the sum of both of the following:
 26 (A) Thirteen million dollars (\$13,000,000) in credits for the
 27 ~~2012-13~~ 2014-15 fiscal year and each fiscal year thereafter.
 28 (B) The unused allocation credit amount, if any, ~~for~~ from the
 29 preceding fiscal year.
 30 (2) If the amount of credits applied for in any particular fiscal
 31 year exceeds the aggregate amount of ~~tax~~ credits authorized to be
 32 allocated under this section and Section 23680, the aggregate
 33 amount of ~~tax~~ credits shall be allocated to each qualified taxpayer
 34 on a pro rata basis.
 35 (3) If the amount of credits allocated in a fiscal year is less than
 36 the aggregate amount of ~~tax~~ credits authorized to be allocated
 37 under this section and Section 23680, the remaining amount shall
 38 be allocated to qualified taxpayers outside of the studio zone and
 39 within the state pursuant to Section 17053.90 or 23681 on a pro

1 rata basis, not to exceed 15 percent of the amount of the qualified
2 expenditures credit base.

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

7 (j) The credit allowed by this section shall be in lieu of any other
8 ~~deduction~~ credit that the taxpayer may otherwise claim pursuant
9 to this part with respect to qualified expenditures.

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

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

17 17053.90. (a) For taxable years beginning on or after January
18 1, ~~2013~~, 2015, there shall be allowed to a qualified taxpayer a
19 credit against the “net tax,” as defined in Section 17039, an amount
20 equal to 15 percent, except as otherwise provided, of the qualified
21 expenditures credit base for the production of a qualified
22 commercial outside of the studio zone and within the state.

23 (b) For purposes of this section:

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

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

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

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

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

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

1 (2) (A) “Qualified commercial” means a commercial or
2 advertisement composed of moving images and sounds that is
3 recorded on film, videotape, or other digital medium, created for
4 display on a network, regional channel, cable, or interactive media,
5 including, but not limited to, the Internet, mobile devices, in-game
6 advertising, and experiential advertising ~~where at least 75 percent~~
7 ~~of the total expenditures occur wholly outside of the studio zone~~
8 ~~and within the state.~~ For purposes of this paragraph, mobile devices
9 include cellular telephones, smartphones, personal digital assistants,
10 and other portable devices with a screen.

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

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

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

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

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

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

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

5 (6) (A) “Qualified taxpayer” means a taxpayer that is principally
6 engaged in the production of a qualified commercial, has control
7 over the selection of production location, deployment, or
8 management of the production equipment, directly employs the
9 production crew as the person that has control over the hiring and
10 firing of the crew on the qualified commercial, and paid or incurred
11 at least two hundred fifty thousand dollars (\$250,000) in qualified
12 expenditures outside of the studio zone and within the state during
13 the taxable year.

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

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

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

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

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

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

39 (B) “Qualified wages” shall not include expenses, including
40 wages, paid per person per qualified commercial for writers,

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

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

7 (c) In the case where the credit allowed under this section
8 exceeds the “net tax,” ~~the following shall occur:~~ *a qualified*
9 *taxpayer may do the following:*

10 ~~(1) Fifty percent of the excess credit may be carried over to~~
11 ~~reduce the “net tax” in the following taxable year.~~

12 ~~(2) With regard to the remaining 50 percent of the excess credit,~~
13 ~~the qualified taxpayer shall elect to do either of the following:~~

14 ~~(A) Receive a refund of the excess credit amount.~~

15 ~~(B) Carry over the excess credit to reduce the “net tax” in the~~
16 ~~following taxable year, and succeeding six taxable years, if~~
17 ~~necessary, until the credit has been exhausted.~~

18 ~~(1) Carry over the credit to reduce the “net tax” in the following~~
19 ~~taxable year, and succeeding six taxable years, if necessary, until~~
20 ~~the credit has been exhausted.~~

21 ~~(2) (A) Notwithstanding any other law, sell any credit allowed~~
22 ~~under this section to an unrelated party.~~

