

Date of Hearing: June 21, 2021

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

Sharon Quirk-Silva, Chair

SB 611 (Allen) – As Amended May 11, 2021

SENATE VOTE: 39-0

SUBJECT: Income taxes: credits: motion pictures.

SUMMARY: This bill would allow additional credit amounts under the California’s Film and Motion Picture Production tax credit program for productions that hire specified individuals, and require applicants to create and include a workforce development plan, as specified. Specifically, **this bill:**

- 1) Allows an additional credit for taxpayers awarded the current Film and TV credit, for hiring qualified individuals, equal to 20 % of the qualified wages paid to those individuals. To qualify, these individuals must be graduates of the Career Pathways Training program, or an equivalent program, approved by the California Film Commission (CFC).
- 2) Requires the qualified motion picture to file a workforce development plan with and approved by the California Film Commission, and the qualified motion picture must pay qualified wages to a graduate of the Career Pathways Training program or equivalent program approved by the California Film Commission in at least 60 % of the departments of the production.
- 3) Makes conforming changes.

EXISTING LAW:

- 1) Allows a credit against the personal income and corporation taxes for taxpayers producing qualified motion pictures, administered and allocated by the California Film Commission.
- 2) Allows CFC to allocate \$330 million in tax annually for fiscal years 2020-21 to 2024-25.
- 3) Allows CFC to allocate credits to “qualified motion pictures” which must:
 - a) Have 75% of the motion picture shooting days take place in California, or have 75% of the motion production budget incurred for services or the purchase or rental of property within the state;
 - b) Commence principal photography within 180 days, and finish within 30 months from the date when the application was approved by CFC; and
 - c) Obtain a copyright from the United States Copyright Office
- 4) Directs CFC to allocate credits to any of the following productions:
 - a) A movie of the week or miniseries with a minimum production budget of \$500,000.

- b) A new television series produced in California with a minimum production budget of \$1 million.
 - c) An independent film, as defined.
 - d) A television series that relocated to California.
 - e) A pilot for a new television series longer than 40 minutes of running time exclusive of commercials produced in California with a minimum production budget of \$1 million.
- 5) Allows the credit in an amount equal to 20% or 25% of qualified expenditures for the production of a qualified motion picture in California, with additional credit amounts allowed, including for amounts equal to specific qualified expenditures and qualified wages relating to original photography.
- a) 20% of the qualified production expenditures for a feature, or, a television series that relocated to California in its second or subsequent season, or
 - b) 25% of the qualified expenditures of an independent film, or for the first year that a television series that relocates to California.
- 6) Defines qualified expenditures as amounts paid or incurred to purchase, or lease, tangible personal property, wages, or services performed in the state, during the motion picture production in California. Qualified expenditures do not include amounts paid to writers, directors, music directors, music composers, music supervisors, producers, or performers, other than background actors.
- 7) Specifies that the credit is nonrefundable and nontransferable, but taxpayers have three options if they do not have sufficient income tax liability to offset the credit:
- a) Taxpayers with credits for independent films may sell the credit to not more than one unrelated party, who cannot subsequently resell it, so long as the taxpayer reports the sale along with specified information to the Franchise Tax Board (FTB).
 - b) Taxpayers can elect to apply credits to offset any sales and use tax liability, and obtain either a refund of previously paid taxes or an offset of future ones, according to procedures set forth in statute.
 - c) Lastly, corporation taxpayers may assign the credit to one or more affiliates within their unitary groups if the credit exceeds their liability.
- 8) Defines an application process where applicants file an application to CFC, along with information that includes the motion picture production budget, the number of production days, a financing plan for the production, the diversity of the workforce employed by the applicant, and any other information CFC or FTB deems relevant. Taxpayers must also include the amount of qualified wages the taxpayer expects to pay, the amount of credit the taxpayer computes the production will receive using the appropriate percentages, and a statement establishing that the credit is a significant factor in the applicant's choice of location for the qualified motion picture. The statement must include information regarding whether the qualified motion picture is at risk of not being filmed, or specify the jurisdiction

or jurisdictions in which the qualified motion picture will be located in the absence of the tax credit, and must be signed by an officer or executive of the applicant.

- a) If approved, CFC issues the applicant a credit allocation letter indicating the amount of credit *reserved*, pending continuing eligibility and final documentation. The applicant must commence principal photography within six months, and finish within 30 months from the date when the application was approved by the CFC.
 - b) When the project is complete, the applicant must provide final documentation to CFC necessary to verify the qualified expenditures eligible for the credit and the applicable percentage, plus a copyright certificate. CFC then determines whether the project is still eligible for the credit, and if so, the amount of qualified expenditures, and the applicable credit percentage. State law provides that this amount can be less, but not more, than the one in the credit allocation letter.
- 9) Provides that, upon completion of its determination, CFC issues the taxpayer a credit certificate, which can be applied beginning that taxable year.
- 10) Requires applicants to include in their applications the applicant's voluntary programs to increase the representation of minorities and women in certain job classifications, and CFC to annually post on its website and make available for public release specific aggregated diversity-related information collected from an applicant.

FISCAL EFFECT: According to the Senate Committee on Appropriations, this bill would not change the total dollar amount of film tax credits awarded in a fiscal year. However, taxpayers who receive credits could receive larger ones than would have occurred absent the bill, crowding out others from receiving any credit. A cost pressure would result, to increase the amount of annual film tax credits available to award.

The Franchise Tax Board's (FTB's) implementation costs have yet to be determined, but would likely be minor and absorbable. The California Film Commission (CFC) would incur minor costs to update regulations and procedures.

COMMENTS:

- 1) *Author and supporters statement of need for legislation.* According to the author, "California is the home of the entertainment industry—one of the last industries in the country which is almost completely unionized and offers good jobs to people of all educational levels with full health benefits and defined benefit pensions. Those who work on movie and TV sets are highly trained and skilled at their craft. They work project to project, with periods of unemployment between jobs. Without both craft and life skills, training combined with experience, it is hard to succeed and even harder to establish a career.

"California Film and Television Tax Credit Program 3.0 created a training and outreach program targeting underrepresented communities in the Los Angeles area, laying the foundation for a program statewide. Career Pathways provides both life skills and professional craft training for entry-level positions in film and television production. It is aimed at attracting new and diverse talent; creating a pathway for a trained workforce to pursue careers in the entertainment industry. Upon successful completion of the training program, participants gain direct entry into the workforce. Similarly, the Directors Guild of

America has an Assistant Director Training Program. Jointly sponsored by the DGA and the Alliance of Motion Picture and Television Producers, it provides on-the-job training to for participants to become Second Assistant Directors, with extensive paid, hands-on work experience on actual film and television projects. Trainees who successfully complete all the program's requirements are invited to join the Guild. SB 611 will incentivize the expansion of such programs that that train Californians from underrepresented and historically disadvantaged communities. Its implementation, over time, will expand career pathways to a new, more diverse generation of talented Californians.”

The California Labor Federation adds in their support, “SB 611 strengthens the current Career Pathways program, and equivalent programs approved by the California Film Commission (CFC) by providing a meaningful incentive to hire this newly trained workforce – without additional state funds. The California Film Tax Credit program is capped each year, and tax credits are awarded to applying productions based on their ‘jobs ratio’ – that is, how many ‘below the line’ jobs the production creates. SB 611 allows the CFC to increase the ‘job ratio’ for a production that hires from this new, diverse pool of trained workers, making it more likely that they will be awarded a California Film Tax Credit. This is a well thought out strategy that will not only bring immediate results, but will also be sustainable in the long run, as Career Pathways and other programs can be scaled up statewide to meet the ever-increasing demand for skilled workers in the motion picture and television industries.”

The Entertainment Union Coalition (EUC) also supports SB 611, in part because of the approach SB 611 takes to increase diversity in the motion picture industry, saying, “The bill recognizes that the long-run key to increasing diversity is to create a highly trained and skilled workforce drawn from California’s most underserved communities and economically disadvantaged backgrounds and to incentivize motion picture productions to hire those workers as production expands.”

2) Background:

- a) *California Film production tax credit program.* In 1985, the Legislature established the California Film Commission (CFC) to coordinate state and local governments’ efforts at providing an environment conducive for the film industry. The Governor, the Senate Pro Tempore, and the Speaker of the Assembly appoint CFC’s 21 members from the film industry, private sector, and state and local governments.

In 2014, the Legislature enacted “Film and TV Tax Credit 2.0,” which directed CFC to allocate \$230 million in credits in 2015-16, and \$330 million in credits each fiscal year through 2019-20 (AB 1839, Gatto); the lower initial amount reflected the \$100 million remaining under Film and TV Credit 1.0. The Legislature designed Film and TV Tax Credit 1.0 and 2.0 in very similar ways, but with several key differences in credit mechanics, as well as the application and allocation process.

Credit mechanics. CFC can allocate credits to “qualified motion pictures,” which must:

- Have 75% of the motion picture shooting days take place in California, or have 75% of the motion production budget incurred for services or the purchase or rental of property within the state;

- Commence principal photography within 180 days, and finish within 30 months from the date when the application was approved by the CFC; and
- Obtain a copyright from the United States Copyright Office.

CFC can allocate credits to any of the following productions:

- A feature with a minimum production budget of \$1 million.
- A movie of the week or miniseries with a minimum production budget of \$500,000.
- A new television series produced in California with a minimum production budget of \$1 million.
- An independent film, as defined.
- A television series that relocated to California.
- A pilot for a new television series longer than 40 minutes of running time exclusive of commercials produced in California with a minimum production budget of \$1 million.

Commercial advertising, music videos, motion pictures for non-commercial use, news and public events programs, talk shows, game shows, reality programming, documentaries, or sexually explicit films are not eligible.

The amount of the tax credit is equal to either:

- 20% of the qualified production expenditures for a feature, or, a television series that relocated to California in its second or subsequent season, or
- 25% of the qualified expenditures of an independent film, or for the first year that a television series that relocates to California.

Qualified expenditures are amounts paid or incurred to purchase, or lease, tangible personal property, wages, or services performed in the state, during the motion picture production in California. Qualified expenditures do not include amounts paid to writers, directors, music directors, music composers, music supervisors, producers, or performers, other than background actors.

Up to a maximum of 25%, Film and TV Credit 2.0 contained credit “uplifts” for 20% productions when they incurred qualified expenditures for:

- Filming outside the Los Angeles zone, as defined.
- Music scoring and music track recording expenditures
- Visual effects expenditures, where at least 75 % or a minimum of \$10 million is paid or incurred in California

The credit is nonrefundable and nontransferable, but taxpayers have three options if they do not have sufficient income tax liability to offset the credit: taxpayers with credits for independent films may sell the credit to not more than one unrelated party, who cannot subsequently resell it, so long as the taxpayer reports the sale along with specified information to the Franchise Tax Board (FTB). Additionally, taxpayers can elect to apply credits to offset any sales and use tax liability, and obtain either a refund of previously paid taxes or an offset of future ones, according to procedures set forth in statute. Lastly,

corporation taxpayers may assign the credit to one or more affiliates within their unitary groups if the credit exceeds their liability.

Any credit sold or assigned is subject to the same requirements as if they had originally received the credit. Taxpayers cannot sell or assign credits if another taxpayer claims them in the same taxable year.

Application Process. Applicants file an application to the CFC, along with information that includes the motion picture production budget, the number of production days, a financing plan for the production, the diversity of the workforce employed by the applicant, and any other information the CFC or FTB deems relevant. Taxpayers must also include the amount of qualified wages the taxpayer expects to pay, the amount of credit the taxpayer computes the production will receive using the appropriate percentages, and a statement establishing that the credit is a significant factor in the applicant's choice of location for the qualified motion picture. The statement must include information regarding whether the qualified motion picture is at risk of not being filmed, or specify the jurisdiction or jurisdictions in which the qualified motion picture will be located in the absence of the tax credit, and must be signed by an officer or executive of the applicant.

If approved, CFC issues the applicant a credit allocation letter indicating the amount of credit *reserved*, pending continuing eligibility and final documentation. The applicant must commence principal photography within 6 months, and finish within 30 months from the date when the application was approved by the CFC.

When the project is complete, the applicant must provide final documentation to CFC necessary to verify the qualified expenditures eligible for the credit and the applicable percentage, plus a copyright certificate. CFC then determines whether the project is still eligible for the credit, and if so, the amount of qualified expenditures, and the applicable credit percentage. State law provides that this amount can be less, but not more, than the one in the credit allocation letter. Before CFC issues a credit certificate, the applicant must report:

- If readily available, a list of the states, provinces, or other jurisdictions in which any member of the applicant's combined reporting group in the same business unit as the qualified taxpayer that, in the preceding calendar year, has produced a qualified motion picture intended for release in the United States market.
- Whether a qualified motion picture was awarded any financial incentive by the state, province, or other jurisdiction that was predicated on the performance of primary principal photography or postproduction in that location.

Additionally, CFC uses final documentation to recalculate the jobs ratio. Based on information received from the applicant, if CFC determines that the jobs ratio for a production other than independent film is reduced by more than 10%, CFC reduces the credit by that percentage. If the jobs ratio is reduced by more than 20%, CFC is barred from accepting an application from that taxpayer, or any taxpayer within its unitary group of corporations. For independent films, the jobs ratio must be reduced by more than 30% for a credit reduction to occur, with reduction equal the amount of reduction plus 10%. CFC does not reduce the jobs ratio when a taxpayer demonstrates that the difference is due to reasonable cause, as defined.

Upon completion of its determination, CFC issues the taxpayer a credit certificate, which can be applied beginning that taxable year. Generally, 12 and 24 months pass between receiving a credit allocation letter and obtaining a credit certificate, with more time passing before the taxpayer claims a credit, sells or assigns it, or carries it forward to a future taxable year, when the state incurs its fiscal impact.

In 2018, the Legislature enacted the Film and TV Credit 3.0 which authorizes the California Film Commission to allocate \$330 million in tax credits each fiscal year from 2020-21 to 2024-25 (SB 878, Committee on Budget and Fiscal Review). Additionally, the new credit allows the credit in an amount equal to 20 % or 25 % of qualified expenditures for the production of a qualified motion picture in California, with additional credit amounts allowed, including for amounts equal to specific qualified expenditures and qualified wages relating to original photography, as specified. Later amended to require applicants to include in their applications the applicant's voluntary programs to increase the representation of minorities and women in certain job classifications, and CFC to annually post on its website and make available for public release specific aggregated diversity-related information collected from an applicant.

- 3) *Current California Film production tax credit diversity component is a reporting, not incentive scheme to increase diversity in film and television hiring.* Senate Bill 611 allows an additional credit for taxpayers awarded the current Film and TV credit, for hiring qualified individuals, equal to 20 % of the qualified wages paid to those individuals. To qualify, these individuals must be graduates of the career pathways Training Program, or an equivalent program, approved by CFC. Additionally, the qualified motion picture must file a workforce development plan with and approved by the California Film Commission, and the qualified motion picture must pay qualified wages to a graduate of the Career Pathways Training program or equivalent program approved by the California Film Commission in at least 60 % of the departments of the production.

The scheme in SB 611 would replace the current application process, which does not contain a specific incentive for increased diversity hiring. Rather, current law requires applicants to include in their applications the applicant's voluntary programs to increase the representation of minorities and women in certain job classifications, and CFC to annually post on its website and make available for public release specific aggregated diversity-related information collected from an applicant.

- 4) *Committee comment.* It should be noted that this bill would not change the amount of annual film tax credits available, currently set at \$330 million annually through 2024-25, thus to the extent that awardees will receive larger credits they otherwise would have, due to the bill's incentives regarding hiring, fewer productions will be awarded credits each year.
- 5) *Double referral.* Should this bill pass out of this Committee, it will be re-referred to the Assembly Committee on Revenue and Taxation.
- 6) *Prior and related legislation.*
 - a) AB 986 (Gipson), Legislation of 2021, the Equitable Opportunities Film Tax Credit, would permit a qualified taxpayer to receive up to 40% of the qualified expenditures attributable to the production of a qualified motion picture that is an independent

minority film, as defined, with a total limit of up to \$30,000,000. The bill would require an applicant with a production that is an independent minority film to include, in its application for the film credits to the California Film Commission, certain information relating to the applicant's voluntary programs to increase the representation of minorities and women in the job classifications that are not included in qualified wages. The bill would also increase the aggregate amount of credits that may be allocated, commencing with the 2021–22 fiscal year, and each fiscal year thereafter, through and including the 2024–25 fiscal year, under the film credits by \$200,000,000, and would make these credits exclusively available to independent minority films.

Status: Currently pending as a 2 year bill before this Committee.

- b) SB 485 (Portantino), Legislation of 2021, would have created a new tax credit within the existing Film and TV credit for building certified studio construction projects.

Status: Held in Senate Committee on Appropriations.

- c) AB 1839 (Gatto), Chapter 413, Statutes of 2014) created the California Film and TV 2.0 tax credit program, as specified.

REGISTERED SUPPORT / OPPOSITION:

Support

The Apex Group
 Association of Talent Agents
 California IATSE Council
 California Labor Federation, AFL-CIO
 California Teamsters Public Affairs Council
 Catchlight Studios
 Crewvie
 Entertainment Union Coalition (UNREG)
 Hollywood Chamber of Commerce
 IATSE Local 16
 IATSE Local 44
 IATSE Local 600
 IATSE Local 695
 IATSE Local 705
 IATSE Local 728
 IATSE Local 729
 IATSE Local 80
 IATSE Local 800
 IATSE Local 839
 IATSE Local 871
 IATSE Local 884
 IATSE Local 892
 Laborers Local 724
 Motion Picture Association of America
 Producers Guild of America
 SAG-AFTRA
 State Building and Construction Trades Council of Ca

Teamsters Local 399
Writers Guild of America West

Opposition

There is no opposition on file.

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