

SENATE BILL

No. 55

Introduced by Senator Calderon

February 12, 2010

An act to repeal and amend Sections 17053.85 and 23685 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 55, as introduced, Calderon. Income and corporation taxes: credits: qualified motion picture production.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit, for taxable years beginning on or after January 1, 2011, in an amount equal to a specified percentage of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture has relocated to California or is an independent film, as provided. Existing law limits the amount of credits that may be allocated in any fiscal year, as specified, and prohibits the allocation of any credits from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year.

This bill would delete that prohibition.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17053.85 of the Revenue and Taxation
2 Code, as added by Section 4 of Chapter 10 of the 3rd Extraordinary
3 Session of the Statutes of 2009, is repealed.

4 ~~17053.85.—(a) (1) For taxable years beginning on or after~~
5 ~~January 1, 2011, there shall be allowed to a qualified taxpayer a~~
6 ~~credit against the “net tax,” as defined in Section 17039, in an~~
7 ~~amount equal to the applicable percentage, as specified in~~
8 ~~paragraph (4), of the qualified expenditures for the production of~~
9 ~~a qualified motion picture in California.~~

10 ~~(2) The credit shall be allowed for the taxable year in which the~~
11 ~~California Film Commission issues the credit certificate pursuant~~
12 ~~to subdivision (g) for the qualified motion picture, and shall be for~~
13 ~~the applicable percentage of all qualified expenditures paid or~~
14 ~~incurred by the qualified taxpayer in all taxable years for that~~
15 ~~qualified motion picture.~~

16 ~~(3) The amount of the credit allowed to a qualified taxpayer~~
17 ~~shall be limited to the amount specified in the credit certificate~~
18 ~~issued to the qualified taxpayer by the California Film Commission~~
19 ~~pursuant to subdivision (g).~~

20 ~~(4) For purposes of paragraphs (1) and (2), the applicable~~
21 ~~percentage shall be:~~

22 ~~(A) Twenty percent of the qualified expenditures attributable~~
23 ~~to the production of a qualified motion picture in California.~~

24 ~~(B) Twenty-five percent of the qualified expenditures~~
25 ~~attributable to the production of a qualified motion picture in~~
26 ~~California where the qualified motion picture is a television series~~
27 ~~that relocated to California or an independent film.~~

28 ~~(b) For purposes of this section:~~

29 ~~(1) “Ancillary product” means any article for sale to the public~~
30 ~~that contains a portion of, or any element of, the qualified motion~~
31 ~~picture.~~

1 (2) “Budget” means an estimate of all expenses paid or incurred
2 during the production period of a qualified motion picture. It shall
3 be the same budget used by the qualified taxpayer and production
4 company for all qualified motion picture purposes.

5 (3) “Clip use” means a use of any portion of a motion picture,
6 other than the qualified motion picture, used in the qualified motion
7 picture.

8 (4) “Credit certificate” means the certificate issued by the
9 California Film Commission pursuant to subparagraph (C) of
10 paragraph (2) of subdivision (g).

11 (5) (A) “Employee fringe benefits” means the amount allowable
12 as a deduction under this part to the qualified taxpayer involved
13 in the production of the qualified motion picture, exclusive of any
14 amounts contributed by employees, for any year during the
15 production period with respect to any of the following:

16 (i) Employer contributions under any pension, profit-sharing,
17 annuity, or similar plan.

18 (ii) Employer-provided coverage under any accident or health
19 plan for employees.

20 (iii) The employer’s cost of life or disability insurance provided
21 to employees.

22 (B) Any amount treated as wages under clause (i) of
23 subparagraph (A) of paragraph (18) shall not be taken into account
24 under this paragraph.

25 (6) “Independent film” means a motion picture with a minimum
26 budget of one million dollars (\$1,000,000) and a maximum budget
27 of ten million dollars (\$10,000,000) that is produced by a company
28 that is not publicly traded and publicly traded companies do not
29 own, directly or indirectly, more than 25 percent of the producing
30 company.

31 (7) “Licensing” means any grant of rights to distribute the
32 qualified motion picture, in whole or in part.

33 (8) “New use” means any use of a motion picture in a medium
34 other than the medium for which it was initially created.

35 (9) (A) “Postproduction” means the final activities in a qualified
36 motion picture’s production, including editing, foley recording,
37 automatic dialogue replacement, sound editing, scoring and music
38 editing, beginning and end credits, negative cutting, negative
39 processing and duplication, the addition of sound and visual effects,
40 soundmixing, film-to-tape transfers, encoding, and color correction.

1 ~~(B) “Postproduction” does not include the manufacture or~~
2 ~~shipping of release prints.~~

3 ~~(10) “Preproduction” means the process of preparation for actual~~
4 ~~physical production which begins after a qualified motion picture~~
5 ~~has received a firm agreement of financial commitment, or is~~
6 ~~greenlit, with, for example, the establishment of a dedicated~~
7 ~~production office, the hiring of key crew members, and includes,~~
8 ~~but is not limited to, activities that include location scouting and~~
9 ~~execution of contracts with vendors of equipment and stage space.~~

10 ~~(11) “Principal photography” means the phase of production~~
11 ~~during which the motion picture is actually shot, as distinguished~~
12 ~~from preproduction and postproduction.~~

13 ~~(12) “Production period” means the period beginning with~~
14 ~~preproduction and ending upon completion of postproduction.~~

15 ~~(13) “Qualified entity” means a personal service corporation as~~
16 ~~defined in Section 269A(b)(1) of the Internal Revenue Code, a~~
17 ~~payroll services corporation, or any entity receiving qualified wages~~
18 ~~with respect to services performed by a qualified individual.~~

19 ~~(14) (A) “Qualified individual” means any individual who~~
20 ~~performs services during the production period in an activity related~~
21 ~~to the production of a qualified motion picture.~~

22 ~~(B) “Qualified individual” shall not include either of the~~
23 ~~following:~~

24 ~~(i) Any individual related to the qualified taxpayer as described~~
25 ~~in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal~~
26 ~~Revenue Code.~~

27 ~~(ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of~~
28 ~~the Internal Revenue Code, of the qualified taxpayer.~~

29 ~~(15) (A) “Qualified motion picture” means a motion picture~~
30 ~~that is produced for distribution to the general public, regardless~~
31 ~~of medium that is one of the following:~~

32 ~~(i) A feature with a minimum production budget of one million~~
33 ~~dollars (\$1,000,000) and a maximum production budget of~~
34 ~~seventy-five million dollars (\$75,000,000).~~

35 ~~(ii) A movie of the week or miniseries with a minimum~~
36 ~~production budget of five hundred thousand dollars (\$500,000).~~

37 ~~(iii) A new television series produced in California with a~~
38 ~~minimum production budget of one million dollars (\$1,000,000)~~
39 ~~licensed for original distribution on basic cable.~~

40 ~~(iv) An independent film.~~

1 ~~(v) A television series that relocated to California.~~

2 ~~(B) To qualify as a “qualified motion picture,” all of the~~
3 ~~following conditions shall be satisfied:~~

4 ~~(i) At least 75 percent of the production days occur wholly in~~
5 ~~California or 75 percent of the production budget is incurred for~~
6 ~~payment for services performed within the state and the purchase~~
7 ~~or rental of property used within the state.~~

8 ~~(ii) Production of the qualified motion picture is completed~~
9 ~~within 30 months from the date on which the qualified taxpayer’s~~
10 ~~application is approved by the California Film Commission. For~~
11 ~~purposes of this section, a qualified motion picture is “completed”~~
12 ~~when the process of postproduction has been finished.~~

13 ~~(iii) The copyright for the motion picture is registered with the~~
14 ~~United States Copyright Office pursuant to Title 17 of the United~~
15 ~~States Code.~~

16 ~~(iv) Principal photography of the qualified motion picture~~
17 ~~commences after the date on which the application is approved by~~
18 ~~the California Film Commission, but no later than 180 days after~~
19 ~~the date of that approval.~~

20 ~~(C) For the purposes of subparagraph (A), in computing the~~
21 ~~total wages paid or incurred for the production of a qualified~~
22 ~~motion picture, all amounts paid or incurred by all persons or~~
23 ~~entities that share in the costs of the qualified motion picture shall~~
24 ~~be aggregated.~~

25 ~~(D) “Qualified motion picture” shall not include commercial~~
26 ~~advertising, music videos, a motion picture produced for private~~
27 ~~noncommercial use, such as weddings, graduations, or as part of~~
28 ~~an educational course and made by students, a news program,~~
29 ~~current events or public events program, talk show, game show,~~
30 ~~sporting event or activity, awards show, telethon or other~~
31 ~~production that solicits funds, reality television program, clip-based~~
32 ~~programming if more than 50 percent of the content is comprised~~
33 ~~of licensed footage, documentaries, variety programs, daytime~~
34 ~~dramas, strip shows, one-half hour (air time) episodic television~~
35 ~~shows, or any production that falls within the recordkeeping~~
36 ~~requirements of Section 2257 of Title 18 of the United States Code.~~

37 ~~(16) “Qualified expenditure” means amounts paid or incurred~~
38 ~~to purchase or lease tangible personal property used within this~~
39 ~~state in the production of a qualified motion picture and payments;~~

1 including qualified wages, for services performed within this state
2 in the production of a qualified motion picture.

3 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
4 or incurred qualified expenditures and has been issued a credit
5 certificate by the California Film Commission pursuant to
6 subdivision (g).

