STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Portantino, et al.

Sponsor:

Bill Number: SB 144

Related Bills: See Legislative History

Amended: July 11, 2021

SUBJECT

California Motion Picture Credit/Increase Allocation for Recurring TV Series

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), increase the funding for the existing motion picture and film tax credit for the 2021-2022 and 2022-2023 fiscal years exclusively for new television series that relocate to California and for recurring television series. In addition, this bill would allow a new tax credit in an amount equal to 20 percent (20%) or 25 percent (25%), or as modified by up to 4 percent (4%), of qualified expenditures paid or incurred by a qualified motion picture (QMP) produced at a certified studio construction project (certified project) in the state. This credit would be certified and allocated by the California Film Commission (CFC).

This bill would also add new qualifications for the credit and provisions relating to the CFC application process. This bill also specifies new rules relating to the CFC's allocation of the credits and modifies the reporting requirements for the Legislative Analyst's Office (LAO) and the CFC to provide annual reporting related to diversity to the Legislature.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The July 11, 2021, amendments removed intent language to enact statutory changes relating to the Budget Act of 2021, and replaced it with the provisions discussed in this analysis. This is the department's first analysis of the bill.

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

REASON FOR THE BILL

The reason for the bill is to encourage the production of television series and motion pictures, as well as certified projects, in California.

ANALYSIS

This bill would amend the existing motion picture and film credit, for taxable years beginning on or after January 1, 2022, and before January 1, 2032, to require the taxpayer to provide additional information to the CFC to qualify for the credit, and to require the CFC to establish additional verification procedures for updating the application information.

For fiscal years 2021–2022 and 2022–2023, the CFC would be required to allocate an additional fifteen million dollars ($15,000,000) in credits exclusively to television series that relocate to California. For purpose of this allocation, "television series that relocated to California" would mean a television series, without regard to episode length or initial media exhibition, with a minimum production budget of one million dollars ($1,000,000) per episode that both filmed at least 75 percent (75%) of the principal photography days for at least one episode outside of California, and has not filmed more than 25 percent (25%) of principal photography days for any episode in California.

For fiscal years 2021–2022 and 2022–2023, the CFC would also be required to allocate an additional seventy-five million dollars ($75,000,000) in credits exclusively to recurring television series.

In addition, this bill would provide additional rules to limit the amount of credit received by a recurring television series in a subsequent season to no more than the amount reserved in its prior fiscal year Credit Allocation Letter or Letters. If no amounts were reserved in the prior fiscal year, the credit limit would be based on the most immediate prior fiscal year in which a Credit Allocation Letter or Letters were received. This bill would also prescribe rules for the adjustments of allocations made by the CFC between fiscal years when insufficient tax credits are available to fund all recurring television series.

This bill would also, under the PITL and the CTL, amend the existing motion picture and film credit to add an additional credit for taxable years beginning on or after January 1, 2022, and before January 1, 2032, equal to 20 percent (20%) or 25 percent (25%), or as modified by up to four percent (4%), of the "qualified expenditures" paid or incurred by a qualified motion picture (QMP) produced at a certified project in California. The motion picture and film credit would be subject to allocation and administration by the CFC and would be allowed to the "qualified taxpayer" for each taxable year for which the CFC issues a credit certificate. For purposes of this credit, a qualified taxpayer could include a pass-through entity and a disregarded entity.

The CFC, commencing with fiscal year 2021–2022, would be required to allocate tax credits each year to QMPs. The total amount of credits that would be allocated is one hundred fifty million dollars ($150,000,000). A season of a series or feature film may not be allocated more than twelve million dollars ($12,000,000). Additionally, recurring television series receiving an initial allocation would be allocated a credit with the same limitation for subsequent seasons.

The definitions provided in the existing motion picture and film credit would apply to this credit, except as provided.

