

# CA AB 1839, Chaptered

California

**SUMMARY:** Establishes tax credits for qualified motion pictures under the Person Income Tax and Corporation Tax laws. Extends the scope of the existing credits to an applicable percentage of qualified related expenditures for television pilot episodes, visual effects, and music scoring and track recording by musicians. Allows a credit against qualified state sales and use taxes, and a credit to reduce the tentative minimum tax under the Corporation Tax Law. Requires a report on the effectiveness of the credits.-SAME AS:

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

02/18/2014 INTRODUCED.

02/27/2014 To ASSEMBLY Committees on ARTS, ENTERTAINMENT, SPORTS, TOURISM AND INTERNET MEDIA and REVENUE AND TAXATION.

03/19/2014 From ASSEMBLY Committee on ARTS, ENTERTAINMENT, SPORTS, TOURISM AND INTERNET MEDIA with author's amendments.

03/19/2014 In ASSEMBLY. Read second time and amended. Rerefer to Committee on ARTS, ENTERTAINMENT, SPORTS, TOURISM AND INTERNET MEDIA.

03/25/2014 From ASSEMBLY Committee on ARTS, ENTERTAINMENT, SPORTS, TOURISM AND INTERNET MEDIA: Do pass to Committee on REVENUE & TAXATION.

05/13/2014 In ASSEMBLY Committee on REVENUE AND TAXATION: To Suspense File.

05/13/2014 From ASSEMBLY Committee on REVENUE AND TAXATION: Do pass to Committee on APPROPRIATIONS.

05/21/2014 In ASSEMBLY Committee on APPROPRIATIONS: To Suspense File.

05/23/2014 In ASSEMBLY. Joint Rule 62(a) suspended.

05/23/2014 From ASSEMBLY Committee on APPROPRIATIONS: Do pass as amended.

05/23/2014 In ASSEMBLY. Read second time and amended. To second reading.

05/27/2014 In ASSEMBLY. Read second time. To third reading.

05/28/2014 In ASSEMBLY. Read third time. Passed ASSEMBLY. \*\*\*\*\*To SENATE.

06/05/2014 To SENATE Committee on GOVERNANCE AND FINANCE.

06/17/2014 From SENATE Committee on GOVERNANCE AND FINANCE with author's amendments.

06/17/2014 In SENATE. Read second time and amended. Re-referred to Committee on GOVERNANCE AND FINANCE.

06/25/2014 From SENATE Committee on GOVERNANCE AND FINANCE: Do pass as amended to

Committee on APPROPRIATIONS.

07/02/2014 In SENATE. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.

08/04/2014 In SENATE Committee on APPROPRIATIONS: Not heard.

08/11/2014 In SENATE Committee on APPROPRIATIONS: To Suspense File.

08/14/2014 From SENATE Committee on APPROPRIATIONS: Do pass as amended.

08/20/2014 In SENATE. Read second time and amended. To third reading.

08/22/2014 In SENATE. Read third time and amended. To second reading.

08/25/2014 In SENATE. Read second time. To third reading.

08/27/2014 In SENATE. Senate Rule 29.3(b) suspended.

08/27/2014 Re-referred to SENATE Committee on RULES.

08/27/2014 From SENATE Committee on RULES with author's amendments.

08/27/2014 In SENATE. Read second time and amended. Re-referred to Committee on RULES.

08/29/2014 Withdrawn from SENATE Committee on RULES.

08/29/2014 In SENATE. Ordered to third reading.

08/29/2014 In SENATE. Read third time. Passed SENATE. \*\*\*\*\*To ASSEMBLY for concurrence.

08/29/2014 In ASSEMBLY. ASSEMBLY concurred in SENATE amendments. To enrollment.

09/05/2014 Enrolled.

09/09/2014 \*\*\*\*\*To GOVERNOR.

09/18/2014 Signed by GOVERNOR.

09/18/2014 Chaptered by Secretary of State. Chapter No. 413

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session: California 2013-14 Regular Session

cite: 2013 CA AB 1839

Chaptered

September 18, 2014

Gatto

Assembly Bill No. 1839

CHAPTER 413

An act to amend Section 23036 of, to add Sections 38.9, 17053.95, and 23695 to, and to repeal and amend Section 6902.5 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 18, 2014. Filed with Secretary of State September 18, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1839, Gatto. Income taxes: qualified motion pictures.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit against those taxes for taxable years beginning on or after January 1, 2011, in an amount equal to an applicable percentage of either 20% or 25%, respectively, of the qualified expenditures, as defined, attributable to the production of a qualified motion picture in California, or, where the qualified motion picture is a television series that relocated to California or is an independent film, as provided. Existing law imposes specified duties on the California Film Commission related to the administration of the credits, including a requirement to allocate the tax credits until July 1, 2017, and limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$100,000,000 through the 2016-17 fiscal year. Existing law, for taxable years beginning on or after January 1, 2011, in lieu of the credits authorized under the Personal Income Tax Law and the Corporation Tax Law for qualified motion pictures described above, also allows a credit against qualified state sales and use taxes, as provided.

Existing law provides for a tentative minimum tax and further provides that, except for specified credits, no other credit shall reduce the tax imposed below the tentative minimum tax.

This bill would establish similar credits under the Personal Income Tax Law and the Corporation Tax Law for taxable years beginning on or after January 1, 2016, to be allocated by the California Film Commission on or after July 1, 2015, and before July 1, 2020. This bill would, as compared to the existing tax credits, extend the scope of the credits for a qualified motion picture to the applicable percentage of qualified expenditures up to \$100,000,000, would extend the credit to qualified expenditures for television pilot episodes, and would determine an applicable percentage of 25% or 20% for qualified expenditures, with an additional credit amount available, as specified. This bill would limit the aggregate amount of these new credits to be allocated in each fiscal year to up to \$330 million, and would, subject to a computation and ranking of applicants based on the jobs ratio, as defined, require the California Film Commission to allocate credit amounts subject to specified categories of qualified motion pictures. This bill would, for taxable years beginning on or after January 1, 2016, in lieu of the credits authorized under the Personal Income Tax Law and the Corporation Tax Law for qualified motion pictures described above, allow a credit against qualified state sales and use taxes, as provided. This bill would also require the Legislative Analyst's Office to prepare reports related to the effectiveness and administration of the qualified motion picture credit under the Sales and Use Tax Law, the Personal Income Tax Law, and the Corporation Tax Law.

This bill would, for taxable years, beginning on or after January 1, 2016, additionally allow the credit under the Corporation Tax Law for qualified expenditures for the production of qualified motion pictures to reduce the tentative minimum tax.

This bill would also make findings and declarations related to the entertainment industry, and would urge the United States Department of Commerce and the International Trade Commission to investigate and impose sanctions on specified motion picture productions and elements of production to combat unfair and illegal competition.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The bill would state that its provisions are severable.

This bill would incorporate additional changes in Section 23036 of the Revenue and Taxation Code, proposed by AB 2754, to be operative only if AB 2754 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

This bill would take effect immediately as a tax levy.

Vote Required: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO Immediate Effect YES Urgency: NO Tax Levy: YES Election: NO Usual Current Expenses: NO Budget Bill: NO Prop 25 Trailer Bill: NO

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

SECTION 1. The Legislature finds and declares all of the following:

(a) There has been no greater ambassador for the State of California than its artistic output, inspiring

generations to dream about the bounty of this golden state, driving a modern gold rush of those who came here to be a part of that California dream, as they had done during the Gold Rush and the Dust Bowl migrations during previous generations.

- (b) California's artistic output is manifested in the evolution of Hollywood, a locale internationally celebrated as the home of the entertainment industry, having established itself as a filmmaking locale by the early 1900s.
- (c) Hollywood's cultural output is a primary reason why California emerged as a thought leader in the United States, and around the world.
- (d) The benefits of a healthy entertainment industry manifest themselves in healthy employment markets, healthy tourism, healthy local economies, and healthy family units.
- (e) However, since 1997, other states and nations have sought to lure the economic activity, tax revenue, workforce, and renown that are concomitant to the industry.
- (f) California's entertainment workforce has been steadily eroding for more than a decade, forcing thousands of Californians to temporarily or permanently relocate, leaving their families and communities behind.
- (g) The exodus of the film industry has hurt related businesses that provide the motion picture industry with specialized services, equipment, and facilities.
- (h) The visual effects industry is a highly qualified and highly skilled sector of the entertainment industry that is becoming increasingly significant as films become more technical in nature.
- (i) In search of subsidy programs that specifically target special effects, visual effects, and virtual photography, many California-based companies have opened international offices to compete for tax incentives offered in those jurisdictions.
- (j) California, and the United States as a whole, is facing growing competition from international governments that have implemented aggressive tax rebates and initiatives that have lured tens of thousands of jobs associated with film production, postproduction, visual effects, and music scoring abroad.
- (k) The federal International Trade Commission exercises broad authority to investigate the effects of subsidized imports on domestic industries, to conduct global safeguard investigations, and to protect domestic industries from unfair acts in importation.
- (l) It is the intent of the Legislature to urge the United States Department of Commerce and the International Trade Commission to investigate aggressively and impose sanctions, including tariffs, on productions and elements of production, including visual effects, virtual photography, and music scoring, that are digitally distributed and electronically transmitted, in its definition of "articles" protected by the Tariff Act, to combat unfair and illegal competition caused by international subsidies to these articles of commerce, and to urge the United States Congress to take other appropriate actions.
- (m) A central focus of this Legislature has been developing policies to help California climb out of the great recession and put families back to work. In order to halt the steady outward march of jobs and creativity, California must have a robust, smart, and efficient tax incentive program that guarantees job growth and economic expansion, coupled with strong accountability and transparency measures. Towards this end, California's tax credits for film and television must be reformed to ensure that California's taxpayers receive the maximum possible economic return on their investment. It is the intent of this legislation to replace the program's current arbitrary lottery system with a competitive and accountable system that ranks tax credit applications according to net new jobs created and overall positive and sustained economic impacts for the entire state.

