

Introduced by Senator Calderon

February 22, 2012

An act to amend Sections 17053.85 and 23685 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1167, as introduced, Calderon. Income taxes: credits: film: extension.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, if the qualified motion picture has relocated to California or is an independent film, as provided. Existing law requires the California Film Commission to allocate the tax credits until July 1, 2015, and limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$100,000,000, through the 2014–15 fiscal year.

This bill, under the Personal Income Tax Law and the Corporation Tax Law, would extend the California Film Commission's requirement to allocate the tax credits five additional years, until July 1, 2020. This bill would also extend the limit on the aggregate amount of credits that may be allocated through the 2019–20 fiscal year.

This bill would take effect immediately as a tax levy.

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

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

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

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

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (10) “Preproduction” means the process of preparation for actual
37 physical production which begins after a qualified motion picture
38 has received a firm agreement of financial commitment, or is
39 greenlit, with, for example, the establishment of a dedicated
40 production office, the hiring of key crew members, and includes,

1 but is not limited to, activities that include location scouting and
2 execution of contracts with vendors of equipment and stage space.

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

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

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

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

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

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

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

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

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

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

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

33 (iv) An independent film.

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

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

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

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

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

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

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

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

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

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

39 (B) In the case of any passthrough entity, the determination of
40 whether a taxpayer is a qualified taxpayer under this section shall

1 be made at the entity level and any credit under this section is not
2 allowed to the passthrough entity, but shall be passed through to
3 the partners or shareholders in accordance with applicable
4 provisions of Part 10 (commencing with Section 17001) or Part
5 11 (commencing with Section 23001). For purposes of this
6 paragraph, “passthrough entity” means any entity taxed as a
7 partnership or “S” corporation.

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

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

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

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

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

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

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

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

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

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

38 (19) “Residual compensation” means supplemental
39 compensation paid at the time that a motion picture is exhibited

1 through new use, reuse, clip use, or in secondary markets, as
2 distinguished from payments made during production.

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

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

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

15 (c) (1) Notwithstanding any other law, a qualified taxpayer
16 may sell any credit allowed under this section that is attributable
17 to an independent film, as defined in paragraph (6) of subdivision
18 (b), to an unrelated party.

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

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

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

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

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

39 (7) In the event that both the taxpayer originally allocated a
40 credit under this section by the California Film Commission and

1 a taxpayer to whom the credit has been sold both claim the same
2 amount of credit on their tax returns, the Franchise Tax Board may
3 disallow the credit of either taxpayer, so long as the statute of
4 limitations upon assessment remains open.

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

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

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

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

- 19 (1) Identification of each qualified individual.
- 20 (2) The specific start and end dates of production.
- 21 (3) The total wages paid.
- 22 (4) The amount of qualified wages paid to each qualified
23 individual.

24 (5) The copyright registration number, as reflected on the
25 certificate of registration issued under the authority of Section 410
26 of Title 17 of the United States Code, relating to registration of
27 claim and issuance of certificate. The registration number shall be
28 provided on the return claiming the credit.

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

32 (7) Information to substantiate its qualified expenditures.

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

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

1 section. The regulations shall include provisions to set aside a
2 percentage of annual credit allocations for independent films.

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

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

9 (1) On or after July 1, 2009, and before July 1, ~~2015~~ 2020,
10 allocate tax credits to applicants.

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

16 (i) The budget for the motion picture production.

17 (ii) The number of production days.

18 (iii) A financing plan for the production.

19 (iv) The diversity of the workforce employed by the applicant,
20 including, but not limited to, the ethnic and racial makeup of the
21 individuals employed by the applicant during the production of
22 the qualified motion picture, to the extent possible.

23 (v) All members of a combined reporting group and any
24 members to which the credit is assigned, including, if readily
25 available, the states, provinces, or other jurisdictions in which any
26 of those members finance motion picture productions.

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

35 (vii) The names of all partners in a partnership not publicly
36 traded or the names of all members of a limited liability company
37 classified as a partnership not publicly traded for California income
38 tax purposes. The information provided pursuant to this clause
39 shall be confidential and shall not be subject to public disclosure.

