ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Gatto, Bocanegra, et al.	Analyst:	Jane Raboy	Bill Number:	AB 1839
Related Bills:	See Legislative History	Telephone:	845-5718	Amended Dates:	May 23, 2014 and June 17, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: New Motion Picture Credit

SUMMARY

This bill would create a new credit for the production of a qualified motion picture (New Motion Picture Credit) under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL).

RECOMMENDATION

No position.

Summary of Amendments

The May 23, 2014, and June 17, 2014, removed and added provisions relating to the New Motion Picture Credit, made several technical and nonsubstantive changes, and added co-authors.

This analysis replaces the department's analysis of the bill as amended March 19, 2014.

REASON FOR THE BILL

The reason for this bill is to expand and improve in-state competitiveness by retaining film and television productions 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, 2016.

ANALYSIS

FEDERAL LAW

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

Board Position:			Executive Officer	Date
_______ S	_______ NA	___X___ NP		
_______ SA	_______ O	_______ NAR	Selvi Stanislaus	6/25/14
_______ N	_______ OUA			

STATE LAW

The California Film Commission (Commission) administers the existing motion picture credit (Original Motion Picture Credit), and authorizes the allocation of credits, establishes program guidelines, application, and certification procedures.

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

- $100 million in credits for the 2009/2010 fiscal year and each fiscal year thereafter, through, and including the 2016/2017 fiscal year.
- The unused allocation credit amount, if any, for the preceding fiscal year.
- The amount of previously allocated credit not certified.

For taxable years beginning on or after January 1, 2011, under the Original Motion Picture Credit, a qualified taxpayer may claim a credit for qualified expenditures attributable to the production that is equal to either of the following applicable percentage:

- 20 percent of qualified expenditures attributable to the production of a qualified motion picture in California; or
- 25 percent of qualified expenditures attributable to the production of qualified motion picture that is either a television series that relocated to California or an independent film.

A qualified motion picture is defined as a motion picture produced for distribution to the public that is one of the following:

- A feature film with a production budget between $1 million and $75 million;
- A movie of the week or miniseries with a minimum production budget of $500,000;
- A new television series produced in California with a minimum production budget of $1 million licensed for original distribution on basic cable;
- An independent film, as defined; or
- A television series that relocates to California with no minimum budget and is produced for any media outlet.

The credit is allocated by the Commission in the fiscal year that the production begins and is certified by the Commission after the production is completed. A taxpayer is required to apply to the Commission to claim the credit. The Commission is required annually to provide the Franchise Tax Board (FTB), Legislative Analyst's Office (LAO), and the Board of Equalization (BOE) a list of the taxpayers and the tax credit amounts allocated to each taxpayer by the Commission.

A qualified taxpayer may sell the Original Motion Picture Credit, attributable to an independent film, to an unrelated party. The unrelated party is subject to the same requirements as the qualified taxpayer. Prior to the sale of the credit, the qualified taxpayer is required to report to the FTB all required information in the form and manner specified by the FTB.

The Original Motion Picture Credit may not be sold to more than one taxpayer or resold by the purchaser. In the event that both the taxpayer originally allocated a credit by the 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.

Like other credits under the CTL, 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.[1]

A qualified taxpayer is allowed an Original Motion Picture Credit or a credit against the qualified sales and use tax.

The Original Motion Picture Credit may reduce tax below the tentative minimum tax for corporations.

<u>THIS BILL</u>

The Commission would administer the New Motion Picture Credit, authorize the allocation of credits, and establish program guidelines, application, and certification procedures.

For taxable years beginning on or after January 1, 2016, this bill would allow a New Motion Picture Credit equal to an applicable percentage of the qualified expenditures for the production of a qualified motion picture in California.

This bill would prohibit a credit for any qualified expenditures for the production of a motion picture in California, if a credit for those same expenditures has been claimed under the Original Motion Picture Credit.[2]

The applicable percentage for the New Motion Picture Credit would be as follows:

- 20 percent of qualified expenditures attributable to either:
    - the production of a qualified motion picture in California, including, but not limited to, a feature, up to $100 million dollars in qualified expenditures, or
    - a television series that relocated to California that is in its second or subsequent year of receiving a tax credit allocation under the New Motion Picture Credit or under the Original Motion Picture Credit.[3]
- 25 percent of qualified expenditures, as defined, attributable to the production of a qualified motion picture where the qualified motion picture is a television series that relocated to California in its first year of receiving tax credit allocation under this bill.
- 25 percent of qualified expenditures, up to $10 million dollars, attributable to the production of a qualified motion picture that is an independent film.

---

[1] Revenue and Taxation Code Section 23663.
[2] Pursuant to Revenue and Taxation Code Sections (R&TC) 17053.85 and 23685.
[3] Ibid.

