STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Portantino, et al.	Sponsor:	Bill Number: SB 485
	Related Bills: See Legislative History	Amended: August 1 and August 17, 2022

SUBJECT

Motion Picture and Television Production Tax Credit (Motion Picture Credit) Allocation Extension

SUMMARY

This bill would do the following:

Provision No. 1 – If Legislation Related to the 2023 Budget Act that Makes Changes to the Application Criteria for the Motion Picture Credit is not Enacted:

Sections 1 and 3 of the bill would, under Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), modify the existing motion picture credit to require a qualified motion picture to include a diversity workplan and allow an increased credit percentage for applicants that meet the diversity work plan requirements for allocations made by the California Film Commission (CFC) on or after July 1, 2023. Sections 1 and 3 would also make changes to the definition of "qualified motion picture" for certified studio construction projects, and make other technical, nonsubstantive changes. This provision would be repealed if legislation related to the 2023 budget act makes changes to the application criteria for the motion picture credit is enacted.

Provision No. 2 - If Legislation Related to the 2023 Budget Act that Makes Changes to the Application Criteria for the Motion Picture Credit is Enacted:

Sections 2 and 4 of the bill would, under PITL and CTL, include the changes described in Sections 1 and 3. In addition, Sections 2 and 4 would also extend the allocation period for the credit through the 2029-2030 fiscal year, add Section 41 reporting requirements, and make other technical, nonsubstantive changes.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The August 1, 2022, amendments added a coauthor, removed a coauthor, and added goals, objectives, and reporting requirements to comply with Revenue and Taxation Code (RTC) section 41.

The August 17, 2022, amendments modified certain credit provisions discussed in this analysis, extended the allocation period, and added Section 41 requirements contingent on the enactment of legislation related to the Budget Act of 2023 if legislation makes changes to the application criteria for the motion picture credit. These amendments created new implementation considerations.

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

REASON FOR THE BILL

The reason for the bill is to encourage the production of motion pictures and television series in California.

ANALYSIS

Analysis of Provision No. 1: If Legislation Related to the 2023 Budget Act that Makes Changes to the Application Criteria for the Motion Picture Credit is not Enacted (Sections 1 and 3)

This provision would, under PITL and CTL, remain in effect until the enactment of legislation related to the 2023 Budget Act that makes changes to the application criteria for the motion picture credit and repealed on or before July 1, 2023.

This provision would also modify the definition of qualified motion picture to require the applicant to provide a diversity workplan that would be approved by the CFC and allow an increased credit percentage for applicants that meet the diversity work plan requirements, for allocations made by the CFC on or after July 1, 2023. In addition, this provision would authorize the CFC to certify the tax credit after receiving the applicant's final diversity report and require the CFC to increase to the applicant's credit percentage by up to four percentage points if the CFC determines the applicant met or made a good faith effort to meet the diversity goals stated in its diversity workplan.

Furthermore, this provision would modify the certified studio construction project credit to allow the credit to be calculated based on the qualified expenditures paid or incurred by a qualified taxpayer for all taxable years during the production of a qualified motion picture; and would modify the definition of "qualified motion picture" for certified construction projects to apply the requirements to the production period rather than to each taxable year.

Effective/Operative Date

As a tax levy, this provision would be effective immediately upon enactment, and would be operative for taxable years beginning on or after January 1, 2022, with the provisions related to the diversity workplan requirements being operative for allocations made on or after July 1, 2023. Provision No. 1 would remain effective only until the enactment of legislation related to the Budget Act of 2023 that makes changes to the application criteria for the motion picture credit, and as of that date would be repealed.

Federal/State Law (Both Provisions)

Federal Law (Both Provisions)

No comparable provision in federal law.

State Law (Both Provisions)

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. 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% 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% 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% 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% category, detailed above, could be increased by 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% 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%.

An additional credit in the amount of 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%.

The aggregate amount of the credits that may be allocated by the CFC is $330 million 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 are 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.

State law, under the PITL and the CTL, amends 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% or 5%, or as modified by up to 4%, of the “qualified expenditures” paid or incurred by a qualified motion picture (QMP) produced at a certified studio construction project in California.

New credits are allocated based on the assumption that the motion picture meets the diversity goals provided in the diversity workplan.

A QMP that receives a motion picture credit under the existing provisions is not 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 are eligible to apply for an allocation under the existing credits.

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

Implementation Considerations

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

Provision No.1 would modify certified studio construction project provision to allow the qualified expenditures to be paid or incurred by a qualified taxpayer for all taxable years during the production of a qualified motion picture. This provision does not clarify, in which taxable year the credit could be claimed if the certified studio construction project spans several years. It is recommended that this provision be amended for clarity.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY (BOTH PROVISIONS)

SB 144 (Portantino, et al., Chapter 114, Statutes of 2021) amended the existing motion picture credit under PITL and CTL, to provide for an additional credit for expenditures related to the production of a qualified motion picture at a certified project. This bill also added new provisions relating to the certification procedures of a project that are administered by the CFC.

SB 871 (Senate Committee on Budget and Fiscal Review, Chapter 54, Statutes of 2018) allows the 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.

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

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.

AB 1734 (Calderon, 2017/2018), SB 832 (Portantino, et al., 2017/2018), and SB 951 (Mitchell, 2017/2018) would have created a new California motion picture and television production tax credit. AB 1734 and SB 832 did not pass out of the Senate by the constitutional deadline. SB 951 did not pass by out of the Assembly by the constitutional deadline.

PROGRAM BACKGROUND (BOTH PROVISIONS)

None noted.

FISCAL IMPACT (BOTH PROVISIONS)

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

ECONOMIC IMPACT

Revenue Estimate

Provision No. 1 of the bill as amended on August 17, 2022, would not change the manner in which the income or franchise tax is calculated under the RTC.

LEGAL IMPACT (BOTH PROVISIONS)

None noted.

Analysis of Provision No. 2: If Legislation Related to the 2023 Budget Act that Makes Changes to the Application Criteria for the Motion Picture Credit is Enacted on or after July 1, 2023 (Sections 2 and 4)

This provision would, under PITL and CTL, become operative after the enactment of legislation related to the 2023 Budget Act that makes changes to the application criteria for the motion picture credit on or after July 1, 2023; would include the changes from Provision No. 1, and would extend the allocation period by five years, by authorizing the CFC to allocate tax credits to applicants on or after July 1, 2020, and before July 1, 2030, in two or more allocation periods per fiscal year.

This provision would also extend the period allowing the CFC to allocate up to 25% of total credit allocations that would otherwise be allocated for recurring television series in the current fiscal year until the shortfall is eliminated, by five years. The final fiscal year for credit allocations would change from 2024-2025 to 2029-2030. The CFC would not be allowed certify the credit allocations that are subtracted from 2029-2030 fiscal year until July 1, 2030, or later.

This provision would also make various changes to the CFC allocation process and extend the date that the CFC could allocate previously unallocated credits or unused allocation credit amounts to on or after July 1, 2030.

This provision states that, the Legislature would require the following performance indicators for the purpose of complying with RTC section 41, the number of:

- Productions that apply for the production tax credit.
- Jobs included in the budgets of productions receiving the production tax credit.
- Productions that do not receive the production tax credit in California and film in other states or countries.

Furthermore, this provision would provide that the data collected by the CFC and the Franchise Tax Board (FTB) could be included in the data analyzed to evaluate the performance of the production tax credit extended by this act.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment. Provision No. 2 would become operative only upon the enactment of legislation related to the 2023 Budget Act that makes changes to the application criteria for the motion picture credit.

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.

Provision No. 2 of the bill would modify certified studio construction project provision to allow the qualified expenditures to be paid or incurred by a qualified taxpayer for all taxable years during the production of a qualified motion picture. This provision does not clarify, in which taxable year the credit could be claimed if the certified studio construction project spans several years. It is recommended that the bill be amended for clarity.

Provision No. 2 does not specify what data, if any, should be collected by the FTB, and if collected, if the data should be provided to the CFC or the LAO, and by what date, keeping in mind that data from a tax return is generally not available until a year after filing.

Technical Considerations

None noted.

Policy Considerations

None noted.

ECONOMIC IMPACT

Revenue Estimate

This provision would result in the following revenue loss:

Estimated Revenue Impact of SB 485 Provision No. 2 as Amended on August 17, 2022
Assumed Enactment after June 30, 2022

($ in Millions)

Fiscal Year	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027
Provision No. 2	$0	$0	$0	-$6.1	-$30

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.

APPOINTMENTS (BOTH PROVISIONS)

None noted.

SUPPORT/OPPOSITION (BOTH PROVISIONS)

None noted.

ARGUMENTS (BOTH PROVISIONS)

None noted.

LEGISLATIVE CONTACT

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