

Date of Hearing: May 6, 2014

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Ian C. Calderon, Chair

AB 1780 (Donnelly) – As Amended: April 1, 2014

SUBJECT: Income taxes: credit: motion pictures.

SUMMARY: Creates a new program which would require the Franchise Tax Board (FTB) to annually allocate tax credits to qualified motion pictures, as specified, starting on January 1, 2016 and continuing through the 2021-22 fiscal year, allowing a credit equal to 20% of the qualified expenditures attributable to the production in California of one or more qualified motion pictures, as defined, with an aggregate qualified expenditure amount of at least \$500,000. This bill provides that the credit amount may be increased by an additional 10% if each qualified motion picture, for which qualified expenditures are aggregated for the claim of credit, includes a California promotion, as specified. This bill further provides that the credit amount may be increased by up to an additional 5% if each qualified motion picture, for which qualified expenditures are aggregated for the claim of credit, incurred or paid the qualified expenditures relating to original photography outside of a major city zone, as defined. Specifically, this bill:

- 1) Provides a 20% tax credit for the qualified expenditures attributable to the production of one or more qualified motion pictures in California with an aggregate qualified expenditure amount that equals or exceeds \$500,000.
- 2) Declares that the credit shall not be allowed for any qualified expenditures for the production of a motion picture in California, if a credit has been claimed, as specified.
- 3) Allows a 10% additional credit if each qualified motion picture includes a California promotion, as follows:
 - a) For a feature, television series, or video game, the California promotion shall consist of a five-second long logo that promotes California in the end credits before the below-the-line crew crawl for the life of the project and a link to www.visitcalifornia.com presented by the California Travel and Tourism Commission on the Internet Web site of the feature, television series, or video game.
 - b) For a music video or commercial, the California promotion shall consist of a link to www.visitcalifornia.com, presented by the California Travel and Tourism Commission, on the Internet Web site of the music video or commercial.
- 4) The applicable percentage shall also increase by either of the following:
 - a) Five percent if each qualified motion picture, for which qualified expenditures are aggregated for the particular claim for the credit, incurred or paid the qualified expenditures relating to original photography outside of a major city zone.

- b) Two and one-half percent if at least one of the qualified motion pictures, for which qualified expenditures are aggregated for the particular claim for the credit, incurred or paid the qualified expenditures relating to original photography within a major city zone.
- 5) Contains the following definitions:
- a) "Major city zone" means an area within 15 miles of a city with a population over 300,000.
 - b) "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,
 - ii) A television series,
 - iii) A music video,
 - iv) A commercial, or;
 - v) A video game.
- 6) Declares that a "Qualified motion picture" shall not include a motion picture produced for private non-commercial 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.
- 7) Allows a qualified taxpayer to sell any credit allowed under this section to an unrelated party, as specified.
- 8) Requires the qualified taxpayer to report to the FTB prior to the sale of the credit, in the form and manner specified by the FTB, 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.
- 9) Provides that 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.
- 10) Clarifies that a party that has acquired tax credits under this section shall be subject to the requirements of this section.
- 11) Restricts transfer of credit to those credits claimed on a timely filed original return of the qualified taxpayer.

- 12) Provides that the FTB may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section.
- 13) Makes various technical changes to the law.

EXISTING LAW:

- 1) Establishes a motion picture production tax credit, equal to either:
 - a) 20% of the qualified expenditures attributable to the production of a qualified motion picture, or;
 - b) 25% of the qualified expenditures attributable to the production of a television series that relocated to California, or an independent film.
- 2) Defines "independent film" as a film with a budget between \$1 million and \$10 million produced by a non-publicly traded company which is not more than 25% owned by publicly traded companies.
- 3) Requires the California Film Commission (CFC) to administer a motion picture production tax credit allocation and certification program, as follows:
 - a) Taxpayers will first apply to the CFC for a credit allocation, based on a projected project budget.
 - b) Upon receiving an allocation, the project must be completed within 30 months.
 - c) The taxpayer must then provide the CFC with verification of completion and documentation of actual qualifying expenditures.
 - d) Based on that information, the CFC will issue the taxpayer a credit certificate up to the amount of the original allocation.
- 4) Defines "Qualified motion pictures" as one produced for general distribution to the public, and include feature films with budgets between \$1 million and \$75 million; Movies of the Week with a minimum budget of \$500,000, and new television series with a minimum production budget of \$1 million.
- 5) Requires that in order to be eligible for the credit, 75% of the production days must take place within California or 75% 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.
- 6) Declares that the credit is not available for commercial advertising, music videos, motion pictures for non-commercial use, news and public events programs, talk shows, game shows, reality programming, documentaries, and pornographic films
- 7) Requires that the CFC allocate \$100 million of credit authorizations each year during the period 2009-10 through 2015 on a first-come, first-served basis, with 25% of the allocation

