Bill Analysis

Author: Portantino, et al.	Sponsor:	Bill Number: SB 485
	Related Bills: See Legislative History	Introduced: February 17, 2021 Amended: March 10, 2021, April 29, 2021, May 11, 2021, & May 20, 2021

SUBJECT

Certified Studio Construction Project Tax Credit

SUMMARY

This bill would amend the existing motion picture credit under Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), to provide for an additional credit for expenditures related to the production of a qualified motion picture at a certified studio construction project (project).

This bill would also add new provisions relating to the certification procedures of a project that are administered by the California Film Commission (CFC).

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 10, 2021, amendments removed the bill's provisions that would have amended the existing motion picture credit under PITL, and introduced new language under both PITL and CTL to add a new credit pertaining to qualified motion pictures produced at a certified studio construction project. The March 10, 2021, amendments also added a new code section to provide guidelines regarding the certification procedures related to specific studio construction projects.

The April 29, 2021, amendments moved the provisions of the new credit to the existing motion picture credit, and renumbered the proposed provisions for the certification procedures.

The May 11, 2021, amendments made several technical corrections.

The May 20, 2021, amendments added a co-author and made a nonsubstantial technical change.

This analysis only discusses the provisions that impact the Franchise Tax Board (FTB).

REASON FOR THE BILL

The reason for the bill is to encourage the construction and renovation of studio soundstages for the production of motion pictures in California.

ANALYSIS

Sections one and three of this bill would, under PITL and CTL, amend the existing motion picture 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 or 25 percent of the "qualified expenditures" paid or incurred by a qualified motion picture produced at a certified studio construction project in California. The 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.

The definitions provided in the existing motion picture credit would apply to this credit, except as provided below:

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 work and area.
- A skilled and trained workforce will be used to perform all construction work on the project.
- Actual construction or renovation expenditures are not less than either:
  - For Tier one projects, $25 million made over five continuous calendar years or less, or
  - For Tier Two projects, $15 million made over four continuous calendar years or less
- The project is completed after January 1, 2022, but may be started before January 1, 2022.

For the purposes of this credit, "qualified motion picture" means a qualified motion picture (QMP) as defined in existing code that meets all of the following additional requirements:

- For each year the credit is claimed:
    - Films at least 50 percent of the principal photography stage shooting days are on a soundstage that is a certified project.
    - Incurs at least $7.5 million in qualified wages for filming at a certified project.
    - Is produced by a qualified taxpayer that either:
        - Is more than 50 percent owned (directly or indirectly) by the same owners of the soundstage or soundstages that are part of a certified project, or
        - Has entered into a 10 years or more contract or lease with the owners of a certified project where the production is filmed.

The bill would provide that the CFC administer the credit in the same manner as with the motion picture credit with some modifications. Furthermore the existing CFC reporting requirements to the California Legislative Office, Franchise Tax Board (FTB), and California Department of Tax and Fee Administration would apply.

The 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 provided below.

A QMP that qualifies for the credit and during the first five years for Tier One projects and during the first three years for Tier Two projects 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 so long as it continues to meet the conditions set forth in the bill.

A QMP that has its first year of production in the sixth year for a Tier One project, or in the fourth year for a Tier Two project, after the certified project is certified by the CFC or any year thereafter, would be required to submit an application subject to the annual cap and the allocation limitations of the film credit.

The credit provided for by this bill shall not reduce the aggregate amount of the existing motion picture credit that can be allocated by the CFC.

The bill would provide that a conflict between this credit and the existing motion picture credit shall be reconciled in favor of this credit.

The existing carryover provisions in the existing motion picture credit apply to this credit as well. Furthermore, the qualified taxpayer may elect to sell the credit to an unrelated party if the credit allowed by this bill exceeds its tax liability for the taxable year. If the taxpayer elects to sell the credit, it shall pay one and one half percent of the transferred credit amount to the Career Pathways Training Program as specified in existing law.

Other provisions of sections one and three of the bill pertain to the administration and allocation of the credit by the CFC.

Section 2 of this bill would add a new code section to set the certification process and procedures relating to a certified project by the CFC, and would not affect the FTB.

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, 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. [1] 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.

[1] RTC§s 17053.98 and 23698

The applicable credit percentages are:

- 20 percent of the qualified expenditures, up to $100 million 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, up to $100 million, 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 is allowed for the production of a qualified motion picture within California where the applicable credit percentage is 20 percent.

An additional credit in the amount of five 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 is allowed for the production of a qualified motion picture within California where the applicable credit percentage is 25 percent.

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 $5 million. The carryover period for the credits limited by this provision are extended for each taxable year the credit is limited.

