Date of Hearing: April 28, 2015

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND INTERNET MEDIA
Ian Charles Calderon, Chair
AB 1199 (Nazarian) – As Introduced February 27, 2015

SUBJECT: Income taxes: credits: motion pictures.

SUMMARY: Redefines qualified expenditures for music and scoring of films under the film tax credit program. Specifically, **this bill**:

1) Provides additional credits to a qualified motion picture in an aggregate amount, as specified, including five percent of the qualified expenditures relating to qualified music preparation, music scoring, music track recording, and music editing by musicians attributable to the production of a qualified motion picture in California.

2) Defines "Qualified music preparation, music scoring, music track recording, and music editing" to mean music preparation, music scoring, music track recording, and music editing where at least 75% or a minimum of one hundred thousand dollars ($100,000) of the total expenditures for the music preparation, music scoring, music track recording, and music editing is paid or incurred in California.

EXISTING LAW:

1) Provides that, 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 specified, in an amount equal to 20% or 25%, whichever is the applicable credit percentage of the qualified expenditures for the production of a qualified motion picture in California.

2) Declares that 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, as provided.

    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.

3) Allows additional credits to a qualified motion picture in an aggregate amount not to exceed 5% 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.

4) Defines “Postproduction” to mean 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.

5) Requires that a “qualified motion picture,” must film at least 75% of its principal photography days wholly in California or 75% of the production budget must be incurred within the state.

FISCAL EFFECT: Unknown

COMMENTS:

1) *Author and supporter's statement of need for legislation: AB 1839 was a good start but didn’t require post-production work be done in California.* The author states the following in support of this measure, "Governments across the U.S. and around the world are investing billions of dollars in the film and television industry in an effort to create and retain the high-quality jobs attached to the industry. Yet musicians – the highly-trained and highly-talented women and men who record the scores for movies and television shows – are being left behind. Increasingly, recording work is being offshored mostly to Eastern Europe and London—where musicians are paid far below the industry standard. Loss of jobs and wages in California is evident as, the wages for musicians totaled $22 million in 2003 and just ten years later, the total was almost half, at $11.7 million.

   "AB 1199’s provisions, although they are small technical changes, provide the necessary economic incentive to retain and attract music back to California. As an example, the cost to production companies of employing recording musicians at the top industry standard is equivalent to 0.36% to 0.52% of a typical film’s production budget. By offshoring this work, production companies save less than one-quarter of one percent of the film’s production budget—or $143,000 on a typical $65 million film – yet workers and the community lose $1.2 million."

   Supporters such as the Society of Composers and Lyrisists add, "AB 1199 introduces language that would for the first time require a specific amount of the total expenditures relating to music post-production be done in California in order for a production to qualify for an added rebate."

   According to information provided by the bill's sponsors, "Music jobs create more than just a livelihood for thousands of professional musicians in California. Musicians who perform on film and TV soundtracks are the same gifted artists who perform in theaters, on stages, in clubs, in schools and public spaces throughout our state, and provide a rich cultural life that goes beyond their substantial economic contribution. The same performers teach our children in non-profits providing music instruction to children underserved by arts curricula, and train young musicians in our colleges and universities. The financial and cultural wealth of our region is deeply threatened by the dramatic loss of film and television music scoring documented in the comprehensive LAANE report “Keeping the Score”.

   "Musicians have stood shoulder to shoulder with our labor alliance since the late 1990’s, helping to pass each generation of film/TV tax credits. We have helped create language, lobby, strategize and worked hard for our labor colleagues – yet no jobs have been created for us. In the years leading up to AB 1839, not one music job was created by California tax credits. Unfortunately, we have documented music jobs running away even for projects that received production tax dollars here. It is saddening to see companies taking California tax dollars and then taking our music jobs overseas.

"AB 1839 will not work for us. Here's why: Most of our film employment is for independent productions – yet they are not allowed to access the 5% uplift for music scoring. Most of the major studio production would already be required to score here. The TV and pilot production that is the focus of so much of the incentive program provides a much smaller part of musicians employment. Unlike actors, writers, directors, grips, engineers and others, episodic television provides a small part of the employment available for musicians.