SEC. 2. Section 38.9 is added to the Revenue and Taxation Code, to read:

38.9. (a) On or before July 1, 2019, the Legislative Analyst's Office shall provide to the Assembly Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, and the public a report evaluating the economic effects and administration of the tax credits allowed pursuant to Sections 6902.5, as amended by the act adding this section, 17053.95, and 23695. In researching the reports, the Legislative Analyst's Office may do all of the following:

- (1) Request and receive all information provided to the California Film Commission pursuant to

subdivision (g) of Sections 17053.95 and 23695.

(2) Request and receive all information provided to the Franchise Tax Board relating to the sale or assignment of credits pursuant to subdivision (c) of Sections 17053.95 and 23695.

(3) Request and receive all information provided to the board pursuant to subdivisions (c) and (g) of Section 6902.5, as amended by the act adding this section.

(b) The California Film Commission, the board, the Franchise Tax Board, the Employment Development Department, and all other relevant state agencies shall provide additional information, as specified by the Legislative Analyst's Office, as needed to research the reports required by this section.

(c) (1) The information received by the Legislative Analyst's Office pursuant to this section shall be considered confidential taxpayer information subject to Sections 7056, 7056.5, and 19542 of this code and Section 1094 of the Unemployment Insurance Code, and shall be subject to the appropriate confidentiality requirements of the participating state agency.

(2) The Legislative Analyst's Office may publish statistics in conjunction with the reports required by this section that are derived from information provided to the Legislative Analyst's Office pursuant to this section, if the published statistics are classified to prevent the identification of particular taxpayers, reports, and tax returns and the publication of the percentage of dividends paid by a corporation that is deductible by the recipient under Part 11 (commencing with Section 23001) of Division 2.

SEC. 3. Section 6902.5 of the Revenue and Taxation Code, as added by Section 1 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 4. Section 6902.5 of the Revenue and Taxation Code, as added by Section 1 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

6902.5. (a) For the purposes of this section:

(1) "Qualified taxpayer" means a person who is a qualified taxpayer within the meaning of paragraph (17) of subdivision (b) of Section 17053.85, 17053.95, 23685, or 23695.

(2) "Affiliate" means a qualified taxpayer's affiliated corporation that has been assigned any portion of the credit amount by the qualified taxpayer pursuant to subdivision (c) of Section 23685 or subdivision (c) of Section 23695.

(3) "Credit amount" means an amount equal to the tax credit amount that would otherwise be allowed to a qualified taxpayer pursuant to Section 17053.85, 17053.95, 23685, or 23695 but for the election made pursuant to this section.

(4) "Production period" means the production period as defined in paragraph (12) of subdivision (b) of Section 17053.85, 17053.95, 23685, or 23695.

(5) (A) "Qualified sales and use taxes" means any state sales and use taxes imposed by Part 1 (commencing with Section 6001), on the operative date of the act adding this section.

(B) Notwithstanding subparagraph (A), "qualified sales and use taxes" does not mean taxes imposed by Section 6051.2, 6051.5, 6201.2, 6201.5, Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), or Section 35 of Article XIII of the California Constitution.

(b) (1) A qualified taxpayer may, in lieu of claiming the credit allowed by Section 17053.85, 17053.95, 23685, or 23695 make an irrevocable election to apply the credit amount against qualified sales and use taxes imposed on the qualified taxpayer in accordance with this section.

(2) An affiliate may, in lieu of claiming the assigned portion of the credit allowed by Section 23685 or 23695, make an irrevocable election to apply the assigned portion of the credit amount against qualified sales and use taxes imposed on the affiliate in accordance with this section.

(c) (1) A qualified taxpayer or affiliate shall submit to the board an irrevocable election, in a form as prescribed by the board, which shall include, but not be limited to, the following information:

- (A) Representation that the claimant is a qualified taxpayer or an affiliate.
- (B) Statement of the dates on which the production period began and ended.
- (C) The credit amount, and if an affiliate, the portion of the credit amount assigned to it and documentation supporting the assignment of that portion of the credit amount.
- (D) The amount of qualified sales and use taxes the claimant remitted to the board during the period commencing on the first day of the calendar quarter commencing immediately before the beginning of the production period, and ending on the date the claimant was required to file its most recent sales and use tax return with the board.
- (E) A copy of the credit certificate issued pursuant to subparagraph (C) of paragraph (2) of subdivision (g) of Section 17053.85 or 23685 or subparagraph (D) of paragraph (3) of subdivision (g) of Section 17053.95 or 23695.

(2) The election shall be filed on or before the date on which the qualified taxpayer or affiliate would first be allowed to claim a credit pursuant to Section 17053.85, 17053.95, 23685, or 23695 on its tax return.

(d) (1) The claimant may elect to obtain a refund of qualified sales and use taxes paid during the period described in subparagraph (D) of paragraph (1) of subdivision (c). If the claimant elects to obtain a refund of qualified sales and use taxes, the claimant shall file a claim for refund with the irrevocable election described in subdivision (c). The refund amount shall not exceed, for a qualified taxpayer, the credit amount, or for an affiliate, the portion of the credit amount assigned to it.

(2) No interest shall be paid on any amount refunded or credited pursuant to paragraph (1).

(e) If the claimant does not elect to obtain a refund or in the case where the credit amount, or assigned portion, exceeds the amount of its claim for refund for the qualified sales and use taxes, the claimant may, for the reporting periods in the five years following the last reporting period as described in subparagraph (D) of paragraph (1) of subdivision (c), offset any remaining credit amount, or assigned portion, against the qualified sales and use taxes imposed during those reporting periods.

(f) Section 6961 shall apply to any refund, or part thereof, that is erroneously made and any credit, or part thereof, that is erroneously allowed pursuant to this section.

(g) The board shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the board and the Franchise Tax Board, of the qualified taxpayers, or affiliates that have been assigned a portion of the credit allowed under Section 23685 pursuant to subdivision (c) of Section 23685 or Section 23695 pursuant to subdivision (c) of Section 23695, who, during the year, have made an irrevocable election pursuant to this section and the credit amount, or portion of the credit amount, claimed by each qualified taxpayer or affiliate.

(h) The board may prescribe rules and regulations for the administration of this section.

SEC. 5. Section 17053.95 is added to the Revenue and Taxation Code, to read:

17053.95. (a) (1) For taxable years beginning on or after January 1, 2016, there shall be allowed to a qualified taxpayer a credit against the "net tax," as defined in Section 17039, subject to a computation and ranking by the California Film Commission in subdivision (g) and the allocation amount categories described in subdivision (i), in an amount equal to 20 percent or 25 percent, whichever is the applicable credit percentage described in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California. A credit shall not be allowed under this section for any qualified expenditures for the production of a motion picture in California if a credit has been claimed for those same expenditures under Section 17053.85.