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

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

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

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

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

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

(2) Certify tax credits allocated to qualified taxpayers.

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

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

(C) Issue a credit certificate to a qualified taxpayer upon completion of the qualified motion picture reflecting the credit amount allocated after qualified expenditures have been verified under this section. The amount of credit shown in the credit certificate shall not exceed the amount of credit allocated to that qualified taxpayer pursuant to this section.

(3) Provide the Legislative Analyst's Office, upon request, any application materials or any other materials received from applicants, including, but not limited to, information in electronic format when available.

(A) Financial information, including, but not limited to, statements of profits and losses of a partnership or of an owner of a single member limited liability company that is disregarded pursuant to Section 23038.

1 (B) The names of all members of the qualified taxpayer's
2 combined reporting group and any member to which the credit is
3 assigned.

4 (C) The names of all partners in a partnership or the names of
5 all members of a limited liability company classified as a
6 partnership for California income tax purposes that is not publicly
7 traded.

8 (D) The sales price of a credit certificate provided by the
9 Franchise Tax Board. The Franchise Tax Board, upon request and
10 subject to confidentiality requirements, shall provide aggregate
11 information on the identity of the qualified taxpayer, the amount
12 of the credit, and the credit recipient.

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

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

23 (A) One hundred million dollars (\$100,000,000) in credits for
24 the 2009–10 fiscal year and each fiscal year thereafter, through
25 and including the ~~2014–15~~ 2019–20 fiscal year.

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

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

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

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

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

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

SEC. 2. Section 23685 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (iv) An independent film.

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

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

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

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

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

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

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

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

37 (16) “Qualified expenditures” means amounts paid or incurred
38 to purchase or lease tangible personal property used within this
39 state in the production of a qualified motion picture and payments,

1 including qualified wages, for services performed within this state
2 in the production of a qualified motion picture.

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

7 (B) (i) In the case of any passthrough entity, the determination
8 of whether a taxpayer is a qualified taxpayer under this section
9 shall be made at the entity level and any credit under this section
10 is not allowed to the passthrough entity, but shall be passed through
11 to the partners or shareholders in accordance with applicable
12 provisions of Part 10 (commencing with Section 17001) or Part
13 11 (commencing with Section 23001). For purposes of this
14 paragraph, “passthrough entity” means any entity taxed as a
15 partnership or “S” corporation.

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

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

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

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

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

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

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

38 (i) Expenses, including wages, related to new use, reuse, clip
39 use, licensing, secondary markets, or residual compensation, or

1 the creation of any ancillary product, including, but not limited to,
2 a soundtrack album, toy, game, trailer, or teaser.

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

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

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

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

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

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

21 (22) “Television series that relocated to California” means a
22 television series, without regard to episode length or initial media
23 exhibition, that filmed all of its prior season or seasons outside of
24 California and for which the taxpayer certifies that the credit
25 provided pursuant to this section is the primary reason for
26 relocating to California.

27 (c) (1) Notwithstanding subdivision (i) of Section 23036, in
28 the case where the credit allowed by this section exceeds the
29 taxpayer’s tax liability computed under this part, a qualified
30 taxpayer may elect to assign any portion of the credit allowed
31 under this section to one or more affiliated corporations for each
32 taxable year in which the credit is allowed. For purposes of this
33 subdivision, “affiliated corporation” has the meaning provided in
34 subdivision (b) of Section 25110, as that section was amended by
35 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
36 year in which the credit is allowed, except that “100 percent” is
37 substituted for “more than 50 percent” wherever it appears in the
38 section, and “voting common stock” is substituted for “voting
39 stock” wherever it appears in the section.

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

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

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

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

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

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

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

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

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

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

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

39 (9) Chapter 3.5 (commencing with Section 11340) of Part 1 of
40 Division 3 of Title 2 of the Government Code does not apply to

1 any standard, criterion, procedure, determination, rule, notice, or
2 guideline established or issued by the Franchise Tax Board
3 pursuant to this subdivision.