7 (B) In the case of any passthrough entity, the determination of
8 whether a taxpayer is a qualified taxpayer under this section shall
9 be made at the entity level and any credit under this section is not
10 allowed to the passthrough entity, but shall be passed through to
11 the partners or shareholders in accordance with applicable
12 provisions of Part 10 (commencing with Section 17001) or Part
13 11 (commencing with Section 23001). For purposes of this
14 paragraph, “passthrough entity” means any entity taxed as a
15 partnership or “S” corporation.

16 (18) (A) “Qualified wages” means all of the following:

17 (i) Any wages required to be reported under Section 13050 of
18 the Unemployment Insurance Code that were paid or incurred by
19 any taxpayer involved in the production of a qualified motion
20 picture with respect to a qualified individual for services performed
21 on the qualified motion picture production within this state.

22 (ii) The portion of any employee fringe benefits paid or incurred
23 by any taxpayer involved in the production of the qualified motion
24 picture that are properly allocable to qualified wage amounts
25 described in clause (i).

26 (iii) Any payments made to a qualified entity for services
27 performed in this state by qualified individuals within the meaning
28 of paragraph (14).

29 (iv) Remuneration paid to an independent contractor who is a
30 qualified individual for services performed within this state by that
31 qualified individual.

32 (B) “Qualified wages” shall not include any of the following:

33 (i) Expenses, including wages, related to new use, reuse, clip
34 use, licensing, secondary markets, or residual compensation, or
35 the creation of any ancillary product, including, but not limited to,
36 a soundtrack album, toy, game, trailer, or teaser.

37 (ii) Expenses, including wages, paid or incurred with respect to
38 acquisition, development, turnaround, or any rights thereto.

39 (iii) Expenses, including wages, related to financing, overhead,
40 marketing, promotion, or distribution of a qualified motion picture.

1 (iv) ~~Expenses, including wages, paid per person per qualified~~
2 ~~motion picture for writers, directors, music directors, music~~
3 ~~composers, music supervisors, producers, and performers, other~~
4 ~~than background actors with no scripted lines.~~

5 (19) ~~“Residual compensation” means supplemental~~
6 ~~compensation paid at the time that a motion picture is exhibited~~
7 ~~through new use, reuse, clip use, or in secondary markets, as~~
8 ~~distinguished from payments made during production.~~

9 (20) ~~“Reuse” means any use of a qualified motion picture in the~~
10 ~~same medium for which it was created, following the initial use~~
11 ~~in that medium.~~

12 (21) ~~“Secondary markets” means media in which a qualified~~
13 ~~motion picture is exhibited following the initial media in which it~~
14 ~~is exhibited.~~

15 (22) ~~“Television series that relocated to California” means a~~
16 ~~television series, without regard to episode length or initial media~~
17 ~~exhibition, that filmed all of its prior season or seasons outside of~~
18 ~~California and for which the taxpayer certifies that the credit~~
19 ~~provided pursuant to this section is the primary reason for~~
20 ~~relocating to California.~~

21 (e) (1) ~~Notwithstanding any other law, a qualified taxpayer~~
22 ~~may sell any credit allowed under this section that is attributable~~
23 ~~to an independent film, as defined in paragraph (6) of subdivision~~
24 ~~(b), to an unrelated party.~~

25 (2) ~~The qualified taxpayer shall report to the Franchise Tax~~
26 ~~Board prior to the sale of the credit, in the form and manner~~
27 ~~specified by the Franchise Tax Board, all required information~~
28 ~~regarding the purchase and sale of the credit, including the social~~
29 ~~security or other taxpayer identification number of the unrelated~~
30 ~~party to whom the credit has been sold, the face amount of the~~
31 ~~credit sold, and the amount of consideration received by the~~
32 ~~qualified taxpayer for the sale of the credit.~~

33 (3) ~~In the case where the credit allowed under this section~~
34 ~~exceeds the “net tax,” the excess credit may be carried over to~~
35 ~~reduce the “net tax” in the following taxable year, and succeeding~~
36 ~~five taxable years, if necessary, until the credit has been exhausted.~~

37 (4) ~~A credit shall not be sold pursuant to this subdivision to~~
38 ~~more than one taxpayer, nor may the credit be resold by the~~
39 ~~unrelated party to another taxpayer or other party.~~

1 ~~(5) A party that has acquired tax credits under this section shall~~
2 ~~be subject to the requirements of this section.~~

3 ~~(6) In no event may a qualified taxpayer assign or sell any tax~~
4 ~~credit to the extent the tax credit allowed by this section is claimed~~
5 ~~on any tax return of the qualified taxpayer.~~

6 ~~(7) In the event that both the taxpayer originally allocated a~~
7 ~~credit under this section by the California Film Commission and~~
8 ~~a taxpayer to whom the credit has been sold both claim the same~~
9 ~~amount of credit on their tax returns, the Franchise Tax Board may~~
10 ~~disallow the credit of either taxpayer, so long as the statute of~~
11 ~~limitations upon assessment remains open.~~

12 ~~(8) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
13 ~~Division 3 of Title 2 of the Government Code does not apply to~~
14 ~~any standard, criterion, procedure, determination, rule, notice, or~~
15 ~~guideline established or issued by the Franchise Tax Board~~
16 ~~pursuant to this subdivision.~~

17 ~~(d) No credit shall be allowed pursuant to this section unless~~
18 ~~the qualified taxpayer provides the following to the California~~
19 ~~Film Commission:~~

20 ~~(1) Identification of each qualified individual.~~

21 ~~(2) The specific start and end dates of production.~~

22 ~~(3) The total wages paid.~~

23 ~~(4) The amount of qualified wages paid to each qualified~~
24 ~~individual.~~

25 ~~(5) The copyright registration number, as reflected on the~~
26 ~~certificate of registration issued under the authority of Section 410~~
27 ~~of Title 17 of the United States Code, relating to registration of~~
28 ~~claim and issuance of certificate. The registration number shall be~~
29 ~~provided on the return claiming the credit.~~

30 ~~(6) The total amounts paid or incurred to purchase or lease~~
31 ~~tangible personal property used in the production of a qualified~~
32 ~~motion picture.~~

33 ~~(7) Information to substantiate its qualified expenditures.~~

34 ~~(8) Information required by the California Film Commission~~
35 ~~under regulations promulgated pursuant to subdivision (g)~~
36 ~~necessary to verify the amount of credit claimed.~~

37 ~~(e) The California Film Commission may prescribe rules and~~
38 ~~regulations to carry out the purposes of this section including any~~
39 ~~rules and regulations necessary to establish procedures, processes,~~
40 ~~requirements, and rules identified in or required to implement this~~

1 ~~section. The regulations shall include provisions to set aside a~~
2 ~~percentage of annual credit allocations for independent films.~~

3 ~~(f) If the qualified taxpayer fails to provide the copyright~~
4 ~~registration number as required in paragraph (5) of subdivision~~
5 ~~(d), the credit shall be disallowed and assessed and collected under~~
6 ~~Section 19051 until the procedures are satisfied.~~

7 ~~(g) For purposes of this section, the California Film Commission~~
8 ~~shall do the following:~~

9 ~~(1) On, or after, July 1, 2009, and before July 1, 2014, allocate~~
10 ~~tax credits to applicants.~~

11 ~~(A) Establish a procedure for applicants to file with the~~
12 ~~commission a written application, on a form jointly prescribed by~~
13 ~~the commission and the Franchise Tax Board for the allocation of~~
14 ~~the tax credit. The application shall include, but not be limited to,~~
15 ~~the following information:~~

16 ~~(i) The budget for the motion picture production.~~

17 ~~(ii) The number of production days.~~

18 ~~(iii) A financing plan for the production.~~

19 ~~(iv) The diversity of the workforce employed by the applicant,~~
20 ~~including, but not limited to, the ethnic and racial makeup of the~~
21 ~~individuals employed by the applicant during the production of~~
22 ~~the qualified motion picture, to the extent possible.~~

23 ~~(v) Any other information deemed relevant by the commission~~
24 ~~or the Franchise Tax Board.~~

25 ~~(B) Establish criteria, consistent with the requirements of this~~
26 ~~section, for allocating tax credits.~~

27 ~~(C) Determine and designate applicants who meet the~~
28 ~~requirements of this section.~~

29 ~~(D) Process and approve, or reject, all applications on a~~
30 ~~first-come-first-served basis.~~

31 ~~(E) Subject to the annual cap established as provided in~~
32 ~~subdivision (i), allocate an aggregate amount of credits under this~~
33 ~~section and Section 23685, and allocate any carryover of~~
34 ~~unallocated credits from prior years.~~

35 ~~(2) Certify tax credits allocated to qualified taxpayers.~~

36 ~~(A) Establish a verification procedure for the amount of qualified~~
37 ~~expenditures paid or incurred by the applicant.~~

38 ~~(B) Establish audit requirements that must be satisfied before~~
39 ~~a credit certificate may be issued by the California Film~~
40 ~~Commission.~~

~~(C) Issue a credit certificate to a qualified taxpayer upon completion of the qualified motion picture reflecting the credit amount allocated after qualified expenditures have been verified under this section. The amount of credit shown in the credit certificate shall not exceed the amount of credit allocated to that qualified taxpayer pursuant to this section.~~

~~(h) The California Film Commission shall provide the Franchise Tax Board annually with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission. The list shall include the names and taxpayer identification numbers, including taxpayer identification numbers of each partner or shareholder, as applicable, of the qualified taxpayers.~~

~~(i) (1) The aggregate amount of credits that may be allocated in any fiscal year pursuant to this section and Section 23686 shall be an amount equal to the sum of all of the following:~~

~~(A) One hundred million dollars (\$100,000,000) in credits for the 2009–10 fiscal year and each fiscal year thereafter, through and including the 2013–14 fiscal year.~~

