

# 2011 Sale of Credit Attributable to an Independent Film

# 3551

**Part I – See instructions.**

Check the box if the seller is a Single Member Limited Liability Company (SMLLC).

If you are an LLC please choose the appropriate box selecting your election to be treated as a  partnership.  corporation.

Seller	Name on Tax Credit Certificate (Form M). All sellers complete.		<input type="checkbox"/> SSN or ITIN	<input type="checkbox"/> CA Corporation no.	<input type="checkbox"/> FEIN
	Address (suite, room, PO Box, or PMB no.)		<input type="checkbox"/> Secretary of State (SOS) file number		
	City	State	ZIP Code		
	Partner, member, or shareholder name. Leave blank, if same name as above.		<input type="checkbox"/> SSN or ITIN	<input type="checkbox"/> CA Corporation no.	<input type="checkbox"/> FEIN
	Address (suite, room, PO Box, or PMB no.)		<input type="checkbox"/> Secretary of State (SOS) file number		
	City	State	ZIP Code		
Buyer	Buyer name		<input type="checkbox"/> SSN or ITIN	<input type="checkbox"/> CA Corporation no.	<input type="checkbox"/> FEIN
	Address (suite, room, PO Box, or PMB no.)		<input type="checkbox"/> Secretary of State (SOS) file number		
	City	State	ZIP Code		

**Part II – Independent Film Questionnaire.** See instructions

1. Is the credit being sold attributable to an independent film? See instructions, B Definitions.
  - Yes. Go to 2.
  - No. **Stop.** The credit cannot be sold. Only a credit attributable to an independent film can be sold. Do not complete the rest of the form.
2. To determine if the credit can be sold, answer the following questions:
  - Did you purchase the credit from another taxpayer? . . .  Yes  No
  - Is the credit being sold to more than one taxpayer? . . .  Yes  No
  - Is the buyer a related party? . . . . .  Yes  No

If you answer “**Yes**” to any of the questions, **STOP.** The credit cannot be sold. Do not complete the rest of the form.  
 If you answer “**No**” to all of the questions, go to 3.
3. Did this credit pass through more than one entity?  Yes  No  
 If you answer “**Yes**,” you are required to attach an additional schedule (see instructions for Part II), then go to Part III. If “**No**,” go to Part III.

**Part III – Credit Information.** See instructions

<b>3</b> From form M, enter:  Tax Credit Certificate #: _____ Seller's Permit No.: _____	<b>4</b> Tax Credit Allocation amount shown on certificate	<b>5</b> If seller is a partner, member, or shareholder, enter the distributive share of credit from Schedule K-1 (565, 568, or 100S) Share of Income, Deductions, Credits, etc.
<b>6</b> Total amount of credit being sold	<b>7</b> Total amount of consideration received	<b>8</b> Total amount of credit seller applied or will apply to BOE qualified sales and use taxes. Do not enter more than box 4 minus box 6. <b>Important:</b> If box 5 was completed, do not enter more than box 5 minus box 6.

Sign Here	Seller or Officer's signature ▶	Title	Date	Telephone ( )
	Preparer's Use Only	Preparer's signature ▶	Date	Check if self-employed <input type="checkbox"/>
Firm's name (or yours, if self-employed) and address ▶			FEIN	
May the FTB discuss this form with the preparer shown above? . . . . . <input type="checkbox"/> Yes <input type="checkbox"/> No			Telephone ( )	

# Instructions for Form FTB 3551

## Sale of Credit Attributable to an Independent Film

### Important Information

For taxable years beginning on or after January 1, 2011, California Revenue and Taxation Code (R&TC) Sections 17053.85 and 23685 allow a qualified taxpayer a credit against the "net tax" (individuals) or "tax" (corporations) for a percentage of the qualified expenditures for the production of a qualified motion picture in California. A qualified taxpayer may sell any credit allowed under R&TC Sections 17053.85 and 23685 that is attributable to an independent film to an unrelated party. The California Film Commission (CFC) determines the amount of the credit and issues form M, Tax Credit Certificate, to the qualified taxpayer showing the amount of the credit. The maximum amount of credit that can be sold is the amount shown on the credit certificate. The full amount of credit or a portion of it may be sold. Any portion of the credit that is not sold can be used by the qualified taxpayer to offset income tax liability, or State Board of Equalization (BOE) qualified sales and use taxes. Credit not sold may also be sold to an affiliate.

No later than 30 days after the sale of the credit, the qualified taxpayer selling the credit is required to report information related to the sale to the Franchise Tax Board (FTB). The requirement to notify FTB of the sale also applies to a partner, member, or shareholder who will sell any portion of their distributive share of the credit. After the sale of the credit, the unrelated party that has acquired the credit is subject to the requirements and restrictions of R&TC Sections 17053.85 and 23685. The unrelated purchaser may use the credit against income tax liability, but may not sell it, assign it, or use it against BOE qualified sales and use taxes.