4 (10) Subdivision (i) of Section 23036 shall not apply to any
5 credit sold pursuant to this subdivision.

6 (11) For purposes of this subdivision:

7 (A) An affiliated corporation or corporations that are assigned
8 a credit pursuant to paragraph (1) shall be treated as a qualified
9 taxpayer pursuant to paragraph (1) of subdivision (a).

10 (B) The unrelated party or parties that purchase a credit pursuant
11 to paragraph (3) shall be treated as a qualified taxpayer pursuant
12 to paragraph (1) of subdivision (a).

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

16 (1) Identification of each qualified individual.

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

18 (3) The total wages paid.

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

21 (5) The copyright registration number, as reflected on the
22 certificate of registration issued under the authority of Section 410
23 of Title 17 of the United States Code, relating to registration of
24 claim and issuance of certificate. The registration number shall be
25 provided on the return claiming the credit.

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

29 (7) Information to substantiate its qualified expenditures.

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

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. The regulations shall include provisions to set aside a
38 percentage of annual credit allocations for independent films.

39 (f) If the qualified taxpayer fails to provide the copyright
40 registration number as required in paragraph (5) of subdivision

(d), the credit shall be disallowed and assessed and collected under Section 19051 until the procedures are satisfied.

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

(1) On or after July 1, 2009, and before July 1, ~~2015~~ 2020, allocate tax credits to applicants.

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

(i) The budget for the motion picture production.

(ii) The number of production days.

(iii) A financing plan for the production.

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

(v) All members of a combined reporting group and any members to which the credit is assigned, including, if readily available, the states, provinces, or other jurisdictions in which any of those members finance motion picture productions.

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

(vii) The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.

(viii) Detailed narratives, for use only by the Legislative Analyst's Office in conducting a study of the effectiveness of this credit, that describe the extent to which the credit is expected to influence or affect filming and other business location decisions,

1 hiring decisions, salary decisions, and any other financial matters
2 of the applicant.

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

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

7 (C) Determine and designate applicants who meet the
8 requirements of this section.

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

11 (E) Subject to the annual cap established as provided in
12 subdivision (i), allocate an aggregate amount of credits under this
13 section and Section 17053.85, and allocate any carryover of
14 unallocated credits from prior years.

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

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

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

23 (C) Issue a credit certificate to a qualified taxpayer upon
24 completion of the qualified motion picture reflecting the credit
25 amount allocated after qualified expenditures have been verified
26 under this section. The amount of credit shown in the credit
27 certificate shall not exceed the amount of credit allocated to that
28 qualified taxpayer pursuant to this section.

29 (3) Provide the Legislative Analyst's Office, upon request, any
30 application materials or any other materials received from
31 applicants, including, but not limited to, information in electronic
32 format when available.

33 (A) Financial information, including, but not limited to,
34 statements of profits and losses of a partnership or of an owner of
35 a single member limited liability company that is disregarded
36 pursuant to Section 23038.

37 (B) The names of all members of the qualified taxpayer's
38 combined reporting group and any member to which the credit is
39 assigned.

1 (C) The names of all partners in a partnership or the names of
2 all members of a limited liability company classified as a
3 partnership for California income tax purposes that is not publicly
4 traded.

5 (D) The sales price of a credit certificate provided by the
6 Franchise Tax Board. The Franchise Tax Board, upon request and
7 subject to confidentiality requirements, shall provide aggregate
8 information on the identity of the qualified taxpayer, the amount
9 of the credit, and the credit recipient.

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

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

20 (A) One hundred million dollars (\$100,000,000) in credits for
21 the 2009–10 fiscal year and each fiscal year thereafter, through
22 and including the ~~2014–15~~ 2019–20 fiscal year.

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

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

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

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

38 (4) Any act that reduces the amount that may be allocated
39 pursuant to paragraph (1) constitutes a change in state taxes for
40 the purpose of increasing revenues within the meaning of Section

1 3 of Article XIII A of the California Constitution and may be passed
2 by not less than two-thirds of all Members elected to each of the
3 two houses of the Legislature.

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

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

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