~~(B) The unused allocation credit amount, if any, for the preceding fiscal year.~~

~~(C) The amount of previously allocated credits not certified.~~

~~(2) If the amount of credits applied for in any particular fiscal year exceeds the aggregate amount of tax credits authorized to be allocated under this section, such excess shall be treated as having been applied for on the first day of the subsequent fiscal year. However, credits may not be allocated from a fiscal year other than the fiscal year in which the credit was originally applied for or the immediately succeeding fiscal year.~~

~~(3) Notwithstanding the foregoing, the Film Commission shall set aside up to ten million (\$10,000,000) of tax credits each fiscal year for independent films allocated in accordance with rules and regulations developed pursuant to subdivision (e).~~

~~(4) Any act that reduces the amount that may be allocated pursuant to paragraph (1) constitutes a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution and may be passed by not less than two-thirds of all Members elected to each of the two houses of the Legislature.~~

1 ~~(j) The film commission shall have the authority to allocate tax~~
2 ~~credits in accordance with this section and in accordance with any~~
3 ~~regulations prescribed pursuant to subdivision (c) upon adoption.~~

4 SEC. 2. Section 17053.85 of the Revenue and Taxation Code,
5 as added by Section 4 of Chapter 17 of the 3rd Extraordinary
6 Session of the Statutes of 2009, is amended to read:

7 17053.85. (a) (1) For taxable years beginning on or after
8 January 1, 2011, there shall be allowed to a qualified taxpayer a
9 credit against the “net tax,” as defined in Section 17039, in an
10 amount equal to the applicable percentage, as specified in
11 paragraph (4), of the qualified expenditures for the production of
12 a qualified motion picture in California.

13 (2) The credit shall be allowed for the taxable year in which the
14 California Film Commission issues the credit certificate pursuant
15 to subdivision (g) for the qualified motion picture, and shall be for
16 the applicable percentage of all qualified expenditures paid or
17 incurred by the qualified taxpayer in all taxable years for that
18 qualified motion picture.

19 (3) The amount of the credit allowed to a qualified taxpayer
20 shall be limited to the amount specified in the credit certificate
21 issued to the qualified taxpayer by the California Film Commission
22 pursuant to subdivision (g).

23 (4) For purposes of paragraphs (1) and (2), the applicable
24 percentage shall be:

25 (A) Twenty percent of the qualified expenditures attributable
26 to the production of a qualified motion picture in California.

27 (B) Twenty-five percent of the qualified expenditures
28 attributable to the production of a qualified motion picture in
29 California where the qualified motion picture is a television series
30 that relocated to California or an independent film.

31 (b) For purposes of this section:

32 (1) “Ancillary product” means any article for sale to the public
33 that contains a portion of, or any element of, the qualified motion
34 picture.

35 (2) “Budget” means an estimate of all expenses paid or incurred
36 during the production period of a qualified motion picture. It shall
37 be the same budget used by the qualified taxpayer and production
38 company for all qualified motion picture purposes.

1 (3) “Clip use” means a use of any portion of a motion picture,
2 other than the qualified motion picture, used in the qualified motion
3 picture.

4 (4) “Credit certificate” means the certificate issued by the
5 California Film Commission pursuant to subparagraph (C) of
6 paragraph (2) of subdivision (g).

7 (5) (A) “Employee fringe benefits” means the amount allowable
8 as a deduction under this part to the qualified taxpayer involved
9 in the production of the qualified motion picture, exclusive of any
10 amounts contributed by employees, for any year during the
11 production period with respect to any of the following:

12 (i) Employer contributions under any pension, profit-sharing,
13 annuity, or similar plan.

14 (ii) Employer-provided coverage under any accident or health
15 plan for employees.

16 (iii) The employer’s cost of life or disability insurance provided
17 to employees.

18 (B) Any amount treated as wages under clause (i) of
19 subparagraph (A) of paragraph (18) shall not be taken into account
20 under this paragraph.

21 (6) “Independent film” means a motion picture with a minimum
22 budget of one million dollars (\$1,000,000) and a maximum budget
23 of ten million dollars (\$10,000,000) that is produced by a company
24 that is not publicly traded and publicly traded companies do not
25 own, directly or indirectly, more than 25 percent of the producing
26 company.

27 (7) “Licensing” means any grant of rights to distribute the
28 qualified motion picture, in whole or in part.

29 (8) “New use” means any use of a motion picture in a medium
30 other than the medium for which it was initially created.

31 (9) (A) “Postproduction” means the final activities in a qualified
32 motion picture’s production, including editing, foley recording,
33 automatic dialogue replacement, sound editing, scoring and music
34 editing, beginning and end credits, negative cutting, negative
35 processing and duplication, the addition of sound and visual effects,
36 soundmixing, film-to-tape transfers, encoding, and color correction.

37 (B) “Postproduction” does not include the manufacture or
38 shipping of release prints.

39 (10) “Preproduction” means the process of preparation for actual
40 physical production which begins after a qualified motion picture

1 has received a firm agreement of financial commitment, or is
2 greenlit, with, for example, the establishment of a dedicated
3 production office, the hiring of key crew members, and includes,
4 but is not limited to, activities that include location scouting and
5 execution of contracts with vendors of equipment and stage space.

6 (11) “Principal photography” means the phase of production
7 during which the motion picture is actually shot, as distinguished
8 from preproduction and postproduction.

9 (12) “Production period” means the period beginning with
10 preproduction and ending upon completion of postproduction.

11 (13) “Qualified entity” means a personal service corporation as
12 defined in Section 269A(b)(1) of the Internal Revenue Code, a
13 payroll services corporation, or any entity receiving qualified wages
14 with respect to services performed by a qualified individual.

15 (14) (A) “Qualified individual” means any individual who
16 performs services during the production period in an activity related
17 to the production of a qualified motion picture.

18 (B) “Qualified individual” shall not include either of the
19 following:

20 (i) Any individual related to the qualified taxpayer as described
21 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
22 Revenue Code.

23 (ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of
24 the Internal Revenue Code, of the qualified taxpayer.

25 (15) (A) “Qualified motion picture” means a motion picture
26 that is produced for distribution to the general public, regardless
27 of medium that is one of the following:

28 (i) A feature with a minimum production budget of one million
29 dollars (\$1,000,000) and a maximum production budget of
30 seventy-five million dollars (\$75,000,000).

31 (ii) A movie of the week or miniseries with a minimum
32 production budget of five hundred thousand dollars (\$500,000).

33 (iii) A new television series produced in California with a
34 minimum production budget of one million dollars (\$1,000,000)
35 licensed for original distribution on basic cable.

36 (iv) An independent film.

37 (v) A television series that relocated to California.

38 (B) To qualify as a “qualified motion picture,” all of the
39 following conditions shall be satisfied:

1 (i) At least 75 percent of the production days occur wholly in
2 California or 75 percent of the production budget is incurred for
3 payment for services performed within the state and the purchase
4 or rental of property used within the state.

5 (ii) Production of the qualified motion picture is completed
6 within 30 months from the date on which the qualified taxpayer's
7 application is approved by the California Film Commission. For
8 purposes of this section, a qualified motion picture is "completed"
9 when the process of postproduction has been finished.

10 (iii) The copyright for the motion picture is registered with the
11 United States Copyright Office pursuant to Title 17 of the United
12 States Code.

13 (iv) Principal photography of the qualified motion picture
14 commences after the date on which the application is approved by
15 the California Film Commission, but no later than 180 days after
16 the date of that approval.

17 (C) For the purposes of subparagraph (A), in computing the
18 total wages paid or incurred for the production of a qualified
19 motion picture, all amounts paid or incurred by all persons or
20 entities that share in the costs of the qualified motion picture shall
21 be aggregated.

22 (D) "Qualified motion picture" shall not include commercial
23 advertising, music videos, a motion picture produced for private
24 noncommercial use, such as weddings, graduations, or as part of
25 an educational course and made by students, a news program,
26 current events or public events program, talk show, game show,
27 sporting event or activity, awards show, telethon or other
28 production that solicits funds, reality television program, clip-based
29 programming if more than 50 percent of the content is comprised
30 of licensed footage, documentaries, variety programs, daytime
31 dramas, strip shows, one-half hour (air time) episodic television
32 shows, or any production that falls within the recordkeeping
33 requirements of Section 2257 of Title 18 of the United States Code.

34 (16) "Qualified expenditure" means amounts paid or incurred
35 to purchase or lease tangible personal property used within this
36 state in the production of a qualified motion picture and payments,
37 including qualified wages, for services performed within this state
38 in the production of a qualified motion picture.

39 (17) (A) "Qualified taxpayer" means a taxpayer who has paid
40 or incurred qualified expenditures and has been issued a credit

1 certificate by the California Film Commission pursuant to
2 subdivision (g).

3 (B) In the case of any passthrough entity, the determination of
4 whether a taxpayer is a qualified taxpayer under this section shall
5 be made at the entity level and any credit under this section is not
6 allowed to the passthrough entity, but shall be passed through to
7 the partners or shareholders in accordance with applicable
8 provisions of Part 10 (commencing with Section 17001) or Part
9 11 (commencing with Section 23001). For purposes of this
10 paragraph, “passthrough entity” means any entity taxed as a
11 partnership or “S” corporation.

12 (18) (A) “Qualified wages” means all of the following:

13 (i) Any wages required to be reported under Section 13050 of
14 the Unemployment Insurance Code that were paid or incurred by
15 any taxpayer involved in the production of a qualified motion
16 picture with respect to a qualified individual for services performed
17 on the qualified motion picture production within this state.

