

BILL ANALYSIS

Department, Board, Or Commission Franchise Tax Board	Author Gatto, Bocanegra, et al.	Bill Number AB 1839
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SUBJECT

New Motion Picture Credit

SUMMARY

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

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.

FEDERAL LAW

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

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 uncertified credit amount, if any, that was previously allocated.

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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 of a qualified motion picture that is equal to either of the following applicable percentages:

- 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 a 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.

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 to provide annually to 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.

A qualified taxpayer may sell an 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

In lieu of a credit against the income or franchise tax, a qualified taxpayer may elect to apply an Original Motion Picture Credit to reduce the sales and use tax liability.

¹ Revenue and Taxation Code (R&TC) Section 23663.

The Original Motion Picture Credit may reduce tax below the tentative minimum tax for taxpayers subject to the CTL.

THIS BILL

This bill would allow a New Motion Picture Credit subject to a computation, ranking, and allocation by the California Film Commission (Commission) for an amount equal to 20 or 25 percent, whichever is the applicable credit 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.

The applicable credit 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

An additional credit, in an aggregate amount not to exceed 5 percent of the qualified expenditures would be allowed to a qualified motion picture as follows:

- 5 percent of qualified expenditures relating to original photography outside the Los Angeles zone
- 5 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.
- 5 percent of the qualified expenditures relating to qualified visual effects attributable to the production of a qualified motion picture in California.
- 25 percent of qualified expenditures 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 a tax credit allocation.
- 25 percent of qualified expenditures, up to \$10 million dollars, attributable to the production of a qualified motion picture that is an independent film.

² See R&TC Sections 17053.85 and 23685.

The Commission would be required to allocate tax credits to applicants as follows:

- In one or more allocation periods per fiscal year on or after July 1, 2015, and before July 1, 2016.
- In two or more allocations periods per fiscal year on or after July 1, 2016, and before July 1, 2020.

The amount of the credit allowed to a qualified taxpayer, except as otherwise provided, 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 for a fiscal year would be the applicable amount as follows:

- \$230 million in credits for the 2015-2016 fiscal year;
- \$330 million in credits for the 2016-2017 fiscal year and each fiscal year thereafter, through and including the 2019-20 fiscal year; plus any amount described below:
- The unused allocation credit amount, if any, for the preceding fiscal year.
- The amount of previously allocated credit not certified.
- The amount of any credits reduced upon the application of the jobs ratio.

For pass-thru entities, 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 CTL, 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. A party acquiring the credit would be subject to the requirements of this bill and any credit sold by an owner of a disregarded entity would not be subject to the normal credit limitation applicable to owners of disregarded entities.³

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, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.

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 that purchases a credit would be treated as a qualified taxpayer and subject to the requirements of this bill.

³ R&TC Sections 17039(g) and 23036(i).

Credits in excess of the tax liability may be carried over for six years, if necessary, until the credit has been exhausted.

This bill would allow a qualified taxpayer, in lieu of claiming the New Motion Picture Credit on the income tax return, 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.

This bill would exempt the FTB's standards, criteria, procedures, determinations, rules, notices, or guidelines from the requirements of the Administrative Procedure Act.

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.

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 list would include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

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.

This bill would define the following terms and phrases: "applicable period," "ancillary product," "budget," "clip use," "credit certificate," "employee fringe benefits," "independent film," "jobs ratio," "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 and 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, 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.

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

Provisions of the 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. In addition, the Legislature would be required to determine the remedy for that invalidity.

This bill provides double jointing⁴ language that would prevent this bill and AB 2754 from chaptering out⁵ R&TC Section 23036 that is amended in each bill.

LEGISLATIVE HISTORY

AB 286 (Nazarian, 2013/2014) would have modified 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 have extended the Commission's authority to allocate and certify the Original Motion Picture Credit by five years, until July 1, 2022, and would have increased 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.

⁴ *Double jointing* refers to technical amendments necessary when two or more bills propose to amend the same code section (i.e., R&TC Section 23036). Double jointing prevents the problem of chaptering out.

⁵ *Chaptering out* means when, during a calendar year, two or more bills amending the same code section become law, and the bill enacted last (with a higher chapter number) becomes law and prevails over the code section in the previously enacted.

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 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 a 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. Unused tax credits may be carried forward up to 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 lacks any motion picture or film production credits.

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. Of this total, \$7 million per year 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, and test systems changes, and create new tax forms and instructions.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1839* Assumed Enactment After June 30, 2014 (\$ in Millions)			
2015-16	2016-17	2017-18	2018-19
\$0	- \$24	- \$70	- \$120

*This estimate does not include the credit amount applied against Sales & Use tax.

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

Revenue Discussion

This bill authorizes an annual allocation of \$230 million in movie credits beginning in fiscal year 2015-2016 and increases the allocation to \$330 million per year for fiscal year 2016-2017 through 2019-2020. Based on certification patterns for the current movie credit program and phase-in expectations, it is estimated that \$45 million in movie credits would be certified in fiscal year 2016-2017, \$130 million in 2017-2018, and \$200 million in fiscal year 2018-2019. Given the budget and allocation amounts specified in this bill the FTB estimates that 25 percent of certified credits would be for small independent film production companies and the remaining 75 percent would be for all other production companies.