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

31 ~~(C) A credit shall not be sold pursuant to this paragraph to~~
32 ~~more than one unrelated party, nor may the credit be resold by~~
33 ~~the unrelated party to another taxpayer or other party.~~

34 ~~(D) An unrelated party that has acquired credits under this~~
35 ~~section shall be subject to the requirements of this section.~~

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

39 ~~(F) In the event that both the qualified taxpayer originally~~
40 ~~allocated a credit under this section by the California Film~~

1 *Commission and an unrelated party to whom the credit has been*
2 *sold both claim the credit on their tax returns, the Franchise Tax*
3 *Board may disallow the credit of either taxpayer if the statute of*
4 *limitations upon assessment remains open.*

5 (G) *Subdivision (g) of Section 17039 shall not apply to any*
6 *credit sold pursuant to this subdivision.*

7 (H) *For purposes of this subdivision, except as otherwise*
8 *specifically provided, the unrelated party that purchases a credit*
9 *pursuant to this subdivision shall be treated as a qualified taxpayer.*

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

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

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

18 (2) Total qualified expenditures.

19 (3) Total qualified wages paid.

20 (4) Total nonqualified expenditures incurred in California.

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

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

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

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

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

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

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

1 (1) Establish a procedure for applicants to file with the
 2 ~~commission~~ *California Film Commission* a written application
 3 ~~due on or before April 1, 2014, and each April 1 thereafter, for~~
 4 ~~work completed in the prior calendar year,~~ on a form jointly
 5 prescribed by the ~~commission~~ *California Film Commission* and
 6 the Franchise Tax Board for the allocation of the ~~tax~~ credit.

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

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

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

14 (5) Provide the Legislative Analyst’s Office, upon request, any
 15 or all application materials or any other materials received from,
 16 or submitted by, the applicants, in electronic format when available,
 17 including, but not limited to, information provided pursuant to
 18 subdivision (d).

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

23 (g) (1) The California Film Commission shall provide the
 24 Legislative Analyst’s Office and the Franchise Tax Board annually
 25 with a list of qualified taxpayers and the ~~tax~~ credit amounts
 26 allocated to each qualified taxpayer by the California Film
 27 Commission. The list shall include the names and taxpayer
 28 identification numbers, ~~including taxpayer identification numbers~~
 29 ~~of each partner or shareholder, as applicable,~~ of the qualified
 30 taxpayers.

31 (2) (A) Notwithstanding subparagraph (B) *or paragraph (6) of*
 32 *subdivision (f)*, the California Film Commission shall annually
 33 post on its Internet Web site and make *a table* available for public
 34 release ~~the following~~ *that includes all of the following information:*

35 (i) ~~A table which includes all of the following information:~~

36 (⊕)

37 (i) A list of qualified taxpayers and the ~~tax~~ credit amounts
 38 allocated to each qualified taxpayer by the California Film
 39 Commission.

40 (⊕)

1 (ii) The total number of production days in California reported
2 by the qualified taxpayers in its application.

3 ~~(iii)~~

4 (iii) The number of California jobs directly created by the
5 production as reported by the qualified taxpayer in its application.

6 ~~(iv)~~

7 (iv) The total amount of qualified expenditures that were spent
8 on submitted productions.

9 ~~(ii) A summary describing the qualified taxpayer's production
10 and background information regarding the qualified taxpayer
11 contained in the qualified taxpayer's application for the credit.~~

12 (B) This subdivision shall not be construed to make the
13 information submitted by an applicant for a tax credit under this
14 section a public record.

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

18 (A) Two million dollars (\$2,000,000) in credits for the ~~2012-13~~
19 ~~2014-15~~ fiscal year and each fiscal year thereafter.

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

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

27 (3) If the amount of credits allocated in a fiscal year is less than
28 the aggregate amount of tax credits authorized to be allocated
29 under this section and Section 23681, the remaining amount shall
30 be allocated to qualified taxpayers within the studio zone pursuant
31 to Section 17053.89 or 23680 on a pro rata basis, not to exceed 15
32 percent of the amount of the qualified expenditures credit base.

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

37 (j) The credit allowed by this section shall be in lieu of any other
38 ~~deduction~~ credit that the taxpayer may otherwise claim pursuant
39 to this part with respect to qualified expenditures.

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

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

8 23680. (a) For taxable years beginning on or after January 1,
 9 ~~2013, 2015~~, there shall be allowed to a qualified taxpayer a credit
 10 against the “tax,” as defined in Section 23036, an amount equal
 11 to 15 percent, except as otherwise provided, of the qualified
 12 expenditures credit base for the production of a qualified
 13 commercial within the studio zone.

14 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (6) (A) “Qualified taxpayer” means a taxpayer that is principally
34 engaged in the production of a qualified commercial, has control
35 over the selection of production location, deployment, or
36 management of the production equipment, directly employs the
37 production crew as the person that has control over the hiring and
38 firing of the crew on the qualified commercial, and paid or incurred
39 at least five hundred thousand dollars (\$500,000) in qualified
40 expenditures within the studio zone during the taxable year. All

1 members of a commonly controlled group, as defined by
2 subdivision (b) of Section 25105, shall be treated as a single
3 qualified taxpayer for the purposes of computing qualified
4 expenditures.

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

13 (ii) In the case of an “S” corporation, the credit allowed under
14 this section shall not be used by an “S” corporation as a credit
15 against a tax imposed under Chapter 4.5 (commencing with Section
16 23800) of Part 11 of Division 2.

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 within the studio
23 zone.

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

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

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

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

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

1 (c) In the case where the credit allowed under this section
2 exceeds the “tax,” ~~the following shall occur: a qualified taxpayer~~
3 ~~may do the following:~~

4 (1) ~~Fifty percent of the excess credit shall be carried over to~~
5 ~~reduce the “tax” in the following taxable year.~~

6 (2) ~~With regard to the remaining 50 percent of the excess credit,~~
7 ~~the qualified taxpayer shall elect to do either of the following:~~

8 (A) ~~Receive a refund of the excess credit amount.~~

9 (B) ~~Carry over the excess credit to reduce the “tax” in the~~
10 ~~following taxable year, and succeeding six taxable years, if~~
11 ~~necessary, until the credit has been exhausted.~~

12 (1) ~~Carry over the credit to reduce the “tax” in the following~~
13 ~~taxable year, and succeeding six taxable years, if necessary, until~~
14 ~~the credit has been exhausted.~~

15 (2) (A) ~~Notwithstanding any other law, sell any credit allowed~~
16 ~~under this section to an unrelated party.~~

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

25 (C) ~~A credit shall not be sold pursuant to this paragraph to~~
26 ~~more than one unrelated party, nor may the credit be resold by~~
27 ~~the unrelated party to another taxpayer or other party.~~

28 (D) ~~An unrelated party that has acquired credits under this~~
29 ~~section shall be subject to the requirements of this section.~~

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

33 (F) ~~In the event that both the qualified taxpayer originally~~
34 ~~allocated a credit under this section by the California Film~~
35 ~~Commission and an unrelated party to whom the credit has been~~
36 ~~sold both claim the credit on their tax returns, the Franchise Tax~~
37 ~~Board may disallow the credit of either taxpayer if the statute of~~
38 ~~limitations upon assessment remains open.~~

39 (G) ~~Subdivision (g) of Section 17039 shall not apply to any~~
40 ~~credit sold pursuant to this subdivision.~~

1 (H) For purposes of this subdivision, except as otherwise
 2 specifically provided, the unrelated party that purchases a credit
 3 pursuant to this subdivision shall be treated as a qualified taxpayer.

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

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

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

12 (2) Total qualified expenditures.

13 (3) Total qualified wages paid.

14 (4) Total nonqualified expenditures incurred in California.

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

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

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

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

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

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

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

34 (1) Establish a procedure for applicants to file with the
 35 ~~commission~~ California Film Commission a written application
 36 ~~due on or before April 1, 2014, and each April 1 thereafter, for~~
 37 ~~work completed in the prior calendar year, on a form jointly~~
 38 ~~prescribed by the commission~~ California Film Commission and
 39 the Franchise Tax Board for the allocation of the tax credit.