18 (ii) The portion of any employee fringe benefits paid or incurred
19 by any taxpayer involved in the production of the qualified motion
20 picture that are properly allocable to qualified wage amounts
21 described in clause (i).

22 (iii) Any payments made to a qualified entity for services
23 performed in this state by qualified individuals within the meaning
24 of paragraph (14).

25 (iv) Remuneration paid to an independent contractor who is a
26 qualified individual for services performed within this state by that
27 qualified individual.

28 (B) “Qualified wages” shall not include any of the following:

29 (i) Expenses, including wages, related to new use, reuse, clip
30 use, licensing, secondary markets, or residual compensation, or
31 the creation of any ancillary product, including, but not limited to,
32 a soundtrack album, toy, game, trailer, or teaser.

33 (ii) Expenses, including wages, paid or incurred with respect to
34 acquisition, development, turnaround, or any rights thereto.

35 (iii) Expenses, including wages, related to financing, overhead,
36 marketing, promotion, or distribution of a qualified motion picture.

37 (iv) Expenses, including wages, paid per person per qualified
38 motion picture for writers, directors, music directors, music
39 composers, music supervisors, producers, and performers, other
40 than background actors with no scripted lines.

1 (19) “Residual compensation” means supplemental
2 compensation paid at the time that a motion picture is exhibited
3 through new use, reuse, clip use, or in secondary markets, as
4 distinguished from payments made during production.

5 (20) “Reuse” means any use of a qualified motion picture in the
6 same medium for which it was created, following the initial use
7 in that medium.

8 (21) “Secondary markets” means media in which a qualified
9 motion picture is exhibited following the initial media in which it
10 is exhibited.

11 (22) “Television series that relocated to California” means a
12 television series, without regard to episode length or initial media
13 exhibition, that filmed all of its prior season or seasons outside of
14 California and for which the taxpayer certifies that the credit
15 provided pursuant to this section is the primary reason for
16 relocating to California.

17 (c) (1) Notwithstanding any other law, a qualified taxpayer
18 may sell any credit allowed under this section that is attributable
19 to an independent film, as defined in paragraph (6) of subdivision
20 (b), to an unrelated party.

21 (2) The qualified taxpayer shall report to the Franchise Tax
22 Board prior to the sale of the credit, in the form and manner
23 specified by the Franchise Tax Board, all required information
24 regarding the purchase and sale of the credit, including the social
25 security or other taxpayer identification number of the unrelated
26 party to whom the credit has been sold, the face amount of the
27 credit sold, and the amount of consideration received by the
28 qualified taxpayer for the sale of the credit.

29 (3) In the case where the credit allowed under this section
30 exceeds the “net tax,” the excess credit may be carried over to
31 reduce the “net tax” in the following taxable year, and succeeding
32 five taxable years, if necessary, until the credit has been exhausted.

33 (4) A credit shall not be sold pursuant to this subdivision to
34 more than one taxpayer, nor may the credit be resold by the
35 unrelated party to another taxpayer or other party.

36 (5) A party that has acquired tax credits under this section shall
37 be subject to the requirements of this section.

38 (6) In no event may a qualified taxpayer assign or sell any tax
39 credit to the extent the tax credit allowed by this section is claimed
40 on any tax return of the qualified taxpayer.

(7) In the event that both the taxpayer originally allocated a credit under this section by the California Film Commission and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the Franchise Tax Board may disallow the credit of either taxpayer, so long as the statute of limitations upon assessment remains open.

(8) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this subdivision.

(d) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

- (1) Identification of each qualified individual.
 - (2) The specific start and end dates of production.
 - (3) The total wages paid.
 - (4) The amount of qualified wages paid to each qualified individual.
 - (5) The copyright registration number, as reflected on the certificate of registration issued under the authority of Section 410 of Title 17 of the United States Code, relating to registration of claim and issuance of certificate. The registration number shall be provided on the return claiming the credit.
 - (6) The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.
 - (7) Information to substantiate its qualified expenditures.
 - (8) Information required by the California Film Commission under regulations promulgated pursuant to subdivision (g) necessary to verify the amount of credit claimed.
- (e) The California Film Commission may prescribe rules and regulations to carry out the purposes of this section including any rules and regulations necessary to establish procedures, processes, requirements, and rules identified in or required to implement this section. The regulations shall include provisions to set aside a percentage of annual credit allocations for independent films.
- (f) If the qualified taxpayer fails to provide the copyright registration number as required in paragraph (5) of subdivision

(d), the credit shall be disallowed and assessed and collected under Section 19051 until the procedures are satisfied.

(g) For purposes of this section, the California Film Commission shall do the following:

(1) On, or after, July 1, 2009, and before July 1, 2014, allocate tax credits to applicants.

(A) Establish a procedure for applicants to file with the commission a written application, on a form jointly prescribed by the commission and the Franchise Tax Board for the allocation of the tax credit. The application shall include, but not be limited to, the following information:

(i) The budget for the motion picture production.

(ii) The number of production days.

(iii) A financing plan for the production.

(iv) 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.

(v) Any other information deemed relevant by the commission or the Franchise Tax Board.

(B) Establish criteria, consistent with the requirements of this section, for allocating tax credits.

(C) Determine and designate applicants who meet the requirements of this section.

(D) Process and approve, or reject, all applications on a first-come-first-served basis.

(E) Subject to the annual cap established as provided in subdivision (i), allocate an aggregate amount of credits under this section and Section 23685, and allocate any carryover of unallocated credits from prior years.

(2) Certify tax credits allocated to qualified taxpayers.

(A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant.

(B) Establish audit requirements that must be satisfied before a credit certificate may be issued by the California Film Commission.

(C) Issue a credit certificate to a qualified taxpayer upon completion of the qualified motion picture reflecting the credit amount allocated after qualified expenditures have been verified under this section. The amount of credit shown in the credit

1 certificate shall not exceed the amount of credit allocated to that
2 qualified taxpayer pursuant to this section.

3 (h) The California Film Commission shall provide the Franchise
4 Tax Board annually with a list of qualified taxpayers and the tax
5 credit amounts allocated to each qualified taxpayer by the
6 California Film Commission. The list shall include the names and
7 taxpayer identification numbers, including taxpayer identification
8 numbers of each partner or shareholder, as applicable, of the
9 qualified taxpayers.

10 (i) (1) The aggregate amount of credits that may be allocated
11 in any fiscal year pursuant to this section and Section 23686 shall
12 be an amount equal to the sum of all of the following:

13 (A) One hundred million dollars (\$100,000,000) in credits for
14 the 2009–10 fiscal year and each fiscal year thereafter, through
15 and including the 2013–14 fiscal year.

16 (B) The unused allocation credit amount, if any, for the
17 preceding fiscal year.

18 (C) The amount of previously allocated credits not certified.

19 (2) If the amount of credits applied for in any particular fiscal
20 year exceeds the aggregate amount of tax credits authorized to be
21 allocated under this section, such excess shall be treated as having
22 been applied for on the first day of the ~~subsequent~~ *next* fiscal year
23 *in which credits are available.* ~~However, credits may not be~~
24 ~~allocated from a fiscal year other than the fiscal year in which the~~
25 ~~credit was originally applied for or the immediately succeeding~~
26 ~~fiscal year.~~

27 (3) Notwithstanding the foregoing, the Film Commission shall
28 set aside up to ten million (\$10,000,000) of tax credits each fiscal
29 year for independent films allocated in accordance with rules and
30 regulations developed pursuant to subdivision (e).

31 (4) Any act that reduces the amount that may be allocated
32 pursuant to paragraph (1) constitutes a change in state taxes for
33 the purpose of increasing revenues within the meaning of Section
34 3 of Article XIII A of the California Constitution and may be passed
35 by not less than two-thirds of all Members elected to each of the
36 two houses of the Legislature.

37 (j) The film commission shall have the authority to allocate tax
38 credits in accordance with this section and in accordance with any
39 regulations prescribed pursuant to subdivision (e) upon adoption.

SEC. 3. Section 23685 of the Revenue and Taxation Code, as added by Section 9 of Chapter 10 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

~~23685. (a) (1) For taxable years beginning on or after January 1, 2011, there shall be allowed to a qualified taxpayer a credit against the “tax,” as defined in Section 23036, in an amount equal to the applicable percentage, as specified in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California.~~

~~(2) The credit shall be allowed for the taxable year in which the California Film Commission issues the credit certificate pursuant to subdivision (g) for the qualified motion picture, and shall 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.~~

~~(3) The amount of the credit allowed to a qualified taxpayer shall be limited to the amount specified in the credit certificate issued to the qualified taxpayer by the California Film Commission pursuant to subdivision (g).~~

~~(4) For purposes of paragraphs (1) and (2), the applicable percentage shall be:~~

~~(A) Twenty percent of the qualified expenditures attributable to the production of a qualified motion picture in California.~~

~~(B) Twenty-five percent 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 or an independent film.~~

~~(b) For purposes of this section:~~

~~(1) “Ancillary product” means any article for sale to the public that contains a portion of, or any element of, the qualified motion picture.~~

~~(2) “Budget” means an estimate of all expenses paid or incurred during the production period of a qualified motion picture. It shall be the same budget used by the qualified taxpayer and production company for all qualified motion picture purposes.~~

~~(3) “Clip use” means a use of any portion of a motion picture, other than the qualified motion picture, used in the qualified motion picture.~~

1 ~~(4) “Credit certificate” means the certificate issued by the~~
2 ~~California Film Commission pursuant to subparagraph (C) of~~
3 ~~paragraph (2) of subdivision (g).~~