Implementation Considerations

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

The bill provides that the credit would be allowed in the taxable year that the CFC issues the credit certificate after completion of the QMP, and also commencing with the first year of filming the certified project and for each successive year the QMP satisfies the requirements for the credit. For clarity, the author may want to specify the year that the credit is allowed.

Technical Considerations

This bill would provide that a conflict between the new credit and existing motion picture credit would be resolved in favor of this credit. The author may wish to amend the bill to use standard tax language for this paragraph, clarifying that qualified expenditures will first be applied to this credit before the existing credit.

Policy Considerations

This bill would allow a credit for qualified expenditures that are currently deductible as business expenses. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense. Providing both a credit and allowing the full amount to be deducted would have the effect of providing a double benefit for that item.

Because the bill does not specify otherwise, the provisions of this bill could cause two separate allocations of credits for the same taxpayer based on the same qualified expenditures.

LEGISLATIVE HISTORY

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 (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 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.

AB 688 (Gomez, 2015/2016), would have extended the CFC'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 did not pass out of the Assembly by the constitutional deadline.

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.

Introduced: February 17, 2021
Amended: March 10, 2021, April 29, 2021, May 11, 2021, and May 20, 2021

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SB 485 as Amended May 20, 2021
Assumed Enactment after June 30, 2021

($ in Millions)

Fiscal Year	Revenue
2021-2022	-$1.2
2022-2023	-$7.8
2023-2024	-$75

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

The Senate Floor analysis dated May 25, 2021, lists the following support and opposition.

Support: Association of Talent Agents; California IATSE Council; California Labor Federation; California State Association of Electrical Workers; California State Council of Laborers; California State Pipe Trades Council; Catchlight Studios; Central City Association of Los Angeles; Comcast Corporation and Affiliated Entities; Entertainment Union Coalition; Greater San Fernando Valley Chamber of Commerce; Hollywood Chamber of Commerce; IATSE Local 122; IATSE Local 16; IATSE Local 44; IATSE Local 600; IATSE Local 695; IATSE Local 705; IATSE Local 706; IATSE Local 728; IATSE Local 729; IATSE Local 80; IATSE Local 800; IATSE Local 839; IATSE Local 871; IATSE Local 884; IATSE Local 892; IBEW Local 302; Laborers Local 724; Liuna Local 724; Los Angeles Area Chamber of Commerce; Los Angeles Business Council; Motion Picture Association of America; NBC Universal; Producers Guild of America; SAG-AFTRA; State Building and

Construction Trades Council of California; Teamsters Local 399; Valley Industry and Commerce Association; VIACOMCBS; Western States Council of Sheet Metal, Air, Rail and Transportation

Opposition: Western Electrical Contractors Association.

ARGUMENTS

The Senate Floor Analysis dated May 25, 2021, includes the following argument in support of AB 485:

> According to the author, "The construction of soundstages in California has not kept pace with the recent growth in production of film, scripted television and streaming content which forces more production outside the state. Further, investment in new soundstages here is constrained by limits on available production tax credits, which create significant uncertainty about long-term demand for new stages. California's film tax credit has been a resounding success, helping to keep California the global leader in entertainment production. However, the film tax credit does not currently incentivize studio construction and renovation projects—projects that will create good jobs and keep productions in-state for decades to come. SB 485 is specifically formulated to foster studio construction and renovation, which will be followed by increased production jobs and spending. In important ways, SB 485 mirrors the existing California Film Tax Credit program by providing an incentive calculated only on payments to behind the camera California workers and local suppliers. SB 485 is a catalyst for new infrastructure and sustained job creation and spending in our economy."

The Senate Floor Analysis dated May 25, 2021, includes the following argument in opposition of AB 485:

> According to the Western Electrical Contractors Association, "State law generally requires public works contractors to keep and submit monthly, certified payroll records that are prepared and submitted under penalty of perjury. But under a provision in your bill, contractors working under a PLA are exempt from this reporting requirement which denies local public agencies and the State Labor Commissioner an administrative record to verify that the appropriate wages and benefits have been paid to construction workers. But in another provision in SB 485, if a Project Labor Agreement (PLA) is in place, the ONLY remedy is the arbitration of the dispute. As you well know, PLAs include discriminatory hiring requirements that give preference to certain construction contractors and force employer contributions to trust funds. The covered employee may never vest – resulting in 'wage theft' from these workers. Also,

PLAs have been shown to increase construction costs by as much as 20%. For these reasons, WECA opposes SB 485 unless amended."

LEGISLATIVE CONTACT

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