



Bill Analysis

Author: Senate Committee on
Budget and Fiscal Review

Sponsor:
Related Bills: See Legislative
History

Bill Number: SB 132

Amended: June 26, 2023

SUBJECT

California Motion Picture and Television Production Credit (Motion Picture Credit), Credit Ordering, and Tentative Minimum Tax (TMT)

SUMMARY

This bill would do the following:

Provision No. 1 – Motion Picture Credit 3.0

Sections 6 and 9 of the bill, for taxable years beginning on or after January 1, 2023, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), would eliminate certain requirements for applicants filing a written application with the California Film Commission (CFC), authorize credit allocation, and add rules with respect to a successor tax credit program if certain criteria are satisfied. This provision, for purposes of a certified studio construction project, would revise the definitions of “recurring television series” and “diversity plan,” increase the certification period for a certified studio construction project to 5 years, and make other nonsubstantive changes.

Provision No. 2 – Motion Picture Credit 4.0

Sections 7 and 10 of the bill, for taxable years beginning on or after January 1, 2025, under the PITL and CTL, would allow a new Motion Picture Credit 4.0 to a qualified taxpayer for qualified expenditures to produce a qualified motion picture in California. In addition, a qualified taxpayer could make a one-time irrevocable election in the first taxable year to be paid a refund at a discounted rate, spread equally over 5 years.

Provision No. 3 – Credit Ordering and Credits Reducing Tax Below TMT

Sections 5 and 8 of the bill, for taxable years beginning on or after January 1, 2025, under the PITL and CTL, would add Motion Picture Credit 4.0 to the order of credits allowed to be taken against tax, and would allow the Motion Picture Credit 3.0, the credit for certified studio construction project, and the Motion Picture Credit 4.0 to reduce tax amount below the TMT.

RECOMMENDATION

No position—The three-member Franchise Tax Board has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

The June 25, 2023, amendments removed intent language related to the Budget Act of 2021, and replaced it with the provisions discussed in this analysis. In addition, the amendments added one provision and repealed two provisions of the Labor Code, amended a provision of the Government Code (GOV), and added provisions allowing the new Motion Picture Credit 4.0 to reduce qualified sales and use taxes.

This is the Franchise Tax Board's (FTB) first analysis of the bill and only addresses the provisions that impact the FTB's programs and operations.

REASON FOR THE BILL

The reason for the bill is to keep California's Motion Picture Credit program competitive with production incentives offered by other states and other countries by maintaining and expanding motion picture and television productions in California and increasing the competitiveness of the tax credits by allowing the Motion Picture Credit 4.0 to be refundable.

ANALYSIS

Analysis Provision No. 1:

Motion Picture Credit 3.0 (Sections 6 and 9 of the Bill)

This provision would eliminate the qualified Motion Picture Credit 3.0 requirement for the CFC to include the following information in the application:

- Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company (LLC) that is disregarded pursuant to Revenue and Taxation Code (RTC) section 23038. The information provided pursuant to this clause would be confidential and would not be subject to public disclosure.
- The names of all partners in a partnership not publicly traded or the names of all members of an LLC classified as a partnership not publicly traded for California income tax purposes that have a financial interest in the applicant's qualified motion picture. The information provided pursuant to this clause would be confidential and would not be subject to public disclosure.

This provision, for taxable years beginning on or after January 1, 2023, under the PITL and CTL, would revise the definition of “certified studio construction project” to mean a project certified for a period of 5 years.

For the purposes of the certified studio construction project credit (also known as the California Soundstage Filming Tax Credit), this provision would revise the definition of “qualified motion picture” as follows:

- Would require the filming of at least 50% of its principal photography stage shooting days on a soundstage or soundstages certified as a certified studio construction during the production period.
- Would reduce the qualified wages amount for filming on a soundstage or soundstages certified as a certified studio construction project that the qualified motion picture pays or incurs during the production period, from \$7.5 million to \$5 million.

For the purposes of the certified studio construction project credit, this provision would also revise the definition of “diversity plan” to add a disability status in addition to race, ethnicity, and gender for consideration in a diversity workplan, and would limit the amount that may be allocated by the CFC to any qualified motion picture to \$12 million, or \$750,000 per episode, for a season of a television series.

This provision would also authorize a qualified taxpayer to receive the credit allocation under Motion Picture Credit 3.0, for both of the following:

- A qualified motion picture that satisfies the criteria of certified studio construction project credit, other than a recurring television series, but does not receive certified studio construction project credit allocation.
- A recurring television series that satisfy the criteria of certified studio construction project but no longer eligible for a credit allocation under the certified studio construction project.

If any successor tax credit program that modifies or replaces the Motion Picture Credit 3.0, both of the following would apply:

- A qualified motion picture that satisfies the criteria of certified studio construction project credit, other than a recurring television series, but does not receive certified studio construction project credit allocation, would be allowed to apply to receive an allocation of credits under the successor program.
- A recurring television series that satisfies the criteria of certified studio construction project but is no longer eligible for a credit allocation under the certified studio construction project credit, would be allowed to receive an allocation of credits under the successor program.

For purposes of the certified studio construction project credit, this provision would replace the qualified motion picture requirement to receive the credit during the first 3 years after the certified project is certified by the CFC within the 5-year period for purposes of allocating the studio production credit.

For purposes of the certified studio construction project credit with a qualified motion picture that has its first year of production in the fourth year after the certified project is certified, or in any year thereafter, this provision would eliminate the requirement to submit an application subject to the annual cap and the allocation limitations of the credit.

For feature films and new television series, for purposes of allocating the studio production credit amount, this provision would eliminate the jobs ratio calculation requirement.

The provisions of this bill would be severable.

Effective/Operative Date

As a provision within a bill providing for appropriations relating to the Budget Bill, this provision would be effective immediately upon enactment. The amendments to the studio construction project credit would be specifically operative for taxable years beginning on or after January 1, 2023, except for amendments to the definitions "certified studio construction project" and "qualified motion picture" for the purposes of studio construction project that would apply for all taxable years to any certified studio construction project that has been certified, and any qualified motion picture that has been allocated a credit.

Federal/State Law (Provisions 1 and 2)

Federal Law

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 to produce a qualified motion picture in California. Credit amounts are allocated and certified by the CFC. No credit is allowed for any qualified expenditures to the extent that another motion picture credit has been claimed for the same expenditures. In addition, the credit allowed to a qualified taxpayer is limited to the amount specified in the credit certification issued by the CFC. Furthermore, if the credit exceeds net tax for the taxable year, it is allowed to be carried over to the succeeding nine taxable years.

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 to produce 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 to produce 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 was \$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.

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

On July 1, 2025, if 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, amended the existing motion picture credits 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.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY (PROVISIONS 1 AND 2)

SB 144 (Portantino, et al., Chapter 114, Statutes of 2021) amended the motion picture credit, under the PITL and CTL, to provide 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 to produce a qualified motion picture in California.

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

FISCAL IMPACT (PROVISIONS 1 AND 2)

FTB staff estimates costs of approximately \$4.5 million from the General Fund and 2 two-year limited term positions and 5 permanent positions in fiscal year 2023-24; \$1.0 million from the General Fund in 2024-25; \$753,000 from the General Fund in 2025-26 and ongoing to expand the tax systems necessary to support refundable credits for business entities. These resources are critical to successfully administer and maintain the refundable functionality within the business entities core tax systems and secure vendor support to make system modifications allowing FTB to effectively and timely adopt desired legislative priorities.

ECONOMIC IMPACT (PROVISIONS 1 THROUGH 3)

*Revenue Estimate**

(\$ in Millions)

Fiscal Year	2022-2023	2023-2024	2024-2025
Provision No. 1, 2, and 3	\$0	\$1.0	\$6.0

*FTB staff defers to the Department of Finance (DOF) for the determination of the revenue impact of this bill.

Revenue Discussion

DOF expects revenue losses through the multi-year (2026-27) to be relatively small as it takes a few years on average for projects to be certified. Over the lifetime of the program, DOF projects that the 5-year extension (without refundability) would lead to revenue losses of approximately \$1.4 billion cumulatively. Revenue losses are projected to increase to over \$100 million in 2027-28 and to peak at approximately \$250 million in 2030-31, before decreasing again with the last revenue losses projected around 2035-36. This distribution is based on the current program statistics as it relates to the timing of certification and the claiming of credits.

Making the credit refundable is estimated to lead to over \$200 million in revenue losses. The state is projected to realize some savings from the 10% discount rate such that the total revenue loss from the extension and from the refundability is less than \$1.65 billion (\$330 million * 5). The estimate assumes that taxpayers first use their credits

to offset any liability before receiving any refunds. The estimate assumes that all authorized credits are allocated every year and that they are certified over the subsequent 7 years on the same schedule as the Motion Picture Credit 1.0.

