Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND INTERNET MEDIA
Ian C. Calderon, Chair

AB 1413 (Committee on Revenue and Taxation) – As Introduced: March 19, 2013

SUBJECT: Tax law: tentative minimum tax credit: exempt organizations

SUMMARY: In relevant part, this bill would allow, for taxable years beginning on or after January 1, 2011, the credit for qualified expenditures for the production of qualified motion pictures to reduce the tentative minimum tax, as specified. Specifically, this bill would add the credit allowed relating to qualified motion pictures, to the list of credits allowed to reduce the tentative minimum tax, for taxable years beginning on or after January 1, 2011.

EXISTING LAW provides that a credit may not reduce the “tax” below the tentative minimum tax [as defined by paragraph (1) of subdivision (a) of Section 23455], except as specified. [Revenue & Taxation Code Section 23036 (d)(1)]

FISCAL EFFECT: Unknown

COMMENTS:

1) Film Production Tax Credit Clean-up: Rational and Support:

   According to information provided by the Committee on Revenue and Taxation, "A technical issue has arisen concerning the utilization of the California Production Tax Credit (“PTC”) that requires a legislative correction as soon as possible. The problem prevents full monetization of the credit as envisioned by the sponsors and authors of the bills. Specifically, it appears that technical language was omitted which would allow the PTC to reduce 'regular' income tax beyond the 'tentative minimum tax (TMT)(see below). This language is routinely included in over 97% of the tax credits claimed by California corporations.

   "Without the simple technical fix, many taxpayers will not be able to utilize the credit they have been awarded, and were counting on to make their production in California. Failure to repair the problem would impair California’s efforts to stabilize and reverse runaway production to other state and countries.

   "Because the PTC was inadvertently not added to the list of tax credits that can be used to reduce regular tax beyond TMT, the PTC can only be used by corporate taxpayers to reduce their regular tax liability to their 'tentative minimum tax'. In many cases this means the credit is limited to about 25% of the amount awarded (the difference between the regular tax rate of 8.84% and the AMT rate of 6.65%). Because the use of the PTC is similarly limited in future years, even carried over credits would be unlikely to be used in future years.

   "From the earliest discussions of the PTC, the motion picture and television community has let it be known that the key to a credit that would allow California to effectively compete against other states and stabilize runaway production was the ability to fully monetize the credit. To that end, the credit program was designed to be marketable (for independents), fully transferable amongst related entities and to be taken in the form of a sales tax refund. The intent of the sponsors was that the credit be fully utilized.

"Moreover, since its inception the PTC has been conceived as a 'capped and allocated' credit program; in other words, the state's exposure was capped at $100 million per year, no matter what form the credit took to be monetized. That feature, and the belief that full utilization was the key to effectiveness, paved the way for approval of the unique structure of the PTC.

"The 2010 FTB Annual Report (the last year available) shows that 97% of the corporate tax credits utilized by taxpayers were listed in Revenue and Taxation Code Section 23036(d)(1). There is good reason for this. As at play here, without consideration of the TMT limitation, any tax credit passed by the legislature would be limited in use to as little as 25% as the amount awarded."

According to a coalition of union supporters, "This bill corrects an oversight in the original legislation. Specifically, this bill permits the credit to be used by film production companies to reduce their tax liability below the otherwise applicable minimum tax. This treatment is common for similar tax programs; this bill adds the film incentive tax credit to a list of approximately 20 similar programs."

The Motion Picture Association of America adds in further support, "As a practical matter, it is critically important that production companies be able to fully monetize the production tax credit. Without the capacity to fully monetize it, production companies will discount the value of the production tax credit and choose other more competitive jurisdictions in which to locate their productions and the jobs and economic activity they generate.

"In addition, this bill will not have an impact on the General Fund, since the production tax credit is capped and allocated at the amount of $100 million annually."

2) Background: Film Production Tax Credit:

In February 2009, the California Film & Television Tax Credit Program was enacted as part of a targeted economic stimulus package to increase production spending, jobs and tax revenues in California. The California Film and Television Tax Credit Program was designed to target those productions most at risk of leaving the state while recognizing annual funding limits due to state budget constraints. According to its supporters, the program has succeeded in attracting this target group: basic cable TV series, mid-sized feature films and made for TV movies. Even with this narrow target of potential applicants, which excludes the big-budget feature films and broadcast network TV series, demand exceeds supply.

The credit first became available in July of 2009. Under existing statute, a qualified taxpayer is allowed a credit against income and/or sales and use taxes based on qualified expenditures. The credit amounts to either 20% or 25% of qualified expenditures, with a maximum of $500 million dollars allocated total over the life of the program. The credit cannot be used until January 1, 2011 and is not refundable. The credit may be carried over for five years and may be transferred to affiliates. Credits issued to independent films ($1 million- $10 million qualified expenditure budget that is produced by a company that is not publically traded and in which a publically traded company does not own more than 25% of the shares) may be transferred or sold to an unrelated party.

To be eligible for the credit, a project must meet the 75% test (production days or total production budget in California) and must be a qualifying motion picture.

For the purposes of a 20% tax credit, a qualifying motion picture is defined as:

a) A Feature Film ($1 million minimum- $75 million maximum production budget),

b) A Movie of the Week or Miniseries ($500,000 minimum production budget); or

c) A new television series licensed for original distribution on basic cable ($1 million minimum budget, one-half hour shows and other exclusions apply)

For the purposes of a 25% tax credit, a qualifying motion picture is defined as:

a) A television series, without regard to episode length, that filmed all of its prior seasons outside of California; or

b) An independent film.

In the 2009-2010 fiscal year, which was the initial year of the program, $200 million was allocated. In each subsequent year until July 1, 2017, CFC will allocate $100 million. A minimum $10 million of the annual finding is made available for independent films.

3) Annual Committee on Revenue and Taxation bill for Non-controversial Issues.

This bill is the annual Revenue and Taxation Committee Bill. This bill has two major provisions for clean-up of the codes, one of which is within the jurisdiction of this committee, and one which is not.

The Business Law Section of the California State Bar is sponsoring a plan for simplification of the process for applying for a California tax exemption under Revenue and Taxation Code Section 23701, for non-profit organizations organized under Internal Revenue Code 501 (c)(4), (5), (6), or (7), as is currently allowed in Revenue and Taxation Code Section 23701(d) for those organized under 501(c)(3) of the Internal Revenue Code.

Should this bill be adopted, this proposal will be vetted in the Committee on Revenue and Taxation, which has jurisdiction over such matters.

4) Double-referral: Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Revenue and Taxation.

5) Prior and Related Legislation.

a) AB 3 (Bocanegra) of 2013, is a spot bill which would state the intent of the Legislature to enact legislation to expand or continue the California Film and Television Tax Credit Program. Status: Assembly Rules pending referral.

b) AB 286 (Nazarian) of 2013, would expand the definition of qualified motion pictures by removing the cap on the production budget for feature films and limit the amount of qualified expenditures, for purposes of the qualified motion pictures that are features, to $75,000,000. This bill would additionally revise the amount of credits allocated per fiscal year to provide that a minimum threshold is met for allocations to specified qualified motion pictures. Status: Pending before the Assembly Committee on Arts, Entertainment, Sports, Tourism & Internet Media.

c) AB 1189 (Nazarian) of 2013, would extend the requirement to allocate the tax credits 5 additional years, until July 1, 2022. This bill would also extend and increase the limit on the aggregate amount of credits that may be allocated through the 2021–22 fiscal year. Status: Pending before the Assembly Committee on Arts, Entertainment, Sports, Tourism & Internet Media.

d) AB 2026 (Fuentes), Chapter 841, Statutes of 2012, extended the operation of the California Motion Picture Tax Credit (Film Tax Credit) for two years, thereby authorizing the allocation of an additional $100 million annually in tax credits to qualified productions from July 1, 2015, until July 1, 2017.

e) AB 1069 (Fuentes), Chapter 731, Statues of 2011, extended the California Film Commission's requirement to allocate the tax credits until July 1, 2015. This bill would also extend the limit on the aggregate amount of credits that may be allocated through the 2014-15 fiscal year.

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

g) SBX8 55 (Calderon), of the 2009-10 Legislative Session, deleted the fiscal year limitation in the existing production tax credit. SBX8 55 was held in Senate Rules Committee without a hearing.

h) ABX3 15 (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.

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

j) AB 1696 (Bass), of the 2007-08 Legislative Session, established a financial assistance program within the California Film Commission (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.

k) SB 359 (Runner), of the 2007-08 Legislative Session, 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.

l) AB 832 (Bass), of the 2007-08 Legislative Session, 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.

m) SB 740 (Calderon), of the 2007-08 Legislative Session, 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.

n) AB 777 (Nunez), of the 2005-06 Legislative Session, 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.

o) SB 58 (Murray), of the 2005-06 Legislative Session, 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.

p) AB 261 (Koretz), of the 2005-06 Legislative Session, re-established funding for the Film California First Program. AB 261 was gutted and amended in the Assembly Rules Committee and became a transportation bill.

q) AB 1830 (Cohn), of the 2003-04 Legislative Session, 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 the Assembly Committee on Arts, Entertainment, Sports, Tourism & Internet Media Committee without a hearing.

r) 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.

s) 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.

t) AB 2747 (Wesson), of the 2001-02 Legislative Session, 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.

u) 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.

v) AB 358 (Wildman & Kuehl), of the 1999-2000 Legislative Session, 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.

w) 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

California Teamsters Public Affairs Council
Directors Guild of America
International Alliance of Theatrical Stage Employees
International Brotherhood of Teamsters, Local 399
Laborers' International Union of North America, Local 724
Motion Picture Association of America
Professional Musicians Local 47
Recording Musicians' Association
SAG-AFTRA

Opposition

None on file

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