Of the certified amount, it was assumed that major production companies would use 50 percent of the credit in the year certified (\$17 million in fiscal year 2016-2017) and the remainder over the next four years. Because independent film companies may sell the credit to unrelated parties, it was assumed 65 percent would be used in the year certified (\$7 million in fiscal year 2016-2017) and the remainder over the next three years. It was assumed that corporations would use 90 percent of the credit and personal income taxpayers would use the remaining 10 percent.

It is expected that credit usage would continue to grow each year the credit is available, and would peak at approximately \$210 million a year between 2020 and 2022, and begin to decrease each year thereafter.

APPOINTMENTS

None.

SUPPORT/OPPOSITION⁶

Support: 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, California Attractions and Parks, California Chamber of Commerce, California Federation of Teachers, California Film and Television Production Alliance, California Hotel and Lodging Association, California Labor Federation, California Professional Firefighters, California State Council of Laborers, California Teamsters, CBS Television Studios, Central Cities Association, Century City Chamber of Commerce, Chef Robért Catering, Inc., Cities of Agoura Hills, Arcata, Bakersfield, Beverly Hills, Burbank, Calabasas, Camarillo, Carson, Cerritos, Compton, Culver City, Downey, Duarte, El Segundo, Fresno, Glendale, Glendora, Hawthorne, Hemet, Hermosa Beach, Inglewood, Irvine, La Cañada Flintridge, La Puente, Lakewood, Long Beach, Los Angeles, Malibu, Monrovia, Norwalk, Oakland, Palmdale, Pasadena, Pico Rivera, Rancho Palos Verdes, Sacramento, San Dimas, San Fernando, San Jose, Santa Ana, Santa Barbara, Santa Clarita, Santa Fe Springs, Sierra Madre, South Pasadena, Torrance, Walnut Creek, and Whittier City and County of San Francisco, Costume Rentals Corporation, Counties of Riverside and San Bernardino, County of Nevada Board of Supervisors, Directors Guild of America, Entertainment Union Coalition, Film L.A., Fox Entertainment, Friends of the San Francisco Film Commission, Greater Palm Springs Convention and Visitors Bureau, HBO, High Desert Film Alliance, IATSE Local 16 – San Francisco/Bay Area, IATSE Local 44 – Affiliated Property Craftpersons, IATSE Local 80 – Motion Picture Studio Grips/Crafts Service, IATSE Local 600 – International Cinematographers Guild, IATSE Local 695 – Sound Technicians, Television Engineers, Video Assist Technicians, and Studio Projectionists, IATSE Local 700 – Motion Picture Editors Guild, IATSE Local 705 – Motion Picture Costumers, IATSE Local 706 – Make Up Artists & Hair Stylists Guild, IATSE Local 728 – Motion Picture Studio Electrical Lighting Technicians, IATSE Local 729 – Motion Picture Set Painters & Sign Writers, IATSE Local 767 – Motion Picture Studio First Aid Employees, IATSE Local 800 – Art Directors Guild and Scenic, Title, and Graphic Artists, IATSE Local 839 – The Animation Guild, IATSE Local 871 – Script Supervisors/Continuity, Accountants and Allied Production Specialists Guild, IATSE Local 884 – Motion Picture Studio Teachers and Welfare Workers, IATSE Local 892 – Costume Designers Guild, Imperial Irrigation District, Indio Chamber of Commerce, Inland Empire Film Commission, International Brotherhood of Teamsters, Local 399, JCX Expendables, League of California Cities, Los Angeles Coalition for the Economy & Jobs, Los Angeles Unified School District, Marin County Film Resource Office, Monterey County Film Commission, Motion Picture and Television Mobile Catering Association, Motion Picture Association of America, Movie Movers, Inc., NBC Universal, Nest Studio Rentals, Northern California Production Council, OddLot Entertainment, Orange County Business Council, Paramount Pictures, Placer Lake Tahoe Film Office, Producers Guild of America, Recording Industry Association of America, Recording Musicians Association, Regional Economic Association Leaders of California, Sacramento Film Commission, Sacramento Hotel Association, Sacramento Metropolitan Chamber of Commerce, San Diego Regional Chamber of Commerce, San Francisco Chamber of Commerce, San Francisco Film Commission, San Gabriel Valley Economic Partnership, San Jose Silicon Valley Chamber of Commerce, San Mateo County/Silicon Valley Film Commission, Santa Barbara County Film

⁶ As noted in the Senate Floor Analyses [sic] dated August 29, 2014.

Commission, Screen Actors Guild-American Federation of Television and Radio Artists, Simi Valley Chamber of Commerce, South Bay Association of Chambers of Commerce, Southwest California Legislative Council, State Building and Construction Trades Council of California, Sunland-Tujunga Chamber of Commerce, Teamsters Local 399 – Studio Transportation Drivers, The Walt Disney Company, Torrance Chamber of Commerce, United Chambers of Commerce, United Teachers of Los Angeles, Valley Industry and Commerce Association, Warner Brothers Entertainment, Inc., and West Hollywood Film.

Opposition: American Heart Association, California School Employees Association, and California Teachers Association.

VOTES

	Date	Yes	No
Concurrence	08/29/14	72	0
Senate Floor	08/29/14	34	2
Assembly Floor	05/28/14	76	0

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