reserved for independent films.

- 8) Declares that any unallocated amounts and any allocation amounts in excess of certified credits may be carried over and reallocated by the CFC.
- 9) Provides that qualifying taxpayers could claim the credit on their tax return filed with the FTB under either the Personal Income Tax or Corporation Tax.
- 10) Provides further that taxpayers may use certified credits in a number of ways, they may;
 - a) Claim it directly;
 - b) Assign it to another member of their unitary group;
 - c) Sell the credits to other taxpayers, or;
 - d) Elect to apply the credit against their sales and use tax liability.
- 11) Specifies that the CFC will allocate \$100 million of credit authorizations each year during the period starting July 2015 until July 2017 on a first come first served basis.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author Statement of Need for Legislation: According to the author, "The current film tax credit is set to expire and with it, give us the opportunity to either extend it with the same failed policies or renew it with new idea. AB 1780 brings a positive transformation to credit. It allows independent and small film companies a chance to qualify and also grants up to a 35% tax credit which is significantly higher than the current incentive and the credit in other states that are luring away our hallmark industry. AB 1780 is important to the film industry, but far more important to our state. Hollywood is the home to the entertainment industry, but over the years more and more productions are leaving California and being lured to other parts of the United States that offer a better tax credit incentive program. With AB 1780, it is about time that we bring Hollywood home."
- 2) Arguments in Opposition: The California School Employees Association opposes AB 1780, stating, "While we appreciate the important role of the film industry in California's economy, we believe that it contains the same problem as many tax credits: it would reward activity which is otherwise taking place, using state dollars that have no positive impact. The increases and decreases in trade activity are generally a function of the economy and not tax credits."

The California Teachers Association (CTA) also opposes AB 1780, stating, "CTA opposes any reduction in revenue to the State's General Fund which would reduce Proposition 98 funding. In the last several years, K-12 education alone has taken over \$20 billion in cuts. This does not include cuts that have hit the California Community Colleges, CSU and the UC systems. Likewise, we must not forget the cuts that have also hit our social and health services, safety programs, and many other essential services.

"CTA has been on record opposing tax credits for its own members (Teacher Tax Credits). Tax credits for special interest groups, corporations, and others have, over the last decade, depleted our General Fund of billions of dollars. California cannot afford to continue giving away tax credits that deplete the General Fund, because this hurts funding for our schools."

- 3) Existing 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 [SBX3 15 (Calderon), Chapter 17, Statutes of 2009-10 Third Extraordinary Session, and ABX3 15, (Krekorian), Chapter 10, Statutes of 2009-10 Third Extraordinary Session].

The 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:

a) 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).

b) 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 file tax return with the Franchise Tax Board under the personal income tax or the corporate tax law.

- 4) Major proposed changes to Film Tax Credit Program contained in AB 1780: The major changes to the existing law proposed under this bill would:
- a) Expand the scope of the California Film Production Tax Credit Program beyond films and specified television programs to include commercials, music videos and video games.
 - b) Allow aggregation of numerous productions expenses to reach a \$500,000 threshold, whereas existing law has a single film requirement of a minimum \$1 million dollars.
 - c) Adds a new "California promotion feature", which would give an extra 10 percent credit against qualified expenses, as follows:
 - i) For a feature, television series, or video game, the California promotion shall consist of a five-second long logo that promotes California in the end credits before the below-the-line crew crawl for the life of the project and a link to www.visitcalifornia.com presented by the California Travel and Tourism Commission on the Internet Web site of the feature, television series, or video game.
 - ii) For a music video or commercial, the California promotion shall consist of a link to www.visitcalifornia.com, presented by the California Travel and Tourism Commission, on the Internet Web site of the music video or commercial.