(2) Except as otherwise provided in this section, 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, but in no instance prior to July 1, 2016, 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 credit percentage shall be:
  - (A) Twenty percent of the qualified expenditures attributable to the production of a qualified motion picture in California, including, but not limited to, a feature, up to one hundred million dollars (\$100,000,000) in qualified expenditures, or a television series that relocated to California that is in its second or subsequent years of receiving a tax credit allocation pursuant to this section or Section 17053.85.
  - (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 in its first year of receiving a tax credit allocation pursuant to this section.
  - (C) Twenty-five percent of the qualified expenditures, up to ten million dollars (\$10,000,000), attributable to the production of a qualified motion picture that is an independent film.
  - (D) Additional credits shall be allowed to a qualified motion picture whose applicable credit percentage is determined pursuant to subparagraph (A), in an aggregate amount not to exceed 5 percent of the qualified expenditures under that subparagraph, as follows:
    - (i) (I) Five percent of qualified expenditures relating to original photography outside the Los Angeles zone. (II) For purposes of this clause:
      - (ia) "Applicable period" means the period that commences with preproduction and ends when original photography concludes. The applicable period includes the time necessary to strike a remote location and return to the Los Angeles zone.
      - (ib) "Los Angeles zone" means the area within a circle 30 miles in radius from Beverly Boulevard and La Cienega Boulevard, Los Angeles, California, and includes Agua Dulce, Castaic, including Lake Castaic, Leo Carillo State Beach, Ontario International Airport, Piru, and Pomona, including the Los Angeles County Fairgrounds. The Metro Goldwyn Mayer, Inc. Conejo Ranch property is within the Los Angeles zone.
      - (ic) "Original photography" includes principal photography and reshooting original footage.
      - (id) "Qualified expenditures relating to original photography outside the Los Angeles zone" means amounts paid or incurred during the applicable period for tangible personal property purchased or leased and used or consumed outside the Los Angeles zone and relating to original photography outside the Los Angeles zone and qualified wages paid for services performed outside the Los Angeles zone and relating to original photography outside the Los Angeles zone.
    - (ii) Five percent of the qualified expenditures relating to music scoring and music track recording by musicians attributable to the production of a qualified motion picture in California.
    - (iii) Five percent of the qualified expenditures relating to qualified visual effects attributable to the production of a qualified motion picture in California.
- (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.
- (4) "Credit certificate" means the certificate issued by the California Film Commission pursuant to subparagraph (C) of paragraph (3) of subdivision (g).
- (5) (A) "Employee fringe benefits" means the amount allowable as a deduction under this part to the qualified taxpayer involved in the production of the qualified motion picture, exclusive of any amounts contributed by employees, for any year during the production period with respect to any of the following:
  - (i) Employer contributions under any pension, profit-sharing, annuity, or similar plan.
  - (ii) Employer-provided coverage under any accident or health plan for employees.
  - (iii) The employer's cost of life or disability insurance provided to employees.(B) Any amount treated as wages under clause (i) of subparagraph (A) of paragraph (21) shall not be taken into account under this paragraph.
- (6) "Independent film" means a motion picture with a minimum budget of one million dollars (\$1,000,000) that is produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than 25 percent of the producing company.
- (7) "Jobs ratio" means the amount of qualified wages paid to qualified individuals divided by the amount of tax credit, not including any additional credit allowed pursuant to subparagraph (D) of paragraph (4) of subdivision (a), as computed by the California Film Commission.
- (8) "Licensing" means any grant of rights to distribute the qualified motion picture, in whole or in part.
- (9) "New use" means any use of a motion picture in a medium other than the medium for which it was initially created.
- (10) "Pilot for a new television series" means the initial episode produced for a proposed television series.
- (11) (A) "Postproduction" means the final activities in a qualified motion picture's production, including editing, foley recording, automatic dialogue replacement, sound editing, scoring, music track recording by musicians and music editing, beginning and end credits, negative cutting, negative processing and duplication, the addition of sound and visual effects, sound mixing, film-to-tape transfers, encoding, and color correction.  
  
(B) "Postproduction" does not include the manufacture or shipping of release prints or their equivalent.
- (12) "Preproduction" means the process of preparation for actual physical production which begins after a qualified motion picture has received a firm agreement of financial commitment, or is greenlit, with, for example, the establishment of a dedicated production office, the hiring of key crew members, and includes, but is not limited to, activities that include location scouting and execution of contracts with vendors of equipment and stage space.
- (13) "Principal photography" means the phase of production during which the motion picture is actually shot, as distinguished from preproduction and postproduction.
- (14) "Production period" means the period beginning with preproduction and ending upon



completion of postproduction.

- (15) "Qualified entity" means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a payroll services corporation, or any entity receiving qualified wages with respect to services performed by a qualified individual.
- (16) "Qualified expenditures" means amounts paid or incurred for tangible personal property purchased or leased, and used, within this state in the production of a qualified motion picture and payments, including qualified wages, for services performed within this state in the production of a qualified motion picture.
- (17) (A) "Qualified individual" means any individual who performs services during the production period in an activity related to the production of a qualified motion picture.
  - (B) "Qualified individual" shall not include either of the following:
    - (i) Any individual related to the qualified taxpayer as described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.
    - (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code, of the qualified taxpayer.
- (18) (A) "Qualified motion picture" means a motion picture that is produced for distribution to the general public, regardless of medium, that is one of the following:
  - (i) A feature with a minimum production budget of one million dollars (\$1,000,000).
  - (ii) A movie of the week or miniseries with a minimum production budget of five hundred thousand dollars (\$500,000).
  - (iii) A new television series of episodes longer than 40 minutes each of running time, exclusive of commercials, that is produced in California, with a minimum production budget of one million dollars (\$1,000,000) per episode.
  - (iv) An independent film.
  - (v) A television series that relocated to California.
  - (vi) A pilot for a new television series that is longer than 40 minutes of running time, exclusive of commercials, that is produced in California, and with a minimum production budget of one million dollars (\$1,000,000).
- (B) To qualify as a "qualified motion picture," all of the following conditions shall be satisfied:
  - (i) At least 75 percent of the principal photography days occur wholly in California or 75 percent of the production budget is incurred for payment for services performed within the state and the purchase or rental of property used within the state.
  - (ii) Production of the qualified motion picture is completed within 30 months from the date on which the qualified taxpayer's application is approved by the California Film Commission. For purposes of this section, a qualified motion picture is "completed" when the process of postproduction has been finished.
  - (iii) The copyright for the motion picture is registered with the United States Copyright Office pursuant to Title 17 of the United States Code.
  - (iv) Principal photography of the qualified motion picture commences after the date on which the application is approved by the California Film Commission, but no later than 180 days after the date of that approval unless death, disability, or disfigurement of the director or of a principal cast member, an act of God, including, but not limited to, fire, flood, earthquake, storm, hurricane, or other natural disaster, terrorist activities, or government sanction has directly prevented a production's ability to begin principal photography within the prescribed 180-day

commencement period.

- (C) For the purposes of subparagraph (A), in computing the total wages paid or incurred for the production of a qualified motion picture, all amounts paid or incurred by all persons or entities that share in the costs of the qualified motion picture shall be aggregated.
  - (D) "Qualified motion picture" shall not include commercial advertising, music videos, a motion picture produced for private noncommercial use, such as weddings, graduations, or as part of an educational course and made by students, a news program, current events or public events program, talk show, game show, sporting event or activity, awards show, telethon or other production that solicits funds, reality television program, clip-based programming if more than 50 percent of the content is comprised of licensed footage, documentaries, variety programs, daytime dramas, strip shows, one-half hour (air time) episodic television shows, or any production that falls within the recordkeeping requirements of Section 2257 of Title 18 of the United States Code.
- (19) (A) "Qualified taxpayer" means a taxpayer who has paid or incurred qualified expenditures, participated in the Career Readiness requirement, and has been issued a credit certificate by the California Film Commission pursuant to subdivision (g).
- (B) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section is not allowed to the pass-thru entity, but shall be passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, "pass-thru entity" means any entity taxed as a partnership or "S" corporation.
- (20) "Qualified visual effects" means visual effects where at least 75 percent or a minimum of ten million dollars (\$10,000,000) of the qualified expenditures for the visual effects is paid or incurred in California.
- (21) (A) "Qualified wages" means all of the following:
- (i) 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.
  - (ii) 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 described in clauses (i), (iii), and (iv).
  - (iii) Any payments made to a qualified entity for services performed in this state by qualified individuals within the meaning of paragraph (17).
  - (iv) Remuneration paid to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.
- (B) "Qualified wages" shall not include any of the following:
- (i) 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.
  - (ii) Expenses, including wages, paid or incurred with respect to acquisition, development, turnaround, or any rights thereto.
  - (iii) Expenses, including wages, related to financing, overhead, marketing, promotion, or distribution of a qualified motion picture.

- (iv) 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.
  - (22) "Residual compensation" means supplemental compensation paid at the time that a motion picture is exhibited through new use, reuse, clip use, or in secondary markets, as distinguished from payments made during production.
  - (23) "Reuse" means any use of a qualified motion picture in the same medium for which it was created, following the initial use in that medium.
  - (24) "Secondary markets" means media in which a qualified motion picture is exhibited following the initial media in which it is exhibited.
  - (25) "Television series that relocated to California" means a television series, without regard to episode length or initial media exhibition, with a minimum production budget of one million dollars (\$1,000,000) per episode, that filmed its most recent season outside of California or has filmed all seasons outside of California and for which the taxpayer certifies that the credit provided pursuant to this section is the primary reason for relocating to California.
  - (26) "Visual effects" means the creation, alteration, or enhancement of images that cannot be captured on a set or location during live action photography and therefore is accomplished in postproduction. It includes, but is not limited to, matte paintings, animation, set extensions, computer-generated objects, characters and environments, compositing (combining two or more elements in a final image), and wire removals. "Visual effects" does not include fully animated projects, whether created by traditional or digital means.
- (c) (1) Notwithstanding any other law, a qualified taxpayer may sell any credit allowed under this section that is attributable to an independent film, as defined in paragraph (6) of subdivision (b), to an unrelated party.
- (2) The qualified taxpayer shall report to the Franchise Tax Board prior to the sale of the credit, in the form and manner specified by the Franchise Tax Board, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.
  - (3) In the case where the credit allowed under this section exceeds the "net tax," the excess credit may be carried over to reduce the "net tax" in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.
  - (4) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.
  - (5) A party that has acquired tax credits under this subdivision shall be subject to the requirements of this section.
  - (6) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed 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.
  - (9) Subdivision (g) of Section 17039 shall not apply to any credit sold pursuant to this

subdivision.