"Here's what will work for California: Setting aside a tiny percentage for music scoring post-production will create an outsize number of jobs, wages, health and pension benefits, and state revenues. A mere 1% tax credit for music scoring would generate 12 million dollars in immediate wages, as well as health and pension benefits and an even greater amount of taxable residuals paid over time. Since most films available for music scoring will be produced outside California, this allows us to capture jobs that would otherwise be lost to Californians. Our music scoring infrastructure will, with this program, bring music scoring from projects filmed in Georgia, North Carolina, New York, the U.K. and all over the world. Just one significant film like the "Hunger Games: Catching Fire", with a music budget of around $800,000, is estimated to bring in 2.3 million dollars to California regional benefit. The revenues raised by capturing such a project with an incentive would represent an outsize value for California."

They add, "London is just in the process of raising their post-production carve-out to 30% - and it has worked for them, as they take music jobs away from California. New York upgraded their separate post-production carve-out from 7 to 25 million dollars in 2015, and it is paying dividends for New Yorkers – at our expense."

2) *Background: California Film Production Tax Program.*

Last year the legislature adopted a revised and expanded set of film production tax credits with the passage of AB 1839 (Gatto/Bocanegra), Chapter 413, Statutes of 2014. That measure contained many changes in both the scope and structure of the film tax credit program.

a) *The original structure for the film tax credit program*. In 2009, the Legislature approved, and Governor Schwarzenegger signed, the California Film & Television Tax Credit Program (Film Tax Credit Program) as a part of the 2009 Budget plan to promote film production and to create and retain jobs in California [SB 15 X3 (Calderon), Chapter 17, Statutes of 2009-10 Third Extraordinary Session, and AB 15 X3 (Krekorian), Chapter 10, Statutes of 2009-10 Third Extraordinary Session].

The California Film Commission (CFC) allocates $100 million in credits for qualified production expenditures annually - $10 million of which is set aside for qualified production expenditures incurred by independent films. Qualified taxpayers are allowed a credit against income and/or sales and use taxes, based upon qualified expenditures.

Credits are not refundable and only tax credits that are issues to an "independent film" are transferrable to an unrelated party.

Qualified expenditures are costs that must be incurred in the State of California. They include crew and staff salaries, wages and benefits (not including wages and benefits paid to writers, directors, music directors/composers/producers, and actors), cost of rental facilities and equipment, and costs such as lodging, food, wardrobe and construction.

To apply for the California Film and Television Incentive Program, a "qualified motion picture" must be one of the following:

i) Eligible for 20% Tax Credit -

- A feature film with a production budget of no less than $1 million and not more than $75 million.
- A movie of the week or miniseries with a production budget of no less than $500,000.
- A new television series licensed for original distribution on basic cable with a production budget of $1 million minimum and with a running time of no less than 60 minutes (including commercials).

ii) Eligible for 25% Tax Credit -

- A television series, without regard to episode length or media distribution outlet (basic cable, premium cable, or network broadcast), that filmed all of its prior seasons outside of California and that chooses to relocate to California.
- An "independent film" (with a production budget of at least $1 million and a maximum qualified expenditures budget of $10 million; must be produced by a company that is not publicly traded and that publicly traded companies do not own more than 25% of the producing company).

The film must also have 75% of its production days take place in or total production budget spent in California.

In an effort to ensure fairness, the oversubscribed program is operated in a lottery manner. Applications for tax credits are due to the CFC at the beginning of June, and the CFC holds a drawing at the end of the month to select the films that will be issued credits. The number of applicants for credits far exceeds the available funds for credits: in 2012, only 27 projects out of the 322 applicants that applied were selected.

After the applications for credits have been received and the "qualified motion pictures" have been selected for the available credits, the CFC issues a credit allocation letter reserving an amount of tax credits to an applicant based upon projected qualified expenditures. If a project is approved for a credit, the project must shoot within 6 months and be completed within 30 months from the date that the application was approved.

