

**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

**California Film and Television Incentive Program**

Title 10, Chapter 7.75, Sections 5500 - 5507

**NOTICE OF PROPOSED RULEMAKING**

October 16, 2009

Notice is hereby given that the California Film Commission proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

**Proposed Regulatory Action**

The Office proposes to adopt new sections 5500 through 5507 in Title 10 of the California Code of Regulations in order to implement, interpret and make specific Revenue and Taxation Code sections 17053.85 and 23685 relating to a film and television tax incentive program.

No public hearing is scheduled; however, any interested person or his or her duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

**Written Comment Period**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Agency. Written comments will be accepted by the Agency until 5:00 p.m. on November 30, 2009. Submit comments to:

Name: Amy Lemisch  
Address: California Film Commission, 7080 Hollywood Boulevard,  
Hollywood, CA 90028  
Email: amy.lemisch@film.ca.gov

**Authority and Reference**

The proposed regulation has been adopted under the authority of Government Code section 11152, and Revenue and Taxation Code sections 17053.85(e) and 23685(e) and in order to implement, interpret, and make specific Revenue and Taxation Code sections 17085.85 and 23685.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Film Commission proposes to adopt new sections 5500, 5501, 5502, 5503, 5504, 5505, 5506, and 5507. The regulations establish a procedure for allocating tax credits to qualified taxpayers in the motion picture industry. This tax credit program shall be named the California Film and Television Tax Credit Program.

Section 5500 provides definitions of terms used in the California Film and Television Tax Credit Program. This section defines the Applicant, California Film Commission, Director, Credit Allocation Letter and Production Budget. These definitions are specific to this tax credit program. This section also defines the following terms used in the statute or regulation that are industry terms: Basic cable, Feature Film, Miniseries, Movie of the Week, Producer, Reality Program, Strip Show, Television Season, and Television Series.

Section 5501 provides for an application process for the allocation of the tax credits. This section will provide for the announcement of a period of time when the production companies can apply for eligible tax credits in each fiscal year. The acceptance of applications will be on a first-come, first-serve basis. A random numbering process will be applied for any applications received at the same time. The applicants will be required to submit a California Film Commission Application Form and to include supporting documents to establish that they are eligible for the tax credits. These documents include a Budget for the Qualified Motion Picture, a Shooting Schedule, Synopsis of the Screenplay, Screenplay, financial plan, relocation statement, if the production is moving from filming out of state, and an Independent Film Declaration, if applicable. Provisions specific to television productions are provided for in the application process. This section shall require a production company to apply at least 30 days before the beginning of production and to commence filming no later than 180 calendar days after the Credit Allocation Letter is issued. If the application is incomplete, applicants shall have three days to submit any information or documents requested by the Director or they lose their position in the queue. This program will also require specific production company staff to attend an orientation meeting with the California Film Commission. This section also provides that any television series that has been approved and issued tax credits, shall be placed at the top of the queue for the following open allocation period in the next fiscal year, for the life of that series.

Section 5502 identifies the eligibility requirements for the California Film and Television Tax Credit Program. This section requires that the applicant plans to produce a qualified motion picture and provides that the qualified motion picture must be consistent with the requirements in the Revenue and Taxation Code. It also specifies that the applicants must plan to film at least 75% of principal photography days wholly in California or incur 75% of the production expenditures within California. This section provides the criteria for a Television Series to qualify as a relocated series. It also specifies that a television pilot does not qualify. This section provides that an independent film that exceeds the maximum budget shall be reclassified as a Feature Film and put back in the queue for any available tax credits. This section also provides that a Movie of the Week and a Mini-Series may also qualify as an independent film, based on the proposed budget. This section specifies that an Animated Production is not a Qualified Motion Picture and is not eligible for this program.

Section 5503 identifies the provisions in the statute for Qualified Expenditures and clarifies that State and Federal income taxes, CPA fees, expenditures for services performed outside of California and expenditures for exhibition of the production are not qualified expenditures.

Section 5504 provides for the procedures in allocating the tax credits. The section clarifies that the statute provides for the percentage of qualified expenditures allowed for both a feature film and an independent film. This section also provides that if the tax credits have been allocated for the fiscal year, any applications still in the queue will remain in the order received, until allocations become available, the applicant withdraws the application or the end of the fiscal year. This section provides that ten million dollars will be reserved specifically for Independent Films each fiscal year.

Section 5505 establishes reporting requirements for a production company during the filming of the qualified motion picture, including submittal of Daily Call Sheets, final productions reports for Principal Photography, a Monthly Status Report on estimated qualified expenditures and a Fiscal Year-End Expenditure Report.

Section 5506 provides for the issuance of the Credit Certificate, which is the document issued to the qualified taxpayer upon completion of the qualified motion picture. This section requires the applicant to submit documents requesting the tax credit certificate and verifying the completion of the project: proof of copyright registration of the screenplay, letter certifying date of completion of post production, list of all cast, crew, and vendors, the total expenditures and budget, employment records, Final Checker or Galley signed by a production representative, and a report from an independent, California licensed Certified Public Accountant verifying expenses on the production and in compliance with the Agreed Upon Procedures, dated October 1, 2009, which is also incorporated by reference. This section states that if the application is disapproved, the finding is final and not subject to administrative appeal.

Section 5507 requires the holder of the Credit Certificate to comply with promotional requirements, including an on-screen acknowledgement to CFC, five production stills, and an electronic press kit, if available.

This regulation will incorporate by reference the California Film Commission forms that are required to be submitted during the application and filming process.

The following forms shall be required in the initial application process:

California Film and Television Tax Credit Program Application Form, CFC Form A (rev. 9/1/2009)

Financing Sources Report, CFC Form B (New 6/1/2009)

Independent Film Declaration, CFC Form C (rev. 9/1/2009), if the qualified motion picture meets the criteria for an independent film.

The CFC shall issue a Credit Allocation Letter, CFC Form D (rev. 9/1/2009), which provides the approval of the applicant and identifies the number of tax credits for which the applicant is eligible.

A Monthly Status Report Form, CFC Form I (Rev. 9/1/2009), shall be required to be submitted monthly during principal photography and includes the project status and estimated qualified expenditures changes.

The following forms are required to be submitted upon completion of the production to verify the qualified expenditures:

Expenditure Summary Report, CFC Form F (rev. 9/1/2009)

Employment Diversity Report, CFC Form H (New 6/1/2009)

Request for a Tax Credit Certificate, CFC Form J (New 6/1/2009)

Fiscal Year End Expenditure Report, CFC Form K (Rev. 9/1/2009)

The Tax Credit Certificate, CFC Form M (Rev. 9/1/2009) is the actual tax credit certificate that will be issued by the Director of the CFC and is the document that will be submitted to the Franchise Tax Board or the Board of Equalization.

### **COST ESTIMATES OF PROPOSED ACTION**

The California Film Commission has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on representative person or businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.

### **EFFECT ON SMALL BUSINESS**

The California Film Commission has determined that the proposed regulations will not directly affect small business. The businesses that are complying with these regulations are film production companies and are not small businesses.

### **ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESS**

Adoption of these regulations will (1) facilitate the creation of jobs within California; (2) will facilitate the creation of businesses within California, (3) will facilitate the expansion of businesses currently doing business within California.

### **REASONABLE ALTERNATIVES CONSIDERED**

The California Film Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

## **Contact Person**

Inquiries concerning the proposed action may be directed to:

Name: Terri Toohey  
Email: [terri.toohey@bth.ca.gov](mailto:terri.toohey@bth.ca.gov)

The backup contact person for these inquiries is:

Name: Nancy Stone  
Phone No.: 323-860-2960

Questions on the substance of the proposed regulations may be directed to:

Name: Amy Lemisch  
Phone No.: 323-860-2960

## **Availability Of Changed Or Modified Text**

After the close of the forty-five (45) day public comment period, the Office may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the Agency regarding this proposal, the Office may determine that changes to the proposed regulation are appropriate. If the Office makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Office adopts the regulations as revised. The Office will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Terri Toohey at the above email address. The Office will accept written comments on the modified regulations for 15 days after the date on which they are made available.

## **Availability Of Initial Statement Of Reasons, Rulemaking File And Express Terms Of The Proposed Regulations**

The Office has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the California Film Commission, 7080 Hollywood Boulevard, Suite 900, Hollywood, California during normal business working hours (9 am-5 pm). Please contact Amy Lemisch at the above email address to arrange a date and time to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Office Contact Person designated in this Notice.

### **Availability Of Final Statement Of Reasons**

The Office is required to prepare a Final Statement of Reasons. Once the Office has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Office Contact Person identified in this Notice.

### **Office Internet Website**

The Office maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at:

[www.film.ca.gov](http://www.film.ca.gov)