- (10) For purposes of this subdivision, the unrelated party or parties that purchase a credit pursuant to this subdivision shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).
- (d) (1) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:
- (A) Identification of each qualified individual.
  - (B) The specific start and end dates of production.
  - (C) The total wages paid.
  - (D) The total amount of qualified wages paid to qualified individuals.
  - (E) 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.
  - (F) The total amounts paid or incurred to purchase or lease tangible personal property used in the production of a qualified motion picture.
  - (G) Information to substantiate its qualified expenditures.
  - (H) Information required by the California Film Commission under regulations promulgated pursuant to subdivision (g) necessary to verify the amount of credit claimed.
  - (I) Provides documentation verifying completion of the Career Readiness requirement.
- (2) (A) Based on the information provided in paragraph (1), the California Film Commission shall recompute the jobs ratio previously computed in subdivision (g) and compare this recomputed jobs ratio to the jobs ratio that the qualified taxpayer previously listed on the application submitted pursuant to subdivision (g).
- (B) (i) If the California Film Commission determines that the jobs ratio has been reduced by more than 10 percent for a qualified motion picture other than an independent film, the California Film Commission shall reduce the amount of credit allowed by an equal percentage, unless the qualified taxpayer demonstrates, and the California Film Commission determines, that reasonable cause exists for the jobs ratio reduction.
  - (ii) If the California Film Commission determines that the jobs ratio has been reduced by more than 20 percent for a qualified motion picture other than an independent film, the California Film Commission shall not accept an application described in subdivision (g) from that qualified taxpayer or any member of the qualified taxpayer's controlled group for a period of not less than one year from the date of that determination, unless the qualified taxpayer demonstrates, and the California Film Commission determines, that reasonable cause exists for the jobs ratio reduction.
- (C) If the California Film Commission determines that the jobs ratio has been reduced by more than 30 percent for an independent film, the California Film Commission shall reduce the amount of credit allowed by an equal percentage, plus 10 percent of the amount of credit that would otherwise have been allowed, unless the qualified taxpayer demonstrates, and the California Film Commission determines, that reasonable cause exists for the jobs ratio reduction.
- (D) For the purposes of this paragraph, "reasonable cause" means unforeseen circumstances beyond the control of the qualified taxpayer, such as, but not limited to, the cancellation of a television series prior to the completion of the scheduled number of episodes or other similar circumstances as determined by the California Film

Commission in regulations to be adopted pursuant to subdivision (e).

- (e) (1) (A) Subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the California Film Commission shall adopt rules and regulations to implement a Career Readiness requirement by which the California Film Commission shall identify training and public service opportunities that may include, but not be limited to, hiring interns, public service announcements, and community outreach and may prescribe rules and regulations to carry out the purposes of this section, including, subparagraph (D) of paragraph (4) of subdivision (a) and clause (iv) of subparagraph (D) of paragraph (2) of subdivision (g), and including any rules and regulations necessary to establish procedures, processes, requirements, application fee structure, and rules identified in or required to implement this section, including credit and logo requirements and credit allocation procedures over multiple fiscal years where the qualified taxpayer is producing a series of features that will be filmed concurrently.
- (B) Notwithstanding any other law, prior to preparing a notice of proposed action pursuant to Section 11346.4 of the Government Code and prior to making any revision to the proposed regulation other than a change that is nonsubstantial or solely grammatical in nature, the Governor's Office of Business and Economic Development shall first approve the proposed regulation or proposed change to a proposed regulation regarding allocating the credit pursuant to subdivision (i), computing the jobs ratio as described in subdivisions (d) and (g), and defining "reasonable cause" pursuant to subparagraph (E) of paragraph (2) of subdivision (d).
- (2) (A) Implementation of this section for the 2015-16 fiscal year is deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare and, therefore, the California Film Commission is hereby authorized to adopt emergency regulations to implement this section during the 2015-16 fiscal year in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
- (B) Nothing in this paragraph shall be construed to require the Governor's Office of Business and Economic Development to approve emergency regulations adopted pursuant to this paragraph.
- (3) The California Film Commission shall not be required to prepare an economic impact analysis pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) with regard to any rules and regulations adopted pursuant to this subdivision.
- (f) If the qualified taxpayer fails to provide the copyright registration number as required in subparagraph (E) of paragraph (1) 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) Subject to the requirements of subparagraphs (A) through (E), inclusive, of paragraph (2), on or after July 1, 2015, and before July 1, 2016, in one or more allocation periods per fiscal year, allocate tax credits to applicants.
  - (2) On or after July 1, 2016, and before July 1, 2020, in two or more allocation periods per fiscal year, allocate tax credits to applicants.
  - (A) Establish a procedure for applicants to file with the California Film Commission a written application, on a form jointly prescribed by the California Film 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) All members of a combined reporting group, if known at the time of the application.
  - (vi) Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company that is disregarded pursuant to Section 23038. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.
  - (vii) The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes that have a financial interest in the applicant's qualified motion picture. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.
  - (viii) The amount of qualified wages the applicant expects to pay to qualified individuals.
  - (ix) The amount of tax credit the applicant computes the qualified motion picture will receive, applying the applicable credit percentages described in paragraph (4) of subdivision (a).
  - (x) A statement establishing that the tax credit described in this section is a significant factor in the applicant's choice of location for the qualified motion picture. The statement shall include information about whether the qualified motion picture is at risk of not being filmed or specify the jurisdiction or jurisdictions in which the qualified motion picture will be located in the absence of the tax credit. The statement shall be signed by an officer or executive of the applicant.
  - (xi) Any other information deemed relevant by the California Film 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) (i) For purposes of allocating the credit amounts subject to the categories described in subdivision (i) in any fiscal year, the California Film Commission shall do all of the following:
- (ii) For each allocation date and for each category, list each applicant from highest to lowest according to the jobs ratio as computed by the California Film Commission.
  - (iii) Subject to the applicable credit percentage, allocate the credit to each applicant according to the highest jobs ratio, working down the list, until the credit amount is exhausted.
  - (iv) Pursuant to regulations adopted pursuant to subdivision (e), the California Film Commission may increase the jobs ratio by up to 25 percent if a qualified motion picture increases economic activity in California according to criteria developed by the California Film Commission that would include, but not be limited to, such factors as, the amount of the production and postproduction spending in California, the utilization of production facilities in California, and other criteria measuring economic impact in California as determined by the Film Commission.

- (v) Notwithstanding any other provision, any television series, relocating television series, or any new television series based on a pilot for a new television series that has been approved and issued a credit allocation by the California Film Commission under this section, Section 23695, 17053.85, or 23685 shall be issued a credit for each subsequent year, for the life of that television series whenever credits are allocated within a fiscal year.
  - (E) Subject to the annual cap and the allocation credit amounts based on categories described in subdivision (i), allocate an aggregate amount of credits under this section and Section 23695, and allocate any carryover of unallocated credits from prior years and the amount of any credits reduced pursuant to paragraph (2) of subdivision (d).
- (3) Certify tax credits allocated to qualified taxpayers.
- (A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant, including, but not limited to, updates to the information in subparagraph (A) of paragraph (2) of subdivision (g).
  - (B) Establish audit requirements that must be satisfied before a credit certificate may be issued by the California Film Commission.
  - (C) (i) Establish a procedure for a qualified taxpayer to report to the California Film Commission, prior to the issuance of a credit certificate, the following information:
    - (I) If readily available, a list of the states, provinces, or other jurisdictions in which any member of the applicant's combined reporting group in the same business unit as the qualified taxpayer that, in the preceding calendar year, has produced a qualified motion picture intended for release in the United States market. For purposes of this clause, "qualified motion picture" shall not include any episodes of a television series that were complete or in production prior to July 1, 2016.
    - (II) Whether a qualified motion picture described in subclause (I) was awarded any financial incentive by the state, province, or other jurisdiction that was predicated on the performance of primary principal photography or postproduction in that location.
  - (ii) The California Film Commission may provide that the report required by this subparagraph be filed in a single report provided on a calendar year basis for those qualified taxpayers that receive multiple credit certificates in a calendar year.
  - (D) 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 and the jobs ratio computed 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.
- (4) Obtain, when possible, the following information from applicants that do not receive an allocation of credit:
- (A) Whether the qualified motion picture that was the subject of the application was completed.
  - (B) If completed, in which state or foreign jurisdiction was the primary principal photography completed.
  - (C) Whether the applicant received any financial incentives from the state or foreign jurisdiction to make the qualified motion picture in that location.
- (5) Provide the Legislative Analyst's Office, upon request, any or all application materials or any other materials received from, or submitted by, the applicants, in electronic format when available, including, but not limited to, information provided pursuant to clauses (i)

to (xi) inclusive, of subparagraph (A) of paragraph (2).