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

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

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

8 (5) Provide the Legislative Analyst’s Office, upon request, any
9 or all application materials or any other materials received from,
10 or submitted by, the ~~applications~~, *applicants*, in electronic format
11 when available, including, but not limited to, information provided
12 pursuant to subdivision (d).

13 (6) The information provided to the California Film Commission
14 pursuant to this section shall constitute confidential tax information
15 for purposes of Article 2 (commencing with Section 19542) of
16 Chapter 7 of Part 10.2.

17 (g) (1) The California Film Commission shall provide the
18 Legislative Analyst’s Office and the Franchise Tax Board annually
19 with a list of qualified taxpayers and the ~~tax~~ credit amounts
20 allocated to each qualified taxpayer by the California Film
21 Commission. The list shall include the names and taxpayer
22 identification numbers, ~~including taxpayer identification numbers~~
23 ~~of each partner or shareholder, as applicable~~, of the qualified
24 taxpayers.

25 (2) (A) Notwithstanding subparagraph (B) *or paragraph (6) of*
26 *subdivision (f)*, the California Film Commission shall annually
27 post on its Internet Web site and make *a table* available for public
28 release ~~the following~~: *that includes all of the following information*:

29 ~~(i) A table which includes all of the following information.~~

30 ~~(I)~~

31 *(i)* A list of qualified taxpayers and the ~~tax~~ credit amounts
32 allocated to each qualified taxpayer by the California Film
33 Commission.

34 ~~(II)~~

35 *(ii)* The total number of production days in California reported
36 by the qualified taxpayers in its application.

37 ~~(III)~~

38 *(iii)* The number of California jobs directly created by the
39 production as reported by the qualified taxpayer in its application.

40 ~~(IV)~~

1 (iv) The total amount of qualified expenditures that were spent
2 on submitted productions.

3 ~~(ii) A summary describing the qualified taxpayer's production
4 and background information regarding the qualified taxpayer
5 contained in the qualified taxpayer's application for the credit.~~

6 (B) This subdivision shall not be construed to make the
7 information submitted by an applicant for a ~~tax~~ credit under this
8 section a public record.

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

12 (A) Thirteen million dollars (\$13,000,000) in credits for the
13 ~~2012-13~~ 2014-15 fiscal year and each fiscal year thereafter.

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

16 (2) If the amount of credits applied for in any particular fiscal
17 year exceeds the aggregate amount of ~~tax~~ credits authorized to be
18 allocated under this section and Section 17053.89, the aggregate
19 amount of ~~tax~~ credits shall be allocated to each qualified taxpayer
20 on a pro rata basis.

21 (3) If the amount of credits allocated in a fiscal year is less than
22 the aggregate amount of ~~tax~~ credits authorized to be allocated
23 under this section and Section 17053.89, the remaining amount
24 shall be allocated to qualified taxpayers outside of the studio zone
25 pursuant to Section 17053.90 or 23681 on a pro rata basis, not to
26 exceed 15 percent of the amount of the qualified expenditures
27 credit base.

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

32 (j) The credit allowed by this section shall be in lieu of any other
33 ~~deduction~~ credit that the taxpayer may otherwise claim pursuant
34 to this part with respect to qualified expenditures.

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

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

3 23681. (a) For taxable years beginning on or after January 1,
4 ~~2013, 2015~~, there shall be allowed to a qualified taxpayer a credit
5 against the “tax,” as defined in Section 23036, an amount equal
6 to 15 percent, except as otherwise provided, of the qualified
7 expenditures credit base for the production of a qualified
8 commercial outside of the studio zone and within the state.

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 expenditures occur wholly outside of the studio zone~~
33 ~~and within the state~~. For purposes of this paragraph, mobile devices
34 include cellular telephones, smartphones, personal digital assistants,
35 and other portable devices with a screen.