The bill would define "certified studio construction project" (certified project) as a construction or renovation project that is certified by the CFC to have met all of the following criteria:

- The project provides for the construction or renovation of one or more soundstages in California.
- The construction or renovation of each certified project satisfies criteria requiring the developer of a project certify to the CFC that the project is a public work, as defined, or all construction workers employed will be paid at least the general prevailing rate of per diem wages for the type of work and geographical area. Apprentices may be paid at least the applicable prevailing rate for apprentices.
- Actual construction or renovation expenditures are not less than twenty-five million dollars ($25,000,000) of actual construction or renovation expenditures made over not more than five continuous calendar years.
- The construction or renovation of each certified project commences pursuant to a foundation permit or a structural building permit for the construction or renovation that is issued after the effective date of this credit.
- The applicant must not have received a California Competes Grant under Section 12096.6 of the Government Code for wages or investment related to construction of the studio construction project.

For the purposes of this credit, "qualified motion picture" would mean a QMP as defined in the existing motion picture and film credit that meets all of the following additional requirements:

- For each year the credit is claimed, both:
  - Films at least 50 percent (50%) of the principal photography stage shooting days are on a soundstage that is a certified project where certification was issued within the prior 36 months, and
  - Pays or incurs in the taxable year at least $7.5 million ($7,500,000) in qualified wages for filming at a certified project.

- Is produced by a qualified taxpayer that either:
  - Is more than 50 percent (50%) owned (directly or indirectly) by the same owner or owners of the soundstage or soundstages that are part of the certified project where the production is filmed, or
  - Has entered into a 10-year or more contract or lease with the owner or owners of a certified project where the production is filmed.
- Provides a diversity workplan that is approved by the CFC.

Diversity Workplan

For purposes of this credit, the "diversity workplan" would be required to include the following:

- A statement of the diversity goals the motion picture will seek to achieve in terms of qualified wages paid by race and gender.
- A statement of the diversity goals the motion picture will seek to achieve for individuals whose wages are excluded from qualified wages for purposes of the motion picture and film tax credit, (specifically, wages, paid per person per qualified motion picture, for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines) with respect to both compensation and to the representation of diversity in the creative aspects of the motion picture.
- A plan of what strategies the motion picture will employ to achieve these goals.
- Goals that are broadly reflective of California's population in terms of race and gender.

The CFC would be required to approve or reject the diversity workplan of an applicant, to the extent allowed by federal and state law, and could not certify any studio production tax credits until the CFC has received a final diversity report. The final diversity report would be required to calculate and provide evidence to the extent the applicant met the diversity goals in their diversity workplan.

The CFC would have the authority to audit the final diversity report. If the CFC determines that the applicant has met or made a good faith effort to meet the diversity goals in its diversity workplan, the applicant's studio production credit percentage, 20 percent (20%) or 25 percent (25%), would be increased by up to four percentage points (4%), two percentage points if the CFC determines that the applicant has met or made a good faith effort to meet the diversity goals, and by another two percentage points if the applicant has met or made a good faith effort to meet the diversity goals with respect to individuals whose wages are excluded from qualified wages (wages, paid per person per qualified motion picture, for writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines).

Credits would be allocated based on the assumption that the motion picture meets the diversity goals provided in the diversity workplan.

The CFC, in consultation with the Governor's Office of Business and Economic Development (GO-Biz), would be required to establish guidelines to evaluate diversity workplans and post them on the CFC's internet website.

A QMP that meets the requirements for the credit during the first three years after the certified project is certified by the CFC, would be allowed the credit starting from the first year of filming and for each subsequent year, until the certified project has reached its fourth year after being certified, so long as it continues to meet the conditions set forth in the bill and if the total credit amount the CFC is permitted to allocate has not been previously allocated. A QMP that has its first year of production in the fourth year after the certified project is certified, or in any year thereafter, would be required to submit an application subject to the annual cap and the allocation limitations of the film credit. For feature films and new television series, the jobs ratio used to rank QMPs for purposes of allocating the studio production credit amount would be required to be equal to the product of the jobs ratio and 133 percent (133%).

A QMP that receives a motion picture and film credit under the existing provisions would not be eligible for an allocation under the new credit provisions. However, any television series, relocating television series, recurring television series, or any new television series based on a pilot for a new television series that is no longer eligible for the motion picture and film credit would be eligible to apply for an allocation under the existing credits.

The credit could be carried over for nine years, until exhausted.

This credit would be allowed for the taxable year that the CFC issues the credit certificate. The amount of credit allowed would not be subject to the allocation limitation under the film credit, except as explained above. In addition, the studio production credit would not reduce the aggregate amount of the existing motion picture and film tax credit that can be allocated by the CFC.