4 ~~(5) (A) “Employee fringe benefits” means the amount allowable~~
5 ~~as a deduction under this part to the qualified taxpayer involved~~
6 ~~in the production of the qualified motion picture, exclusive of any~~
7 ~~amounts contributed by employees, for any year during the~~
8 ~~production period with respect to any of the following:~~

9 ~~(i) Employer contributions under any pension, profit-sharing,~~
10 ~~annuity, or similar plan.~~

11 ~~(ii) Employer-provided coverage under any accident or health~~
12 ~~plan for employees.~~

13 ~~(iii) The employer’s cost of life or disability insurance provided~~
14 ~~to employees.~~

15 ~~(B) Any amount treated as wages under clause (i) of~~
16 ~~subparagraph (A) of paragraph (18) shall not be taken into account~~
17 ~~under this paragraph.~~

18 ~~(6) “Independent film” means a motion picture with a minimum~~
19 ~~budget of one million dollars (\$1,000,000) and a maximum budget~~
20 ~~of ten million dollars (\$10,000,000) that is produced by a company~~
21 ~~that is not publicly traded and publicly traded companies do not~~
22 ~~own, directly or indirectly, more than 25 percent of the producing~~
23 ~~company.~~

24 ~~(7) “Licensing” means any grant of rights to distribute the~~
25 ~~qualified motion picture, in whole or in part.~~

26 ~~(8) “New use” means any use of a motion picture in a medium~~
27 ~~other than the medium for which it was initially created.~~

28 ~~(9) (A) “Postproduction” means the final activities in a qualified~~
29 ~~motion picture’s production, including editing, foley recording,~~
30 ~~automatic dialogue replacement, sound editing, scoring and music~~
31 ~~editing, beginning and end credits, negative cutting, negative~~
32 ~~processing and duplication, the addition of sound and visual effects,~~
33 ~~soundmixing, film-to-tape transfers, encoding, and color correction.~~

34 ~~(B) “Postproduction” does not include the manufacture or~~
35 ~~shipping of release prints.~~

36 ~~(10) “Preproduction” means the process of preparation for actual~~
37 ~~physical production which begins after a qualified motion picture~~
38 ~~has received a firm agreement of financial commitment, or is~~
39 ~~greenlit, with, for example, the establishment of a dedicated~~
40 ~~production office, the hiring of key crew members, and includes;~~

1 but is not limited to, activities that include location scouting and
2 execution of contracts with vendors of equipment and stage space.

3 (11) “Principal photography” means the phase of production
4 during which the motion picture is actually shot, as distinguished
5 from preproduction and postproduction.

6 (12) “Production period” means the period beginning with
7 preproduction and ending upon completion of postproduction.

8 (13) “Qualified entity” means a personal service corporation as
9 defined in Section 269A(b)(1) of the Internal Revenue Code, a
10 payroll services corporation, or any entity receiving qualified wages
11 with respect to services performed by a qualified individual.

12 (14) (A) “Qualified individual” means any individual who
13 performs services during the production period in an activity related
14 to the production of a qualified motion picture.

15 (B) “Qualified individual” shall not include either of the
16 following:

17 (i) Any individual related to the qualified taxpayer as described
18 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
19 Revenue Code.

20 (ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of
21 the Internal Revenue Code, of the qualified taxpayer.

22 (15) (A) “Qualified motion picture” means a motion picture
23 that is produced for distribution to the general public, regardless
24 of medium that is one of the following:

25 (i) A feature with a minimum production budget of one million
26 dollars (\$1,000,000) and a maximum production budget of
27 seventy-five million dollars (\$75,000,000).

28 (ii) A movie of the week or miniseries with a minimum
29 production budget of five hundred thousand dollars (\$500,000).

30 (iii) A new television series produced in California with a
31 minimum production budget of one million dollars (\$1,000,000)
32 licensed for original distribution on basic cable.

33 (iv) An independent film.

34 (v) A television series that relocated to California.

35 (B) To qualify as a “qualified motion picture,” all of the
36 following conditions shall be satisfied:

37 (i) At least 75 percent of the production days occur wholly in
38 California or 75 percent of the production budget is incurred for
39 payment for services performed within the state and the purchase
40 or rental of property used within the state.

1 (ii) ~~Production of the qualified motion picture is completed~~
2 ~~within 30 months from the date on which the qualified taxpayer's~~
3 ~~application is approved by the California Film Commission. For~~
4 ~~purposes of this section, a qualified motion picture is "completed"~~
5 ~~when the process of postproduction has been finished.~~

6 (iii) ~~The copyright for the motion picture is registered with the~~
7 ~~United States Copyright Office pursuant to Title 17 of the United~~
8 ~~States Code.~~

9 (iv) ~~Principal photography of the qualified motion picture~~
10 ~~commences after the date on which the application is approved by~~
11 ~~the California Film Commission, but no later than 180 days after~~
12 ~~the date of that approval.~~

13 (C) ~~For the purposes of subparagraph (A), in computing the~~
14 ~~total wages paid or incurred for the production of a qualified~~
15 ~~motion picture, all amounts paid or incurred by all persons or~~
16 ~~entities that share in the costs of the qualified motion picture shall~~
17 ~~be aggregated.~~

18 (D) ~~"Qualified motion picture" shall not include commercial~~
19 ~~advertising, music videos, a motion picture produced for private~~
20 ~~noncommercial use, such as weddings, graduations, or as part of~~
21 ~~an educational course and made by students, a news program,~~
22 ~~current events or public events program, talk show, game show,~~
23 ~~sporting event or activity, awards show, telethon or other~~
24 ~~production that solicits funds, reality television program, clip-based~~
25 ~~programming if more than 50 percent of the content is comprised~~
26 ~~of licensed footage, documentaries, variety programs, daytime~~
27 ~~dramas, strip shows, one-half hour (air time) episodic television~~
28 ~~shows, or any production that falls within the recordkeeping~~
29 ~~requirements of Section 2257 of Title 18 of the United States Code.~~

30 (16) ~~"Qualified expenditures" means amounts paid or incurred~~
31 ~~to purchase or lease tangible personal property used within this~~
32 ~~state in the production of a qualified motion picture and payments,~~
33 ~~including qualified wages, for services performed within this state~~
34 ~~in the production of a qualified motion picture.~~

35 (17) (A) ~~"Qualified taxpayer" means a taxpayer who has paid~~
36 ~~or incurred qualified expenditures and has been issued a credit~~
37 ~~certificate by the California Film Commission pursuant to~~
38 ~~subdivision (g).~~

39 (B) (i) ~~In the case of any passthrough entity, the determination~~
40 ~~of whether a taxpayer is a qualified taxpayer under this section~~

1 shall be made at the entity level and any credit under this section
2 is not allowed to the passthrough entity, but shall be passed through
3 to the partners or shareholders in accordance with applicable
4 provisions of Part 10 (commencing with Section 17001) or Part
5 11 (commencing with Section 23001). For purposes of this
6 paragraph, “passthrough entity” means any entity taxed as a
7 partnership or “S” corporation.

8 (ii) In the case of an “S” corporation, the credit allowed under
9 this section shall not be used by an “S” corporation as a credit
10 against a tax imposed under Chapter 4.5 (commencing with Section
11 23800) of Part 11 of Division 2.

12 (18) (A) “Qualified wages” means all of the following:

13 (i) Any wages required to be reported under Section 13050 of
14 the Unemployment Insurance Code that were paid or incurred by
15 any taxpayer involved in the production of a qualified motion
16 picture with respect to a qualified individual for services performed
17 on the qualified motion picture production within California.

18 (ii) The portion of any employee fringe benefits paid or incurred
19 by any taxpayer involved in the production of the qualified motion
20 picture that are properly allocable to qualified wage amounts
21 described in clause (i).

22 (iii) Any payments made to a qualified entity for services
23 performed in California by qualified individuals within the meaning
24 of paragraph (14).

25 (iv) Remuneration paid to an independent contractor who is a
26 qualified individual for services performed within California by
27 that qualified individual.

28 (B) “Qualified wages” shall not include any of the following:

29 (i) Expenses, including wages, related to new use, reuse, clip
30 use, licensing, secondary markets, or residual compensation, or
31 the creation of any ancillary product, including, but not limited to,
32 a soundtrack album, toy, game, trailer, or teaser.

33 (ii) Expenses, including wages, paid or incurred with respect to
34 acquisition, development, turnaround, or any rights thereto.

35 (iii) Expenses, including wages, related to financing, overhead,
36 marketing, promotion, or distribution of a qualified motion picture.

37 (iv) Expenses, including wages, paid per person per qualified
38 motion picture for writers, directors, music directors, music
39 composers, music supervisors, producers, and performers, other
40 than background actors with no scripted lines.

1 (19) “Residual—compensation” means supplemental
2 compensation paid at the time that a motion picture is exhibited
3 through new use, reuse, clip use, or in secondary markets, as
4 distinguished from payments made during production.

5 (20) “Reuse” means any use of a qualified motion picture in the
6 same medium for which it was created, following the initial use
7 in that medium.

8 (21) “Secondary markets” means media in which a qualified
9 motion picture is exhibited following the initial media in which it
10 is exhibited.

11 (22) “Television series that relocated to California” means a
12 television series, without regard to episode length or initial media
13 exhibition, that filmed all of its prior season or seasons outside of
14 California and for which the taxpayer certifies that the credit
15 provided pursuant to this section is the primary reason for
16 relocating to California.