- 25 percent of qualified expenditures relating to music scoring and music track recording by musicians attributable to the production of a qualified motion picture in California.
- 25 percent of the qualified expenditures relating to qualified visual effects.

The applicable percentage would be increased by 5 percent, not to exceed a maximum of 25 percent, if the qualified motion picture paid or incurred outside the Los Angeles Zone the "qualified expenditures relating to original photography outside the Los Angeles zone," as defined.

The Commission would be required to allocate credits on or and after July 1, 2016, and before July 1, 2021, one or more allocations periods per fiscal year, and the amount of the credit allowed to a qualified taxpayer would be limited to the amount specified in the credit certificate issued by the Commission. Certificates may not be issued prior to July 1, 2016.

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

- The ______amount for the 2016/2017 fiscal year and each fiscal year thereafter, through and including the 2020/2021 fiscal year.
- The unused allocation credit amount, if any, for the preceding fiscal year.
- The amount of previously allocated credit not certified.

For pass-thru entities[4], a "qualified taxpayer" determination would be made at the entity level and the credit would not be allowed to the pass thru (including an S corporation with respect to the tax imposed on S corporations under Part 11) but passed through to the entity's partners or shareholders.

A qualified taxpayer may sell any credit allowed that is attributable to an independent film to an unrelated party, as defined. The qualified taxpayer would be required to report prior to the sale of the credit, all required information regarding the purchase and sale of the credit, in a form and manner specified by the FTB.

A qualified taxpayer would be prohibited from assigning or selling any tax credit to the extent the tax credit allowed is claimed on any tax return of the qualified taxpayer. In the event more than one taxpayer claims the same credit allocated by the Commission, the FTB could disallow the credit of either taxpayer if the statute of limitations remains open. An unrelated party or party that purchases a credit would be treated as a qualified taxpayer and subject to the requirements of this bill.

Any credit unused in a taxable year because it is in excess of the taxpayer's tax liability could be carried over for six years, if necessary, until the credit has been exhausted.

---

[4] "Pass-thru entity" means any entity taxed as a partnership or S corporation.

This bill would exempt the FTB's standards, criteria, procedures, determinations, rules, notices, or guidelines from the requirements of the Administrative Procedures Act and would authorize the Commission to adopt emergency regulations during the 2014-15 fiscal year that would be necessary to implement the credit.[5]

In the event that a qualified taxpayer fails to provide the copyright registration number on the return claiming the credit as required, the credit would be disallowed and assessed, and collected until the requirements are satisfied. A disallowed credit would be treated as a math error.[6]

Annually, the Commission would be required to provide the LAO, the FTB, and the BOE with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the Commission. The FTB would be required to accept the tax credit amounts as reported on the Commission's listing.

This bill would define the following terms and phrases: "applicable period," "ancillary product," "budget," "clip use," "credit certificate," "employee fringe benefits," "independent film," "licensing," "Los Angeles zone," "new use," "original photography," "pilot for a new television series," "postproduction," "preproduction," "principal photography," "production period," "qualified entity," "qualified individual," "qualified motion picture," "qualified expenditures," "qualified expenditures relating to original photography outside the Los Angeles zone," "qualified taxpayer," "qualified visual effects," "qualified wages,""residual compensation," "reuse," "secondary markets," "television series that relocated to California," and "visual effects." These terms or phrases would have no impact on the FTB's duties.

Under the CTL, where the credit allowed exceeds the taxpayer's tax liability, a qualified taxpayer may elect to make an irrevocable assignment of any portion of the credit allowed to one or more affiliated corporations,[7] as defined, for each taxable year the credit is allowed. The election may be based on any method selected by the qualified taxpayer that originally receives the credit, changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of the qualified taxpayer and the qualified taxpayer's affiliated corporations that assign and receive the credits and must be reported to the FTB, along with all required information regarding the assignment of the credit, as specified.

This bill would treat an affiliated corporation or corporations, unrelated party or parties that are assigned a credit, as a qualified taxpayer.

This bill would allow a qualified taxpayer, in lieu of claiming the credit for the production of a the New Motion Picture Credit, to make an irrevocable election to apply the credit amount against the qualified sales and use tax under Section 6902.5.

---

[5] Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
[6] A math error appearing on the return results in an assessment that is due and payable on notice and demand pursuant to R&TC Section 19051 instead of by a notice of proposed assessment with prepayment protest rights that generally is issued after an audit.
[7] R&TC Section 25110(b).

The Board of Equalization would be required to provide an annual listing of qualified taxpayers, or affiliates that made an irrevocable election, including the credit amount, or portion of the credit amount claimed by each qualified taxpayer or affiliate in a form or manner agreed upon by both the BOE and the FTB.

