Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND INTERNET MEDIA
Kansen Chu, Chair
AB 2936 (Nazarian) – As Introduced February 16, 2018

SUBJECT: Income taxes: credits: motion pictures.

SUMMARY: This bill extends the existing California Film and Television Tax Credit Program (CFTTCP), and authorization of the California Film Commission (CFC) to administer the program and allocate the tax credits, by five years. Specifically, **this bill**:

1) Extends the time the California Film Commission has to allocate tax credits to applicants by five years, from July 1, 2020 to July 1, 2025.

2) Extends the time that the aggregate amount of credits allocated for each fiscal year pursuant to the CFTTCP, of three hundred thirty million dollars ($330,000,000), by five years, to extend through and including the 2024–25 fiscal year.

3) Makes a technical change to correct the spelling of Carrillo State Beach.

EXISTING LAW:

1) Establishes a film and television tax credit program (CFTTCP), extending through Fiscal Years (FYs) 2019-20, as follows.

2) Provides the aggregate amount of new credits issued under the film tax credit program to be allocated in each FY is $230 million for the 2015-16 FY and $330 million per FY thereafter, (note that when the $230 million is added to the $100 million provided in prior law for the 2015-16 FY, the available funds for all future years is $330 million.

3) Provides that credits shall be issued in two or more allocation cycles in amounts and in the order generated through a computation and ranking of applicants based on a ratio formula of the number of jobs created to the tax credit amount, as defined.

4) Requires the CFC to allocate the credit amounts subject to the following categories in order to insure like productions compete against each other under the jobs ratio formula:

   a) Independent films shall be allocated 5%.

   b) Features shall be allocated 35%.

   c) A relocating television series shall be allocated 20%.

   d) A new television series, pilots for a new television series, movies of the week, miniseries, and recurring television series shall be allocated 40%.

5) 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.

6) Provides that a relocating series which has a minimum production budget of at least $1 million per episode is eligible for film tax credits.

7) Declares ongoing series to be eligible for the film tax credits.

8) 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.

9) 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 as follows:

   a) If the CFC finds a reduction in actual qualified expenditures of no more than 10% they shall reduce the amount of credit allowed by an equal percentage, with limited exception for reasonable cause, as provided.

   b) In addition, if the CFC finds a reduction in actual qualified expenditures by more than 20%, the CFC shall not accept an application from that qualified taxpayer for one year, with exceptions for reasonable cause, as provided.

   c) Independent films would be treated differently, with any reduction of 30% or more in actual qualified expenditures reducing the amount of credit allowed by an equal percentage, plus subjecting them to a penalty of 10% of the difference in requested tax credit allowance and actual expenditures, with exceptions for reasonable cause, as provided.

10) Requires that 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.

FISCAL EFFECT: Unknown. This measure is keyed fiscal by the Legislative Counsel.

COMMENTS:

1) *Author and supporters statement of need for legislation*: According to the author, "The California Film Commission (CFC) administers the state's two film and television incentive programs: the expanded Film & Television Tax Credit Program 2.0 (Program 2.0) enacted in 2015, as well as the expired, first-generation film and television tax credit program (Program 1.0) which launched in 2009 and ended in June 2017. Both programs were created as targeted economic stimulus initiatives designed to increase film and television production, jobs, and tax revenues in California. California's Film and Tax Credit was revamped in 2015 to offer more of an incentive to smaller productions to stay in California as funding expanded to $330 million, and tripled the amount of tax incentives available to qualified productions."

NBCUniversal adds in their support, "Since the Film & Television tax Credit Program 2.0 (Program 2.0) was enacted in 2015, the program has had demonstrable success and a positive impact on the state and local economy. Indeed, the California Film Commission reports that in just two years under Program 2.0, California has attracted or retained 100 film and television projects generating an estimated $3.7 billion in direct spending to the state – including the $1.4 billion in below-the-line wages. The state's motion picture employment increased from 162,300 jobs in 2015 to 182,400 in 2016 – that is a 12.38% increase in just one year. Program 2.0 is clearly having its intended effect and generating economic activity across the state."

The author concludes by saying, "It is imperative that California, with its long and rich history of being a leader in entertainment, continue competitive policies that offer meaningful financial incentives to retain and lure post-production, jobs, and spending. AB 2936 simply allows the California Film Commission to continue the successful economic stimulus initiatives provided through the Film & Television Tax Credit Program by extending the current program through 2025."

2) *Opposition*: The California Teachers Association (CTA) opposes AB 2936, stating, "CTA opposes any reduction in revenue to the State's General Fund which would reduce Proposition 98 funding. During the most recent recession, K-12 education received over $20 billion in cuts, a figure that does not include the cuts that the California Community Colleges, CSU and the UC systems faced. Why would the Legislature consider measures that take away revenues from the General Fund as we are warned continually that the next recession is just around the corner?

   "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) Background:

   a) *Original film production 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].

      Under that program the CFC allocated $100 million in credits for qualified production expenditures annually - $10 million of which was 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.

b) *California Film & Television Tax Credit Program 2.0*: In 2014 the Film Tax Credit Program was renewed and recast under AB 1839 (Gatto-Bocanegra), referred to as CFTTP 2.0, with an increased allocation amount and revamped structure.

That bill created a tax credit for qualified expenditures on and after January 1, 2016, subject to a $230 million cap in the first year (2015-16) and $330 million aggregate annual cap for each FY from the 2016-17 FY through and including the 2019-20 FY. In addition, it replaced the once a year lottery allocation process for distribution of credits to instead provide that credits would be issued in two or more allocation cycles in amounts and in the order generated through a computation and ranking of applicants based on a ratio formula of the number of jobs created to the tax credit amount, as defined. In order to prevent gaming of the lottery system, CFTTCP 2.0 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 grant reductions and penalties for discrepancies. Finally, CFTTCP 2.0 required that or before July 1, 2019, the Legislative Analyst's Office (LAO) shall provide a report evaluating the economic effects and administration of the tax credits granted under the program.

4) *Legislative and Oversight Hearings of Arts, Entertainment, Sports, Tourism & Internet Media (AEST&IM) and Revenue & Taxation Committees*:

a) *The issue of film production tax credits has come before this committee many times, in many years, in many versions. (Please see Comment 4 below). The Committee has also studied this issue extensively, both alone and with the Committee on Revenue and Taxation*. For instance, 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; the destructive and widespread impacts of run-away production on the entertainment industry and California economy; the overall effectiveness of the CFTTP on retaining film and television production jobs in California, and later; whether the program was structured in the best way to capture and retain big budget as well as small Independent productions, along with incentives for returning television productions and musical scoring, with suggestions for improvement. (For a more in depth summary of earlier Oversight Hearings on this topic, please see the Arts, Entertainment, Sports, Tourism & Internet Media Committee Analysis of AB 1839 [Gatto-Bocanegra], March 25, 2013).

b) *CFTTCP 2.0. More recently, this Committee, along with the Committee on Revenue and Taxation, held an Informational Hearing on February 24, 2017, entitled, "The Secondary Impact of California's Film and Television Tax Credit Program: Diversity?"* A large component of this hearing was discussion of the expanded employment opportunities provided by the retention and expansion of the film and television industries brought about through the CFTTCP 2.0, and who benefitted by these new opportunities. Within that discussion, the committees focused on the CFTTCP Career Readiness program.

The CFC's October 2016 Progress Report included a review of the Career Readiness program; "A substantial addition to Program 2.0 is the 'Career Readiness' requirement. All accepted applicants must participate in career-based learning and training programs that have been approved by the CFC. The structure for participation was developed based on extensive collaboration with the California Department of Education and the California Community Colleges Chancellor's Office. The CFC is also engaged in outreach to non-profits and other organizations involved in linked-learning opportunities for high school and post-high school students, such as The Los Angeles Fund for Public Education (LAFund) and Veterans in Film & Television (VFT).

As explained in the White Paper presented as part of the background materials for the Joint Informational Hearing, "The Secondary Impact of California's Film and Television Tax Credit Program: Diversity?" there are many ways applicants can meet this requirement:

- Paid Internship – provide high school or community college students either: i) three paid internship positions with a minimum of 75 hours each, or ii) a combination of internships with a minimum of 75 hours per student and a total of 225 hours overall. Internship experience should include hands-on work assignments with industry professionals.

- Classroom Workshop – provide high school or community college students at least eight hours of classroom workshops or demonstrations on aspects of the film industry, including set operations, post-production, and technical crafts.

- Studio Employment and Professional Skills Tour – provide high school or community college students at least eight hours of studio employment and professional skills tours, which may include set visits or tours of wardrobe, art, and editorial departments.

- Faculty Externship – provide at least eight hours of continuing education for faculty to observe set operations, post-production, and other specialized departments.

- Financial Contribution – provide a financial contribution, based on 0.25 % of the applicant's estimated tax credit allocation with a minimum of $5,000 and maximum of $12,000, to a local education agency or higher education institution specializing in arts, media, and entertainment career-oriented programs.

"According to the CFC's October 2016 Progress Report, many applicants have satisfied the Career Readiness requirement by providing paid internships or making a financial contribution to high school or community college funds. High school funds have provided scholarships to the 2016 California State Summer School for the Arts, a rigorous month-long training program for high school students in visual and performing arts, creative writing, animation, and film in preparation for a career in the arts and entertainment industries.

Community college funds have been used to provide paid internships for students studying arts, media, or entertainment."

An as-yet-unanswered question raised within this hearing is how the state can best use its leverage as the provider of tax incentives to ensure that all communities benefit from the jobs and economic opportunity generated by tax credit programs such as the CFTTP.

5) *Prior and related legislation:*

a) AB 1734 (Calderon), would extend the sunset for the existing film tax credit program through and including the 2024-25 fiscal year. Status: currently pending before the committee.

b) AB 1664 (Bocanegra and Calderon), would require the California Film Commission (CFC) to develop a workforce development program, as described, consistent with the Career Readiness requirement in the (CFTTCP). Status: currently pending before the Senate Business, Professions & Economic Development Committee.

c) SB 951 (Mitchell), is substantially similar to AB 1734 (Calderon) currently under consideration. Status: currently pending before the Senate Government and Finance Committee.

d) AB 1839 (Gatto & Bocanegra), Chapter 413, Statutes of 2014, Income taxes: qualified motion pictures, 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 authorized the California Film Commission (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 dollar aggregate annual cap for each fiscal year from the 2016-17 fiscal year through and including the 2019-20 fiscal year.

e) 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.

f) 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.

g) 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, and make various additional changes to the CFTTC program. AB 1435 was held by this committee.

h) 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.

i) 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).

j) 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.

k) 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.

l) 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.

m) 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.

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

o) 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.

p) 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.

q) 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.

r) 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.

s) 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.

t) 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.

u) 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.

v) 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.

w) 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.

x) 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.

y) 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.

z) 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.

aa) 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.

bb) 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.

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

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
California Travel Association
Motion Picture Association of America, Inc.
NBCUniversal
The Walt Disney Company
Warner Brothers Entertainment Inc.

Opposition

California Teachers Association

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