17 (e) (1) Notwithstanding subdivision (i) of Section 23036,
18 relating to credits attributable to a passthrough business entity, in
19 the case where the credit allowed by this section exceeds the
20 taxpayer’s tax liability computed under this part, a qualified
21 taxpayer may elect to assign any portion of the credit allowed
22 under this section to one or more affiliated corporations for each
23 taxable year in which the credit is allowed. For purposes of this
24 subdivision, “affiliated corporation” has the meaning provided in
25 subdivision (b) of Section 25110, as that section was amended by
26 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
27 year in which the credit is allowed, except that “100 percent” is
28 substituted for “more than 50 percent” wherever it appears in the
29 section, and “voting common stock” is substituted for “voting
30 stock” wherever it appears in the section.

31 (2) The election provided in paragraph (1):

32 (A) May be based on any method selected by the qualified
33 taxpayer that originally receives the credit.

34 (B) Shall be irrevocable for the taxable year the credit is allowed,
35 once made.

36 (C) May be changed for any subsequent taxable year if the
37 election to make the assignment is expressly shown on each of the
38 returns of qualified taxpayer and a qualified taxpayer’s affiliated
39 corporations that assign and receive the credits.

1 ~~(3) (A) Notwithstanding any other law, a qualified taxpayer,~~
2 ~~may sell any credit allowed under this section that is attributable~~
3 ~~to an independent film, as defined in paragraph (6) of subdivision~~
4 ~~(b), to an unrelated party.~~

5 ~~(B) The qualified taxpayer shall report to the Franchise Tax~~
6 ~~Board prior to the sale of the credit, in the form and manner~~
7 ~~specified by the Franchise Tax Board, all required information~~
8 ~~regarding the purchase and sale of the credit, including the social~~
9 ~~security or other taxpayer identification number of the unrelated~~
10 ~~party to whom the credit has been sold, the face amount of the~~
11 ~~credit sold, and the amount of consideration received by the~~
12 ~~qualified taxpayer for the sale of the credit.~~

13 ~~(4) In the case where the credit allowed under this section~~
14 ~~exceeds the “tax,” the excess credit may be carried over to reduce~~
15 ~~the “tax” in the following taxable year, and succeeding five taxable~~
16 ~~years, if necessary, until the credit has been exhausted.~~

17 ~~(5) A credit shall not be sold pursuant to this subdivision to~~
18 ~~more than one taxpayer, nor may the credit be resold by the~~
19 ~~unrelated party to another taxpayer or other party.~~

20 ~~(6) A party that has been assigned or acquired tax credits under~~
21 ~~this paragraph shall be subject to the requirements of this section.~~

22 ~~(7) In no event may a qualified taxpayer assign or sell any tax~~
23 ~~credit to the extent the tax credit allowed by this section is claimed~~
24 ~~on any tax return of the qualified taxpayer.~~

25 ~~(8) In the event that both the taxpayer originally allocated a~~
26 ~~credit under this section by the California Film Commission and~~
27 ~~a taxpayer to whom the credit has been sold both claim the same~~
28 ~~amount of credit on their tax returns, the Franchise Tax Board may~~
29 ~~disallow the credit of either taxpayer, so long as the statute of~~
30 ~~limitations upon assessment remains open.~~

31 ~~(9) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
32 ~~Division 3 of Title 2 of the Government Code does not apply to~~
33 ~~any standard, criterion, procedure, determination, rule, notice, or~~
34 ~~guideline established or issued by the Franchise Tax Board~~
35 ~~pursuant to this subdivision.~~

36 ~~(d) No credit shall be allowed pursuant to this section unless~~
37 ~~the qualified taxpayer provides the following to the California~~
38 ~~Film Commission:~~

39 ~~(1) Identification of each qualified individual.~~

40 ~~(2) The specific start and end dates of production.~~

1 ~~(3) The total wages paid.~~

2 ~~(4) The amount of qualified wages paid to each qualified~~
3 ~~individual.~~

4 ~~(5) The copyright registration number, as reflected on the~~
5 ~~certificate of registration issued under the authority of Section 410~~
6 ~~of Title 17 of the United States Code, relating to registration of~~
7 ~~claim and issuance of certificate. The registration number shall be~~
8 ~~provided on the return claiming the credit.~~

9 ~~(6) The total amounts paid or incurred to purchase or lease~~
10 ~~tangible personal property used in the production of a qualified~~
11 ~~motion picture.~~

12 ~~(7) Information to substantiate its qualified expenditures.~~

13 ~~(8) Information required by the California Film Commission~~
14 ~~under regulations promulgated pursuant to subdivision (g)~~
15 ~~necessary to verify the amount of credit claimed.~~

16 ~~(e) The California Film Commission may prescribe rules and~~
17 ~~regulations to carry out the purposes of this section including any~~
18 ~~rules and regulations necessary to establish procedures, processes,~~
19 ~~requirements, and rules identified in or required to implement this~~
20 ~~section. The regulations shall include provisions to set aside a~~
21 ~~percentage of annual credit allocations for independent films.~~

22 ~~(f) If the qualified taxpayer fails to provide the copyright~~
23 ~~registration number as required in paragraph (5) of subdivision~~
24 ~~(d), the credit shall be disallowed and assessed and collected under~~
25 ~~Section 19051 until the procedures are satisfied.~~

26 ~~(g) For purposes of this section, the California Film Commission~~
27 ~~shall do the following:~~

28 ~~(1) On or after July 1, 2009, and before July 1, 2014, allocate~~
29 ~~tax credits to applicants.~~

30 ~~(A) Establish a procedure for applicants to file with the~~
31 ~~commission a written application, on a form jointly prescribed by~~
32 ~~the commission and the Franchise Tax Board for the allocation of~~
33 ~~the tax credit. The application shall include, but not be limited to,~~
34 ~~the following information:~~

35 ~~(i) The budget for the motion picture production.~~

36 ~~(ii) The number of production days.~~

37 ~~(iii) A financing plan for the production.~~

38 ~~(iv) The diversity of the workforce employed by the applicant,~~
39 ~~including, but not limited to, the ethnic and racial makeup of the~~

1 individuals employed by the applicant during the production of
2 the qualified motion picture, to the extent possible.

3 (v) Any other information deemed relevant by the commission
4 or the Franchise Tax Board.

5 (B) Establish criteria, consistent with the requirements of this
6 section, for allocating tax credits.

7 (C) Determine and designate applicants who meet the
8 requirements of this section.

9 (D) Process and approve, or reject, all applications on a
10 first-come-first-served basis.

11 (E) Subject to the annual cap established as provided in
12 subdivision (i), allocate an aggregate amount of credits under this
13 section and Section 17053.85, and allocate any carryover of
14 unallocated credits from prior years.

15 (2) Certify tax credits allocated to qualified taxpayers.

16 (A) Establish a verification procedure for the amount of qualified
17 expenditures paid or incurred by the applicant.

18 (B) Establish audit requirements that must be satisfied before
19 a credit certificate maybe issued by the California Film
20 Commission.

21 (C) Issue a credit certificate to a qualified taxpayer upon
22 completion of the qualified motion picture, reflecting the credit
23 amount allocated after qualified expenditures have been verified
24 under this section. The amount of a credit shown in the credit
25 certificate shall not exceed the amount of credit allocated to that
26 qualified taxpayer pursuant to this section.

27 (h) The California Film Commission shall provide the Franchise
28 Tax Board and the board annually with a list of qualified taxpayers
29 and the tax credit amounts allocated to each qualified taxpayer by
30 the California Film Commission. The list shall include the names
31 and taxpayer identification numbers, including taxpayer
32 identification numbers of each partner or shareholder, as applicable,
33 of the qualified taxpayer.

34 (i) (1) The aggregate amount of credits that may be allocated
35 in any fiscal year pursuant to this section and Section 17053.85
36 shall be an amount equal to the sum of all of the following:

37 (A) One hundred million dollars (\$100,000,000) in credits for
38 the 2009-10 fiscal year and each fiscal year thereafter, through
39 and including the 2013-14 fiscal year.

1 ~~(B) The unused allocation credit amount, if any, for the~~
2 ~~preceding fiscal year.~~

3 ~~(C) The amount of previously allocated credits not certified.~~

4 ~~(2) If the amount of credits applied for in any particular fiscal~~
5 ~~year exceeds the aggregate amount of tax credits authorized to be~~
6 ~~allocated for under this section, such excess shall be treated as~~
7 ~~having been applied for on the first day of the subsequent fiscal~~
8 ~~year. However, credits may not be allocated from a fiscal year~~
9 ~~other than the fiscal year in which the credit was originally applied~~
10 ~~for or the immediately succeeding fiscal year.~~

11 ~~(3) Notwithstanding the foregoing, the Film Commission shall~~
12 ~~set aside up to ten million (\$10,000,000) of tax credits each fiscal~~
13 ~~year for independent films allocated in accordance with rules and~~
14 ~~regulations developed pursuant to subdivision (e).~~

15 ~~(4) Any act that reduces the amount that may be allocated~~
16 ~~pursuant to paragraph (1) constitutes a change in state taxes for~~
17 ~~the purpose of increasing revenues within the meaning of Section~~
18 ~~3 of Article XIII A of the California Constitution and may be passed~~
19 ~~by not less than two-thirds of all Members elected to each of the~~
20 ~~two houses of the Legislature.~~

21 ~~(j) The film commission shall have the authority to allocate tax~~
22 ~~credits in accordance with this section and in accordance with any~~
23 ~~regulations prescribed pursuant to subdivision (e) upon adoption.~~

24 SEC. 4. Section 23685 of the Revenue and Taxation Code, as
25 added by Section 9 of Chapter 17 of the 3rd Extraordinary Session
26 of the Statutes of 2009, is amended to read:

27 23685. (a) (1) For taxable years beginning on or after January
28 1, 2011, there shall be allowed to a qualified taxpayer a credit
29 against the “tax,” as defined in Section 23036, in an amount equal
30 to the applicable percentage, as specified in paragraph (4), of the
31 qualified expenditures for the production of a qualified motion
32 picture in California.