- d) Add a new credit feature for filming outside of a major city zone as follows:
- i) Five percent if each qualified motion picture, for which qualified expenditures are aggregated for the particular claim for the credit, incurred or paid the qualified expenditures relating to original photography outside of a major city zone.
 - ii) Two and one-half percent if at least one of the qualified motion pictures, for which qualified expenditures are aggregated for the particular claim for the credit, incurred or paid the qualified expenditures relating to original photography within a major city zone.

The bill defines "Major city zone" to mean an area within 15 miles of a city with a population over 300,000.

- e) Remove the sunset on the existing program and would allow the program to continue indefinitely.
 - f) Remove the cap on expenditures, currently set at \$100,000 annually to allow an unlimited number of tax credits to issue.
 - g) Move the administration of the Film Production Tax Program from the California Film Commission to the Franchise Tax Board.
- 5) Legislative and Oversight Hearings of Arts, Entertainment, Sports, Tourism & Internet Media (AEST&IM) and Revenue & Taxation Committees: The issue of film production tax credits has come before this committee many times, in many years, in many versions. (Please see, Comment 9 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 Current Film Tax Credit Program: To date, \$600 million in tax credits have 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. (This paragraph was updated to include current figures).

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."

- 6) Legislative Analyst Office (LAO) study of the Film Tax Credit Program due in 2016: In addition to the bill and Informational Hearing noted above and below, AB 2026 (Fuentes) Chapter 841, Statutes of 2011, provided that the LAO must provide to the Assembly

Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, and the public, on or before January 1, 2016, a report evaluating the economic effects and administration of the tax credits.

AB 2026 authorized the LAO, in researching the reports, to:

- a) Request and receive all information provided to the CFC pursuant to state law.
- b) Request and receive all information provided to the FTB relating to the sale or assignment of credits, and;
- c) Request and receive all information provided to the board pursuant to state law.

AB 2026 also required CFC, the board, the FTB, the Employment Development Department, and all other relevant state agencies to provide additional information, as specified by the LAO, as needed to research the reports.

The bill authorized the LAO to publish statistics in conjunction with the reports required, derived from information provided to the LAO, 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. (Note: This report was released by the LAO after this analysis was completed.)

- 7) 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."

FilmLA 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 FilmLA by the CFC, 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 where 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 percent 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.

8) Committee Comments:

- a) This Committee Has Adopted Comprehensive Legislation on This Subject in AB 1839 (Gatto): Earlier this session, this committee heard and approved AB 1839 (Gatto), a measure which would extend the sunset date for the existing Film Production Tax Credit Program, a portion of which are tax credits for post-production of qualified films which are substantially identical to the instant bill, on March 25, 2014, (which was before AB 1780 was amended to contain its current provisions on April 1, 2014).
- b) This Legislation Would Take the Successful Film Tax Credit Program From the Purview of the CFC and Place it Instead With the FTB: Currently the Film Production Tax Credit Program is housed within the CFC. That agency describes itself on its website as, a "one-stop resource for film and TV production across the Golden State. Offering services which include: Film & TV Tax Credits; Online Permits for Filming on State Property (beaches, parks, roadways, universities and government buildings); An Online Location Database via CinemaScout; Personalized Location Assistance/Problem Solving; Access

to California's Statewide Network of More Than 60 Regional Film Offices (for local support, location information and permits)."

Existing statutory law contains policy directives to the CFC which have served to guide creation, adoption and implementation of the Film Production Tax Credit Program from its inception in 2009. By all accounts, the CFC is doing a good job in administration of the existing program, and has been lauded for its adept handling of the program.

AB 1780 would move the program away from the CFC, providing instead that, "The FTB may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section." The measure is silent on implementation guidance such as is contained in existing law, AB 1839 (Gatto) and AB 2700 (Nazarian), which each contain lengthy sections of policy and procedural guidance.

