Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Davis	Analyst:	David Scott	Bill Number:	AB 1915
Related Bills:	None	Telephone:	845-5806	Amended Date:	April 05, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Music Recording Production Expenditures Credit

SUMMARY

This bill would allow a credit against net tax for personal income and corporation taxes. The credit would be an unspecified percent of the total costs paid or incurred for music recording production expenditures in California.

SUMMARY OF AMENDMENTS

The April 5, 2010, amendments removed all of the bill's provisions, which related to the Public Utilities Code for Solar Energy Programs, and replaced them with the provisions discussed in this analysis.

This is the department's first analysis of the bill

PURPOSE OF THE BILL

It appears that the purpose of this bill is to encourage the recording of music, poetry, or spoken-word performances in California.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately, upon enactment and specifically operative for taxable years beginning on or after January 1, 2010.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Board Position:			Department Director	Date
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Currently, neither federal income tax law nor California income tax law includes a credit specifically for music production costs or expenses.

THIS BILL

This bill adds provisions to the Personal Income Tax Law and Corporation Tax Law for a credit for qualified production expenditures for a qualified music recording. The bill would require an unspecified minimum production budget. The credit would be an unspecified percentage of the qualified expenditures. No deduction would be allowed for the amount of qualified expenses for which a credit is allowed. The credit, if not used in the current tax year, would carry over to future tax years, until exhausted.

The bill defines the following terms:

1. "Budget" means an estimate of all expenses paid or incurred during the production period.
2. "Music recording production company" means a company engaged in the business of producing music recordings.
3. "Qualified expenditure" means amounts paid or incurred to purchase or lease tangible personal property or payments for services in California for the production of a qualified music recording.
4. "Qualified music recording" means a recording, in whole or in part, of music, poetry, or spoken-word performance made in California that is produced by a music recording production company for distribution to the general public, with an unspecified budget. It shall not include the audio portions of dialogue or words spoken and recorded as part of a motion picture, video, theatrical production, television news coverage, or athletic event.
5. "Qualified taxpayer" means a taxpayer who has paid or incurred the qualified costs.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Until the percent of expenditures allowed as a credit or the minimum budget for expenditures is specified, the Franchise Tax Board (FTB) would be unable to administer this law.

The bill fails to specify the percent of the expenditures to be used to compute the credit. In addition, the bill has language calling for a minimum production budget; however, the minimum budget is unspecified. Without this information, the FTB would be unable to determine the impact on California revenue.

The bill defines what "budget" means. The definition refers to "the production period;" however, the bill does not define the production period. The production period could be as short as the time to record part of a performance, the time to record a single song or track on an album, the time to record the entire album, or a year or more recording multiple albums. The author's intent is unclear.

The bill defines “qualified music recording.” The definition requires that the recording is produced in California by a music recording production company for distribution to the general public. The definition of “music recording production company” is a company in the business of producing music recordings. The definition should include specific duties, such as artist cultivation and development, recording of the product in the studio (and also define studio, which could be a home studio), obtaining licensing and copyrights, or any other duties as appropriate.

In addition, the bill lacks a definition of what qualifies as distribution to the public. Without these definitions, a recording production company could include an individual with a home computer and recording software, who makes a recording and posts it on an internet website, such as You Tube or MySpace. That individual would be entitled to a credit. If the intent of the bill is to promote commercial recordings for sale to the public, it should specify that in a definition of “distribution to the public.”

This bill uses terms that are undefined or are unclear, i.e., “the production period.” The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit.

OTHER STATES’ INFORMATION

Four other states have music production credits. Michigan offers a credit of up to 42 percent of production costs, with required minimum costs of $50,000, and allows the taxpayer to use $20,000 of the credit, per tax year, until exhausted.

Georgia offers a flat 20 percent tax credit, with required minimum costs of at least $500,000. The credit is transferable. Additionally, Georgia offers a sales and use tax exemption for equipment, materials, and services purchased for use in the production of films, televisions series, commercials, music videos, game development, and animation products.

Oklahoma offers two credits, plus a sales and use tax exemption. The first is a credit (Construction Tax Credit) for the costs of construction of music production facilities built in Oklahoma. The credit is 10 percent of costs greater than $100,000 and less than $1,000,000, plus for costs greater than $1,000,000; the credit is 25 percent of the construction costs. The second credit (Reinvestment Tax Credit) is for 25 percent of profits reinvested into another music or film project produced in Oklahoma. The sales and use tax exemption is a point of sale exemption for property and services used in the production of the project in Oklahoma. There is no minimum budget required.

Louisiana offers a three tiered refundable music production credit (Louisiana Sound Recording Tax Credit). The first level is 10 percent of costs greater than $15,000, but less than $150,000. The second tier is a 15 percent credit for costs greater than $150,000, but less than $1,000,000. The third tier is a 20 percent credit for costs in excess of $1,000,000. If the taxpayer earns more credits than is owed in taxes, Louisiana will refund the balance. If the taxpayer is not based in Louisiana and/or owes no taxes in Louisiana, the taxpayer will get a check for the full value of the credits earned. The taxpayer can only use the program for three of five years. The program is capped at $3 million per year.

FISCAL IMPACT

Based on the provisions in this bill, the FTB is unable to determine an estimated fiscal impact at this time. Because the bill does not specify a credit amount or required budget amounts, the FTB has insufficient information to complete a fiscal impact estimate.

ECONOMIC IMPACT

Revenue Estimate

Based on the provisions in this bill, the FTB is unable to determine an estimated revenue impact at this time. Because the bill does not specify a credit amount, the FTB has insufficient information to complete a revenue estimate.

ARGUMENTS/POLICY CONCERNS

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

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