33 (2) The credit shall be allowed for the taxable year in which the
34 California Film Commission issues the credit certificate pursuant
35 to subdivision (g) for the qualified motion picture, and shall be for
36 the applicable percentage of all qualified expenditures paid or
37 incurred by the qualified taxpayer in all taxable years for that
38 qualified motion picture.

39 (3) The amount of the credit allowed to a qualified taxpayer
40 shall be limited to the amount specified in the credit certificate

1 issued to the qualified taxpayer by the California Film Commission
2 pursuant to subdivision (g).

3 (4) For purposes of paragraphs (1) and (2), the applicable
4 percentage shall be:

5 (A) Twenty percent of the qualified expenditures attributable
6 to the production of a qualified motion picture in California.

7 (B) Twenty-five percent of the qualified expenditures
8 attributable to the production of a qualified motion picture in
9 California where the qualified motion picture is a television series
10 that relocated to California or an independent film.

11 (b) For purposes of this section:

12 (1) “Ancillary product” means any article for sale to the public
13 that contains a portion of, or any element of, the qualified motion
14 picture.

15 (2) “Budget” means an estimate of all expenses paid or incurred
16 during the production period of a qualified motion picture. It shall
17 be the same budget used by the qualified taxpayer and production
18 company for all qualified motion picture purposes.

19 (3) “Clip use” means a use of any portion of a motion picture,
20 other than the qualified motion picture, used in the qualified motion
21 picture.

22 (4) “Credit certificate” means the certificate issued by the
23 California Film Commission pursuant to subparagraph (C) of
24 paragraph (2) of subdivision (g).

25 (5) (A) “Employee fringe benefits” means the amount allowable
26 as a deduction under this part to the qualified taxpayer involved
27 in the production of the qualified motion picture, exclusive of any
28 amounts contributed by employees, for any year during the
29 production period with respect to any of the following:

30 (i) Employer contributions under any pension, profit-sharing,
31 annuity, or similar plan.

32 (ii) Employer-provided coverage under any accident or health
33 plan for employees.

34 (iii) The employer’s cost of life or disability insurance provided
35 to employees.

36 (B) Any amount treated as wages under clause (i) of
37 subparagraph (A) of paragraph (18) shall not be taken into account
38 under this paragraph.

39 (6) “Independent film” means a motion picture with a minimum
40 budget of one million dollars (\$1,000,000) and a maximum budget

1 of ten million dollars (\$10,000,000) that is produced by a company
2 that is not publicly traded and publicly traded companies do not
3 own, directly or indirectly, more than 25 percent of the producing
4 company.

5 (7) “Licensing” means any grant of rights to distribute the
6 qualified motion picture, in whole or in part.

7 (8) “New use” means any use of a motion picture in a medium
8 other than the medium for which it was initially created.

9 (9) (A) “Postproduction” means the final activities in a qualified
10 motion picture’s production, including editing, foley recording,
11 automatic dialogue replacement, sound editing, scoring and music
12 editing, beginning and end credits, negative cutting, negative
13 processing and duplication, the addition of sound and visual effects,
14 soundmixing, film-to-tape transfers, encoding, and color correction.

15 (B) “Postproduction” does not include the manufacture or
16 shipping of release prints.

17 (10) “Preproduction” means the process of preparation for actual
18 physical production which begins after a qualified motion picture
19 has received a firm agreement of financial commitment, or is
20 greenlit, with, for example, the establishment of a dedicated
21 production office, the hiring of key crew members, and includes,
22 but is not limited to, activities that include location scouting and
23 execution of contracts with vendors of equipment and stage space.

24 (11) “Principal photography” means the phase of production
25 during which the motion picture is actually shot, as distinguished
26 from preproduction and postproduction.

27 (12) “Production period” means the period beginning with
28 preproduction and ending upon completion of postproduction.

29 (13) “Qualified entity” means a personal service corporation as
30 defined in Section 269A(b)(1) of the Internal Revenue Code, a
31 payroll services corporation, or any entity receiving qualified wages
32 with respect to services performed by a qualified individual.

33 (14) (A) “Qualified individual” means any individual who
34 performs services during the production period in an activity related
35 to the production of a qualified motion picture.

36 (B) “Qualified individual” shall not include either of the
37 following:

38 (i) Any individual related to the qualified taxpayer as described
39 in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal
40 Revenue Code.

1 (ii) Any 5 percent owner, as defined in Section 416(i)(1)(B) of
2 the Internal Revenue Code, of the qualified taxpayer.

3 (15) (A) “Qualified motion picture” means a motion picture
4 that is produced for distribution to the general public, regardless
5 of medium that is one of the following:

6 (i) A feature with a minimum production budget of one million
7 dollars (\$1,000,000) and a maximum production budget of
8 seventy-five million dollars (\$75,000,000).

9 (ii) A movie of the week or miniseries with a minimum
10 production budget of five hundred thousand dollars (\$500,000).

11 (iii) A new television series produced in California with a
12 minimum production budget of one million dollars (\$1,000,000)
13 licensed for original distribution on basic cable.

14 (iv) An independent film.

15 (v) A television series that relocated to California.

16 (B) To qualify as a “qualified motion picture,” all of the
17 following conditions shall be satisfied:

18 (i) At least 75 percent of the production days occur wholly in
19 California or 75 percent of the production budget is incurred for
20 payment for services performed within the state and the purchase
21 or rental of property used within the state.

22 (ii) Production of the qualified motion picture is completed
23 within 30 months from the date on which the qualified taxpayer’s
24 application is approved by the California Film Commission. For
25 purposes of this section, a qualified motion picture is “completed”
26 when the process of postproduction has been finished.

27 (iii) The copyright for the motion picture is registered with the
28 United States Copyright Office pursuant to Title 17 of the United
29 States Code.

30 (iv) Principal photography of the qualified motion picture
31 commences after the date on which the application is approved by
32 the California Film Commission, but no later than 180 days after
33 the date of that approval.

34 (C) For the purposes of subparagraph (A), in computing the
35 total wages paid or incurred for the production of a qualified
36 motion picture, all amounts paid or incurred by all persons or
37 entities that share in the costs of the qualified motion picture shall
38 be aggregated.

39 (D) “Qualified motion picture” shall not include commercial
40 advertising, music videos, a motion picture produced for private

1 noncommercial use, such as weddings, graduations, or as part of
 2 an educational course and made by students, a news program,
 3 current events or public events program, talk show, game show,
 4 sporting event or activity, awards show, telethon or other
 5 production that solicits funds, reality television program, clip-based
 6 programming if more than 50 percent of the content is comprised
 7 of licensed footage, documentaries, variety programs, daytime
 8 dramas, strip shows, one-half hour (air time) episodic television
 9 shows, or any production that falls within the recordkeeping
 10 requirements of Section 2257 of Title 18 of the United States Code.

11 (16) “Qualified expenditures” means amounts paid or incurred
 12 to purchase or lease tangible personal property used within this
 13 state in the production of a qualified motion picture and payments,
 14 including qualified wages, for services performed within this state
 15 in the production of a qualified motion picture.

16 (17) (A) “Qualified taxpayer” means a taxpayer who has paid
 17 or incurred qualified expenditures and has been issued a credit
 18 certificate by the California Film Commission pursuant to
 19 subdivision (g).

20 (B) (i) In the case of any passthrough entity, the determination
 21 of whether a taxpayer is a qualified taxpayer under this section
 22 shall be made at the entity level and any credit under this section
 23 is not allowed to the passthrough entity, but shall be passed through
 24 to the partners or shareholders in accordance with applicable
 25 provisions of Part 10 (commencing with Section 17001) or Part
 26 11 (commencing with Section 23001). For purposes of this
 27 paragraph, “passthrough entity” means any entity taxed as a
 28 partnership or “S” corporation.

29 (ii) In the case of an “S” corporation, the credit allowed under
 30 this section shall not be used by an “S” corporation as a credit
 31 against a tax imposed under Chapter 4.5 (commencing with Section
 32 23800) of Part 11 of Division 2.

33 (18) (A) “Qualified wages” means all of the following:

34 (i) Any wages required to be reported under Section 13050 of
 35 the Unemployment Insurance Code that were paid or incurred by
 36 any taxpayer involved in the production of a qualified motion
 37 picture with respect to a qualified individual for services performed
 38 on the qualified motion picture production within California.

39 (ii) The portion of any employee fringe benefits paid or incurred
 40 by any taxpayer involved in the production of the qualified motion

1 picture that are properly allocable to qualified wage amounts
2 described in clause (i).

3 (iii) Any payments made to a qualified entity for services
4 performed in California by qualified individuals within the meaning
5 of paragraph (14).

6 (iv) Remuneration paid to an independent contractor who is a
7 qualified individual for services performed within California by
8 that qualified individual.

9 (B) “Qualified wages” shall not include any of the following:

10 (i) Expenses, including wages, related to new use, reuse, clip
11 use, licensing, secondary markets, or residual compensation, or
12 the creation of any ancillary product, including, but not limited to,
13 a soundtrack album, toy, game, trailer, or teaser.

14 (ii) Expenses, including wages, paid or incurred with respect to
15 acquisition, development, turnaround, or any rights thereto.

16 (iii) Expenses, including wages, related to financing, overhead,
17 marketing, promotion, or distribution of a qualified motion picture.

18 (iv) Expenses, including wages, paid per person per qualified
19 motion picture for writers, directors, music directors, music
20 composers, music supervisors, producers, and performers, other
21 than background actors with no scripted lines.

22 (19) “Residual compensation” means supplemental
23 compensation paid at the time that a motion picture is exhibited
24 through new use, reuse, clip use, or in secondary markets, as
25 distinguished from payments made during production.

26 (20) “Reuse” means any use of a qualified motion picture in the
27 same medium for which it was created, following the initial use
28 in that medium.

29 (21) “Secondary markets” means media in which a qualified
30 motion picture is exhibited following the initial media in which it
31 is exhibited.

32 (22) “Television series that relocated to California” means a
33 television series, without regard to episode length or initial media
34 exhibition, that filmed all of its prior season or seasons outside of
35 California and for which the taxpayer certifies that the credit
36 provided pursuant to this section is the primary reason for
37 relocating to California.

38 (c) (1) Notwithstanding subdivision (i) of Section 23036,
39 relating to credits attributable to a passthrough business entity, in
40 the case where the credit allowed by this section exceeds the

1 taxpayer's tax liability computed under this part, a qualified
2 taxpayer may elect to assign any portion of the credit allowed
3 under this section to one or more affiliated corporations for each
4 taxable year in which the credit is allowed. For purposes of this
5 subdivision, "affiliated corporation" has the meaning provided in
6 subdivision (b) of Section 25110, as that section was amended by
7 Chapter 881 of the Statutes of 1993, as of the last day of the taxable
8 year in which the credit is allowed, except that "100 percent" is
9 substituted for "more than 50 percent" wherever it appears in the
10 section, and "voting common stock" is substituted for "voting
11 stock" wherever it appears in the section.

12 (2) The election provided in paragraph (1):

13 (A) May be based on any method selected by the qualified
14 taxpayer that originally receives the credit.

15 (B) Shall be irrevocable for the taxable year the credit is allowed,
16 once made.

17 (C) May be changed for any subsequent taxable year if the
18 election to make the assignment is expressly shown on each of the
19 returns of qualified taxpayer and a qualified taxpayer's affiliated
20 corporations that assign and receive the credits.

21 (3) (A) Notwithstanding any other law, a qualified taxpayer,
22 may sell any credit allowed under this section that is attributable
23 to an independent film, as defined in paragraph (6) of subdivision
24 (b), to an unrelated party.

25 (B) The qualified taxpayer shall report to the Franchise Tax
26 Board prior to the sale of the credit, in the form and manner
27 specified by the Franchise Tax Board, all required information
28 regarding the purchase and sale of the credit, including the social
29 security or other taxpayer identification number of the unrelated
30 party to whom the credit has been sold, the face amount of the
31 credit sold, and the amount of consideration received by the
32 qualified taxpayer for the sale of the credit.

33 (4) In the case where the credit allowed under this section
34 exceeds the "tax," the excess credit may be carried over to reduce
35 the "tax" in the following taxable year, and succeeding five taxable
36 years, if necessary, until the credit has been exhausted.

37 (5) A credit shall not be sold pursuant to this subdivision to
38 more than one taxpayer, nor may the credit be resold by the
39 unrelated party to another taxpayer or other party.

1 (6) A party that has been assigned or acquired tax credits under
2 this paragraph shall be subject to the requirements of this section.

3 (7) In no event may a qualified taxpayer assign or sell any tax
4 credit to the extent the tax credit allowed by this section is claimed
5 on any tax return of the qualified taxpayer.

6 (8) In the event that both the taxpayer originally allocated a
7 credit under this section by the California Film Commission and
8 a taxpayer to whom the credit has been sold both claim the same
9 amount of credit on their tax returns, the Franchise Tax Board may
10 disallow the credit of either taxpayer, so long as the statute of
11 limitations upon assessment remains open.

12 (9) Chapter 3.5 (commencing with Section 11340) of Part 1 of
13 Division 3 of Title 2 of the Government Code does not apply to
14 any standard, criterion, procedure, determination, rule, notice, or
15 guideline established or issued by the Franchise Tax Board
16 pursuant to this subdivision.

17 (d) No credit shall be allowed pursuant to this section unless
18 the qualified taxpayer provides the following to the California
19 Film Commission:

- 20 (1) Identification of each qualified individual.
21 (2) The specific start and end dates of production.
22 (3) The total wages paid.
23 (4) The amount of qualified wages paid to each qualified
24 individual.

25 (5) The copyright registration number, as reflected on the
26 certificate of registration issued under the authority of Section 410
27 of Title 17 of the United States Code, relating to registration of
28 claim and issuance of certificate. The registration number shall be
29 provided on the return claiming the credit.

30 (6) The total amounts paid or incurred to purchase or lease
31 tangible personal property used in the production of a qualified
32 motion picture.

33 (7) Information to substantiate its qualified expenditures.

34 (8) Information required by the California Film Commission
35 under regulations promulgated pursuant to subdivision (g)
36 necessary to verify the amount of credit claimed.

37 (e) The California Film Commission may prescribe rules and
38 regulations to carry out the purposes of this section including any
39 rules and regulations necessary to establish procedures, processes,
40 requirements, and rules identified in or required to implement this

1 section. The regulations shall include provisions to set aside a
2 percentage of annual credit allocations for independent films.

3 (f) If the qualified taxpayer fails to provide the copyright
4 registration number as required in paragraph (5) of subdivision
5 (d), the credit shall be disallowed and assessed and collected under
6 Section 19051 until the procedures are satisfied.

7 (g) For purposes of this section, the California Film Commission
8 shall do the following:

9 (1) On or after July 1, 2009, and before July 1, 2014, allocate
10 tax credits to applicants.

11 (A) Establish a procedure for applicants to file with the
12 commission a written application, on a form jointly prescribed by
13 the commission and the Franchise Tax Board for the allocation of
14 the tax credit. The application shall include, but not be limited to,
15 the following information:

16 (i) The budget for the motion picture production.

17 (ii) The number of production days.

18 (iii) A financing plan for the production.

19 (iv) The diversity of the workforce employed by the applicant,
20 including, but not limited to, the ethnic and racial makeup of the
21 individuals employed by the applicant during the production of
22 the qualified motion picture, to the extent possible.

23 (v) Any other information deemed relevant by the commission
24 or the Franchise Tax Board.

25 (B) Establish criteria, consistent with the requirements of this
26 section, for allocating tax credits.

27 (C) Determine and designate applicants who meet the
28 requirements of this section.

29 (D) Process and approve, or reject, all applications on a
30 first-come-first-served basis.

31 (E) Subject to the annual cap established as provided in
32 subdivision (i), allocate an aggregate amount of credits under this
33 section and Section 17053.85, and allocate any carryover of
34 unallocated credits from prior years.

35 (2) Certify tax credits allocated to qualified taxpayers.

36 (A) Establish a verification procedure for the amount of qualified
37 expenditures paid or incurred by the applicant.

38 (B) Establish audit requirements that must be satisfied before
39 a credit certificate maybe issued by the California Film
40 Commission.

1 (C) Issue a credit certificate to a qualified taxpayer upon
2 completion of the qualified motion picture, reflecting the credit
3 amount allocated after qualified expenditures have been verified
4 under this section. The amount of a credit shown in the credit
5 certificate shall not exceed the amount of credit allocated to that
6 qualified taxpayer pursuant to this section.

7 (h) The California Film Commission shall provide the Franchise
8 Tax Board and the board annually with a list of qualified taxpayers
9 and the tax credit amounts allocated to each qualified taxpayer by
10 the California Film Commission. The list shall include the names
11 and taxpayer identification numbers, including taxpayer
12 identification numbers of each partner or shareholder, as applicable,
13 of the qualified taxpayer.

14 (i) (1) The aggregate amount of credits that may be allocated
15 in any fiscal year pursuant to this section and Section 17053.85
16 shall be an amount equal to the sum of all of the following:

17 (A) One hundred million dollars (\$100,000,000) in credits for
18 the 2009–10 fiscal year and each fiscal year thereafter, through
19 and including the 2013–14 fiscal year.

20 (B) The unused allocation credit amount, if any, for the
21 preceding fiscal year.

22 (C) The amount of previously allocated credits not certified.

23 (2) If the amount of credits applied for in any particular fiscal
24 year exceeds the aggregate amount of tax credits authorized to be
25 allocated under this section, such excess shall be treated as having
26 been applied for on the first day of the ~~subsequent~~ *next* fiscal year
27 *in which credits are available.* ~~However, credits may not be~~
28 ~~allocated from a fiscal year other than the fiscal year in which the~~
29 ~~credit was originally applied for or the immediately succeeding~~
30 ~~fiscal year.~~

31 (3) Notwithstanding the foregoing, the Film Commission shall
32 set aside up to ten million (\$10,000,000) of tax credits each fiscal
33 year for independent films allocated in accordance with rules and
34 regulations developed pursuant to subdivision (e).

35 (4) Any act that reduces the amount that may be allocated
36 pursuant to paragraph (1) constitutes a change in state taxes for
37 the purpose of increasing revenues within the meaning of Section
38 3 of Article XIII A of the California Constitution and may be passed
39 by not less than two-thirds of all Members elected to each of the
40 two houses of the Legislature.

1 (j) The film commission shall have the authority to allocate tax
2 credits in accordance with this section and in accordance with any
3 regulations prescribed pursuant to subdivision (e) upon adoption.

4 SEC. 5. This act addresses the fiscal emergency declared by
5 the Governor by proclamation on January 8, 2010, pursuant to
6 subdivision (f) of Section 10 of Article IV of the California
7 Constitution.

8 SEC. 6. This act provides for a tax levy within the meaning of
9 Article IV of the Constitution and shall go into immediate effect.

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