Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Nazarian	Analyst:	Jane Raboy	Bill Number:	AB 1189
Related Bills:	See Legislative History	Telephone:	845-5718	Amended Date:	March 21, 2013
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: CA Motion Picture Credit/CA Film Committee Extend Allocation of Credits

SUMMARY

This bill would extend the California Motion Picture Credit by five years, until July 1, 2022, and increase the aggregate amount of credits awarded from $800 million to approximately $2.2 billion.

RECOMMENDATION

No position.

Summary of Amendments

The March 21, 2013, amendments removed the provisions of the bill relating to legislative intent and replaced them with the provisions discussed in this analysis.

This is the department's first analysis of this bill.

REASON FOR THE BILL

The reason for this bill is to retain and increase film and television production occurring in California.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment. Thus, upon enactment, the California Film Commission (Film Commission) would be able to accept applications for credit allocations in fiscal years 2015/2016 through 2021/2022.

ANALYSIS

FEDERAL/STATE LAW

Federal law does not allow any credit for motion picture productions.

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The California Film and Television Incentive Program (Incentive Program) was enacted in February 2009 as part of a targeted economic stimulus package. The $800 million Incentive Program commenced on July 1, 2009, and authorized the Film Commission to allocate $100 million dollars for the California Motion Picture Credit each fiscal year through (and including) the 2016/2017 fiscal year.[1] Ten percent, or $10 million in tax credits are reserved for independent films, and unallocated amounts may be carried over and reallocated by the Film Commission.

The Film Commission provides tax credits based on "qualified expenditures" for qualified productions that are produced in-state. A taxpayer must apply to the Film Commission to the claim the credit.

For taxable years beginning on or after January 1, 2011, a qualified taxpayer, as defined, may claim a credit for qualified expenditures, as defined, attributable to the production of the following:

- 20 percent of a qualified motion picture in California; or
- 25 percent of a television series that relocated to California or an independent film.

This credit is allocated in the fiscal year that the production begins and is certified by the Film Commission after the production is completed.

A qualified taxpayer may, in lieu of claiming the credit allowed by this provision, make an irrevocable election to apply the credit amount against qualified sales and use taxes imposed on the qualified taxpayer. This credit specifically overrides the credit usage limitation rules for credits earned by disregarded entities.

Any credit unused in a taxable year because it is in excess of the taxpayer's tax liability can be taken over a period of six taxable years or until the credit is exhausted, whichever occurs first. A qualified corporate taxpayer may elect to assign any portion of the credit allowed to one or more affiliated corporations for each taxable year in which the credit is allowed.

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 as the qualified taxpayer. The qualified taxpayer is required to report to the Franchise Tax Board (FTB) prior to the sale of the credit all required information in the form and manner specified by the FTB.

Credits may not be sold to more than one taxpayer or resold by the purchaser to another party. In the event that both the taxpayer originally allocated a credit by the Film Commission and a taxpayer to whom the credit has been sold 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.

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[1] California Film & Television Tax Credit Program Guidelines, July 2012, Web 08/17/2012. Film Commission website at < http://www.film.ca.gov/res/docs/pdf/incentives%20documents/CFCGuidelines_July_2012.pdf.>

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 do not apply.

Allocation

The aggregate amount of credits that may be allocated by the Film Commission in any fiscal year is equal to the sum of following:

- $100,000,000 in credits for the 2009/2010 fiscal year and each fiscal year thereafter, through and including the 2014/2015 fiscal year.
- The unused allocation credit amount, if any, for the preceding fiscal year.
- The amount of previously allocated credit not certified.

THIS BILL

This bill would extend the Film Commission's authority to allocate the California Motion Picture Credit for five additional years, until July 1, 2022. This bill would also increase the limit on the aggregate amount of credits allocated by the Film Commission from $100 million to the following:

- $150 million in credits for fiscal year 2015/2016; and
- $250 million in credits for fiscal years 2016/2017 through and including 2021/2022.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 286 (Nazarian, 2013/2014) would provide minor technical amendments that would not impact the department's program or operations. This bill is currently in the Assembly.

AB 2026 (Fuentes, Chapter 841, Statutes of 2012) extended the California Motion Picture Credit by two additional years, until July 1, 2017.

AB 1069 (Fuentes, Chapter 731, Statutes of 2011) extended the California Motion Picture Credit by one additional year, until July 2015.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida created a five year $296 million transferable tax credit incentive program for the film and entertainment industry. The program began on July 1, 2010, and sunsets June 30, 2016. Generally, the credits are 20 percent of qualified expenditures, with additional amounts available under certain circumstances.

Illinois offers a nonrefundable film production services credit equal to 30 percent of all qualified expenditures, including post-production and also allows for the following:

- An additional 15 percent film production services credit is available on salaries for individuals living in an economically disadvantaged area. The state's credit only applies to residents' wages, is limited to $100,000, and will sunset in 2021. For tax years beginning on or after January 1, 2012.
- If the taxpayer is a partnership or S corporation, the credit is allowed to the partners or shareholders based on their income and distributive share of income. The tax credits are allowed to be carried forward and applied to the tax liability up to five taxable years. A credit may be transferred by the taxpayer earning the credit within one year of the award.

Massachusetts allows two income tax credits for motion picture production companies that are produced within the state during a 12-month period. Effective for taxable years beginning on or after January 1, 2006 and before January 1, 2023, *Massachusetts* allows a transferable 25 percent payroll credit on aggregate payroll that is subject to *Massachusetts* personal income tax withholding. There is also a transferable 25 percent qualified production expense credit for production companies. A tax liability is credited to the company's personal income or corporate excise tax liability and the tax credits may be transferred or the credits may be refunded by the state for 90 percent of their value. If transferred, tax credits can be carried forward 5 years.

Michigan imposes a corporate income tax effective January 1, 2012, replacing the Michigan Business Tax (MBT) for most taxpayers. Currently, the new corporate income tax does not provide for credits for qualified production companies, film and digital media infrastructure investments, or film/television job training expenditures.

Minnesota does not allow any motion picture tax credit or motion picture incentives against the corporate income tax.

New York offers a NY State Film Production Credit that is refundable and equal to a 30 percent of qualified costs incurred in New York State. The new funding allocated to the program totals $420 million per year for calendar years 2010-2014, inclusive. A reserve of $7 million per year, of the total amount is available for The New York State Post Production Credit.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1189 As Amended March 21, 2013 For Taxable Years Beginning On or After January 1, 2014 Enactment Assumed After June 30, 2013 ($ in Millions)*			
2013-15	2015-16	2016-17	2017-18
+$0.0	-$2.2	-$20.0	-$75.0

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

* In addition to the revenue loss shown above, there will be an additional $1.3 billion revenue loss in subsequent years.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may argue that the program targets at-risk motion productions that are most likely to leave the state due to incentives being offered in other state and countries and this credit would enable California to remain competitive.

Opponents: Some may argue that the increase in the amount authorized to be allocated may not out-weigh the benefit in providing a tax credit.

LEGISLATIVE STAFF CONTACT

Jane Raboy	Mandy Hayes	Jahna Carlson
Legislative Analyst, FTB	Revenue Manager, FTB	Acting Legislative Director, FTB
(916) 845-5718	(916) 845-5125	(916) 845-5683
jane.raboy@ftb.ca.gov	mandy.hayes@ftb.ca.gov	jahna.carlson@ftb.ca.gov