The bill provides that the credit would be administered in the same manner as with the existing motion picture and film credit with some modifications. Furthermore, the existing CFC reporting requirements for the LAO, the Franchise Tax Board (FTB), and the CDTFA would also apply to the credit proposed in this bill.

The bill provides that a conflict between the credit allowed under the provisions of this bill and the existing motion picture and film credit would be required to be reconciled in favor of the provisions of this bill.

Other provisions of this bill pertain to the administration and allocation of the credit by the CFC. In addition, Section 3 of this bill would add a new section to the Revenue and Taxation Code (RTC) requiring taxpayers seeking certification of a certified project to certify certain information to the CFC. These provisions would not affect FTB operations.

Currently, the LAO must complete certain reporting requirements for various legislative committees and the public by January 1, 2023, which includes information from the CFC, the FTB, and the CDTFA. The bill would extend the due date of this report from January 1, 2023, to May 1, 2023, and expand the information that can be requested by the LAO from the CFC and the CDTFA. In addition, on or before May 1, 2025, the LAO must also report to the legislative committees and the public a summary of the workforce diversity information and effectiveness of the credits that receive an increased credit percentage for increasing the diversity of the film production workforce.

The bill provides an exception to the RTC section 19542 disclosure rules for the CFC, the CDTFA, the FTB, the Employment Development Department, and all other relevant state agencies to provide information as specified by the LAO.

The bill provides that Section 41 would not apply to these credits and that the provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2022. The new credit added by this bill would be specifically operative for taxable years beginning on or after January 1, 2022, and before January 1, 2032.

Federal/State Law

Federal Law

There is no comparable provision in federal law.

State Law

For taxable years beginning on or after January 1, 2020, 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.

(RTC sections 17053.98 and 23698.) Credit amounts are allocated and certified by the CFC. No credit is 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 is limited to the amount specified in the credit certification issued by the CFC.

The applicable credit percentages are:

- 20 percent (20%) of the qualified expenditures, up to one hundred million dollars ($100,000,000), 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 (25%) of the qualified expenditures, up to one hundred million dollars ($100,000,000), 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 ten million dollars ($10,000,000), 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, could be 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 picture within California where the applicable credit percentage is 20 percent (20%).

An additional credit in the amount of five 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 picture within California where the applicable credit percentage is 25 percent (25%).

The aggregate amount of the credits that may be allocated by the CFC is three hundred, thirty thousand million dollars ($330,000,000) for the 2020-2021 fiscal year and for each fiscal year thereafter though and including the 2024-2025 fiscal year.

Furthermore, the CFC may on or after July 1, 2025, allocate any previously allocated, but not certified credit amounts to credits available for allocation.

If the credit exceeds net tax for the taxable year, it is allowed to be carried over to the succeeding nine taxable years.

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

For taxable years 2020, 2021, and 2022, and under PITL and CTL, certain taxpayers may not reduce their business tax liability by more than five million dollars ($5,000,000). The carryover period for the credits limited by this provision are extended for each taxable year the credit is limited.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 485 (Portantino, et al., 2021/2022), would amend the existing motion picture and film credit under PITL and CTL, to provide for an additional credit for expenditures related to the production of a QMP at a certified project. This bill would also add new provisions relating to the certification procedures of a project that are administered by the CFC. SB 485 was held in the Senate without further action.

AB 1442 (Rivas, 2019/2020), would have created a relocation credit for relocation of film production to California from a state that restricts a woman's access to abortion services. This bill was held in the Senate Appropriations Committee without further action.

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

AB 1734 (Calderon, 2017/2018), would have created a new Motion Picture Credit. AB 1734 did not 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 did not pass out of the Senate by the constitutional deadline.

SB 951 (Mitchell, 2017/2018,) would have created a new Motion Picture Credit. SB 951 did not pass by out of the Senate by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

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 SB 144 as Amended July 11, 2021
Assumed Enactment after June 30, 2021

($ in Millions)

Fiscal Year	Revenue
2021-2022	-$0
2022-2023	-$1.6
2023-2024	-$6.2

*This estimate does not include the credit amount applied against sales and 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

None noted.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

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