36 (B) “Qualified commercial” shall not include any
37 program-length production with an advertising component in
38 excess of five minutes, including an infomercial, news, or current
39 affairs program, interview or talk program, network promotion
40 (short-form content intended to promote other programming),

1 feature film promotion (trailers and teasers), sporting event, game
2 show, award ceremony, daytime drama, reality entertainment
3 program, program intended primarily for industrial, corporate, or
4 institutional end users, public service announcements, fundraising
5 commercial or commercial promoting a political candidate or
6 political issue, a program consisting of more than one-half of the
7 screen time of stock footage, a program produced by an
8 organization described in Section 527 of the Internal Revenue
9 Code, or any production to which the recordkeeping requirements
10 of Section 2257 of Title 18 of the United States Code apply.

11 (3) “Qualified expenditures” means the amount paid or incurred
12 during the taxable year to purchase or lease tangible personal
13 property outside of the studio zone and within the state in the
14 production of a qualified commercial, and to pay for services
15 performed outside of the studio zone and within the state in the
16 production of a qualified commercial.

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

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

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

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

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

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

1 a single qualified taxpayer for the purposes of computing qualified
2 expenditures.

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

11 (ii) In the case of an “S” corporation, the credit allowed under
12 this section shall not be used by an “S” corporation as a credit
13 against a tax imposed under Chapter 4.5 (commencing with Section
14 23800) of Part 11 of Division 2.

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

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

22 (ii) Any payments made to a qualified taxpayer for services
23 performed outside of the studio zone and within the state by a
24 qualified individual.

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

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

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

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

1 (c) In the case where the credit allowed under this section
2 exceeds the “tax,” ~~the following shall occur: a qualified taxpayer~~
3 ~~may do the following:~~

4 (1) ~~Fifty percent of the excess credit shall be carried over to~~
5 ~~reduce the “tax” in the following taxable year.~~

6 (2) ~~With regard to the remaining 50 percent of the excess credit,~~
7 ~~the qualified taxpayer shall elect to do either of the following:~~

8 (A) ~~Receive a refund of the excess credit amount.~~

9 (B) ~~Carry over the excess credit to reduce the “tax” in the~~
10 ~~following taxable year, and succeeding six taxable years, if~~
11 ~~necessary, until the credit has been exhausted.~~

12 (1) ~~Carry over the credit to reduce the “tax” in the following~~
13 ~~taxable year, and succeeding six taxable years, if necessary, until~~
14 ~~the credit has been exhausted.~~

15 (2) (A) ~~Notwithstanding any other law, sell any credit allowed~~
16 ~~under this section to an unrelated party.~~

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

25 (C) ~~A credit shall not be sold pursuant to this paragraph to~~
26 ~~more than one unrelated party, nor may the credit be resold by~~
27 ~~the unrelated party to another taxpayer or other party.~~

28 (D) ~~An unrelated party that has acquired credits under this~~
29 ~~section shall be subject to the requirements of this section.~~

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

33 (F) ~~In the event that both the qualified taxpayer originally~~
34 ~~allocated a credit under this section by the California Film~~
35 ~~Commission and an unrelated party to whom the credit has been~~
36 ~~sold both claim the credit on their tax returns, the Franchise Tax~~
37 ~~Board may disallow the credit of either taxpayer if the statute of~~
38 ~~limitations upon assessment remains open.~~

39 (G) ~~Subdivision (g) of Section 17039 shall not apply to any~~
40 ~~credit sold pursuant to this subdivision.~~

1 (H) For purposes of this subdivision, except as otherwise
2 specifically provided, the unrelated party that purchases a credit
3 pursuant to this subdivision shall be treated as a qualified taxpayer.

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

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

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

12 (2) Total qualified expenditures.

13 (3) Total qualified wages paid.

14 (4) Total nonqualified expenditures incurred in California.

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

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

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

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

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

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

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

34 (1) Establish a procedure for applicants to file with the
35 ~~commission~~ *California Film Commission* a written application
36 ~~due on or before April 1, 2014, and each April 1 thereafter, for~~
37 ~~work completed in the prior calendar year, on a form jointly~~
38 ~~prescribed by the commission~~ *California Film Commission* and
39 the Franchise Tax Board for the allocation of the ~~tax~~ credit.