Analysis Provision No. 2:

Motion Picture Credit 4.0 (Sections 7 and 10 of the Bill)

This provision would, for taxable years beginning on or after January 1, 2025, under the PITL and CTL, allow qualified taxpayers a tax credit in an amount equal to the applicable percentage of the qualified expenditures to produce a qualified motion picture in California. Credit amounts would be allocated and certified by the CFC. No credit would be allowed for qualified expenditures to the extent that another Motion Picture Credit has been claimed for the same qualified expenditures.

In addition, this provision, under the PITL and CTL, would allow a qualified taxpayer an option to make a one-time irrevocable election to receive a refundable tax credit. The qualified taxpayer would apply the credit against the tax liability in the first year and evenly distribute 90% of the remaining credit amount equally over 5 taxable years.

For purposes of this credit, credit certificates must be issued by the CFC for the qualified motion picture on or after July 1, 2025, and would be required to be for the applicable percentage 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 for each qualified motion picture would be limited to the following amounts specified in the credit certification issued by the CFC. In the case of:

- A feature, up to \$100 million.
- A miniseries or limited series 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 \$1 million per episode, up to \$100 million.
- A 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 \$1 million per episode or a television series that relocated to California, up to \$100 million per season.
- An independent film, up to \$10 million.

The applicable credit percentage would be:

- 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% 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% 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 would be allowed to produce a qualified motion within California where the applicable credit percentage is 20%.

Under the CTL, where the credit allowed exceeds the taxpayer's tax liability, a qualified taxpayer could elect to make an irrevocable assignment of any portion of the credit allowed to one or more affiliated corporations, as defined, for each taxable year the credit is allowed. The election could be based on any method selected by the qualified taxpayer that originally receives the credit, changed for any subsequent taxable year. The election to make the assignment would be required to be expressly shown on each of the tax returns of the qualified taxpayer and the qualified taxpayer's affiliated corporations the credits that would be assigned and received, and would be required to be reported to the FTB, along with all required information regarding the assignment of the credit, as specified.

A qualified taxpayer could sell the credit that is attributable to an independent film, as defined in this provision, to an unrelated party. The qualified taxpayer would be required to report to the 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,

- Face amount of the credit sold, and
- Amount of consideration received by the qualified taxpayer for the sale of the credit.

A credit could not be sold to more than one taxpayer, and the credit could not be resold by the unrelated party to another taxpayer or other party. A taxpayer that has acquired a tax credit would be subject to the requirements of this provision.

In no event could a qualified taxpayer assign or sell any credit to the extent the credit is claimed on any tax return of the qualified taxpayer. If the taxpayer, originally allocated a credit by the CFC, and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the FTB could disallow the credit of either taxpayer so long as the statute of limitations upon assessment remains open.

The unrelated party or parties that purchase a credit would be treated as a qualified taxpayer. Under the CTL, the affiliated corporation that is assigned a credit would be treated as a qualified taxpayer.

With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes, the amount of any credit sold or credit carryforward allowable for any taxable year attributable to the disregarded business entity would not be limited, as specified.

This provision would exempt any standard, criterion, procedure, determination, rule, notice, or guideline issued by the FTB pursuant to this provision from the requirements of the Administrative Procedure Act.

No credit would be allowed unless the qualified taxpayer provides the following to the CFC:

- Identification of each qualified individual.
- The specific start and end dates of production.
- The total wages paid.
- The total amount of qualified wages paid to qualified individuals.
- Aggregate data for individuals whose wages are excluded from qualified 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, including their gender, ethnic, and racial makeup.
- The copyright registration number, as reflected on the certificate of registration issued. The registration number shall be provided on the return claiming the credit. If the qualified taxpayer fails to provide the copyright registration number as required, the credit would be disallowed and assessed and collected under Section 19051 until the procedures are satisfied.

- The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.
- Information to substantiate its qualified expenditures.
- Information required by the CFC necessary to verify the amount of credit claimed.
- Data regarding the diversity of the workforce employed by the applicant on the qualified motion picture.
- If applicable, documentation verifying that the qualified taxpayer made a financial contribution to the Career Pathways Training requirement.

Based on the information provided, the CFC would be required to recompute the jobs ratio previously computed and compare this recomputed jobs ratio to the jobs ratio that the qualified taxpayer previously listed on the application submitted. If the CFC determines that the jobs ratio has been reduced by more than 10% for a qualified motion picture, the CFC would reduce the amount of credit allowed by an equal percentage, unless the qualified taxpayer demonstrates, and the CFC determines, that reasonable cause exists for the jobs ratio reduction.

If the CFC determines that the jobs ratio has been reduced by more than 20% for a qualified motion picture, the CFC would be prohibited from accepting an application from that qualified taxpayer or any member of the qualified taxpayer's controlled group for a period of not less than one year from the date of that determination, unless the qualified taxpayer demonstrates, and the CFC determines, that reasonable cause exists for the jobs ratio reduction.

On or after July 1, 2025, and before July 1, 2030, or longer as described below, the CFC would be required to do the following:

- In two or more allocation periods per fiscal year, allocate tax credits to applicants.
- Establish a procedure for applicants to file with the CFC a written application, on a form jointly prescribed by the CFC and the FTB for the allocation of the tax credit.
- Establish criteria, consistent with the requirements of this section, for allocating tax credits.
- Determine and designate applicants who meet the requirements of this section.
- Certify tax credits allocated to qualified taxpayers.

The application would include, but not be limited to, the following information:

- The budget for the motion picture production.
- The number of production days.
- A financing plan for the production.

- The diversity of the workforce employed by the applicant, including, but not limited to, the ethnic and racial makeup of the individuals employed by the applicant during the production of the qualified motion picture, to the extent possible.
- The amount of qualified wages the applicant expects to pay to qualified individuals.
- All members of a combined reporting group, if known at the time of the application.
- The amount of qualified wages the applicant expects to pay to qualified individuals.
- The amount of tax credit the applicant computes the qualified motion picture will receive, applying the applicable credit percentages described in the bill.
- A statement establishing that the tax credit is a significant factor in the applicant's choice of location for the qualified motion picture. The statement would include information about whether the qualified motion picture is at risk of not being filmed or specify the jurisdiction or jurisdictions in which the qualified motion picture would be located in the absence of the tax credit. The statement would be signed by an officer or executive of the applicant.
- The applicant's written policy against unlawful harassment, including, but not limited to, sexual harassment, which includes procedures for reporting and investigating harassment claims, a phone number for an individual who would be responsible for receiving harassment claims, and a statement that the company would not retaliate against an individual who reports harassment. The applicant would also indicate how the policy would be distributed to employees and include a summary of education training resources, including the prohibition against, and prevention and correction of, sexual harassment and remedies available.
- The ethnic and racial makeup and gender of writers, directors, music directors, music composers, music supervisors, producers, and performers, other than background actors with no scripted lines whose wages are excluded from qualified wages.
- A summary of the applicant's voluntary programs to increase the representation of minorities and women in the job classifications, as specified, and information about how these programs are publicized to interested parties. The officer or executive referenced in clause (x) who is signing the statement would provide additional information about these programs, if needed and upon request, to the CFC.
- Any other information deemed relevant by the CFC or the FTB.

On or after July 1, 2030, the CFC could allocate any previously allocated credits, not certified, that have not previously been added to credit amounts available for allocation under this program or any successor program.

The CFC would be required to annually provide the LAO, the FTB, and the California Department of Tax and Fee Administration (CDTFA) with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer. The list would include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayer.

Except for the refundable credit, the aggregate amount of credits that could be allocated for fiscal year 2025-26 and each fiscal year thereafter, through and including the 2029-30 fiscal year, is \$330 million, plus:

- The unused allocation credit amount, if any, for the preceding fiscal year, as specified.
- 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 CFC.

The CFC would have the authority to allocate tax credits in accordance with any regulations prescribed upon adoption.

This provision would also allow a qualified taxpayer to make a one-time irrevocable election to be paid a refund for each taxable year of the refundable period, not to exceed the annual refundable amount, and would define the following terms:

- "Annual refundable amount" would mean 20% of the total refundable amount.
- "Credit amount" would mean the credit amount specified in the credit certificate issued to the qualified taxpayer by the CFC, as specified. In the case of a pass-thru entity (PTE), the "credit amount" would mean the pro rata share or distributive share of the credit passed through to the partner or shareholder of the qualified taxpayer. For purposes of this subclause, the term PTE would mean any partnership, S corporation, or LLC treated as a partnership. In the case of an assigned credit, the "credit amount" would mean the credit amount that was assigned to the taxpayer.
- "Refundable period" would mean the first taxable year that the credit certificate is issued to the qualified taxpayer by the CFC, and the succeeding 4 taxable years.
- "Total refundable amount" would mean 90% of the credit amount that exceeds the net tax or tax in the first taxable year of the refundable period.