- (6) The information provided to the California Film Commission pursuant to this section shall constitute confidential tax information for purposes of Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2.
- (h) (1) The California Film Commission shall annually provide the Legislative Analyst's Office, the Franchise Tax Board, and the board 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 taxpayer.
- (2) (A) Notwithstanding paragraph (6) of subdivision (g), the California Film Commission shall annually post on its Internet Web site and make available for public release the following:
- (i) A table which includes all of the following information: a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission, the number of production days in California the qualified taxpayer represented in its application would occur, the number of California jobs that the qualified taxpayer represented in its application would be directly created by the production, and the total amount of qualified expenditures expected to be spent by the production.
  - (ii) A narrative staff summary describing the production of the qualified taxpayer as well as background information regarding the qualified taxpayer contained in the qualified taxpayer's application for the credit.
- (B) Nothing in this subdivision shall be construed to make the information submitted by an applicant for a tax credit under this section a public record.
- (3) The California Film Commission shall provide each city and county in California with an instructional guide that includes, but is not limited to, a review of best practices for facilitating motion picture production in local jurisdictions, resources on hosting and encouraging motion picture production, and the California Film Commissions' Model Film Ordinance. The California Film Commission shall maintain on its Internet Web site a list of initiatives by locality that encourage motion picture production in regions across the state. The list shall be distributed to each approved applicant for the program to highlight local jurisdictions that offer incentives to facilitate film production.
- (i) (1) (A) The aggregate amount of credits that may be allocated for a fiscal year pursuant to this section and Section 23695 is the applicable amount described in the following, plus any amount described in subparagraph (B), (C), or (D):
- (i) Two hundred thirty million dollars (\$230,000,000) in credits for the 2015-16 fiscal year.
  - (ii) Three hundred thirty million dollars (\$330,000,000) in credits for the 2016-17 fiscal year and each fiscal year thereafter, through and including the 2019-20 fiscal year.
- (B) The unused allocation credit amount, if any, for the preceding fiscal year.
- (C) The amount of previously allocated credits not certified.
- (D) The amount of any credits reduced pursuant to paragraph (2) of subdivision (d).
- (2) (A) Notwithstanding the foregoing, the California Film Commission shall allocate the credit amounts subject to the following categories:
- (i) Independent films shall be allocated 5 percent of the amount specified in paragraph (1).



- (ii) Features shall be allocated 35 percent of the amount specified in paragraph (1).
  - (iii) A relocating television series shall be allocated 20 percent of the amount specified in paragraph (1).
  - (iv) A new television series, pilots for a new television series, movies of the week, miniseries, and recurring television series shall be allocated 40 percent of the amount specified in paragraph (1).
- (B) Within 60 days after the allocation period, any unused amount within a category or categories shall be first reallocated to the category described in clause (iv) of subparagraph (A) and, if any unused amount remains, reallocated to another category or categories with a higher demand as determined by the California Film Commission.
  - (C) Notwithstanding the foregoing, the California Film Commission may increase or decrease an allocation amount in subparagraph (A) by 5 percent, if necessary, due to the jobs ratio, the number of applications, or the allocation credit amounts available by category compared to demand.
  - (D) With respect to a relocating television series issued a credit in a subsequent year pursuant to clause (v) of subparagraph (D) of paragraph (2) of subdivision (g), that subsequent credit amount shall be allowed from the allocation amount described in clause (iv) of subparagraph (A).
- (3) 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.
- (j) The California Film Commission shall have the authority to allocate tax credits in accordance with this section and in accordance with any regulations prescribed pursuant to subdivision (e) upon adoption.

SEC. 6. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

- (A) The tax imposed under Chapter 2 (commencing with Section 23101).
- (B) The tax imposed under Chapter 3 (commencing with Section 23501).
- (C) The tax on unrelated business taxable income, imposed under Section 23731.
- (D) The tax on "S" corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" also includes all of the following:

- (1) The tax on limited partnerships, imposed under Section 17935, the tax on limited liability companies, imposed under Section 17941, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948.
- (2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).
- (3) The tax on built-in gains of "S" corporations, imposed under Section 23809.

- (4) The tax on excess passive investment income of "S" corporations, imposed under Section 23811.
- (c) Notwithstanding any other provision of this part, credits are allowed against the "tax" in the following order:
- (1) Credits that do not contain carryover provisions.
  - (2) Credits that, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years, except for those credits that are allowed to reduce the "tax" below the tentative minimum tax, as defined by Section 23455. The order of credits within this paragraph shall be determined by the Franchise Tax Board.
  - (3) The minimum tax credit allowed by Section 23453.
  - (4) Credits that are allowed to reduce the "tax" below the tentative minimum tax, as defined by Section 23455.
  - (5) Credits for taxes withheld under Section 18662.
- (d) Notwithstanding any other provision of this part, each of the following applies:
- (1) A credit may not reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits:
    - (A) The credit allowed by former Section 23601 (relating to solar energy).
    - (B) The credit allowed by former Section 23601.4 (relating to solar energy).
    - (C) The credit allowed by former Section 23601.5 (relating to solar energy).
    - (D) The credit allowed by Section 23609 (relating to research expenditures).
    - (E) The credit allowed by former Section 23609.5 (relating to clinical testing expenses).
    - (F) The credit allowed by Section 23610.5 (relating to low-income housing).
    - (G) The credit allowed by former Section 23612 (relating to sales and use tax credit).
    - (H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).
    - (I) The credit allowed by former Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).
    - (J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).
    - (K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).
    - (L) The credit allowed by former Section 23623 (relating to program area hiring credit).
    - (M) The credit allowed by former Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).
    - (N) The credit allowed by former Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).
    - (O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).
    - (P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).
    - (Q) The credit allowed by former Section 23649 (relating to qualified property).
    - (R) For taxable years beginning on or after January 1, 2011, the credit allowed by Section 23685 (relating to qualified motion pictures).

- (S) For taxable years beginning on or after January 1, 2016, the credit allowed by Section 23695 (relating to qualified motion pictures).
- (2) A credit against the tax may not reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).
- (e) Any credit which is partially or totally denied under subdivision (d) is allowed to be carried over to reduce the “tax” in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.
- (f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative is allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.
- (g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer is eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.
- (h) Unless otherwise provided, in the case of an “S” corporation, any credit allowed by this part is computed at the “S” corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit applies to the “S” corporation and to each shareholder.
- (i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity is limited in accordance with paragraphs (2) and (3).
- (2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer’s “tax,” as defined in subdivision (a), for the taxable year is limited to an amount equal to the excess of the taxpayer’s regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer’s regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. A credit is not allowed if the taxpayer’s regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer’s regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.
- (3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).
- (j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-thru entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer’s first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.
- (2) For purposes of this subdivision, “eligible pass-thru entity” means any partnership or “S” corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year a credit is operative.
- (3) This subdivision applies to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 6.5. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term “tax” includes any of the following:

- (A) The tax imposed under Chapter 2 (commencing with Section 23101).

- (B) The tax imposed under Chapter 3 (commencing with Section 23501).
  - (C) The tax on unrelated business taxable income, imposed under Section 23731.
  - (D) The tax on “S” corporations imposed under Section 23802.
- (2) The term “tax” does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.
- (b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term “tax” also includes all of the following:
- (1) The tax on limited partnerships, imposed under Section 17935, the tax on limited liability companies, imposed under Section 17941, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948.
  - (2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).
  - (3) The tax on built-in gains of “S” corporations, imposed under Section 23809.
  - (4) The tax on excess passive investment income of S corporations, imposed under Section 23811.
- (c) Notwithstanding any other provision of this part, credits are allowed against the “tax” in the following order:
- (1) Credits that do not contain carryover provisions.
  - (2) Credits that, when the credit exceeds the “tax,” allow the excess to be carried over to offset the “tax” in succeeding taxable years, except for those credits that are allowed to reduce the “tax” below the tentative minimum tax, as defined by Section 23455. The order of credits within this paragraph shall be determined by the Franchise Tax Board.
  - (3) The minimum tax credit allowed by Section 23453.
  - (4) Credits that are allowed to reduce the “tax” below the tentative minimum tax, as defined by Section 23455.
  - (5) Credits for taxes withheld under Section 18662.
- (d) Notwithstanding any other provision of this part, each of the following applies:
- (1) A credit may not reduce the “tax” below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits:
    - (A) The credit allowed by former Section 23601 (relating to solar energy).
    - (B) The credit allowed by former Section 23601.4 (relating to solar energy).
    - (C) The credit allowed by former Section 23601.5 (relating to solar energy).
    - (D) The credit allowed by Section 23609 (relating to research expenditures).
    - (E) The credit allowed by former Section 23609.5 (relating to clinical testing expenses).
    - (F) The credit allowed by Section 23610.5 (relating to low-income housing).
    - (G) The credit allowed by former Section 23612 (relating to sales and use tax credit).
    - (H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).
    - (I) The credit allowed by former Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

