



Bill Analysis

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Sponsor:

Bill Number: AB 986

Related Bills: See Legislative
History

Introduced February 18 and
Amended March 23, 2021

SUBJECT

Film Credit Equitable Opportunities

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), would modify the motion picture production credit by increasing the credit for independent minority films, as defined, and by increasing the credit for independent minority film original photography expenses and wages.

In addition, this bill would increase the aggregate amount of credits that may be allocated under the film credits and would make these credits exclusively available to independent minority films.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The bill as introduced on February 18, 2021, would have also added the film studios located in the City of Banning to the definition of the qualifying Los Angeles zone. The March 23, 2021, amendment removed the film studios located in the City of Banning from the definition of the Los Angeles zone.

This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to promote diversity in the independent film industry.

ANALYSIS

This bill, under the PITL and the CTL, would modify the new motion picture production credit by allowing qualified taxpayers an increased tax credit for an independent minority film production in California. The applicable credit percentage would be 40 percent (40%) of the qualified expenditures, up to \$30 million, attributable to the production of the qualified motion picture that is an independent minority film.

This bill would define "independent minority film" as a motion picture satisfying all of the following:

- A minimum budget of one million dollars (\$1,000,000).
- Produced by a company that would not be publicly traded, and publicly traded companies could not own, directly or indirectly, any interest in the producing company. The producing company would be at least 51 percent (51%) owned by a minority individual or group, and the management and daily business operations would be controlled by at least one individual who is a minority.
- The California Film Commission (Commission) application information indicates that at least 50 percent (50%) of the writers, directors, music directors, music composers, music supervisors, producers, performers, other than background actors with no scripted lines, and behind-the-camera roles, including, but not limited to, lighting, sound, cameras, and design, are minorities.
- "Minority" would mean African American, Asian Pacific American, Hispanic American (Caribbean, Central or South American, Cuban, Mexican, or Puerto Rican), or Native American (having origin in any of the original peoples of North America or the Hawaiian Islands).

Certain additional credits would also be allowed in lieu of other additional credits for independent minority film production as follows:

- Taxpayers whose applicable credit percent is 20 percent (20%) of qualified expenditures attributable to the production of a motion picture in California under current law would be allowed an additional credit. The additional credit would be in lieu of the additional credit allowed for five percent (5%) of qualified expenditures, excluding qualified wages, for original photography outside the Los Angeles zone, and would be five percent (5%) of qualified expenditures, excluding qualified wages, relating to original photography in California for an independent minority film.
- Taxpayers whose applicable credit percent is 20 percent (20%) of qualified expenditures attributable to the production of a motion picture in California under current law would be allowed an additional credit. The additional credit would be in lieu of the additional credit allowed for ten percent (10%) of qualified wages, for original photography outside the Los Angeles zone, and would be ten percent (10%) of qualified wages, relating to original photography in California for an independent minority film.
- Taxpayers whose applicable credit percent is 25 or 40 percent (25% or 40%) of qualified expenditures attributable to the production of a motion picture in California under current law would be allowed an additional credit. The additional credit would be in lieu of the additional credit allowed for five percent (5%) of qualified wages, for original photography outside the Los Angeles zone, and would be ten percent (10%) of qualified wages, relating to original photography in California for an independent minority film.

The following definitions would apply to additional credits for independent minority film production:

- "Applicable period" would mean the period that commences with preproduction and ends when original photography concludes.
- "Original photography" would include principal photography and reshooting original footage.
- "Qualified expenditures" would mean amounts paid or incurred for tangible personal property purchased or leased, and used, within this state in the production of a qualified motion picture and payments, including qualified wages, for services performed within this state in the production of a qualified motion picture.

The bill would authorize a qualified taxpayer to sell any of the film credits attributable to an independent minority film.

The bill would require an applicant with a production that is an independent minority film to include, in its application for the film credits to the Commission, certain information relating to the applicant's voluntary programs to increase the representation of minorities and women in the job classifications that are not included in qualified wages.

From the 2021-2022 fiscal year through the 2024-2025 fiscal year, the bill would also provide an additional \$200,000,000 per fiscal year exclusively for independent minority film.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment, commencing specifically with the 2021-2022 fiscal year.

Federal/State Law

Federal Law

There is no current federal law comparable to the state's film credit.

State Law

State law allows a motion picture and television production credit that is administered by the Commission. This law was enacted in June, 2018, and became operative for taxable years beginning on or after January 1, 2020.

Taxpayers can make an irrevocable election to apply the assigned credit against qualified sales and use tax imposed under the Sales and Use Tax provisions. 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 require for the applicable percentage be of all qualified expenditures paid or incurred by the qualified taxpayer in all taxable years for that qualified motion picture.

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

The applicable credit percentage is:

- 20 percent (20%) 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 (25%) 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 (25%) 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 (20%) category, detailed above, increased by 5 percent (5%) 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 (10%) 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 is allowed for the production of a qualified motion within California where the applicable credit percentage is 20 percent (20%).

An additional credit in the amount of 5 percent (5%) 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 is allowed for the production of a qualified motion within California where the applicable credit percentage is 25 percent (25%).

A qualified taxpayer may sell the credit that is attributable to an independent film to an unrelated party.

The qualified taxpayer is 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.

The aggregate amount of credits allocated for fiscal year 2020–2021 and each fiscal year thereafter, through and including the 2024–2025 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.

The credit is excluded from the requirements of Section 41.

Implementation Considerations

The department has identified the following implementation considerations, and is available to work with the author's office to resolve these and other considerations that may be identified.

Subclauses (I) and (II) of clause (i), subdivision (a), paragraph (4), subparagraph (E) of both Sections 17053.98 and 23698 address independent minority pictures, which would be allowed a 40 percent (40%) credit of the qualified expenditures attributable for the production of a qualified motion picture in California. Current law allows an additional ten percent (10%) for those with an applicable percentage of 20 percent (20%) and an additional 5 percent (5%) for those with an applicable percentage of 25 percent (25%). The author may wish to combine subclauses (I) and (II) and choose the additional credit that would be allowed of 5 or 10 percent (5% or 10%) of qualified wages paid for services performed relating to original photography in California to qualified individuals who reside in California.

Technical Considerations

As a tax levy, this bill would be effective immediately. The effective date in Sections 17053.98 and 23698, subdivision (k), of this bill is inconsistent and the operative date is not specified. It is recommended that the author strike out: "The amendments made by the act adding this subdivision to this section shall be effective commencing with the 2021–2022 fiscal year." and replace it with: "The amendments made by the act adding this subdivision to this section shall be operative for taxable years beginning on or after January 1, 2021."

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 871 (Committee on Budget and Fiscal Review, Chapter 54, Statutes of 2018), under the PITL and the CTL, allowed a California motion picture and television production credit/qualified expenditures and wages relating to original photography outside Los Angeles zone.

SB 878 (Committee on Budget and Fiscal Review, Chapter 456, Statutes of 2018) , under the PITL and the CTL, modified the Legislative Analyst Office's reporting requirement, clarified the Commission's authority to allocate the credit, and appropriated funds to the Commission, as specified.

AB 2936 (Nazarian, 2017/2018) would have extended the California Motion Picture and Television Production Credit (Motion Picture Credit) to 2024-2025 fiscal year under the PITL and CTL. AB 2936 did not pass out of the Assembly by the constitutional deadline.

SB 951 (Mitchell and Portantino, 2017/2018), under the PITL and the CTL, would have allowed a credit to a qualified taxpayer for qualified expenditures for the production of a qualified motion picture in California. SB 951 did not pass out of the Senate by the constitutional deadline.

AB 286 (Nazarian, 2015/2016), under the PITL and the CTL, would have modified the Motion Picture Credit. AB 286 did not pass out of the Assembly by the constitutional deadline.

AB 1839 (Gatto, et al., Chapter 413, Statutes of 2014) created the motion picture credit, under the PITL and the CTL, that was available for allocation by the Commission for fiscal years 2015-2016 through 2019-2020, inclusive. Motion picture credits in excess of the tax liability may be carried over for six years, if necessary, until the credit has been exhausted.

PROGRAM BACKGROUND

None noted.

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 986 as Amended March 23, 2021.
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2021-2022	\$0
2022-2023	-\$3.2
2023-2024	-\$16

*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 or for the net final payment method of accrual.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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