Under this provision, the refund would be computed as follows:

- In the first taxable year of the refundable period, the credit amount would be allowed against the tax computed for taxable year. If the credit allowed by this section exceeds net tax or tax in the first taxable year of the refundable period, the refund amount equals the annual refundable amount.
- In each taxable year after the first taxable year of the refundable period, the annual refundable amount would be allowed as a credit against the net tax or tax for the taxable year, and the excess, if any, would be refunded to the qualified taxpayer.
- If the qualified taxpayer's tax liability for the taxable year exceeds the annual refundable amount, only the annual refundable amount would be allowed as a credit against the qualified taxpayer's net tax or tax.

The credit carryover amount would be computed and carried over to the next succeeding year of the refundable period as follows:

- In the first taxable year of the refundable period, the total refundable amount, less the annual refundable amount, would be carried over to the succeeding taxable year.
- In each taxable year after the first taxable year of the refundable period, the total refundable amount, less the annual refundable amount allowed against the qualified taxpayer's net tax or tax, or refunded in the current and prior taxable years in the refundable period would be carried over to the next succeeding year of the refundable period.

This credit could be carried over for up to 9 taxable years until exhausted. However, if the qualified taxpayer makes an irrevocable election for the refundable credit, no amount of credit would be allowed after the refundable period. The refund would be credited against other amounts due, if any, and the balance, if any, would be paid from the Tax Relief and Refund Account.

To be paid a refund, the qualified taxpayer would be required to make an irrevocable election on an original, timely filed return in the taxable year that the credit certificate is issued in the form and manner as prescribed by the FTB.

A taxpayer that purchases a credit, as specified, would not be allowed to elect to be paid a refund.

For purposes of complying with Section 41, the Legislature provides that the following goals, purposes, and objectives for the Motion Picture Credit 4.0 would include:

- Maintain and expand motion picture and television productions, and the quality of the jobs they provide, in California.
- Keep California's motion picture credits competitive with production incentives offered by other states and other countries.

- Increase the competitiveness of these credits by allowing the Motion Picture Credit 4.0 to be refundable.

In addition, for purposes of complying with Section 41, the Legislature describes the following performance indicators for the Motion Picture Credit 4.0 to include:

- The number and types of productions that apply for the allowed tax credits.
- The total amount of the applied credit allocations.
- The total amount of allocated credits.
- The total amount of credits certified as eligible to be claimed on a tax return.
- The number of jobs included in the budgets of productions receiving the allocated tax credits.
- The number of productions relocating from another state or country to California to receive allocated tax credits.
- A comparison of the performance indicators specified above, inclusive, with results from programs authorized by Motion Picture Credit 1.0, Motion Picture Credit 2.0, and Motion Picture Credit 3.0.
- The total amount of allocated credits claimed as a refund on a tax return.

On or before May 1, 2028, the LAO would be required to provide to the Assembly Committee on Revenue and Taxation, the Senate Committee on Revenue and Taxation, and the public, a report evaluating the effectiveness of the Motion Picture Credit 4.0 program in achieving the metrics, as specified, including an assessment of the refundability of the tax credit in achieving those metrics.

Notwithstanding the general prohibition against disclosure of confidential taxpayer information, upon the LAO's request, the CFC, the CDTFA, the FTB, the Employment Development Department, and all other relevant state agencies would be required to provide information as necessary for LAO's research to prepare required reporting. The information received by the LAO would be considered confidential taxpayer information subject to appropriate confidentiality requirements of the participating state agencies.

The LAO could publish statistics in conjunction with reports derived from this information, in both of the following cases:

- The published statistics are classified to prevent the identification of particular taxpayers, reports, and tax returns.
- The publication of the percentage of dividends paid by a corporation that are deductible by the recipient under the CTL.

The Legislature finds and declares that these provisions, which would allow the Motion Picture Credit 3.0 and the certified studio construction project credit to reduce tax below the TMT retroactively, serve the public purpose of increasing economic benefits for Californians through increased employment and stability in the motion picture and television industry and does not constitute a gift of public funds.

The provisions of this bill would be severable.