- (J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).
  - (K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).
  - (L) The credit allowed by former Section 23623 (relating to program area hiring credit).
  - (M) The credit allowed by former Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).
  - (N) The credit allowed by former Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).
  - (O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).
  - (P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).
  - (Q) The credit allowed by former Section 23649 (relating to qualified property).
  - (R) For taxable years beginning on or after January 1, 2011, the credit allowed by Section 23685 (relating to qualified motion pictures).
  - (S) For taxable years beginning on or after January 1, 2014, the credit allowed by Section 23689 (relating to GO-Biz California Competes Credit).
  - (T) For taxable years beginning on or after January 1, 2016, the credit allowed by Section 23695 (relating to qualified motion pictures).
- (2) A credit against the tax may not reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).
- (e) Any credit which is partially or totally denied under subdivision (d) is allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.
  - (f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative is allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.
  - (g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer is eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.
  - (h) Unless otherwise provided, in the case of an "S" corporation, any credit allowed by this part is computed at the "S" corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit applies to the "S" corporation and to each shareholder.
  - (i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity is limited in accordance with paragraphs (2) and (3).
  - (2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the taxable year is limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. A credit is not allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.
- (3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the

amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

- (j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-thru entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.
- (2) For purposes of this subdivision, "eligible pass-thru entity" means any partnership or "S" corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year a credit is operative.
- (3) This subdivision applies to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 7. Section 23695 is added to the Revenue and Taxation Code, to read:

23695. (a) (1) For taxable years beginning on or after January 1, 2016, there shall be allowed to a qualified taxpayer a credit against the "tax," as defined in Section 23036, subject to a computation and ranking by the California Film Commission in subdivision (g) and the allocation amount categories described in subdivision (i), in an amount equal to 20 percent or 25 percent, whichever is the applicable credit percentage described in paragraph (4), of the qualified expenditures for the production of a qualified motion picture in California. A credit shall not be allowed under this section for any qualified expenditures for the production of a motion picture in California if a credit has been claimed for those same expenditures under Section 23685.

- (2) Except as otherwise provided in this section, 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, but in no instance prior to July 1, 2016, 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 credit percentage shall be:
  - (A) Twenty percent of the qualified expenditures attributable to the production of a qualified motion picture in California, including, but not limited to, a feature, up to one hundred million dollars (\$100,000,000) in qualified expenditures, or a television series that relocated to California that is in its second or subsequent years of receiving a tax credit allocation pursuant to this section or Section 23685.
  - (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 in its first year of receiving a tax credit allocation pursuant to this section.
  - (C) Twenty-five percent of the qualified expenditures, up to ten million dollars (\$10,000,000), attributable to the production of a qualified motion picture that is an independent film.
  - (D) Additional credits shall be allowed to a qualified motion picture whose applicable credit percentage is determined pursuant to subparagraph (A), in an aggregate amount not to exceed 5 percent of the qualified expenditures under that subparagraph, as follows:
    - (i) (I) Five percent of qualified expenditures relating to original photography outside the Los Angeles zone.

(II) For purposes of this clause:

- (ia) "Applicable period" means the period that commences with preproduction and ends when original photography concludes. The applicable period includes the time necessary to strike a remote location and return to the Los Angeles zone.
- (ib) "Los Angeles zone" means the area within a circle 30 miles in radius from Beverly Boulevard and La Cienega Boulevard, Los Angeles, California, and includes Agua Dulce, Castaic, including Lake Castaic, Leo Carillo State Beach, Ontario International Airport, Piru, and Pomona, including the Los Angeles County Fairgrounds. The Metro Goldwyn Mayer, Inc. Conejo Ranch property is within the Los Angeles zone.
- (ic) "Original photography" includes principal photography and reshooting original footage.
- (id) "Qualified expenditures relating to original photography outside the Los Angeles zone" means amounts paid or incurred during the applicable period for tangible personal property purchased or leased and used or consumed outside the Los Angeles zone and relating to original photography outside the Los Angeles zone and qualified wages paid for services performed outside the Los Angeles zone and relating to original photography outside the Los Angeles zone.

(ii) Five percent of the qualified expenditures relating to music scoring and music track recording by musicians attributable to the production of a qualified motion picture in California.

(iii) Five percent of the qualified expenditures relating to qualified visual effects attributable to the production of a qualified motion picture in California.

(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.
- (4) "Credit certificate" means the certificate issued by the California Film Commission pursuant to subparagraph (C) of paragraph (3) of subdivision (g).
- (5) (A) "Employee fringe benefits" means the amount allowable as a deduction under this part to the qualified taxpayer involved in the production of the qualified motion picture, exclusive of any amounts contributed by employees, for any year during the production period with respect to any of the following:
  - (i) Employer contributions under any pension, profit-sharing, annuity, or similar plan.
  - (ii) Employer-provided coverage under any accident or health plan for employees.
  - (iii) The employer's cost of life or disability insurance provided to employees.
- (B) Any amount treated as wages under clause (i) of subparagraph (A) of paragraph (21) shall not be taken into account under this paragraph.
- (6) "Independent film" means a motion picture with a minimum budget of one million dollars (\$1,000,000) that is produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than 25 percent of the producing company.

- (7) "Jobs ratio" means the amount of qualified wages paid to qualified individuals divided by the amount of tax credit, not including any additional credit allowed pursuant to subparagraph (D) of paragraph (4) of subdivision (a), as computed by the California Film Commission.
- (8) "Licensing" means any grant of rights to distribute the qualified motion picture, in whole or in part.
- (9) "New use" means any use of a motion picture in a medium other than the medium for which it was initially created.
- (10) "Pilot for a new television series" means the initial episode produced for a proposed television series.
- (11) (A) "Postproduction" means the final activities in a qualified motion picture's production, including editing, foley recording, automatic dialogue replacement, sound editing, scoring, music track recording by musicians and music editing, beginning and end credits, negative cutting, negative processing and duplication, the addition of sound and visual effects, sound mixing, film-to-tape transfers, encoding, and color correction.
- (B) "Postproduction" does not include the manufacture or shipping of release prints or their equivalent.
- (12) "Preproduction" means the process of preparation for actual physical production which begins after a qualified motion picture has received a firm agreement of financial commitment, or is greenlit, with, for example, the establishment of a dedicated production office, the hiring of key crew members, and includes, but is not limited to, activities that include location scouting and execution of contracts with vendors of equipment and stage space.
- (13) "Principal photography" means the phase of production during which the motion picture is actually shot, as distinguished from preproduction and postproduction.
- (14) "Production period" means the period beginning with preproduction and ending upon completion of postproduction.
- (15) "Qualified entity" means a personal service corporation as defined in Section 269A(b)(1) of the Internal Revenue Code, a payroll services corporation, or any entity receiving qualified wages with respect to services performed by a qualified individual.
- (16) "Qualified expenditures" means amounts paid or incurred for tangible personal property purchased or leased, and used, within this state in the production of a qualified motion picture and payments, including qualified wages, for services performed within this state in the production of a qualified motion picture.
- (17) (A) "Qualified individual" means any individual who performs services during the production period in an activity related to the production of a qualified motion picture.
- (B) "Qualified individual" shall not include either of the following:
- (i) Any individual related to the qualified taxpayer as described in subparagraph (A), (B), or (C) of Section 51(i)(1) of the Internal Revenue Code.
- (ii) Any 5-percent owner, as defined in Section 416(i)(1)(B) of the Internal Revenue Code, of the qualified taxpayer.
- (18) (A) "Qualified motion picture" means a motion picture that is produced for distribution to the general public, regardless of medium, that is one of the following:
- (i) A feature with a minimum production budget of one million dollars (\$1,000,000).
- (ii) A movie of the week or miniseries with a minimum production budget of five hundred thousand dollars (\$500,000).
- (iii) A new television series of episodes longer than 40 minutes each of running time,



exclusive of commercials, that is produced in California, with a minimum production budget of one million dollars (\$1,000,000) per episode.

(iv) An independent film.

(v) A television series that relocated to California.

(vi) A pilot for a new television series that is longer than 40 minutes of running time, exclusive of commercials, that is produced in California, and with a minimum production budget of one million dollars (\$1,000,000).

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

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

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

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

(iv) Principal photography of the qualified motion picture commences after the date on which the application is approved by the California Film Commission, but no later than 180 days after the date of that approval unless death, disability, or disfigurement of the director or of a principal cast member, an act of God, including, but not limited to, fire, flood, earthquake, storm, hurricane, or other natural disaster, terrorist activities, or government sanction has directly prevented a production's ability to begin principal photography within the prescribed 180-day commencement period.

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

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

(19) (A) "Qualified taxpayer" means a taxpayer who has paid or incurred qualified expenditures, participated in the Career Readiness requirement, and has been issued a credit certificate by the California Film Commission pursuant to subdivision (g).

(B) (i) In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section is not allowed to the pass-thru entity, but shall be passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, "pass-thru entity" means any entity taxed as a partnership or "S" corporation.

