



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/30/02	Bill No:	AB 2747
Tax:	Sales and Use	Author:	Wesson, et al.
Board Position:		Related Bills:	

BILL SUMMARY

This bill would authorize a wage-based income tax credit in connection with motion picture production to be administered by the Franchise Tax Board (FTB), and would enable a taxpayer to claim a refund for that credit with the Board of Equalization or claim a credit against sales or use tax liability, as specified.

ANALYSIS

Current Law

Under existing Sales and Use Tax Law, some exemptions related to the motion picture industry include:

- An exemption under Section 6378 from the 5 percent state sales and use tax, for the sale and purchase of any tangible personal property purchased for use in teleproduction or other post production activities, as described, by a qualified person that is primarily engaged in teleproduction or post production services, as defined pursuant to the North American Industry Classification System Manual, published by the United States Office of Management and Budget, 1997 edition.
- Section 6010.4 provides that when certain persons form partnerships to reduce the cost of producing motion pictures through sharing of equipment and other assets, the furnishing of that property, without transfer of title, by the partnership to its members for the purpose of producing motion pictures does not constitute a “sale” and, therefore, no tax applies to the furnishing of that property.
- Section 6010.6 provides that “sale” and “purchase” do not include the following: 1) any transfer of any qualified motion picture or any interest or rights therein when the transfer is prior to the date that the qualified motion picture is exhibited or broadcast to its general audience, and 2) the performance of qualified motion picture production services, as defined, in connection with the production of any qualified motion picture, as defined. Therefore, no tax applies to these transactions.

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- Leases of motion pictures, animated motion pictures, and television films and tapes (except video cassettes, tapes, and discs leased for private use under which the lessee does not obtain the right to license or broadcast) do not constitute “sales.” Therefore, the lessor is the consumer of the property he or she leases and is required to pay tax on his or her cost of the property.

Proposed Law

This bill would authorize a credit, to be administered by the FTB, against personal income and bank and corporation taxes of specified amounts in connection with various services performed in connection with the production of a qualified motion picture, as defined.

This bill would allow persons to claim a refund with the Board of Equalization in lieu of claiming the proposed income tax credit, equal to the amount of the credit that would otherwise be allowed under the Personal Income and Bank and Corporation Tax laws, up to the amount of sales or use tax paid, or a credit against liability for sales or use taxes due, provided the person does all the following:

- Make an irrevocable election to waive the equivalent amount of credit allowed under the Personal Income and Bank and Corporation Tax laws.
- Provide a copy of the personal income or bank and corporation tax return on which the tax liability was assessed.

The bill also specifies the following:

- The bill authorizes the Board to recover any portion of the refund or credit that was erroneously made, as specified.
- The Board shall provide an annual listing to the FTB of persons who have claimed a refund or credit, and the amounts.
- Any refund or credit approved by the Board shall be payable from the General Fund.
- The refund/credit provisions shall remain in effect until December 31, 2010.

The provisions of the bill would become effective January 1, 2003; however, the proposed credit would apply to taxable years beginning July 1, 2004.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to provide more incentives to producers of entertainment productions to stay in California. The author notes that there has been an increase in “runaway productions” because of the heavy use of tax credits and rebates by Canada and other countries to producers, in addition to currency fluctuations and cost differentials. This has resulted in a high unemployment among the film trades in the United States, and particularly in California. The author believes that in at least some cases, the credit proposed in this bill would make a difference between producing abroad and producing at home.

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2. Why come to the Board of Equalization for an income tax-related credit? The idea behind enabling a taxpayer to claim a refund or credit with the Board is to provide a mechanism for certain businesses that might be ineligible to claim the full income tax credit on their FTB returns. Under the FTB-related provisions, the credit would only be allowable up to the amount of income tax liability due. If there is no income tax liability to offset, the taxpayer would be unable to realize the benefits of the tax incentives proposed in this measure. Although the bill contains a carry over feature so that the unused portion of the credit can be claimed on future income tax returns, if there is insufficient income tax liability to provide an offset, the incentive proposed in the bill is lost. Therefore, the bill would enable qualifying taxpayers to file a claim for refund with the Board for the entire income tax credit, in lieu of claiming any credit with the FTB. However, since the credit would be administered by the FTB and is based on tax laws that it administers, it would appear more logical to have the FTB administer a refund program.

COST ESTIMATE

Some costs would be incurred in notifying affected taxpayers, and in reviewing and processing claims for refund. An estimate of these costs is pending.

REVENUE ESTIMATE

An estimate of the revenues associated with this measure will be deferred pending FTB's analysis.

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