SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 611 (Allen) - Income taxes: credits: motion pictures

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Policy Vote: GOV. & F. 5 - 0
Mandate: No
Consultant: Robert Ingenito

Bill Summary: SB 611 would allow an additional credit to the California Film and TV 3.0 tax credit program for those taxpayers that hire certain individuals.

Fiscal Impact: This bill would not change the total dollar amount of film tax credits awarded in a fiscal year. However, taxpayers who receive credits could receive larger ones than would have occurred absent the bill, crowding out others from receiving any credit. A cost pressure would result, to increase the amount of annual film tax credits available to award.

The Franchise Tax Board's (FTB's) implementation costs have yet to be determined, but would likely be minor and absorbable. The California Film Commission (CFC) would incur minor costs to update regulations and procedures.

Background: Tax expenditure programs (TEPs) are special tax provisions that reduce the amount of revenues the "basic" tax system would otherwise generate in order to provide (1) benefits to certain groups of taxpayers, and/or (2) incentives to encourage certain types of behavior and activities, such as charitable giving. Specifically, current law provides for, among other things, various income and corporation tax credits and deductions, as well as exemptions from the sales and use tax. The Department of Finance is required to publish a list of TEPs (currently totaling several hundred), which currently total $75 billion annually. Two common types of TEPS are tax deductions and tax credits. Unlike tax deductions, which reduce the amount of earnings subject to tax, credits reduce (dollar for dollar) the amount of taxes owed.

In 1985, the Legislature established CFC to coordinate state and local governments' efforts at providing an environment conducive for the film industry. In 2009, the Legislature enacted a tax credit for qualified motion picture production in California, directing CFC to annually allocate $100 million in credits until 2012-13, commonly known as "Film and TV Tax Credit 1.0" CFC was directed to allocate two years' worth of credits ($200 million) in 2009-10, so CFC allocated the subsequent year's credits for each fiscal year from 2010-11 onward. For example, when CFC allocated credits on July 1, 2014, they were for credits authorized in 2015-16. The Legislature subsequently extended the program for one year (to 2014-15), and then again for two additional years (through 2016-17). Because the initial bills directed CFC to allocate the subsequent year's credits, CFC last allocated the last $100 million of Film and TV Credit 1.0 on July 1, 2015.

In 2014, the Legislature enacted "Film and TV Tax Credit 2.0," which directed CFC to allocate $230 million in credits in 2015-16, and $330 million in credits each fiscal year through 2019-20; the lower 2015-16 amount reflected the fact that credits were still being allocated via Film and TV Credit 1.0.

In 2018, the Legislature enacted the Film and TV Credit 3.0 which authorizes CFC to allocate $330 million in tax credits annually from 2020-21 to 2024-25 (SB 858, Committee on Budget and Fiscal Review). Additionally, the new program allows the credit in an amount equal to 20 percent or 25 percent of qualified expenditures for the production of a qualified motion picture in California, with additional credit amounts allowed, including for amounts equal to specific qualified expenditures and qualified wages relating to original photography.

Under Credit 3.0, CFC can allocate credits to "qualified motion pictures," which must: (1) have 75 percent of the motion picture shooting days take place in California, or have 75 percent of the motion production budget incurred for services or the purchase or rental of property within the State, (2) commence principal photography within 180 days, and finish within 30 months from the date when the application was approved by CFC, and (3) obtain a copyright from the United States Copyright Office.

CFC can allocate credits to any of the following productions: (1) a feature with a minimum production budget of $1 million, (2) a movie of the week or miniseries with a minimum production budget of $500,000, (3) a new television series produced in California with a minimum production budget of $1 million, (4) an independent film, as defined, (5) a television series that relocated to California, or (6) pilot for a new television series longer than 40 minutes of running time exclusive of commercials produced in California with a minimum production budget of $1 million. Commercial advertising, music videos, motion pictures for non-commercial use, news and public events programs, talk shows, game shows, reality programming, documentaries, or sexually explicit films are not eligible.

The amount of the tax credit is equal to either (1) 20 percent of the qualified production expenditures for a feature, or, a television series that relocated to California in its second or subsequent season, or (2) 25 percent of the qualified expenditures of an independent film, or for the first year that a television series that relocates to California.

Qualified expenditures are amounts paid or incurred to purchase, or lease, tangible personal property, wages, or services performed in the state, during the motion picture production in California. Qualified expenditures do not include amounts paid to writers, directors, music directors, music composers, music supervisors, producers, or performers, other than background actors.

Up to a maximum of 25 percent, qualified motion picture can receive credit "uplifts" for 20 percent productions when they incurred qualified expenditures for: (1) filming outside the Los Angeles zone, as defined, (2) music scoring and music track recording expenditures, and (3) visual effects expenditures, where at least 75 percent or a minimum of $10 million is paid or incurred in California

The credit is nonrefundable and nontransferable, but taxpayers have three options if they do not have sufficient income tax liability to offset the credit. First, taxpayers with credits for independent films may sell the credit to not more than one unrelated party, who cannot subsequently resell it, so long as the taxpayer reports the sale along with specified information to FTB. Second, taxpayers can elect to apply credits to offset any sales and use tax liability, and obtain either a refund of previously paid taxes or an offset of future ones, according to procedures set forth in statute. Third, corporation taxpayers may assign the credit to one or more affiliates within their unitary groups if the credit exceeds their liability.