Upon completion of the project, and before the Tax Credit Certificate is issued, the applicant must provide to the CFC several documents, including a list of qualified expenditures that has been reviewed by a trained CPA. The CFC reviews the documents with the applicant to determine if all criteria has been met, at which time the CFC will issue the credit certificate. The credit allows the taxpayer to claim the credit on their filed tax return with the Franchise Tax Board under the personal income tax or the corporate tax law.

b) *AB 1389 restructured and increased funding for the film tax credit program*. One of the biggest changes to the film tax credit program introduced with AB 1839 was the tripling of the annual budget available for tax credits, from $100 million to $330 million dollars. In addition to the increased amount available for credits, the allocation system changed from a once a year lottery system, to a competitive system based upon a formula using the ratio of jobs projected to be created and the amount of funding requested. The allocations are now to be made twice a year. A summary of the major programmatic changes includes:

AB 1838 expanded and amended the tax credit for qualified expenditures for the production of qualified motion pictures in California for taxable years beginning on or after January 1, 2016, and authorized the CFC to administer the program and allocate the tax credits, subject to a $230 million cap in the first year (2015-16) and $330 million aggregate annual cap for each fiscal year (FY) from the 2016-17 FY through and including the 2019-20 FY. Note that when the $230 million was added to the $100 million provided in existing law for the 2015-16 FY, the available funds for all future years under the bill was $330 million. In addition, the measure:

i) Requires the CFC to allocate the credit amounts subject to specified categories in order to insure like productions compete against each other under the jobs ratio formula outlined in the bill.

ii) Requires applicants to include a statement which declares that the tax credit is a significant factor in the applicant's choice of location for the qualified motion picture.

iii) Changes the definition of relocating series, to one which has a minimum production budget of at least $1 million per episode.

iv) Allows ongoing series to become eligible for the film tax credits.

v) Ensures any television series, relocating television series, or any new television series based on a pilot that was issued a credit a place at the top of the queue for allocations for the life of that television series, as provided.

vi) Requires the CFC to audit final submissions for tax credits and compare the jobs ratio figures contained in original tax credit applications to those actual qualified expenditures, and provides for discrepancies to be addressed.

vii) Requires that on or before July 1, 2019, the Legislative Analyst's Office (LAO) shall provide to the Assembly Revenue and Taxation Committee, the Senate Governance and Finance Committee, and the public a report evaluating the economic effects and administration of the tax credits allowed, as provided.

Additionally, as pointed out by the author, "in efforts to promote optimal returns to our investment and prevent runaway production in various sectors of the industry, the tax credit program provides an additional 5% credit for the following expenditures:

- Out-of-Zone filming- expenditures relating to original photography and incurred outside the Los Angeles Zone.
- Visual Effects (VFX) - To qualify, visual effects work must represent at least 75% of the VFX budget or a minimum of $10 million in qualified VFX expenditures incurred in California.
- Music Scoring and music track recording - expenditures relating to music scoring and track recoding. In comparison to qualified VFX expenditures there are no similar minimum thresholds."

3) *Long history of Legislative and Oversight Hearings of Arts, Entertainment, Sports, Tourism & Internet Media (AEST&IM) and Revenue & Taxation Committees supports film production tax credit program*. The issue of film production tax credits has come before this committee many times, in many years, in many versions. (Please see Comment 7 below). The Committee has also studied this issue extensively, both alone and with the Committee on Revenue and Taxation.

On March 21, 2011, a Joint Oversight Hearing of the Assembly AEST&IM and the Assembly Revenue and Taxation Committees was held on, "California's Film Credit Under the Spotlight: *A Review of the Film and Television Tax Credit Program."* This was followed by the Revenue and Taxation Committee Oversight Hearing on "*Assessing Tax Expenditure Programs in Light of California's Fiscal Challenges*" on February 22, 2012, where the Film Tax Credit was again analyzed. On October 9, 2013, yet another Joint Oversight Hearing of the Assembly AEST&IM and the Assembly Revenue and Taxation Committees was held, entitled "*A Review of the California Film Tax Program*." The topics of discussion in the many hearings followed the same general themes. Below is a capsule of some of the findings which came from these many reviews of the Film Tax Credit Program.

a) *Run-away Production.* From the 2011 Joint Informational Hearing: At the state level, "run-away productions" are film or television productions that are developed for initial exhibition or broadcast in California, but that are actually filmed in another state or country in order to achieve lower production costs.

A number of other states (forty two at last count) have adopted or are adopting measures, including tax credits, to attract film production. Various entities (state & local governments, non-profits, labor unions and the film industry, among others) indicate that tax credits and other incentives to produce films outside California have resulted in film production moving out of California and into other states and countries.

