ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author:	Calderon	Analyst:	Gail Hall	Bill Number:	SB 1197
Related Bills:	See Legislative History	Telephone:	845-6111	Introduced Date:	February 18, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: California Film & Television Tax Credit/Amend Allocation Rules

SUMMARY

This bill would revise the rules for allocating the California Film & Television Tax Credit.

This bill would not impact the department's programs and operations, but does impact state tax revenue.

PURPOSE OF THE BILL

According to the author's office, this bill would encourage film and television projects to begin production early, which would stimulate California's economy without creating any additional burden on the general fund.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be immediately effective upon enactment and operative as of that date.

POSITION

Pending.

ANALYSIS

FEDERAL LAW

The federal American Jobs Creation Act (AJCA) of 2004 contains provisions that impact the income tax treatment of motion picture productions. Effective for productions commencing after October 22, 2004, and before January 1, 2010, the AJCA permits qualifying film and television productions to elect to deduct certain production expenditures in the year the expenditure is incurred in lieu of capitalizing the cost and recovering it through depreciation allowances under the income forecast method discussed above. This provision only applies to qualified productions, the aggregate cost of which does not exceed $15 million.

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
_______ SA	_______ O	_______ NAR	Selvi Stanislaus	04/13/10
_______ N	_______ OUA	___X___ PENDING		

For this purpose, a qualified film or television production is defined as any production of a motion picture, miniseries, scripted, dramatic television episode, or movie of the week if at least 75 percent of the total compensation expended on the production is for services performed in the United States. For an episodic television series, only the first 44 episodes qualify under the provision. The AJCA modifies the income forecast method to include certain participations and residuals in the adjusted basis of the property. The AJCA also allows a deduction equal to a portion of the taxpayer's qualified domestic production activities, including any disposition, lease, rental, or license of qualified film produced by the taxpayer.

STATE LAW

California has not conformed to the AJCA provisions. Current state law provides for a franchise or income tax credit to a qualified taxpayer for the following amounts:

- 20 percent of qualified expenditures attributable to the production of a qualified motion picture, and
- 25 percent of qualified expenditures attributable to the production of a qualified motion picture where the motion picture is a television series relocated to California or an independent film in California that is allocated and certified by the California Film Commission (CFC).

Any credit unused in a taxable year because it is in excess of the taxpayer's tax liability can be carried over for six taxable years.

A qualified taxpayer may, in lieu of claiming the California Film & Television Tax Credit may make an irrevocable election to apply the credit amount against qualified sales and use taxes imposed on the qualified taxpayer.

Current state law provides that the aggregate amount of credits that may be allocated by the CFC in any fiscal year is equal to the sum of the following:

1. $100,000,000 in credits for the 2009/2010 fiscal year and each fiscal year thereafter, through and including the 2013/2014 fiscal year.
2. The unused allocation credit amount, if any, for the preceding fiscal year.
3. The amount of previously allocated credit not certified.

If the amount of credits applied for in any particular fiscal year exceed the aggregate amount of tax credits authorized to be allocated by the CFC, the excess is treated as having been applied for on the first day of the subsequent fiscal year. Credits may not be allocated from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year so that if allocation authority is not available for a particular applicant for the year of application or succeeding fiscal year, the applicant will not receive an allocation of the California Film & Television Tax Credit.

For credits attributable to an independent film, the qualified taxpayer is permitted to sell a credit to an unrelated party. The unrelated party is subject to the same requirements of this provision. The qualified taxpayer is required to report to the FTB prior to the sale of the credit all required information in the form and manner specified by the FTB. Credits cannot be sold to more than one taxpayer nor may the credit be resold by the purchaser to another party. In the event that both the taxpayer originally allocated a credit by the CFC and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the FTB may disallow the credit of either taxpayer, as long as the statute of limitations upon assessment remains open. The FTB is authorized to prescribe rules, standards, procedures, and the like to implement this aspect of the provisions. The Administrative Procedures Act requirements regarding regulations would not apply.

In accordance with rules and regulations required to be promulgated by the CFC, qualified taxpayers must comply with audit requirements prior to the issuance by the CFC of the certified allocation amount. The credit is disallowed if the taxpayer fails to provide the copyright registration number required by the CFC and until this requirement is met.

Annually, the CFC is required to provide the FTB with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the CFC. The FTB is required to accept the tax credit amounts as reported on the CFC listing.

THIS BILL

This bill would remove the provision that provides that credits may not be allocated from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year.

LEGISLATIVE HISTORY

SBX3 15 (Calderon, Stats. 2010, 3rd Ex. Sess. 2009, Ch. 17) and ABX3 15 (Krekorian, Stats. 2010, 3rd Ex. Sess. 2009, Ch. 10) created the California Film & Television Tax Credit that is allocated and certified by the CFC.

FISCAL IMPACT

This bill would not significantly impact the department’s costs.

ECONOMIC IMPACT

Estimated Revenue Impact of SB1197 Effective for Tax Years Beginning On or After January 1, 2011 Assumed Enactment Date Before June 30, 2010 ($ In Millions)				
2010/11	2011/12	2012/13	2013/14	2014/15
-$10	-$30	-$15	$10	$45

Although the amount of allowable California Film & Television Tax Credit would continue to be limited to $100 million per fiscal year, it is estimated that this amendment would result in more approved projects being started and completed sooner, resulting in the revenue impact shown above.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Gail Hall
(916) 845-6111
gail.hall@ftb.ca.gov

Revenue Manager
Monica Trefz
(916) 845-4002
monica.trefz@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov