



## **Analysis of Amended Bill**

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Sponsor:

Bill Number: AB 1734

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Amended: April 9, 2018,  
April 12, 2018, and May 1, 2018

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Related Bills: See Legislative  
History

**Subject:** California Motion Picture & Television Production Credit/Qualified Expenditures & Wages Relating to Original Photography Outside Los Angeles Zone

### **Summary**

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), allow a credit to a qualified taxpayer for qualified expenditures for the production of a qualified motion picture in California.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

**Recommendation – No position.**

### **Summary of Amendments**

The April 9, 2018, amendments added co-authors and removed provisions that would have extended the authority of the California Film Commission (Commission) to allocate the existing motion picture credit to an unspecified date and replaced them with the provisions discussed in this analysis. The April 12, 2018, amendment made a non-substantive change to the bill. The May 1, 2018, amendments modified provisions of the sales tax law to allow an irrevocable election to apply this bill's credit against a sales and use tax liability, modified the applicable credit percentage and the information required on the credit application, and made several technical changes.

This analysis only discusses the provisions that would impact the department.

This analysis replaces the department's analysis of the bill as introduced January 3, 2018.

### **Reason for the Bill**

The reason for the bill is to enact a motion picture film credit that includes job growth as a criteria for receiving a credit allocation from the Commission.

## **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, 2020.

## **State Law**

For taxable years beginning on or after January 1, 2016, state law allows a Motion Picture Credit<sup>1</sup> that is administered by the Commission. The credit is calculated by multiplying the qualified expenditures for a production of a motion picture in California, as certified by the Commission, by an applicable credit percentage.

A qualified taxpayer, in lieu of claiming the Motion Picture Credit on the income tax return, may make an irrevocable election to apply the credit amount against their qualified sales and use tax liability.

The aggregate amount of credits that may be allocated by the Commission for a fiscal year is:

- \$230 million for the 2015-2016 fiscal year; and
- \$330 million for the 2016-2017 fiscal year and each fiscal year thereafter, through and including the 2019-20 fiscal year; plus any amount, as specified.

The Commission's authority to allocate the Motion Picture Credit to applicants expires on June 30, 2020.

## **This Bill**

This bill would, for taxable years beginning on or after January 1, 2020, allow qualified taxpayers a tax credit in an amount equal to the applicable percentage of the qualified expenditures for the production of a qualified motion picture in California. Credit amounts would be allocated and certified by the Commission. Under the terms of the bill, no credit would be allowed for any otherwise qualified expenditures to the extent that another Motion Picture Credit has been claimed for the same expenditures.

A qualified taxpayer, in lieu of claiming the credit on their California franchise or income tax return, may make an irrevocable election to apply the credit amount against their qualified sales and use tax liability.

For purposes of this credit, credit certificates must be issued by the Commission for the qualified motion picture, on or after July 1, 2020, and would be required to be for the applicable percentage of all qualified expenditures paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.

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<sup>1</sup> See Revenue & Taxation Code sections 17053.95 and 23695.

The credit allowed to a qualified taxpayer would be limited to the amount specified in the credit certification issued by the Commission.

The applicable credit percentage would be:

- 20 percent of the qualified expenditures attributable to the production of a qualified motion picture in California including, but not limited to, a feature, up to \$100 million in qualified expenditures, or a television series that relocated to California that is in its second or subsequent years of receiving an allocation for this tax credit.
- 25 percent of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is a television series that relocated to California in its first year of receiving an allocation of this tax credit.
- 25 percent of the qualified expenditures, up to \$10 million, attributable to the production of a qualified motion picture that is an independent film.

The applicable credit percentage for the 20 percent category, detailed above, could be increased by 5 percent of qualified expenditures relating to:

- Original photography outside of the Los Angeles zone, exclusive of wages.
- Qualified visual effects attributable to the production of a qualified motion picture in California.

An additional credit in the amount of 10 percent of qualified wages paid for services performed relating to original photography outside of the Los Angeles zone to qualified individuals that reside within California but outside of the Los Angeles zone would be allowed for the production of a qualified motion within California where the applicable credit percentage is 20 percent. The additional credit would be reduced to 5 percent for productions where the applicable credit percentage is 25 percent.

A qualified taxpayer may sell the credit that is attributable to an independent film, as defined in this bill, to an unrelated party.

The qualified taxpayer would be required to report to the Franchise Tax Board (FTB) prior to the sale of the credit, in the form and manner specified by the FTB, all required information regarding the purchase and sale of the credit including:

- The social security number 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 credit shall not be sold to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.

A party that has acquired a tax credit shall be subject to the requirements of this section.

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

In the event that both the taxpayer originally allocated a credit by the Commission and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the FTB may disallow the credit of either taxpayer so long as the statute of limitations upon assessment remains open.

The unrelated party or parties that purchase a credit shall be treated as a qualified taxpayer.

Chapter 3.5 (commencing with Section 11340) of Part 1 of line 11 Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the FTB pursuant to this subdivision.

No credit would be allowed unless the qualified taxpayer provides the following to the Commission:

- Identification of each qualified individual.
- The specific start and end dates of production.
- The total wages paid.
- The total amount of qualified wages paid to qualified individuals.
- The copyright registration number, as reflected on the certificate of registration issued.<sup>2</sup> The registration number shall be provided on the return claiming the credit.
- The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.
- Information to substantiate its qualified expenditures.
- Information required by the Commission necessary to verify the amount of credit claimed.
- If applicable, documentation verifying that the qualified taxpayer made a financial contribution to the Career Pathways Training requirement.

Based on the information provided, the Commission would be required to recompute the jobs ratio<sup>3</sup> previously computed and compare this recomputed jobs ratio to the jobs ratio that the qualified taxpayer previously listed on the application submitted. If the Commission determines that the jobs ratio has been reduced by more than 10 percent for a qualified motion picture, the Commission would reduce the amount of credit allowed by an equal percentage, unless the qualified taxpayer demonstrates, and the Commission determines, that reasonable cause exists for the jobs ratio reduction.

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<sup>2</sup> Under the authority of Section 410 of Title 17 of the United States Code.

<sup>3</sup> "Jobs ratio" means the amount of qualified wages paid to qualified individuals divided by the amount of tax credit, not including any additional credit allowed.

If the Commission determines that the jobs ratio has been reduced by more than 20 percent for a qualified motion picture, the Commission would be prohibited from accepting an application from that qualified taxpayer or any member of the qualified taxpayer's controlled group for a period of not less than one year from the date of that determination, unless the qualified taxpayer demonstrates, and the Commission determines, that reasonable cause<sup>4</sup> exists for the jobs ratio reduction.

On or after July 1, 2020, and before July 1, 2025, (or longer as described below), the Commission would be required to do the following:

- In two or more allocation periods per fiscal year, allocate tax credits to applicants.
- Establish a procedure for applicants to file with the Commission a written application, on a form jointly prescribed by the Commission and the FTB for the allocation of the tax credit.
- Establish criteria, consistent with the requirements of this section, for allocating tax credits.
- Determine and designate applicants who meet the requirements of this section.

The application must include, but would not be limited to, the following information:

- The budget for the motion picture production.
- The number of production days.
- A financing plan for the production.
- The diversity of the workforce employed by the applicant, including, but not limited to, the ethnic and racial makeup of the individuals employed by the applicant during the production of the qualified motion picture, to the extent possible.
- All members of a combined reporting group, if known at the time of the application.
- Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company that is disregarded pursuant to Section 23038. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.
- The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes that have a financial interest in the applicant's qualified motion picture. The information provided pursuant to this clause shall be confidential and would not be subject to public disclosure.

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<sup>4</sup> "Reasonable cause" means unforeseen circumstances beyond the control of the qualified taxpayer, such as, but not limited to, the cancellation of a television series prior to the completion of the scheduled number of episodes or other similar circumstances as determined by the Commission.

- The amount of qualified wages the applicant expects to pay to qualified individuals.
- The amount of tax credit the applicant computes the qualified motion picture will receive, applying the applicable credit percentages described in the bill.
- A statement establishing that the tax credit described in this section is a significant factor in the applicant's choice of location for the qualified motion picture. The statement shall include information about whether the qualified motion picture is at risk of not being filmed or specify the jurisdiction or jurisdictions in which the qualified motion picture will be located in the absence of the tax credit. The statement shall be signed by an officer or executive of the applicant.
- The applicant's written policy against unlawful harassment, including, but not limited to, sexual harassment, which includes procedures for reporting and investigating harassment claims, a phone number for an individual who will be responsible for receiving harassment claims, and a statement that the company will not retaliate against an individual who reports harassment. The applicant must also indicate how the policy will be distributed to employees and include a summary of education training resources, including the prohibition against, and prevention and correction of, sexual harassment and remedies available.
- Any other information deemed relevant by the Commission or the FTB.

If on July 1, 2025, the Commission determines that credits allocated remain unused and have not been added to credit amounts available for allocation under a successor section or sections, the Commission may continue to make allocations of the unused credits until such time as the unused credits are fully utilized.

The Commission shall annually provide the Legislative Analyst's Office, the FTB, and the California Department of Tax and Fee Administration with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the Commission. The list shall include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

The aggregate amount of credits that may be allocated for fiscal year 2020–21 and each fiscal year thereafter, through and including the 2024–25 fiscal year is \$330 million, plus:

- The unused allocation credit amount, if any, for the preceding fiscal year.
- The amount of previously allocated credits not certified.
- The amount of any credits reduced pursuant to the recalculation of the jobs ratio, as described above.
- That portion of any unused allocation credit amount, if any, attributable to other motion picture credits available for that fiscal year in a manner as determined by regulations promulgated by the Commission.

The Commission would have the authority to allocate tax credits in accordance with any regulations prescribed upon adoption.

This credit may be carried over for up to nine taxable years until exhausted.

The credit would be excluded from the requirements of Section 41.

### **Implementation Considerations**

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

### **Legislative History**

SB 832 (Portantino, et al., 2017/2018), similar to this bill, would create a new Motion Picture Credit. SB 832 is currently pending before the Senate Governance and Finance Committee.

SB 951 (Mitchell, 2017/2018) similar to this bill, would create a new Motion Picture Credit. SB 951 is currently pending before the Senate Governance and Finance Committee.

AB 688 (Gomez, 2015/2016), would have extended the Commission's authority to allocate the Motion Picture Credit for an additional year, through June 30, 2021, and would have increased the aggregate amount of credits that may be awarded. AB 688 failed to pass out of the Assembly by the constitutional deadline.

AB 1189 (Nazarian, 2013/2014), would have extended the original Motion Picture Credit by five years, until July 1, 2022, and increased the aggregate amount of credits awarded. AB 1189 failed to pass out of the Assembly by the constitutional deadline.

AB 1839 (Gatto, Bocanegra, et al., Chapter 413, Statutes of 2014) added a new statute for the Motion Picture Credit for the production of a qualified motion picture for taxable years beginning July 1, 2016, and before July 1, 2020.

AB 2026 (Fuentes, Chapter 841, Statutes of 2012) extended the original Motion Picture Credit by two additional years, until July 1, 2017, and increased the aggregate amount of credits awarded.

AB 1069 (Fuentes, Chapter 731, Statutes of 2011) extended the original Motion Picture Credit by one additional year, until July 1, 2015, and increased the aggregate amount of credits awarded.

### **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 \$296 million per year or approximately \$1.5 billion transferable corporate income tax credit incentive program for the film and entertainment industry. The program began on July 1, 2010, and expired June 30, 2016.

*Illinois* offers a state credit based on the salaries paid to individuals living in an economically disadvantaged area and applies to residents' wages, limited to \$100,000. However, it lacks an annual allocation-funding cap. The credit will sunset in 2021.

*Massachusetts* allows two motion picture production income tax credits for taxable years beginning on or after January 1, 2006, and before January 1, 2023. It lacks an annual allocation-funding cap or project cap.

*Michigan* lacks a motion picture or film production credit.

*Minnesota* lacks a motion picture or film production credit.

*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 or approximately \$3.8 billion for calendar years 2010 to 2019, inclusive.

### **Fiscal Impact**

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

### **Economic Impact**

#### Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1734 as Amended May 1, 2018  
For Taxable Years Beginning On or After January 1, 2020  
Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue*
2021-2022	- \$27
2022-2023	- \$90
2023-2024	- \$140

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

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

#### Revenue Discussion

This bill would expand the movie credit program by allowing additional allocations of \$330 million plus \$130 million of unused credits from the preceding fiscal years beginning on or after July 1, 2020, and before July 1, 2025. The timing and usage of the credit is based on the current movie credit activity. It is assumed that the first additional allocation would occur on July 1, 2020, and approximately \$260 million of this allocation would be certified in 2022 and

the remaining \$200 million would be certified over the next several years. Of the certified amount, it is assumed that production companies would use 35 percent, or \$70 million, in the year certified, peaking at \$240 million in 2026. It is assumed that 90 percent of the credit would be used by corporations and the remaining 10 percent would be used by personal income taxpayers.

The tax-year estimates are converted to fiscal-year estimates, and then rounded to arrive at the estimates shown in the above table.

### **Support/Opposition**

Support: None provided.

Opposition: None provided.

### **Arguments**

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

Opponents: Some may argue that fiscal costs of this credit outweigh the potential benefits to the state.

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