According to the Los Angeles Economic Development Commission (LAEDC):

"Most people think of film production running away to Canada, though Europe was a quite popular destination for a while (and Romania is currently). However, run-away production to other states has become a more significant challenge to California's film industry. This trend impacts not only production activities in the Los Angeles area, but film commissions around the state that have also been facing this competition. LAEDC tracked the location of major photography on feature film production from (2003 to 2005). Two things stood out from this informal survey. One, when productions leave California, the major studios still tend to go offshore rather than to other states. In many cases, these decisions are due to story considerations, but the financial benefits are still important components of the decision.

"The second trend is that independent producers are increasingly going elsewhere in the U.S. Other states have been busy offering new incentives or increasing the level of existing incentives for filming in their jurisdictions. More worrisome are the efforts to develop production facilities to lure more of the production process. For example, in New Mexico, there are plans to build a $60 million film, TV, and digital media production facility in Albuquerque. New York is working on a studio complex.

"LAEDC conducted research for the CFC on the job and state tax revenue implications of run-away production. On a "mid-budget" film ($17 million), 304 direct and indirect jobs were created and $1.2 million state sales and income taxes were generated. For a "large budget" film ($70 million), 928 direct and indirect jobs were created, while $10.6 million in state taxes were generated. These were conservative estimates."

According to the CFC, "In 2003, 66% of studio feature films were filmed in California. In 2009, only 38% of studio films were filmed in state. San Francisco film and TV production employment dropped 43% between 2001 and 2006.

"The Los Angeles region experienced a steady decline in feature film production days in 11 out of the last 13 years. However, Film L.A., the permitting agency for Los Angeles, reported that in 2010, feature film production posted a 28.1% fourth quarter gain and a year-over-year gain of 8.1%. “The annual increase can be wholly attributed to California’s Film and Television Tax Credit. The Program attracted dozens of new feature film projects to Los Angeles, which were responsible for 26% of local feature production for the year. Were it not for these projects, 2010 would have been the worst year on record,” reported Film L.A. in their Jan. 11, 2011 release. These numbers are an excellent early indicator that the incentive program is having an immediate impact on production levels

b) *Testimony Presented to the Committees by the CFC Included the Following Information on the Economic Impacts of the (then) Current Film Tax Credit Program.* At the time of hearing, $600 million in tax credits had been allocated (reserved) resulting in: Total aggregate direct spending by Program projects: $4.7 billion Total wages paid / to be paid by Program projects: $1.48 billion.

In addition to the economic figures above, the CFC presented testimony at the 2011 Joint Informational Hearing, which included the following testimony about the motion picture industry's general contribution to the state's economy, "The motion picture industry is an essential source of economic activity, tax revenue, jobs and tourism for California contributing $38 billion dollars annually to our state’s economy and supporting nearly 250,000 well-paying direct jobs - with health benefits.

"For instance: An average $70 million dollar feature film generates $10.6 million in state sales and income taxes. The average daily shooting costs on a feature film or TV series range from $100,000 to $250,000 per day. (That's actual dollars that each production spends on groceries, hotel rooms, gas, building supplies, props and payroll). A typical film shooting outside of Los Angeles County will spend on average $50,000 per day in a local community. The average salary for production employees is $75,000, well above the national average."

c) *California Research Bureau (CRB) Data Demonstrates That Loss of Feature Film Productions Drove Down Wages, Even Though Production Days of Other Categories (Such as Reality Television) Increased*. As background material for the 2011 Joint Oversight Hearing, and in support of their testimony, the CRB prepared a briefing packet that updated some basic data on employment, wages, and production in California's movie and video production industry; surveyed state Movie Production Incentive (MPI) programs nation-wide; and surveyed the scholarly and official state literatures on the operation and effects of MPIs.

The CRB researchers offered their report with the caveat that time and staffing constraints limited the comprehensiveness of our response. The following is excerpted from that document: "The industry as a whole showed modest growth over the first half of the decade through 2004, a flat trend through 2007, declined in 2008-9, followed by a sharp recovery in 2010. In California outside of Los Angeles County, the industry peaked in 2002, showed slow employment declines through 2007, and then rebounded in 2008-9.

"However, employment growth in Los Angeles County was coupled with relative and absolute *declines* in average industry wages. Los Angeles County movie industry employees earned, on average, 27 percent more per month in 2000 than their non-L.A. counterparts ($4,279 – or $5,349 in 2009 dollars, vs. $3,370 – $4,213 in 2009 dollars). In 2009, the average L.A. County industry employee earned 13 percent *less* per month than his non-L.A. counterpart ($3,754 vs. $4,232). Thus, in real terms, the L.A. average has dropped 30 percent, declining almost every year, whereas the non-L.A. County average grew by a scant 0.45 percent for the decade.

"Further, according to this data, feature film production has declined since the beginning of the 2000s both in absolute terms as well as in relative terms. Television, which accounted for 23 percent at the start of the decade, now takes more than 40 percent of the total production days."

d) *Most recent analysis* Progress Report, Film and Television Tax Credit Program & Competition for California's Entertainment Industry, July 2013*, shows film tax credit program is working.*

The most recent 2013 CFC progress report shows that, including the 2013 year's conditionally allocated tax credits, approximately $600 million in tax credits has been allocated (reserved) to eligible film and TV projects, resulting in estimated total aggregate direct spending by the program projects of $4.75 billion and estimated total qualified wages paid (or to be paid) by the projects of $1.48 billion. According to the CFC, each $100 million in tax credit allocations allows an average of 45 projects to participate, generating on average $792 million in direct production spending, including $250 million in payroll for below-the-line workers. Furthermore, for every $100 million in tax credits, productions will hire an estimated 8,500 cast and crew members and utilize 10,000 vendors. Collectively, they will also employ more than 67,000 daily hires as extras. All in all, the report concludes that the existing film tax credit program has succeeded in attracting the target group: basic cable TV series, mid-sized feature films and made-for-TV movies.

4) *Recent Private Studies Support but Recommend Improvement of the Film Tax Credit Program.* Private entities have also studied the California Film Tax Credit Program, including a UCLA report from the nonprofit think tank the Headway Project, *There's No Place Like Home Bringing Film & Television Production Back to California*, which verifies the positive economic impact of California's Film & Television Tax Credit Program, and makes suggested improvements. Key findings include that there remains a very strong correlation between tax credits and where film and TV producers go to shoot their projects, and while tax credits are not the only factor in deciding where a project should be shot, they appear to be the most powerful. The authors of the study conclude that the program "is creating jobs and is likely providing an immediate economic benefit to the state."

   FilmL.A. also released a recent study which found the impacts of runaway production continue and will worsen without expansion of the Film Tax Credit Program; see *California Ranks Fourth in Total Live Action Film Project, Job and Spending Counts*. "According to data provided to FilmL.A. by the California Film Commission, from 2010-2013 a total of 77 film projects applied for but were not awarded California state film incentive and then went on to complete production. Most of these projects fled the state; more than 66 percent (51 count) of these projects eventually filmed outside of California in places were (sic) incentives were available…The loss for the California economy exceeded $914 million." The report concludes, "California's film and television tax credit program is a good investment, but needs to be extended and restructured to keep the entertainment industry from fleeing the state."

   The Milken Institute also recently released a study which was entitled, "*A Hollywood Exit - What California Must Do to Remain Competitive in Entertainment - and Keep Jobs*." In the study, researchers confirmed that production flight has continued, despite the presence of the California Film Tax Credit Program. They also confirmed that California cannot win, and should not attempt to win, an all-out tax incentive race to enact the highest incentive program. Rather, Milken researchers suggest that California build on its strengths of being the established global leader in film production and preserve its core employment base and infrastructure. In order to do this, they make the following recommendations which track closely with those of the other studies author's:

   a) *Reduce the uncertainty involved in the filmed production credit.*

      i) Increase funding: Raise the total amount of available annual funds in the state's filmed production credit to a level that allows for the elimination of the annual lottery and for the awarding of credits on a rolling basis throughout the year rather than at one arbitrary point tied to the state's fiscal calendar. This level should be high enough to eliminate the need for the lottery but should also have a clear annual ceiling to avoid creating unpredictability for the state's general fund. The newly raised level of funding should also be divided into specific allocations to maximize the impact across the economy and allow for productions not eligible for the current incentives to be covered.

ii) Remove sunset: California legislators should eliminate the sunset date of film production incentives in favor of a periodic review process, similar to that used by New York, to allow the state to make adjustments to the total pool of money (based on economic conditions and competition) that will take effect after two years. By establishing certainty in the incentives as well as a review process that can make rational adjustments, the state would encourage studios and film companies to make larger commitments to the local infrastructure and can avoid the pitfalls of sudden policy reversals seen in states such as Michigan.

b) *Ensure a smooth evaluation process.*

Establish an application fee for productions over $3 million that will be dedicated to providing new employees at the CFC who will handle the evaluation process. The fee can be weighted to the size of the application, with a minimum application fee for smaller productions scaled up somewhat for larger productions. This funding would be dedicated to the hiring of evaluation staff at the CFC and could be diverted to the state general fund.

c) *Restructure the credit to align with television schedules.*

Dedicate a portion of the fund to hour-long dramatic television, including miniseries, and ensure that network television is explicitly included. Establish a rolling allocation in order to align the fund availability with television filming schedules, particularly in the period when networks determine their fall schedules. Strongly consider emphasizing new productions and eliminating the provision for relocating ones, while continuing to offer coverage to existing television shows as long as they are renewed on a timely basis. In addition, a dedicated pool of money separate from television funding should be established for films, as well as movies of the week and other non-recurring productions.

d) *Capture blockbuster productions.*

Movies with budgets over $75 million should become eligible for filmed production incentives. Total credits for larger productions can be capped to ensure that no one film takes a disproportionate share. Big-budget films could remain eligible for the incentives provided they spend a to-be-determined minimum in the state. This will encourage productions to shift a significant portion of high-value filming to California, and by including visual effects as recommended below, the state can more readily meet a threshold for a total percent of the budget spent in the state.

e) *Encourage production across the state.*

Productions outside the union-designated 30 Mile Zone around Los Angeles suffer a clear cost disadvantage. These projects are exposed to higher costs for on-location filming or higher union travel rates. To mitigate this expense, productions that film outside of the zone should be eligible for an additional 5% credit. This has been implemented to clearly positive effect in New York to encourage productions outside the immediate vicinity of New York City. This will stimulate productions in formerly busy locations such as San Francisco and encourage scouting of diverse locales throughout the entire state.

f) *Embrace digital effects and innovation*.

i) Digital visual effects and animation expenditures should be made explicitly eligible for filmed production incentives at the 20% rate. This would offset a cost disadvantage faced by local visual effects companies - particularly those in the San Francisco Bay area that do not qualify for the current incentives - and encourage additional expenditures in the state.

ii) Establish a digital infrastructure investment credit that is part of the state's research and development tax credit rather than the filmed production incentive. As California works to encourage investment in the filmed production infrastructure, it can also provide a research and development credit to production.

5) *Committee comments:*

a) *New expanded provisions of law have yet to be implemented*.

As mentioned in Comment 2 above, the California film tax credit program was recently recast and restructured to include more money for the program overall and an express bump in the 20% credit allowed for qualified expenditures of an additional 5% for musical scoring and editing. The impact of this expansion has yet to be implemented and therefore the committee wonders whether the provisions adopted in AB 1839 should be given the opportunity to be implemented and the effects considered in the forthcoming studies on the efficacy of the film tax credit program.

It should be noted that the 20% of qualified expenditures under AB 1839 includes post-production, which is defined as including to mean 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 (emphasis added).

b) Changes proposed by AB 1199 may not address concerns of musicians.

As noted above, films may qualify for the California Film Tax Credit Program and get a 20% credit against expenses if 75% of the overall expenditures of a film are incurred in California or if 75% of total shooting days occur in state. Under existing law, all qualifying music costs are eligible to receive the 5% additional credit (over and above the 20%) regardless of total music costs.

AB 1199 seeks to change this, to expressly provide that in order to get the 5% additional credit for music services, as defined in the bill, at least 75% or a minimum of one hundred thousand dollars ($100,000) of the total expenditures for the music preparation, music scoring, music track recording, and music editing is paid or incurred in California. Supporters claim that this change is needed, because under the current formulation, a film may qualify for 20% tax credits in California by reaching the 75% of qualifying expenses through filming and other post production activities, yet score their film in New York and collect that state's 35% tax credit for musical scoring.

