

SUMMARY ANALYSIS OF AMENDED BILL

Author: Gatto, Bocanegra, et al. Analyst: Jane Raboy Bill Number: AB 1839
 Related Bills: See Prior Analysis Telephone: 845-5718 Amended Date: July 2, 2014
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	New Motion Picture Credit
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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 July 2, 2014, amendments are summarized below and would accomplish the following:

- Require the Legislative Analyst Office (LAO) and the California Film Commission (Commission) to prepare reports and provide information.
- Allow the LAO to request and receive information from the Franchise Tax Board (FTB) relating to the sale or assignment of the New Motion Picture Credit.
- Allow the LAO to request the FTB to provide additional information needed to prepare reports required by the bill.

Except for the "This Bill" section, the department's analysis of the bill as amended May 23, and June 17, 2014, still applies. The "Support/Opposition" section has been updated to reflect most recent information. The "Implementation Considerations," "Technical Considerations," "Economic Impact," "Fiscal Impact," and "Policy Concerns" remain unchanged and have been restated for convenience.

THIS BILL

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.

Board Position: _____ S _____ NA _____ X _____ NP _____ SA _____ O _____ NAR _____ N _____ OUA _____	Asst. Legislative Director Gail Hall for Jahna Carlson	Date 08/06/14
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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.¹

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.²
- 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.
- 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,³ 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.

¹ Pursuant to Revenue and Taxation Code Sections (R&TC) 17053.85 and 23685.

² Ibid.

³ "Pass-thru entity" means any entity taxed as a partnership or S corporation.

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.

This bill would exempt the FTB's standards, criteria, procedures, determinations, rules, notices, or guidelines from the requirements of the Administrative Procedure Act and would authorize the Commission to adopt emergency regulations during the 2014-15 fiscal year that would be necessary to implement the credit.⁴

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.⁵

Annually, the Commission would be required to provide the LAO, the FTB, and the Board of Equalization (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.

On or before July 1, 2019, this bill would require the LAO to provide to the Legislature and the public a report evaluating the economic effects and administration of the New Motion Picture Credit. The LAO may request and receive information relating to the sale or assignment of credits and additional information needed to prepare reports. The information received by the LAO would be subject to the confidentiality requirements under current law.⁶

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.

⁴ Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

⁵ 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.

⁶ Revenue and Taxation Code section 19542.

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 R&TC Section 6902.5.

The BOE 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.

⁷ R&TC Section 25110(b).

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.

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

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/OPPOSITION⁸

Support: Academy of Television Arts & Science; AFSCME District Council 57; American Federation of Musicians Local 47; Annapurna Pictures; Antelope Valley Film Office; Association of Talent Agents; Beverly Hills Chamber of Commerce; Brawley Chamber of Commerce; Bring Hollywood Home Foundation; California Attractions and Park Association; California Chamber of Commerce; California Energy Efficiency Industry Council; California Federation of Teachers; California Film Institute; California Film & Television Production Alliance; California Hotel & Lodging Association; California Labor Federation; California League of Latin American Citizens; California Teamsters Public Affairs Council; California Travel Association; California Urban Partnership; Castillo Construction Company; CBS Television Studios; Central City Association; Chef Robert Catering, Inc.; Cheryl Viegas-Walker, City of El Centro Mayor; City and County of San Francisco; City of Agoura Hills; City of Arcata; City of Beverly Hills; City of Burbank; City of Camarillo; City of Cerritos; City of Culver City; City of Glendale; City of Hemet; City of Hermosa Beach; City of Irvine; City of Long Beach; City of Los Angeles; City of Malibu; City of Monterey Park; City of Palmdale; City of Pasadena; City of San Dimas; City of Santa Clarita; City of Walnut Creek; City of West Hollywood; Costume Designers Guild; Costume Rentals Corporation; County of Los Angeles Board of Supervisors; County of Nevada; County of San Bernardino; County of San Diego; Directors Guild of America, Inc.; Don Campbell, City of Brawley Mayor; Downtown Sacramento Partnership; El Centro Chamber of Commerce & Visitors Bureau; El Dorado County Chamber of Commerce; Entertainment Union Coalition; Film L.A.; Film Liaisons in California Statewide; Fox Entertainment Group, Inc.; Friends of the San Francisco Film Commission; G.A.P. International Satellite Broadcasting & News Inc.; Gerard Ange Productions International Inc.; Goodnight & Company; Greater Palm Springs Convention & Visitors Bureau; HBO; Imperial County Board of Supervisors; Imperial Irrigation District; Independent Studio Services; Indio Chamber of Commerce; Inland Empire Film Commission; International Alliance of Theatrical Stage Employees; International Alliance of Theatrical Stage Employees, Local No. 16; IATSE

⁸ As noted in the Senate Governance & Finance Committee bill analysis dated June 20, 2014.

Local 839; International Brotherhood of Teamsters, Local 399; JCX Expendables; Jeff Olan Casting, Inc.; John E. Deasy, Superintendent of Los Angeles School District; Laborers' International Union of North America, LIVE-WEB Mobile Broadcasting; Local 724; Lakeshore Entertainment; League of California Cities; Los Angeles Asian and Pacific Film Festival; Los Angeles Coalition for the Economy and Jobs; Marin County Film Liaison; Monterey County Film Commission; Motion Picture Association of America, Inc.; Motion Picture & Television Mobile Catering Association; Movie Makers, Inc.; National Association of Theatre Owners of California/Nevada; OddLot Entertainment; NBCUniversal; Palm Springs Bureau of Tourism, Paramount Pictures; Placer County Board of Supervisors; Placer-Lake Film Tahoe Film Office; Producers Guild of America; Quixote Studios; Real Coalition; Rebel Entertainment Partners, Inc.; Recording Musicians Association; Roger George Rentals; Sacramento Film Commission; Sacramento Hotel Association; San Diego Regional Chamber of Commerce; San Francisco Chamber of Commerce; San Francisco Center for Economic Development; San Francisco Film Centre; San Francisco Film Commission; San Francisco Film Society; San Francisco Travel Association; San Gabriel Valley Economic Partnership; San Jose Silicon Valley Chamber; Screen Actors Guild-American Federation of Television and Radio Artists; San Mateo County/Silicon Valley Film Commissioner; Santa Barbara Film Commissioner; Southwest California Legislative Council; South Bay Association of Chamber of Commerce; Star Waggon, Inc; State Building and Construction Trade Council; Stephen P. Pougnet, City of Palm Springs Major; Sunland-Tujunga Chamber of Commerce; Teamsters Local 399; The Walt Disney Company; Torrance Chamber of Commerce; Transmedia, SF; United Teachers of Los Angeles; United Chamber of Commerce, San Fernando Valley & Region; Valley Industry and Commerce Association; Visual Communications Media; West Hollywood Film Office; Warner Bros. Entertainment Inc.; WIN-TV Corporation; 1387 Individuals.

Opposition: California School Employees Association; California Teachers Association; 1 Individual.

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.

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