Applicants file an application to CFC, along with information that includes the motion picture production budget, the number of production days, a financing plan for the production, the diversity of the workforce employed by the applicant, and any other information the CFC or FTB deems relevant. Taxpayers must also include the amount of qualified wages the taxpayer expects to pay, the amount of credit the taxpayer computes the production will receive using the appropriate percentages, and a statement establishing that the credit is a significant factor in the applicant's choice of location for the qualified motion picture. The statement must include information regarding whether the qualified motion picture is at risk of not being filmed, or specify the jurisdiction or jurisdictions in which the qualified motion picture will be located in the absence of the tax credit, and must be signed by an officer or executive of the applicant.

CFC must allocate credits by listing each applicant from top to bottom according to an applicant's "jobs ratio" equal to the amount of qualified wages paid by the production divided by the amount of credit, not including uplifts. CFC may increase the jobs ratio by up to 25 percent according to criteria it develops that includes, but is not limited to (1) the amount of production or postproduction spending in California, (2) the utilization of production facilities in California, and (3) other criteria measuring economic impact.

If approved, CFC issues the applicant a credit allocation letter indicating the amount of credit reserved, pending continuing eligibility and final documentation. The applicant must commence principal photography within 6 months, and finish within 30 months from the date when the application was approved by CFC.

When the project is complete, the applicant must provide final documentation to CFC necessary to verify the qualified expenditures eligible for the credit and the applicable percentage, plus a copyright certificate. CFC then determines whether the project is still eligible for the credit, and if so, the amount of qualified expenditures, and the applicable credit percentage. State law provides that this amount can be less, but not more, than the one in the credit allocation letter. Before CFC issues a credit certificate, among other things, CFC uses final documentation to recalculate the jobs ratio. Based on information received from the applicant, if CFC determines that the jobs ratio for a production other than independent film is reduced by more than 10 percent, CFC reduces the credit by that percentage. If the jobs ratio is reduced by more than 20 percent, CFC is barred from accepting an application from that taxpayer, or any taxpayer within its unitary group of corporations. For independent films, the jobs ratio must be reduced by more than 30 percent for a credit reduction to occur, with reduction equal the amount of reduction plus 10 percent. CFC does not reduce the jobs ratio when a taxpayer demonstrates that the difference is due to reasonable cause, as defined.

Upon completion of its determination, CFC issues the taxpayer a credit certificate, which can be applied beginning that taxable year. Generally, 12 and 24 months pass between receiving a credit allocation letter and obtaining a credit certificate, with more time passing before the taxpayer claims a credit, sells or assigns it, or carries it forward to a future taxable year, when the State incurs its fiscal impact.

Proposed Law: This bill would allow an additional credit (equal to 20 percent of qualified wages paid) to taxpayers awarded the current Film and TV credit, for hiring qualified individuals. To qualify, these individuals must be graduates of the Career Pathways Training Program, or an equivalent program, approved by CFC. Additionally, the qualified motion picture must (1) file a workforce development plan with and approved by CFC, and (2) pay qualified wages to a graduate of the Career Pathways Training Program or equivalent program approved by CFC in at least 60 percent of the departments for that production, as determined by CFC.

The bill would define “qualified individual” to mean any individual who performs services during the production period in an activity related to the production of a qualified motion picture. Qualified individual cannot include either of the following: (1) any individual related to the qualified taxpayer as described the Internal Revenue Code, or (2) any 5-percent owner, of the qualified taxpayer, as defined in the Internal Revenue Code.

Under the bill, “qualified wages” would mean any of the following:

- Any wages subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code that were paid or incurred by any taxpayer involved in the production of a qualified motion picture with respect to a qualified individual for services performed on the qualified motion picture production within this state.

- The portion of any employee fringe benefits paid or incurred by any taxpayer involved in the production of the qualified motion picture that are properly allocable to qualified wage amounts.

- Any payments made to a qualified entity for services performed in this state by qualified individuals.

- Remuneration paid to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.

However, “qualified wages” would exclude any of the following:

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

- Expenses, including wages, paid or incurred with respect to acquisition, development, turnaround, or any rights thereto.

- Expenses, including wages, related to financing, overhead, marketing, promotion, or distribution of a qualified motion picture.

- Expenses, including 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.

Related Legislation:

- SB 485 (Portantino) would create a new tax credit within the existing Film and TV credit for building certified studio construction projects. The bill is currently pending in the Committee.

- AB 1839 (Gatto, Chapter 413, Statutes of 2014) created the California Film and TV 2.0 tax credit program, as specified.

Staff Comments: As noted above, this bill would not change the amount of annual film tax credits available, currently set at $330 million annually through 2024-25. However, to the extent that awardees receive larger credits (due to the bill's incentives regarding hiring) that they otherwise would have, fewer taxpayers will be awarded credits each year (because the remaining amount available will be reduced), resulting in a cost pressure to upsize the annual cap from $330 million to a higher amount.

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