1 (2) Subject to the annual cap established as provided in
 2 subdivision (h), allocate and certify an amount of credits to
 3 qualified taxpayers under this section and Section 17053.90.

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

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

8 (5) Provide the Legislative Analyst’s Office, upon request, any
 9 or all application materials or any other materials received from,
 10 or submitted by, the applicants, in electronic format when available,
 11 including, but not limited to, information provided pursuant to
 12 subdivision (d).

13 (6) The information provided to the California Film Commission
 14 pursuant to this section shall constitute confidential tax information
 15 for purposes of Article 2 (commencing with Section 19542) of
 16 Chapter 7 of Part 10.2.

17 (g) (1) The California Film Commission shall provide the
 18 Legislative Analyst’s Office and the Franchise Tax Board annually
 19 with a list of qualified taxpayers and the ~~tax~~ credit amounts
 20 allocated to each qualified taxpayer by the California Film
 21 Commission. The list shall include the names and taxpayer
 22 identification numbers, ~~including taxpayer identification numbers~~
 23 ~~of each partner or shareholder, as applicable,~~ of the qualified
 24 taxpayers.

25 (2) (A) Notwithstanding subparagraph (B) *or paragraph (6) of*
 26 *subdivision (f)*, the California Film Commission shall annually
 27 post on its Internet Web site and make *a table* available for public
 28 release ~~the following:~~ *that includes all of the following information:*

29 ~~(i) A table which includes all of the following information:~~

30 ~~(I)~~

31 *(i)* A list of qualified taxpayers and the ~~tax~~ credit amounts
 32 allocated to each qualified taxpayer by the California Film
 33 Commission.

34 ~~(II)~~

35 *(ii)* The total number of production days in California reported
 36 by the qualified taxpayers in its application.

37 ~~(III)~~

38 *(iii)* The number of California jobs directly created by the
 39 production as reported by the qualified taxpayer in its application.

40 ~~(IV)~~

1 (iv) The total amount of qualified expenditures that were spent
2 on submitted productions.

3 ~~(ii) A summary describing the qualified taxpayer's production~~
4 ~~and background information regarding the qualified taxpayer~~
5 ~~contained in the qualified taxpayer's application for the credit.~~

6 (B) This subdivision shall not be construed to make the
7 information submitted by an applicant for a ~~tax~~ credit under this
8 section a public record.

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

12 (A) Two million dollars (\$2,000,000) in credits for the ~~2012-13~~
13 ~~2014-15~~ fiscal year and each fiscal year thereafter.

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

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

21 (3) If the amount of credits allocated in a fiscal year is less than
22 the aggregate amount of ~~tax~~ credits authorized to be allocated
23 under this section and Section 17053.90, the remaining amount
24 shall be allocated to qualified taxpayers within the studio zone
25 pursuant to Section 17053.89 or 23680 on a pro rata basis, not to
26 exceed 15 percent of the amount of the qualified expenditures
27 credit base.

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

32 (j) The credit allowed by this section shall be in lieu of any
33 other ~~deduction~~ credit that the taxpayer may otherwise claim
34 pursuant to this part with respect to qualified expenditures.

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

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

6 SEC. 6. *The Legislature finds and declares that Sections 1, 2,*
7 *3, and 4 of this act, which adds Sections 17053.89, 17053.90,*
8 *23680, and 23681 to the Revenue and Taxation Code, imposes a*
9 *limitation on the public’s right of access to the meetings of public*
10 *bodies or the writings of public officials and agencies within the*
11 *meaning of Section 3 of Article I of the California Constitution.*
12 *Pursuant to that constitutional provision, the Legislature makes*
13 *the following findings to demonstrate the interest protected by this*
14 *limitation and the need for protecting that interest:*

15 *Without making the tax information specified in these sections*
16 *confidential, the taxpayer’s privacy would not be maintained.*

17 ~~SEC. 6.~~

18 SEC. 7. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.

27 SEC. 8. *This act provides for a tax levy within the meaning of*
28 *Article IV of the Constitution and shall go into immediate effect.*