When the committee spoke with representatives of the FTB about their mission, staffing and whether there are current tax credit programs they administer, representatives stated that the FTB does not currently administer programs such as proposed in AB 1780. A check of their website finds that, "Our mission is to provide the services and information to help taxpayers file accurate and timely tax returns and pay the proper amount owed." Toward that goal, according to their representative, they conduct audits of credit usage for statutory tax credits, including the Film Production Tax Credit. The Agency analysis is currently pending and issues being considered include whether the program administration duties proposed in AB 1780 are within the scope of FTB authority and how many new staff FTB would need to hire in order to implement and enforce the new Film Tax Credit Program were AB 1780 to become law.

- c) This Legislation Has No Funding Limitation Language, and Therefore Could Theoretically Extend an Indefinite Amount of Tax Credits: Of the 42 states which offer film production tax incentives, 12 have no annual cap on the amount of credits which the program may fund. By contrast the majority of states place some limitation upon the amount of funding made available to their tax incentive programs, including New York, Florida and New Mexico. California has consistently had a cap on its Film Production Tax Credit Program expenditure, which has been maintained at \$100 million annually. Currently California ranks 5th nationwide in tax incentive generosity, behind New York, Louisiana, Georgia and Florida.
- e) Existing Law Contains Extensive Sunshine Reporting Requirements For CFA Which Are Not Included in AB 1780: In order to provide the public with open access to the operation of the film tax credit allocation and administration process, current law requires the CFC to make the following public reports:

The CFC shall annually provide the LAO, the FTB, and the State Board of Equalization with a list of qualified taxpayers and the tax credit amounts allocated to each qualified taxpayer by the CFC. 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.

Notwithstanding Revenue and Taxation Code Section 23685, paragraph (5) of subdivision (g), the CFC 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 CFC, 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.

AB 1780 is silent on the matter of providing the public and legislature information regarding the operation and allocation of film tax credits. This situation could lead to concerns regarding the fairness of the tax credit allocation program and make legislative oversight difficult.

- 9) Double Referral: Should this bill pass out of this committee, it will be re-referred to the Assembly Committee on Revenue and Taxation.
- 10) Prior and Related Legislation:
 - a) AB 1839 (Gatto/Bocanegra), of the 2013-14 Legislative Session, extends for five years the requirement that the California Film Commission (CFC) annually allocates tax credits to qualified motion pictures, as specified, continuing through the 2021-22 fiscal year and would recast these credits as Personal Income Tax Credits beginning on and after January 2016. Removes the \$75 million dollar cap on the budget for a qualified motion picture and instead places a cap on the amount of credits a qualified motion picture is eligible to receive, as specified. Expands the portion of the program which covers television series beyond the current cable-TV only eligibility, to include all television series, as defined, regardless of broadcast media. Provides a new incentive for productions located outside of the Los Angeles zone, as specified. AB 1839 is currently awaiting hearing in the Assembly Revenue and Taxation Committee.
 - b) AB 2700 (Nazarian) of the 2013-14 Legislative Session, would provide post-production tax credits similar to those contained in existing law from July 1, 2015, until July 1, 2020. AB 2700 is Currently pending before this committee. (See AB 2700 analysis for more detail).
 - c) AB 1435 (Gatto), of the 2013-14 Legislative Session, 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 is currently in the possession of this committee.

- d) AB 286 (Nazarian), of the 2013-14 Legislative Session, 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.
- e) AB 1189 (Nazarian), of the 2013-14 Legislative Session, 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 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.
- g) 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).
- h) 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.
- i) 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.
- j) SBX8 55 (Calderon), of the 2009-10 Legislative Session, deleted the fiscal year limitation in the existing production tax credit. SB X8 55 was held in Senate Rules Committee without a hearing.
- k) 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.
- l) AB 855 (Krekorian), of the 2009-10 Legislative Session, established a film production tax credit. AB 855 was held at the Assembly Desk.
- m) AB 1696 (Bass), of the 2007-08 Legislative Session, 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.

- n) 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.
- o) 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.
- p) 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.
- q) 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.
- r) 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.
- s) AB 261 (Koretz), of the 2005-06 Legislative Session, 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.
- t) 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 this Committee without a hearing.
- u) 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.

- v) 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.

- w) 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.

- x) 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.

- y) 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.

- z) 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

Bring Hollywood Home Foundation (Sponsor)

Opposition

California School Employees Association
California Teachers Association