However, by drafting the language to make all music credits subject to the 75% in-state rule, the bill may inadvertently incentivize producers to move all music work out of state, and it does not contain any language to prohibit film makers from engaging in the double dipping of music and scoring of tax credits from multiple states that the bill seeks to prevent. Under AB 1199, a film may still qualify for the 20% tax credit in California, and take their music scoring and editing to another state, but now the same film makers will not be able to claim the California musicians for their overall tax credit, and thus will not be incentivized to use any California musicians.

6) <u>Double Referral</u>: Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Revenue and Taxation.

7) <u>Prior Legislation</u>:

   a) AB 2700 (Nazarian), of 2014, would have created a new tax credit to be allocated by the California Film Commission, beginning on and after July 1, 2015 through July 1, 2020, in an amount equal to 25% for qualified post production costs, as defined, for qualified motion pictures. Held in Assembly Appropriation Committee.

   b) AB 1839 (Gatto/Bocanegra), Chapter 413, Statutes of 2014, created a tax credit for qualified expenditures for the production of qualified motion pictures in California for taxable years beginning on or after January 1, 2016, and authorizes the California Film Commission to administer the program and allocate the tax credits, subject to a $230 million cap in the first year (2015-16) and $330 million aggregate annual cap for each fiscal year from the 2016-17 FY through and including the 2019-20 FY.

   c) AB 1780 (Donnelly), of 2013-14, would remove the sunset and extend the Film Production Tax Credits, as defined in the bill, indefinitely. AB 1780 was held in this committee.

   d) AB 1435 (Gatto), of 2013-14, would have removed the sunset provisions, thus extending the credit indefinitely, revise the limit on the aggregate amount of credits that may be allocated in a fiscal year, revise how the credit amount is determined for specified qualified motion pictures, provide that credit amount for television series shall be 20% of qualified expenditures, provide that the credit amounts may be increased based on specified criteria, for a television series and for specified productions that perform postproduction in the state. AB 1435 was held in this committee.

   e) AB 1189 (Nazarian), of 2013-14, would have extended for five years the requirement that the CFC annually allocate tax credits to qualifying motion pictures, as specified, through the 2021-22 fiscal year and would also extend and increase the limit on the aggregate amount of credits that may be allocated through the 2021-22 fiscal year. AB 1189 was returned to the Chief Clerk pursuant to Joint Rule 56.

f) AB 286 (Nazarian), of 2013-14, would have expanded the definition of qualified motion pictures under the film tax program by removing the cap on the production budget for feature films and would limit the amount of qualified expenditures to $75 million. This bill additionally would have revised the amount of credits allocated by the CFC per fiscal year for a qualifying television series, as specified, to provide that the minimum production budget threshold is met by allowing aggregation of two fiscal years expenditures. AB 286 was returned to the Chief Clerk pursuant to Joint Rule 56.

g) AB 2026 (Fuentes), Chapter 841, Statutes of 2012, extended the film production tax credit program for two years, until 2017, under terms which are substantially similar to the measure under current consideration.

h) SB 1197 (Ron Calderon), Chapter 840, Statutes of 2012, extended the film production tax credit program for one year, until 2015, under terms which are substantially similar to the measure under current consideration. Chaptered out by AB 2026 (above).

i) AB 1069 (Fuentes), Chapter 731, Statutes of 2011, extended the film production tax credit program for one year, until 2015, under terms which are substantially similar to the measure under current consideration.

j) SB 1197 (Calderon), of 2009-10, deleted the fiscal year limitation on the existing film production tax credit. SB 1197 was held in Senate Revenue & Taxation Committee without a hearing.

k) SB 55 X8 (Calderon), of the Eighth Extraordinary Session of 2009-10 deleted the fiscal year limitation in the existing production tax credit. SB 55 X8 was held in Senate Rules Committee without a hearing.

l) AB15 X3 (Krekorian), Chapter 10, Statutes of the 2009-10 Third Extraordinary Session, established a five year $500M tax credit for qualified expenditures on qualified productions. Limited allocations to $100M/year.

m) AB 855 (Krekorian), of 2009-10, established a film production tax credit. AB 855 was held at the Assembly Desk.

n) AB 1696 (Bass), of 2007-08, established a financial assistance program within the CFC to encourage filming motion pictures and commercials in California and requires the Business, Transportation & Housing Agency to report the economic impact of this program by December 2011. AB 1696 failed passage on the Senate Floor.

