



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/18/05	Bill No:	SB 58
Tax:	Sales and Use	Author:	Murray and Pavley
Related Bills:			

BILL SUMMARY

This bill would authorize an income tax credit equal to 15% of the qualified amount for qualified wages or qualified property, as defined, paid or incurred during the production period of a qualified motion picture production, as specified and defined.

In lieu of claiming that credit, the bill would allow qualified taxpayers to claim either a refund of sales or use tax paid or incurred under the Sales and Use Tax Law, or a credit against a sales or use tax liability, that is equal to the income tax credit amount or any portion thereof that would otherwise be allowed pursuant to the income tax laws.

ANALYSIS

Current Law

Under existing law, a sales tax is imposed on retailers for the privilege of selling tangible personal property in this state. The use tax is imposed on the storage, use, or other consumption of tangible personal property purchased in this state. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless that property is specifically exempted.

With regard to the motion picture industry, the Sales and Use Tax Law provides the following:

- Section 6378 of the Sales and Use Tax Law provides an exemption from the 5.25 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.

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- 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.
- 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 add Section 6902.5 to the Sales and Use Tax Law, Section 17053.35 to the Personal Income Tax Law, and Section 23635 to the Corporation Tax Law, and amend Section 23036 of the Corporation Tax Law, to do, among other things, the following:

1. Allow a credit to a qualified taxpayer against the personal income tax or the corporation tax an amount equal to 15 percent of the qualified amount, not to exceed \$5 million per qualified motion picture.
2. Define “qualified taxpayer” as a taxpayer who has paid or incurred the expenses for the qualified amount, and has been allocated tax credits by the California Film Commission (CFC).
3. Define “qualified amount” as the total amount paid or incurred after 01/01/06 during the production period for qualified wages and qualified property with respect to the production of each qualified motion picture.
4. Define “qualified property” as tangible personal property used principally in the production of a qualified motion picture which is subject to sales or use tax.
5. Define “qualified motion picture,” to mean, among other things, a feature with a minimum budget of \$500,000. It would exclude from the definition productions such as commercials, music videos, news programs, talk shows, game shows, awards shows, private noncommercial productions (e.g., weddings or graduations).
6. Require the CFC to determine and designate who is a qualified taxpayer and allocate tax credits up to an unspecified amount to qualified taxpayers, as provided.
7. Allow qualified taxpayers, in lieu of claiming the above credit, to either claim a refund of sales or use tax paid or incurred under this part, or a credit against liability for sales or use tax due, that is equal to the credit amount or any portion thereof, that would otherwise be allowed under Sections 17053.35 or 23635.

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The bill would become effective immediately.

Background

Section 6378 was added to the Sales and Use Tax Law in 1998 by AB 2798, Chapter 323. The purpose of that measure was to provide a tax incentive for postproduction work to ensure that the entertainment industry continues to thrive in California. The sponsor of that exemption was the Worldwide Trade Association of Post Production. For fiscal year ending 2004, the sales and use tax exemptions claimed during that year amounted to \$13.5 million.

COMMENTS

1. **Sponsor and purpose.** The bill is sponsored by Senator Murray. The author's office notes that California's dominance as the premier location for movie, television, and commercial production is being eroded by competition from other states and foreign countries. This bill is therefore intended to create incentives in the law to discourage the practice of producing and filming motion pictures outside California.
2. **This analysis focuses primarily on the provisions contained in proposed Section 6902.5 which would fall under the Board's purview.** Some implementation concerns are noted below:
 - **Shouldn't the Franchise Tax Board administer the refunds?** The Board would be required to make refunds or approve credits based on provisions administered by the Franchise Tax Board (FTB). Since the FTB has the expertise in administering the Personal Income Tax Law and the Corporation Tax Law, it appears more appropriate to retain administration of this credit mechanism within that agency.
 - **The bill should define "sales or use taxes paid or incurred."** The bill would allow a qualified taxpayer to claim a refund or credit of sales or use taxes paid or incurred. It is unclear what this provision means. Would this include payments of sales tax reimbursement or use tax to other retailers? Does it mean the amount of sales or use tax paid to the Board as far back as when the taxpayer began filing sales and use tax returns? Does the amount include local and district taxes?
 - **The CFC should provide the Board with necessary information.** The bill would require the taxpayer to provide a copy of his or her income tax return to the Board for purposes of claiming a refund or credit. However, since the CFC would be required to determine and designate qualified taxpayers as well as the amount of tax credit, it is also suggested that the CFC be required to provide the Board with a list of qualifying taxpayers and eligible amounts.
 - **Subdivision (d) of proposed Section 6902.5 is confusing.** This proposed section would limit the allowable refund to the amount of sales and use tax paid, yet the bill states that any refund approved by the Board which may exceed the sales and use tax paid shall, upon an appropriation by the

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Legislature, be payable from the General Fund. Upon what basis would the Board approve a refund in excess of the sales and use tax paid? If the author's intent is to enable production companies to receive up to \$5 million per production, perhaps a grant program would be a better approach.

- **Can taxpayers alternate claiming the credits from year to year?** The bill would specify that after the maximum amount of credits have been allocated for a particular calendar year, the taxpayer's application for an allocation of tax credit shall be treated as an application for tax credits in the succeeding calendar year. Could a taxpayer claim a refund with the Board the first year, absorb all the sales and use tax paid with a large balance of the credit for next year, and claim the balance on the income tax return the next year?
- **The Board should be authorized to share information with the CFC.** When the Board makes a refund, or applies a credit to a sales or use tax liability, it appears it would be essential that the CFC be made aware so that it could ensure that the total allowable credits do not exceed the allowable cap (currently unspecified in the bill). However, the bill doesn't authorize the Board to do so. Section 7056 of the Sales and Use Tax Law prohibits the Board from releasing tax information about taxpayers to outside persons or agencies, unless the Governor authorizes such a release. Either Section 7056 would require an amendment to authorize the Board to release information to the CFC regarding refunds or credits issued, or a special order from the Governor would be required.
- **Would "qualified property" include teleproduction and postproduction equipment currently partially subject to tax?** The bill would provide that "qualified property" upon which the credit is based includes items used principally in the production of a qualified motion picture that are subject to tax pursuant to Part 1 (the Sales and Use Tax Law). Currently, a partial sales and use tax exemption exists for purchases of teleproduction and other postproduction machinery and equipment by persons primarily (over 50%) engaged in teleproduction or other postproduction activities. However, this exemption applies to the Part 1 taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of Part 1 (5.25%), but does not apply to the taxes imposed by Part 1 sections 6051.2 and 6201.2 (1/2%). Since these items are partially subject to tax pursuant to Part 1, would these items still be regarded as "qualified property." Also, the bill should define "principally" as it is used in this bill.

COST ESTIMATE

Administrative costs would be incurred in notifying qualifying taxpayers, personnel time attributable to approving claimed amounts, and answering inquiries. An estimate of these costs is pending.

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REVENUE ESTIMATE

The bill would require the CFC to determine and designate qualified taxpayers and the amount of tax credit. The bill would provide an in-lieu credit against sales and use taxes paid for amounts otherwise allowed under the proposed income tax provisions. The bill would place a cap on the maximum amount of allowable income tax credits, both in the aggregate for all taxpayers (which is currently unspecified in the bill), and with regard to each qualified motion picture. The bill would provide that the maximum allowable credit for each qualified motion picture shall not exceed \$5 million.

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