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

- (20) "Qualified visual effects" means visual effects where at least 75 percent or a minimum of ten million dollars (\$10,000,000) of the qualified expenditures for the visual effects is paid or incurred in California.
- (21) (A) "Qualified wages" means all of the following:
- (i) 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.
  - (ii) 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 described in clauses (i), (iii), and (iv).
  - (iii) Any payments made to a qualified entity for services performed in this state by qualified individuals within the meaning of paragraph (17).
  - (iv) Remuneration paid to an independent contractor who is a qualified individual for services performed within this state by that qualified individual.
- (B) "Qualified wages" shall not include any of the following:
- (i) 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.
  - (ii) Expenses, including wages, paid or incurred with respect to acquisition, development, turnaround, or any rights thereto.
  - (iii) Expenses, including wages, related to financing, overhead, marketing, promotion, or distribution of a qualified motion picture.
  - (iv) 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.
- (22) "Residual compensation" means supplemental compensation paid at the time that a motion picture is exhibited through new use, reuse, clip use, or in secondary markets, as distinguished from payments made during production.
- (23) "Reuse" means any use of a qualified motion picture in the same medium for which it was created, following the initial use in that medium.
- (24) "Secondary markets" means media in which a qualified motion picture is exhibited following the initial media in which it is exhibited.
- (25) "Television series that relocated to California" means a television series, without regard to episode length or initial media exhibition, with a minimum production budget of one million dollars (\$1,000,000) per episode, that filmed its most recent season outside of California or has filmed all seasons outside of California and for which the taxpayer certifies that the credit provided pursuant to this section is the primary reason for relocating to California.
- (26) "Visual effects" means the creation, alteration, or enhancement of images that cannot be captured on a set or location during live action photography and therefore is accomplished in postproduction. It includes, but is not limited to, matte paintings, animation, set extensions, computer-generated objects, characters and environments, compositing (combining two or more elements in a final image), and wire removals. "Visual effects" does not include fully animated projects, whether created by traditional or digital means.
- (c) (1) Notwithstanding subdivision (i) of Section 23036, in the case where the credit allowed by this section exceeds the taxpayer's tax liability computed under this part, a qualified taxpayer

may elect to assign any portion of the credit allowed under this section to one or more affiliated corporations for each taxable year in which the credit is allowed. For purposes of this subdivision, "affiliated corporation" has the meaning provided in subdivision (b) of Section 25110, as that section was amended by Chapter 881 of the Statutes of 1993, as of the last day of the taxable year in which the credit is allowed, except that "100 percent" is substituted for "more than 50 percent" wherever it appears in the section, and "voting common stock" is substituted for "voting stock" wherever it appears in the section.

- (2) The election provided in paragraph (1):
  - (A) May be based on any method selected by the qualified taxpayer that originally receives the credit.
  - (B) Shall be irrevocable for the taxable year the credit is allowed, once made.
  - (C) May be changed for any subsequent taxable year if the election to make the assignment is expressly shown on each of the returns of the qualified taxpayer and the qualified taxpayer's affiliated corporations that assign and receive the credits.
  - (D) Shall be reported to the Franchise Tax Board, in the form and manner specified by the Franchise Tax Board, along with all required information regarding the assignment of the credit, including the corporation number, the federal employer identification number, or other taxpayer identification number of the assignee, and the amount of the credit assigned.
- (3) (A) Notwithstanding any other law, a qualified taxpayer may sell any credit allowed under this section that is attributable to an independent film, as defined in paragraph (6) of subdivision (b), to an unrelated party.
  - (B) The qualified taxpayer shall report to the Franchise Tax Board prior to the sale of the credit, in the form and manner specified by the Franchise Tax Board, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the qualified taxpayer for the sale of the credit.
- (4) In the case where the credit allowed under this section exceeds the "tax," the excess credit may be carried over to reduce the "tax" in the following taxable year, and succeeding five taxable years, if necessary, until the credit has been exhausted.
- (5) A credit shall not be sold pursuant to this subdivision to more than one taxpayer, nor may the credit be resold by the unrelated party to another taxpayer or other party.
- (6) A party that has been assigned or acquired tax credits under this subdivision shall be subject to the requirements of this section.
- (7) In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed by this section is claimed on any tax return of the qualified taxpayer.
- (8) 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.
- (9) 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.
- (10) Subdivision (i) of Section 23036 shall not apply to any credit sold pursuant to this subdivision.

(11) For purposes of this subdivision:

(A) An affiliated corporation or corporations that are assigned a credit pursuant to paragraph (1) shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(B) The unrelated party or parties that purchase a credit pursuant to paragraphs (3) to (10), inclusive, shall be treated as a qualified taxpayer pursuant to paragraph (1) of subdivision (a).

(d) (1) No credit shall be allowed pursuant to this section unless the qualified taxpayer provides the following to the California Film Commission:

(A) Identification of each qualified individual.

(B) The specific start and end dates of production.

(C) The total wages paid.

(D) The total amount of qualified wages paid to qualified individuals.

(E) 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.

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

(G) Information to substantiate its qualified expenditures.

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

(I) Provides documentation verifying completion of the Career Readiness requirement.

(2) (A) Based on the information provided in paragraph (1), the California Film Commission shall recompute the jobs ratio previously computed in subdivision (g) and compare this recomputed jobs ratio to the jobs ratio that the qualified taxpayer previously listed on the application submitted pursuant to subdivision (g).

(B) (i) If the California Film Commission determines that the jobs ratio has been reduced by more than 10 percent for a qualified motion picture other than an independent film, the California Film Commission shall reduce the amount of credit allowed by an equal percentage, unless the qualified taxpayer demonstrates, and the California Film Commission determines, that reasonable cause exists for the jobs ratio reduction.

(ii) If the California Film Commission determines that the jobs ratio has been reduced by more than 20 percent for a qualified motion picture other than an independent film, the California Film Commission shall not accept an application described in subdivision (g) from that qualified taxpayer or any member of the qualified taxpayer's controlled group for a period of not less than one year from the date of that determination, unless the qualified taxpayer demonstrates, and the California Film Commission determines, that reasonable cause exists for the jobs ratio reduction.

(C) If the California Film Commission determines that the jobs ratio has been reduced by more than 30 percent for an independent film, the California Film Commission shall reduce the amount of credit allowed by an equal percentage, plus 10 percent of the amount of credit that would otherwise have been allowed, unless the qualified taxpayer demonstrates, and the California Film Commission determines, that

reasonable cause exists for the jobs ratio reduction.

- (D) For the purposes of this paragraph, “reasonable cause” means unforeseen circumstances beyond the control of the qualified taxpayer, such as, but not limited to, the cancellation of a television series prior to the completion of the scheduled number of episodes or other similar circumstances as determined by the California Film Commission in regulations to be adopted pursuant to subdivision (e).
- (e) (1) (A) Subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the California Film Commission shall adopt rules and regulations to implement a Career Readiness requirement by which the California Film Commission shall identify training and public service opportunities that may include, but not be limited to, hiring interns, public service announcements, and community outreach and may prescribe rules and regulations to carry out the purposes of this section, including, subparagraph (D) of paragraph (4) of subdivision (a) and clause (iv) of subparagraph (D) of paragraph (2) of subdivision (g), and including any rules and regulations necessary to establish procedures, processes, requirements, application fee structure, and rules identified in or required to implement this section, including credit and logo requirements and credit allocation procedures over multiple fiscal years where the qualified taxpayer is producing a series of features that will be filmed concurrently.
- (B) Notwithstanding any other law, prior to preparing a notice of proposed action pursuant to Section 11346.4 of the Government Code and prior to making any revision to the proposed regulation other than a change that is nonsubstantial or solely grammatical in nature, the Governor's Office of Business and Economic Development shall first approve the proposed regulation or proposed change to a proposed regulation regarding allocating the credit pursuant to subdivision (i), computing the jobs ratio as described in subdivisions (d) and (g), and defining “reasonable cause” pursuant to subparagraph (E) of paragraph (2) of subdivision (d).
- (2) (A) Implementation of this section for the 2015-16 fiscal year is deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare and, therefore, the California Film Commission is hereby authorized to adopt emergency regulations to implement this section during the 2015-16 fiscal year in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).
- (B) Nothing in this paragraph shall be construed to require the Governor's Office of Business and Economic Development to approve emergency regulations adopted pursuant to this paragraph.
- (3) The California Film Commission shall not be required to prepare an economic impact analysis pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) with regard to any rules and regulations adopted pursuant to this subdivision.
- (f) If the qualified taxpayer fails to provide the copyright registration number as required in subparagraph (E) of paragraph (1) 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) Subject to the requirements of subparagraphs (A) through (E), inclusive, of paragraph (2), on or after July 1, 2015, and before July 1, 2016, in one or more allocation periods per fiscal year, allocate tax credits to applicants.
- (2) On or after July 1, 2016, and before July 1, 2020, in two or more allocation periods per fiscal year, allocate tax credits to applicants.
- (A) Establish a procedure for applicants to file with the California Film Commission a