o) SB 359 (Runner), of 2007-08, mega tax credit bill which included motion picture production credit. Part of State Budget negotiations. Created a credit for a percentage of the wages paid of amounts paid to purchase or lease tangible personal property in conjunction with the production of a qualified motion picture. The credit is certified and allocated by the CFC. The bill also allows the credit to be claimed against the sales and use tax liability of the company in lieu of the franchise or income tax liability. Finally, the bill allows the credit to be carried over until exhausted. SB 359 was held in the Senate Revenue and Taxation Committee.

p) AB 832 (Bass), of 2007-08, created unfunded grant program administered by the CFC to encourage filming motion pictures and commercials in California. AB 832 was held on the Assembly Appropriations Committee Suspense File.

q) SB 740 (Calderon), of 2007-08, created a film production credit equal to 100% of the direct revenues attributable to the production or 125% of the revenues of the productions in a TV series that relocated to California or an independent film as defined. SB 740 was held in Senate Revenue & Taxation Committee without a hearing.

r) AB 777 (Nunez), of 2005-06, authorized qualified motion picture tax credit in an amount equal to 12% of the qualified production for qualified wages paid with an additional 3% for qualified motion pictures. Created refundable credit. AB 777 was held in Senate Revenue & Taxation Committee without a hearing.

s) SB 58 (Murray), of 2005-06, granted a refundable income or corporation tax credit equal to 15% of the amount of qualified wages paid and qualified property purchased in the production of a qualified motion picture. SB 58 was held in Senate Revenue & Taxation Committee.

t) AB 261 (Koretz), of 2005-06, re-established funding for the Film California First Program. AB 261 was a gut and amend out in the Assembly Rules Committee and became a transportation bill.

u) AB 1830 (Cohn), of 2003-04, authorized tax credits between 2006 and 2012 in an amount equal to 15% of qualified wages paid or incurred for services performed, with respect to the production of each qualified motion picture. AB 1830 was held in this Committee without a hearing.

v) AB 1277 (Cohn), Chapter 662, Statutes of 2003, transferred administrative authority over the CFC to the Business, Transportation & Housing Agency. This bill also created the Film California First Fund, administered by the CFC, which provided for reimbursements to local governments for their costs in issuing permits for local filming of motion pictures. In the last two state budget cycles, no General Fund monies have been appropriated to operate this program.

w) AB 2410 (Frommer), Chapter 1042, Statutes of 2002, required the CFC to report annually the number of motion picture starts that occurred within the State of California. The bill also required EDD to research and maintain data on film industry employment, to determine the economic impact of the film industry, to monitor film industry employment and activity and competing states and countries, to examine the ethnic diversity and representation of minorities in the entertainment industry, to review the effect of federal, state and local laws on the filmed entertainment industry and to report that information to the legislature biannually, provided that funds are appropriated by the legislature in the annual Budget Act for these purposes.

x) AB 2747 (Wesson), of 2001-02, provided a tax incentive to produce motion pictures within California. Would offer tax credits to productions with a total cost of qualified wages between $200,000 and $10 million for 15-25% of wages paid to qualified individuals during the taxable year with respect to qualified motion picture production depending on the area. For each motion picture, the maximum amount of wages per qualified individual that could be taken into account when computing the credit was $25,000. AB 2747 failed passage in the Senate Appropriations Committee.

y) SB 2061 (Schiff), Chapter 700, Statutes of 2000, created the State Theatrical Arts Resources (STAR) partnership which offers surplus State property to filmmakers, where unused State properties, such as health facilities and vacant office structures, are available at no charge or "almost free" to filmmakers.

z) AB 358 (Wildman/Kuehl), of 1999-2000, provided a refundable income and corporation tax credit for 10% of eligible wages paid for motion pictures and TV programs produced in California. AB 358 was held on the Senate Appropriations Committee Suspense File.

aa) AB 484 (Kuehl), Chapter 699, Statutes of 1999, created the Film California First program, housed at the California Film Commission to reimburse certain film costs incurred by a qualified production company when filming on public property, but which is currently unfunded.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of Musicians, Local 47
American Society of Music Arrangers and Composers
Professional Musicians of California
The Recording Academy
The Society of Composers and Lyricists
United Food and Commercial Workers Union, Local 770

Opposition

There is no opposition on file.

Analysis Prepared by: Dana Mitchell / A.,E.,S.,T., & I.M. / (916) 319-3450