### General Information

#### A Purpose

No later than 30 days after the sale of the credit, the qualified taxpayer (seller) submits form FTB 3551, Sale of Credit Attributable to an Independent Film, to notify FTB of the following:

- Name, address, and tax identification number of the film company listed on CFC form M, the seller, and the buyer.
- **Note:** If the film company is a pass-through entity, the qualified seller is the partner, member, or shareholder.
- Tax Credit Certificate number shown on CFC form M.
- Total Tax Credit Allocation Amount shown on CFC form M.
- Partner, member, or shareholder's distributive share of the credit.
- Amount of credit that will be sold.
- Amount of consideration the seller will receive from the buyer.
- Amount of credit the seller has applied or will apply against BOE qualified sales and use taxes.

**Important:** This portion of the credit may not be sold.

#### B Definitions

*"Independent film"* means a motion picture with a minimum budget of one million dollars (\$1,000,000) and a maximum budget of ten million dollars (\$10,000,000) that is produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than twenty five percent of the producing company.

*"Qualified taxpayer"* means a taxpayer who has paid or incurred qualified expenditures and has been issued a credit certificate by the CFC.

In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer is made at the entity level. No amount of credit is allowed to the passthrough entity. It is passed through to the partners, members, or shareholders. Passthrough entity means any entity taxed as a partnership or "S" corporation.

*"Face amount of credit"* means the amount shown in the Tax Credit Allocation box on CFC form M, Tax Credit Certificate.

*"Consideration received"* means the dollar amount the seller receives from the buyer for the sale of the credit. Stock, securities, or other property also count as consideration received.

#### C Rules

Only qualified taxpayers who receive credits attributable to an independent film may sell the credit to an unrelated party.

A credit cannot be:

- Sold to more than one taxpayer.
- Resold, assigned, or used against BOE qualified sales and use taxes by the unrelated purchaser.

In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed is claimed on any tax return of the qualified taxpayer.

In the event the taxpayer that earned the credit and the buyer both claim the same credit amount on their tax return, the FTB may disallow the credit.

#### D Gain on Sale of Credit

The sale of the credit is a sale of property. The seller is required to report gain from the sale. Basis in property is generally the cost of the property. Since the seller did not pay for the credit, the seller does not have a basis in the credit.

The gain from the sale of the credit is the excess of the total consideration received over the basis. The total amount of consideration received is the sum of any money received plus the fair market value of the property (other than money) received. Since the seller's basis in the credit is \$0 (zero), the seller will recognize and report gain on the full amount of consideration received.

#### E Filing form FTB 3551

The seller is required to send the notification form to the FTB no later than 30 days after the sale of

the credit. The form may be sent by mail or by fax to the following PO Box address or fax number:

FRANCHISE TAX BOARD  
PO BOX 1779  
Sacramento, CA 95827  
Fax: 916.855.5666

### Specific Line Instructions

#### Part I

The seller completes the first entity box with the qualified taxpayer's information. This is the information shown on CFC form M. All complete this box.

The seller completes the second entity box only if the seller is a partner, member, or shareholder, selling their distributive share of pass through credits.

The seller completes the third entity box with the buyer's information.

#### Part II – Independent Film Questionnaire

The seller answers questions 1 and 2 in Part II to determine if the credit meets the requirements to be sold. If any of the requirements are not met, the credit cannot be sold. Do not complete the rest of the form. If the credit does not meet the requirements to be sold, it may still be applied against income tax liability, BOE qualified sales and use taxes, or assigned to affiliated corporations.

If the answer to question 3 is "Yes," attach a schedule listing the **same information** as requested in the seller entity box in Part I for each entity which the credit passed through. Begin with the entity which generated the credit and end with the entity of which the seller is a partner, member, or shareholder.

#### Part III – Credit Information

##### Box 3 – Tax Credit Certificate # and Seller's Permit No.

A copy of form M is needed to complete this box. Enter the tax credit certificate number and the seller's permit number from CFC form M. **Do not** enter the credit allocation or copyright reg. number.

##### Box 4 – Tax Credit Allocation amount shown on certificate

Enter the amount shown in the Tax Credit Allocation box from CFC form M.

##### Box 5 – Distributive share of credit from Schedule K-1

Enter the distributive share of credit from the applicable Schedule K-1 (565, 568, or 100S).

##### Box 8 – Total amount of credit applied to BOE qualified sales and use taxes

A qualified taxpayer may make an irrevocable election to apply the credit or a portion of it against BOE qualified sales and use taxes. If you made or will make this election, enter the amount of credit you applied or will apply against BOE qualified sales and use taxes. If you did not make or will not make the election, leave blank.

**Important:** You may not apply any of the credit being sold against BOE qualified sales and use taxes.