The New Motion Picture Credit could reduce a corporate taxpayer's tax below tentative minimum tax.

The provisions of this bill would be severable, so that if any provision or its application is held invalid, that invalidity would not affect other provisions or applications that can still be given effect absent the invalidated provision or application.

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.

For clarity and to avoid disputes between individuals and the department, the author may wish to amend this bill for the following reasons:

- Because this bill would prohibit a credit for any qualified expenditures claimed under the Original Motion Picture Credit, it is unclear why this bill would allow an applicable percentage for television series that relocated to California under the Original Motion Picture Credit.
- The language increasing the additional applicable percentage for "qualified expenditures relating to original photography outside the Los Angeles zone" is awkwardly worded and capable of multiple interpretations. For example, one interpretation would suggest that all qualified expenditures for a qualified motion picture with that category of expenditures would be eligible for an additional credit percentage. Another interpretation would limit the additional credit percentage to only expenditures in that category. These varying interpretations could lead to misunderstanding and disputes with taxpayers.

TECHNICAL CONSIDERATIONS

Page 26, line 19, and on page 27, line 11, the language "On or after January 1, 2015, and before July 1, 2021," should read "On or after July 1, 2016, and before July 1, 2021," to correct for a typographical error.

LEGISLATIVE HISTORY

AB 286 (Nazarian, 2013/2014) would modify the existing Motion Picture Credit. AB 286 failed to pass the Assembly by the constitutional deadline.

AB 1173 (Bocanegra, Chapter 536, Statutes of 2013) allowed the Original Motion Picture Credit to reduce a corporate taxpayer's tax below the tentative minimum tax.

AB 1189 (Nazarian, 2013/2014) would extend the Commission's authority to allocate and certify the Original Motion Picture Credit by five years, until July 1, 2022, and would increase the aggregate amount of credits awarded from $800 million to approximately $2.2 billion.
AB 1189 failed to pass the Assembly by the constitutional deadline.

AB 2026 (Fuentes, Chapter 841, Statutes of 2012) extended the Commission's authority to allocate and certify the Original Motion Picture Credit from July 1, 2015, to July 2017.

AB 1069 (Fuentes, Chapter 731, Statutes of 2011) extended the Commission's authority to allocate and certify the Original Motion Picture Credit from July 1, 2014, to July 2015.

ABX3 15 (Krekorian, Chapter 10, Statutes of 2009) and SBX3 15 (Calderon, Chapter 17, Statutes of 2009) established the Original Motion Picture Credit and required the Commission to administer the Original Motion Picture Credit's allocation and certification program.

OTHER STATES' INFORMATION

The states reviewed 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 corporate income 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 and allows the credit to reduce tax below tentative minimum tax.

Illinois offers a nonrefundable film production services credit equal to 30 percent of all qualified expenditures, including post-production, and includes an additional 15 percent film production services credit for salaries for individuals living in an economically disadvantaged area. The state's credit only applies to residents' wages, limited to $100,000, and will sunset in 2021. Any credit unused in a taxable year because it is in excess of the taxpayer's tax liability is carried forward up to five years.

Massachusetts allows two motion picture production income tax credits 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 *s* 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 five years.

Michigan imposes a corporate income tax that replaced the Michigan Business Tax for most taxpayers, effective January 1, 2012. 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 30 percent of qualified costs incurred in New York State. The funding allocated to the program totals $420 million per year for calendar years 2010 through 2014, inclusive. $7 million per year, of the total amount is reserved for The New York State Post Production Credit.

FISCAL IMPACT

Department staff estimates a one-time implementation cost of approximately $132,000 to develop, program, test, and create new tax forms and instructions under the Personal Income Tax and Corporate Income Tax program.

ECONOMIC IMPACT

Revenue Estimate

This bill would establish a New Motion Picture Credit under the PITL and CTL. The department is unable to determine the revenue impact of this bill because the allocation limitation needed to do the calculation was left blank. Absent this information, the FTB has insufficient information to complete a revenue estimate.

SUPPORT/OPPOSITION[8]

Support: Affiliated Property Craftspersons Local 44, American Federation of Musicians (Local 47, of the United States and Canada, AFL-CIO/CLC), Animation Guild (Local 839 IATSE), Antelope Valley/North Los Angeles County Film Commissioner, AFSME District Council 36, Association of Talent Agents, CBS Television Studios, California Chamber of Commerce, California Film & Television Production Alliance, California Hotel and Lodging Association, California Labor Federation, California State Council of Laborers, Central City Association, City and County of San Francisco, City of Beverly Hills, City of Burbank, City of Cerritos, City of Culver City, City of Hemet, City of Long Beach, City of West Hollywood, City of West Hollywood Film Liaison, Councilmember (2nd District, City of Los Angeles), Councilmember (7th District, City of Los Angeles), County of San Bernardino, Directors Guild of America, Inc., Entertainment Union Coalition, Film Independent, FilmL.A., Inc., Fox Entertainment, Friends of the San Francisco Film Commission, Greater Palm Springs Convention & Visitors Bureau, High Desert Film Alliance, Home Box Office, IATSE Local 800 (Art Directors Guild), IATSE Local 892 (Costume Designers Guild), Independent Film & Television Alliance, Indio Chamber of Commerce, Inland Empire Film Commissioner, International Alliance of Theatrical Stage Employees (Moving Pictures Technicians, Artists, and Allied Crafts of the United States, Its Territories and Canada), JCX Expendables, League of California Cities, Los Angeles Latino International Film Festival, Los Angeles Unified School District, Marin County Film Liaison, Mayor - City of Beverly Hills, Mayor - City of Burbank, Mayor - City of Calabasas, Mayor - City of Carson, Mayor - City of Cerritos, Mayor - City of Compton, Mayor - City of Culver City, Mayor - City of Downey, Mayor - City of Duarte, Mayor - City of El Segundo, Mayor - City of Fresno, Mayor - City of Glendale, Mayor - City of Hawthorne, Mayor - City of Hermosa Beach, Mayor - City of Inglewood, Mayor - City of La Canada Flintridge, Mayor - City of La Puente, Mayor - City of Long Beach, Mayor - City of Los Angeles, Mayor - City of Malibu, Mayor - City of Monrovia, Mayor - City of Norwalk, Mayor - City

[8] As noted in the Assembly Revenue and Taxation Committee bill analysis hearing date May 13, 2014.

of Oakland, Mayor - City of Pasadena, Mayor - City of Pico Rivera, Mayor - City of Rancho Pales Verdes, Mayor - City of Torrance, Mayor - City of Sacramento, Mayor - City of San Diego, Mayor - City of San Fernando, Mayor - City of San Francisco, Mayor - City of San Jose, Mayor - City of Santa Ana, Mayor - City of Santa Fe Springs, Mayor Pro Tem (City of Sierra Madre), Mayor - City of South Pasadena, Monterey County Film Commissioner, Motion Picture Association of America, Inc., Motion Picture & Television Mobile Catering Association, Orange County Film Commissioner, Pan African Film Festival, Paramount Pictures, Placer Lake Tahoe Film Commissioner, Producers Guild of America, Regional Economic Association Leaders of California, Sacramento Hotel Association, San Francisco County Chamber of Commerce, San Francisco Film Commissioner, San Gabriel Valley Economic Partnership, San Mateo County/Silicon Valley Film Commissioner, Sacramento Film Commissioner, Santa Barbara County Film Commissioner, Screen Actors Guild – American Federation of Television and Radio Artists, Script Supervisors/Continuity (Coordinators, Accounts, & Allied), Production Specialists Guild, Local 971), South Bay Chamber of Commerce, Southern California Association of Governments, Southwest California Legislative Council, Sundance Institute, Superintendent (Los Angeles Unified School District), Teamsters, Teamsters (Local 399), Valley Industry and Commerce Association, Vice Mayor - City of Bakersfield, Walt Disney Company, Warner Brothers, and 16,873 private individuals.

Opposition: American Heart Association, American Lung Association in California, California School Employees Association, California Tax Reform Association, California Teachers Association, Cancer Action Network, and American Cancer Society.

ARGUMENTS

Proponents: Some supporters may argue that additional incentives are needed to expand and improve state competiveness in attracting and retaining motion picture production activity.

Opponents: Some have questioned whether motion picture credits have an appreciable long-term benefit to the state.

POLICY CONCERNS

This bill would provide an additional 5 percent applicable percentage if a qualified taxpayer incurred or paid qualified expenditures relating to original photography outside the Los Angeles zone but fails to provide a quantitative measure of qualified expenditures. It is possible that a taxpayer could perform one day of original photography outside the Los Angeles zone and increase the applicable percentage by 5 percent for all qualified expenditures. If this bill were to provide a quantitative measure of qualified expenditures this potential problem would be avoided.

LEGISLATIVE STAFF CONTACT

Jane Raboy
Legislative Analyst, FTB
(916) 845-5718
jane.raboy@ftb.ca.gov

Mandy Hayes
Revenue Manager, FTB
(916) 845-5125
mandy.hayes@ftb.ca.gov

Jahna Carlson
Asst. Legislative Director, FTB
(916) 845-5683
jahna.carlson@ftb.ca.gov