Effective/Operative Date

As a provision within a bill providing for appropriations relating to the Budget Bill, this provision would be effective immediately upon enactment, and the amendments allowing the Motion Picture Credit 4.0 would be specifically operative for taxable years beginning on or after January 1, 2025.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

Analysis Provision No. 3:

Credit Ordering and Credits Reducing Tax Below TMT (Sections 5 and 8 of the Bill)

Under the PITL, this provision would specify that for taxable years beginning on or after January 1, 2025, the Motion Picture Credit 4.0 would be placed after the credits that contain refundable provisions but do not contain carryover provisions, and before the credits relating to refunds pursuant to the Unemployment Insurance Code and tax withholding. This credit would be specifically excluded from the ordering rules that apply to credits containing both carryover and refundable provisions, and that reduce the tax below the TMT.

Under the CTL, this provision would specify that for taxable years beginning on or after January 1, 2025, the Motion Picture Credit 4.0 would be placed after credits that are allowed to reduce the tax below the TMT, as defined, and before credits for tax withholding.

This provision, under the PITL and CTL, for taxable years beginning on or after January 1, 2020, would allow the Motion Picture Credit 3.0 and the certified studio construction project credit (also known as the California Soundstage Filming Tax Credit) to reduce the amount of tax below the TMT. In addition, for taxable years beginning on or after January 1, 2025, would allow the Motion Picture Credit 4.0 to reduce the amount of tax below the TMT.

Effective/Operative Date

As a provision within a bill providing for appropriations relating to the Budget Bill, this provision would be effective immediately upon enactment. The amendments allowing the Motion Picture Credit 3.0 and the certified studio construction project to reduce the tax below TMT would be specifically operative for taxable years beginning on or after January 1, 2020. The amendments allowing the Motion Picture Credit 4.0 to reduce the tax below TMT would be specifically operative for taxable years beginning on or after January 1, 2025.

Federal/State Law

Federal Law

An alternative minimum tax (AMT) is imposed in the amount of the TMT over the regular tax. General business credits allowed for any tax year are limited to the excess of a taxpayer's net income tax over the greater of: (1) the TMT for the tax year, or (2) 25% of the amount of the taxpayer's net regular tax that exceeds \$25,000. In addition, the empowerment zone employment credit, and other specified credits, have various rules for limiting the usage of credits.

State Law

Current state law provides a general rule that tax credits imposed under the PITL and CTL may not reduce regular tax below TMT, unless specifically provided otherwise. There are numerous credits that are allowed to reduce the net tax below the TMT, such as solar energy credits, the College Access Tax Credit, and the California Competes Tax Credit.

The TMT rate for individuals is 7%, for general corporations it is 6.65%, and for financial corporations it is 8.65% of the excess Alternative Minimum Taxable Income of the exemption amount. Corporations with valid S corporation elections are not subject to the AMT. The TMT is compared to the taxpayer's regular tax. For purposes of this comparison, the regular tax is defined as the personal income tax, corporation franchise tax, the corporation income tax, or the tax on the unrelated business income of an exempt corporation. If the TMT exceeds the regular tax, the difference is the AMT. Without considering tax credits, the taxpayer is effectively required to pay the higher of the TMT or the regular tax for the taxable year.

Any unused credit may be carried over for 5 years until exhausted. However, the credit may not be used to reduce the TMT.

The provisions of this bill would be severable.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 113 (Senate Committee on Budget and Fiscal Review, Chapter 3, Statutes of 2021) amongst other items, under the PITL, allowed the PTE elective tax credit to reduce tax below TMT and made changes to the order of credits allowed to be taken against the net tax. In addition, this bill made other nonsubstantive technical changes.

FISCAL IMPACT

This provision would not significantly impact FTB's costs.

PROGRAM BACKGROUND (PROVISIONS 1 THROUGH 3)

None noted.

OTHER STATES' INFORMATION (PROVISIONS 1 THROUGH 3)

None noted.

LEGAL IMPACT (PROVISIONS 1 THROUGH 3)

None noted.

EQUITY IMPACT (PROVISIONS 1 THROUGH 3)

None noted.

APPOINTMENTS (PROVISIONS 1 THROUGH 3)

None noted.

SUPPORT/OPPOSITION (PROVISIONS 1 THROUGH 3)

Support:

None on file.

Opposition:

None on file.

ARGUMENTS (PROVISIONS 1 THROUGH 3)

Proponents:

None on file.

Opponents:

None on file.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov