

## **BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

### **California Film and Television Incentive Program**

Title 10, Chapter 7.5, Sections 5500 - 5507

#### **STATEMENT OF EMERGENCY**

Emergency promulgation of the proposed regulation is necessary for the immediate preservation of the public peace, health and safety, and general welfare of California and its citizens.

On February 20, 2009, legislation took effect immediately establishing the California Film and Television Tax Credit Program. SBX3-15 (Chapter SBX-15) provides a qualified taxpayer a tax credit for qualified expenditures in the production of a qualified motion picture in California for taxable years beginning on or after January 1, 2011. The legislation specifies that the tax credits shall be allowed for the taxable year in which the California Film Commission (CFC) issues the credit certificate, beginning in January 1, 2009 and no later than July 1, 2014. The legislation passed through an extraordinary session of the Legislature addressing the fiscal emergency declared by the Governor in a proclamation on December 19, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

The statute mandates the California Film Commission to begin allocating tax credits to applicants on or after July 1, 2009 and also mandates the CFC to establish a procedure for applicants to file a written application for the allocation of the tax credit, establish criteria for allocating tax credits, determine and designate applicants who meet the requirements to apply for the tax credit, and issue the credit certificate to the qualified taxpayer upon completion of the qualified motion picture.

For the reasons described above, the CFC finds that an emergency declared by both the Governor and the Legislature exists. The CFC also finds that adoption of the regulations mandated to implement the California Film and Television Tax Credit Program by July 1, 2009, is also necessary as emergency regulations.

The state of California has suffered losses in one of its most prominent and economically successful industries - motion picture production - because other regions of the world are aggressively luring motion picture productions by offering attractive financial incentives. Today's economic conditions and the aggressive tactics of other states and countries vying for a piece of the entertainment industry have placed California at a severe disadvantage. Between 2003 and 2008 California experienced a 50% decrease in the number of studio feature films produced in California. In April, 2009, FilmLA, the permitting entity for Los Angeles City and County, reported its lowest quarterly tally for feature filming days since tracking began in 1993. San Francisco film production employment dropped 43% between 2001 and 2006.

Currently over 40 states in the U.S. offer financial incentives to the motion picture industry. The vast majority of these programs offer a percentage of refundable or transferable tax credits, or rebates (typically from 15 - 40%) to productions for qualifying expenditures. The huge growth in state incentive programs has triggered this exodus of film productions from California.

California's new Film & Television Tax Credit Program specifically targets productions that are most likely to leave the state due to incentives being offered in other states and countries. It will enable those making decisions on where to shoot their productions to keep those at risk film and television projects in California. This legislation will help California to be competitive again enabling it to increase the number

of productions and therefore, jobs and dollars spent in state.

The film industry is an important part of the state's economy and directly impacts the revenue generated within the State of California, from employment to goods and services.

The CFC cannot begin allocating the tax credits on July 1, 2009, without promulgating the procedures and criteria for the tax credit program. In addition, the allocation of tax credits is time sensitive, because the statute requires the applicant to apply before the start of filming and no later than 180 days after the tax credit allocation is issued. Therefore any production companies currently ready to start filming, that are weighing their options to film in states that offer tax incentives, would not consider the option of filming in California without the availability of this new incentive program. The promulgation of these regulations on an emergency basis will allow the CFC to begin accepting applications for tax credits immediately.

### 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 Total Production Budget. These definitions are specific to this 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, Television Series and Total Production Budget.

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 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 the television and animated 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. Incomplete applications shall have three days to submit any information or documents requested by the Director of the program 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.

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 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 production 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. 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

Financing Sources Report, CFC Form B

Independent Film Declaration, CFC Form C, if the qualified motion picture meets the criteria for an independent film.

The CFC shall issue a Credit Allocation Letter, CFC Form D, 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, 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

Employment Diversity Report, CFC Form H

Request for a Tax Credit Certificate, CFC Form J  
Fiscal Year End Expenditure Report, CFC Form K

The Tax Credit Certificate, CFC Form M 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.

### **AUTHORITY AND REFERENCE**

The proposed regulations have been adopted under the authority of Revenue and Taxation Code section 17053.85(e) and 23685(e) in order to implement, interpret, and make specific Revenue and Taxation Code sections 17053.85(g) and 23685(g).

### **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 adverse impact on business including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on private persons or directly affected 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.
- 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.
- Significant effect on housing: 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 not small businesses.

### **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.