



Analysis of Amended Bill

Author: Luz Rivas	Sponsor:	Bill Number: AB 1442
Analyst: Jessica Deitchman	Phone: (916) 845-6310	Amended: May 20, 2019, June 12, 2019, June 25, 2019, and July 11, 2019
Attorney: Shane Hofeling	Related Bills: See Legislative History	

Subject: Share Our Values Tax Credit

Summary

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would create the Share Our Values Tax Credit, as specified.

Recommendation – No position.

Summary of Amendments

The May 20, 2019, amendments removed provisions of the bill related to the Government Code and replaced them with provisions that would create the Share Our Values Tax Credit.

The June 12, 2019, amendments, added a sunset date, specified the amount of credit allowed, modified the definition of qualified taxpayer, and added a provision discussing how the credit would be allocated by the California Film Commission (Commission).

The June 25, 2019, amendments removed language that would have allocated the credit on a first-come-first-served basis, and replaced it with language to allocate the credit in the same manner as the motion picture credit.

The July 11, 2019, amendments added a coauthor, and replaced the bill's provisions with the provisions discussed in this analysis.

This is the department's first analysis of the bill. This analysis only addresses the provisions that impact the department.

Reason for the Bill

The reason for the bill is to provide a relocation incentive in the form of a tax credit to qualified taxpayers who choose to relocate film production to California from a state that restricts a woman's access to abortion services.

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.

Federal/State Law

For taxable years beginning on or after January 1, 2016, state law allows a Motion Picture Credit¹ 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 2019-2020 fiscal year; plus any amount, as specified.

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

For taxable years beginning on or after January 1, 2020², state law allows 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 will be allocated and certified by the Commission. No credit will be allowed for any otherwise qualified expenditures to the extent that another Motion Picture Credit has been claimed for the same expenditures.

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

The applicable credit percentages are:

- 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

¹ See Revenue and Taxation Code (R&TC) sections 17053.95 and 23695.

² R&TC sections 17053.98 and 23698.

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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.
- 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 picture within California where the applicable credit percentage is 20 percent.

With some restrictions, a qualified taxpayer may sell the credit that is attributable to an independent film to an unrelated party.

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

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.

This Bill

For each taxable year beginning on or after January 1, 2020, this bill would, under the PITL and the CTL, create the Share Our Values Tax Credit that would allow a credit equal to the applicable percentage of qualified expenditures for the production of a qualified motion picture in California. Credit amounts would be allocated and certified by the Commission. 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.³ The credit would be allowed for the taxable year the Commission issues the credit certificate and the amount of credit allowed to a qualified taxpayer would be limited to the amount specified in the credit certification issued by the Commission.

The applicable percentages would be:

- 20 percent of the qualified expenditures, up to \$100 million in qualified expenditures per feature or television series season, attributable to the production of a qualified motion picture in California including, but not limited to, a feature 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.
- 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 taxpayers that reside within California but outside of the Los Angeles zone would be allowed for the production of a qualified motion picture within California where the applicable credit percentage is 20 percent.

This bill would incorporate the definitions in the current Motion Picture Credit⁴ with the exception of the following definitions:

- "Jobs ratio" would mean the amount of qualified wages paid to qualified individuals divided by the amount of tax credit, not including any additional credit allowed relating to original photography outside the Los Angeles zone (pursuant to subparagraphs (D) and (E) of paragraph (4) of subdivision (a),

³ Sections 17053.85, 17053.95, 17053.98, 23685, 23695, or 23698.

⁴ Sections 17053.95 and 23695.

as computed by the Commission. For the purposes of the calculation of the jobs ratio only, 70 percent of qualified expenditures for visual effects paid to third-party vendors for work performed in California shall be deemed to be qualified wages paid to a qualified individual.

- "Qualified motion picture" would mean:
- A motion picture that is produced for distribution to the general public, regardless of medium, that is one of the following:
 - A feature with a minimum production budget of one million dollars (\$1,000,000).
 - A miniseries consisting of two or more episodes, each longer than 40 minutes of running time, exclusive of commercials, that is produced in California, with a minimum production budget of one million dollars (\$1,000,000) per episode.
 - A new television series of episodes longer than 40 minutes each of running time, exclusive of commercials, that is produced in California, with a minimum production budget of one million dollars (\$1,000,000) per episode.
 - An independent film.
 - A television series that relocated to California.
 - A pilot for a new television series that is longer than 40 minutes of running time, exclusive of commercials, that is produced in California, and with a minimum production budget of one million dollars (\$1,000,000).
- Additionally, to qualify as a "qualified motion picture," all of the following conditions shall be satisfied:
 - At least 75 percent of the principal photography days occur wholly in California or 75 percent of the production budget is incurred for payment for services performed within the state and the purchase or rental of property used within the state.
 - Production of the qualified motion picture is completed within 30 months from the date on which the qualified taxpayer's application is approved by the Commission. For purposes of this section, a qualified motion picture is "completed" when the process of postproduction has been finished.
 - The copyright for the motion picture is registered with the United States Copyright Office pursuant to Title 17 of the United States Code.
 - Principal photography of the qualified motion picture commences after the date on which the application is approved by the Commission, but no later than 180 days after the date of that approval if the qualified motion picture has a budget with qualified

expenditures of less than one hundred million dollars (\$100,000,000), and no later than 240 days after the date of that approval in the case of a qualified motion picture with a budget of qualified expenditures with at least one hundred million dollars (\$100,000,000), unless death, disability, or disfigurement of the director or of a principal cast member; an act of God, including, but not limited to, fire, flood, earthquake, storm, hurricane, or other natural disaster; terrorist activities; or government sanction has directly prevented a production's ability to begin principal photography within the prescribed 180- or 240-day commencement period.

- The qualified motion picture relocated to California from a state that has pending legislation or existing law that prohibits access to, criminalizes the provision of, or otherwise restricts a woman's access to abortion services after eight weeks from the beginning of the pregnancy or earlier or the qualified taxpayer chose to pay or incur qualified expenditures in California rather than in a state that has pending legislation or existing law that prohibits access to, criminalizes the provision of, or otherwise restricts a woman's access to abortion services after eight weeks from the beginning of the pregnancy or earlier.

"Qualified taxpayer" would have the same meaning as under the current law definition of the California Motion Picture credit, except that the qualified taxpayer additionally would be required to include on the written credit application a narrative summary describing how the qualified taxpayer, and any relevant activities during the production period, shares California's values with regard to women's reproductive rights.

The aggregate amount of credits that may be allocated for a fiscal year is \$100,000,000, plus any unused allocation amounts from prior fiscal years, for the 2020-2021 fiscal year and each fiscal year thereafter, through and including the 2024-2025 fiscal year. These credits would generally be allocated to the highest jobs ratio, working down the list, until the credit amount is exhausted.

If the Commission determines the "job ratio" has been reduced by more than ten percent for a qualified motion picture, the Commission shall reduce the amount of credit allowed by an equal percentage, unless the "qualified taxpayer" demonstrates that reasonable cause exists for the jobs ratio reduction. If the "job ratio" has been reduced by more than 20 percent, the Commission shall not accept the application, unless the "qualified taxpayer" demonstrates that the reduction was due to reasonable cause.

The Commission on or after July 1, 2025, may allocate any previously allocated credits not certified that have not previously been added to credit amounts available for allocation.

This bill would require the Commission, among other requirements, to:

- Allocate and certify 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 Franchise Tax Board (FTB) for the allocation of the tax credit.
- Annually provide the Legislative Analyst's Office, the FTB, and the California Department of Fee and Tax Administration with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer. 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.
- Annually post specified information on its internet website.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill would allow a credit to those taxpayers who demonstrate that they have relocated to California from a state that has pending legislation or existing law that prohibits access to, criminalizes the provision of, or otherwise restricts a woman's access to abortion services after eight weeks of pregnancy or earlier. However, the bill fails to specify that the move must be in the year that the restriction was introduced or passed. As a result, those taxpayers that are currently located in California, but were previously located in a state that had the limitation on abortion described above, regardless of if the limitation occurred after the taxpayer's relocation to California, would be entitled to the credit. If this is contrary to the author's intent, the bill should be amended.

This bill uses terms that are undefined, i.e., "pending legislation." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the terms.

It is recommended that the bill be amended to grant the FTB regulatory authority for purposes of administering this bill's provisions, and an exemption from the rulemaking procedures required under the Administrative Procedures Act (APA).

Legislative History

SB 871 (Committee on Budget and Fiscal Review, Chapter 54, Statutes of 2018) allows a Motion Picture Credit for taxable years beginning on or after January 1, 2020, to a qualified taxpayer for qualified expenditures for the production of a qualified motion picture in California.

AB 1734 (Calderon, 2017/2018), would have created a new Motion Picture Credit. AB 1734 failed to pass out of the Assembly by the constitutional deadline.

SB 832 (Portantino, et al., 2017/2018), would have created a new Motion Picture Credit. SB 832 failed to pass out of the Senate by the constitutional deadline.

SB 951 (Mitchell, 2017/2018,) would have created a new Motion Picture Credit. SB 951 failed to pass by out of the Senate by the constitutional deadline.

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 would have 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 film credit equal to 30 percent of all qualified expenditure, including post production. The Illinois Film Tax Credit is currently scheduled for legislative renewal 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 and *Minnesota* lack 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 and is available until 2022.

Fiscal Impact

This bill would not significantly impact the department's costs.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1442 as Amended July 11, 2019
Assumed Enactment after June 30, 2019

(\$ in Millions)

Fiscal Year	Revenue
2019-2020	\$0.0
2020-2021	-\$9.0
2021-2022	-\$35.0

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 allow the Commission to annually allocate \$100 million in Share Our Values tax credits to productions moving to California 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 \$100 million allocation would occur on July 1, 2020, and approximately \$37 million of this allocation would be certified by 2021, and the remaining \$63 million would be certified over the next several years. It is assumed that any unused allocations would be returned to the Commission and re-allocated as specified in the bill. Of the certified amounts, it is assumed that production companies would use 60 percent, or \$22 million in the year generated and the remaining amounts would go unused. It is assumed that 99 percent of the credit would be used by corporations and the remaining one 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. It is estimated that credit usage would peak in fiscal year 2025, at \$60 million.

Policy Concerns

This bill lacks carryover language. As a result, any unused credit would be lost if the taxpayer is unable to use the entire credit amount in the year claimed. The author may wish to add language allowing a limited carryover period.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the credit by the Legislature.

Legislative Staff Contact

Jessica Deitchman
Legislative Analyst, FTB
(916) 845-6310

jessica.deitchman@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484

jame.eiserman@ftb.ca.gov

Jahna Carlson
Acting Legislative Director, FTB
(916) 845-5683

jahna.carlson@ftb.ca.gov