written application, on a form jointly prescribed by the California Film 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) All members of a combined reporting group, if known at the time of the application.
  - (vi) Financial information, if available, including, but not limited to, the most recently produced balance sheets, annual statements of profits and losses, audited or unaudited financial statements, summary budget projections or results, or the functional equivalent of these documents of a partnership or owner of a single member limited liability company that is disregarded pursuant to Section 23038. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.
  - (vii) The names of all partners in a partnership not publicly traded or the names of all members of a limited liability company classified as a partnership not publicly traded for California income tax purposes that have a financial interest in the applicant's qualified motion picture. The information provided pursuant to this clause shall be confidential and shall not be subject to public disclosure.
  - (viii) The amount of qualified wages the applicant expects to pay to qualified individuals.
  - (ix) The amount of tax credit the applicant computes the qualified motion picture will receive, applying the applicable credit percentages described in paragraph (4) of subdivision (a).
  - (x) A statement establishing that the tax credit described in this section is a significant factor in the applicant's choice of location for the qualified motion picture. The statement shall include information about whether the qualified motion picture is at risk of not being filmed or specify the jurisdiction or jurisdictions in which the qualified motion picture will be located in the absence of the tax credit. The statement shall be signed by an officer or executive of the applicant.
  - (xi) Any other information deemed relevant by the California Film 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) (i) For purposes of allocating the credit amounts subject to the categories described in subdivision (i) in any fiscal year, the California Film Commission shall do all of the following:
- (ii) For each allocation date and for each category, list each applicant from highest to lowest according to the jobs ratio as computed by the California Film Commission.

- (iii) Subject to the applicable credit percentage, allocate the credit to each applicant according to the highest jobs ratio, working down the list, until the credit amount is exhausted.
  - (iv) Pursuant to regulations adopted pursuant to subdivision (e), the California Film Commission may increase the jobs ratio by up to 25 percent if a qualified motion picture increases economic activity in California according to criteria developed by the California Film Commission that would include, but not be limited to, such factors as, the amount of the production and postproduction spending in California, the utilization of production facilities in California, and other criteria measuring economic impact in California as determined by the Film Commission.
  - (v) Notwithstanding any other provision, any television series, relocating television series, or any new television series based on a pilot for a new television series that has been approved and issued a credit allocation by the California Film Commission under this section, Section 17053.95, 17053.85, or 23685 shall be issued a credit for each subsequent year, for the life of that television series whenever credits are allocated within a fiscal year.
- (E) Subject to the annual cap and the allocation credit amounts based on categories described in subdivision (i), allocate an aggregate amount of credits under this section and Section 17053.95, and allocate any carryover of unallocated credits from prior years and the amount of any credits reduced pursuant to paragraph (2) of subdivision (d).
- (3) Certify tax credits allocated to qualified taxpayers.
- (A) Establish a verification procedure for the amount of qualified expenditures paid or incurred by the applicant, including, but not limited to, updates to the information in subparagraph (A) of paragraph (2) of subdivision (g).
  - (B) Establish audit requirements that must be satisfied before a credit certificate may be issued by the California Film Commission.
  - (C) (i) Establish a procedure for a qualified taxpayer to report to the California Film Commission, prior to the issuance of a credit certificate, the following information:
    - (I) If readily available, a list of the states, provinces, or other jurisdictions in which any member of the applicant's combined reporting group in the same business unit as the qualified taxpayer that, in the preceding calendar year, has produced a qualified motion picture intended for release in the United States market. For purposes of this clause, "qualified motion picture" shall not include any episodes of a television series that were complete or in production prior to July 1, 2016.
    - (II) Whether a qualified motion picture described in subclause (I) was awarded any financial incentive by the state, province, or other jurisdiction that was predicated on the performance of primary principal photography or postproduction in that location.
  - (ii) The California Film Commission may provide that the report required by this subparagraph be filed in a single report provided on a calendar year basis for those qualified taxpayers that receive multiple credit certificates in a calendar year.
- (D) 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 and the jobs ratio computed 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.

- (4) Obtain, when possible, the following information from applicants that do not receive an allocation of credit:
  - (A) Whether the qualified motion picture that was the subject of the application was completed.
  - (B) If completed, in which state or foreign jurisdiction was the primary principal photography completed.
  - (C) Whether the applicant received any financial incentives from the state or foreign jurisdiction to make the qualified motion picture in that location.
- (5) Provide the Legislative Analyst's Office, upon request, any or all application materials or any other materials received from, or submitted by, the applicants, in electronic format when available, including, but not limited to, information provided pursuant to clauses (i) to (xi) inclusive, of subparagraph (A) of paragraph (2).
- (6) The information provided to the California Film Commission pursuant to this section shall constitute confidential tax information for purposes of Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2.
- (h) (1) The California Film Commission shall annually provide the Legislative Analyst's Office, the Franchise Tax Board, and the board 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 taxpayer.
- (2) (A) Notwithstanding paragraph (6) of subdivision (g), the California Film Commission shall annually post on its Internet Web site and make available for public release the following:
  - (i) A table which includes all of the following information: a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the California Film Commission, the number of production days in California the qualified taxpayer represented in its application would occur, the number of California jobs that the qualified taxpayer represented in its application would be directly created by the production, and the total amount of qualified expenditures expected to be spent by the production.
  - (ii) A narrative staff summary describing the production of the qualified taxpayer as well as background information regarding the qualified taxpayer contained in the qualified taxpayer's application for the credit.
- (B) Nothing in this subdivision shall be construed to make the information submitted by an applicant for a tax credit under this section a public record.
- (3) The California Film Commission shall provide each city and county in California with an instructional guide that includes, but is not limited to, a review of best practices for facilitating motion picture production in local jurisdictions, resources on hosting and encouraging motion picture production, and the California Film Commissions' Model Film Ordinance. The California Film Commission shall maintain on its Internet Web site a list of initiatives by locality that encourage motion picture production in regions across the state. The list shall be distributed to each approved applicant for the program to highlight local jurisdictions that offer incentives to facilitate film production.
- (i) (1) (A) The aggregate amount of credits that may be allocated for a fiscal year pursuant to this section and Section 17053.95 is the applicable amount described in the following, plus any amount described in subparagraph (B), (C), or (D):
  - (i) Two hundred thirty million dollars (\$230,000,000) in credits for the 2015-16 fiscal year.



- (ii) Three hundred thirty million dollars (\$330,000,000) in credits for the 2016-17 fiscal year and each fiscal year thereafter, through and including the 2019-20 fiscal year.
  - (B) The unused allocation credit amount, if any, for the preceding fiscal year.
  - (C) The amount of previously allocated credits not certified.
  - (D) The amount of any credits reduced pursuant to paragraph (2) of subdivision (d).
- (2) (A) Notwithstanding the foregoing, the California Film Commission shall allocate the credit amounts subject to the following categories:
- (i) Independent films shall be allocated 5 percent of the amount specified in paragraph (1).
  - (ii) Features shall be allocated 35 percent of the amount specified in paragraph (1).
  - (iii) A relocating television series shall be allocated 20 percent of the amount specified in paragraph (1).
  - (iv) A new television series, pilots for a new television series, movies of the week, miniseries, and recurring television series shall be allocated 40 percent of the amount specified in paragraph (1).
- (B) Within 60 days after the allocation period, any unused amount within a category or categories shall be first reallocated to the category described in clause (iv) of subparagraph (A) and, if any unused amount remains, reallocated to another category or categories with a higher demand as determined by the California Film Commission.
- (C) Notwithstanding the foregoing, the California Film Commission may increase or decrease an allocation amount in subparagraph (A) by 5 percent, if necessary, due to the jobs ratio, the number of applications, or the allocation credit amounts available by category compared to demand.
- (D) With respect to a relocating television series issued a credit in a subsequent year pursuant to clause (v) of subparagraph (D) of paragraph (2) of subdivision (g), that subsequent credit amount shall be allowed from the allocation amount described in clause (iv) of subparagraph (A).
- (3) 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.
- (j) The California Film Commission shall have the authority to allocate tax credits in accordance with this section and in accordance with any regulations prescribed pursuant to subdivision (e) upon adoption.

SEC. 8. The Legislature finds and declares that Sections 5 and 7 of this act impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the California Film Commission to fully accomplish its goals, it is imperative to protect the interests of those persons submitting information to the California Film Commission to ensure that any personal or sensitive business information that this act requires those persons to submit is protected as confidential information.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that

invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application and the Legislature shall determine the remedy for that invalidity.

SEC. 10. Section 6.5 of this bill incorporates amendments to Section 23036 of the Revenue and Taxation Code proposed by both this bill and Assembly Bill 2754. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2015, but this bill becomes operative first, (2) each bill amends Section 23036 of the Revenue and Taxation Code, and (3) this bill is enacted after Assembly Bill 2754, in which case Section 23036 of the Revenue and Taxation Code, as amended by Section 6 of this bill, shall remain operative only until the operative date of Assembly Bill 2754, at which time Section 6.5 of this bill shall become operative.

SEC. 11. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.