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Executive Director

May 7, 2010

Dear Interested Party:

Enclosed is the Board of Equalization (BOE) staff's discussion paper explaining the provisions of Revenue and Taxation Code section 6902.5 regarding California's sales and use tax credit for film and television productions. BOE is responsible for administering the sales and use tax provisions in Revenue and Taxation Code section 6902.5 in conjunction with the California Film Commission (CFC) and the California Franchise Tax Board (FTB).

Staff would like to provide interested parties, including the CFC and FTB, an opportunity to discuss the sales and use tax credit and present any comments they may have regarding the BOE's administration of the credit. Accordingly, a meeting is scheduled at 10:00 a.m. on June 24, 2010, in Room 207, at the BOE's Culver City Office, which is located at 5901 Green Valley Circle, Suite 200, Culver City, California.

If you are unable to attend the meeting but would like to provide input for discussion, please feel free to write to me at the above address or send a fax to (916) 322-4530 before the June 24, 2010 meeting. Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend them an invitation to the meeting. If you plan to attend the meeting on June 24, 2010, or would like to participate via teleconference, please contact Ms. Lynn Whitaker at (916) 324-8483 or by e-mail at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov) prior to June 16, 2010.

I look forward to our meeting. Should you have any questions, please feel free to contact Ms. Leila Hellmuth, Supervisor, Business Taxes Committee Team, at (916) 322-5271.

Sincerely,

Jeffrey L. McGuire  
Chief, Tax Policy Division  
Sales and Use Tax Department

JLM:llw

Enclosures

cc: (via e-mail)

Ms. Randie L. Henry  
Mr. Randy Ferris  
Mr. Bradley Heller  
Ms. Freda Orendt  
Mr. Stephen Rudd  
Mr. Kevin Hanks  
Mr. Steven Sisti  
Mr. James Kuhl  
Mr. Geoffrey E. Lyle  
Ms. Leila Hellmuth  
Ms. Lynn Whitaker  
Ms. Cecilia Watkins

## Discussion Paper

### California Film and Television Tax Credit - Sales and Use Tax Provisions

#### I. California Film Commission

The California Film Commission (CFC) is authorized to allocate California film and television tax credits (credits) to eligible applicants on or after July 1, 2009, and before July 1, 2014.<sup>1</sup> The aggregate amount of credits the CFC may allocate in any fiscal year is \$100,000,000. Credits may be allocated for fiscal years 2009-2010 through 2013-2014. If the maximum amount of credits are not allocated during a particular fiscal year or the CFC does not certify an eligible applicant to use credits that were allocated during a particular fiscal year, the CFC may carryover and allocate or re-allocate those credits during the following fiscal year.<sup>2</sup>

#### II. Credit Certificates

Once credits are allocated, the CFC is authorized to certify the actual amount of the allocated credits each eligible applicant has qualified to use and issue a “credit certificate”<sup>3</sup> to each “qualified taxpayer”<sup>4</sup> reflecting that taxpayer’s certified credits.<sup>5</sup> After the CFC begins issuing credit certificates, the CFC is required to provide a list of qualified taxpayers and their certified credits to the State Board of Equalization (BOE) and the Franchise Tax Board (FTB).<sup>6</sup>

#### III. Sales and Use Tax Election

##### A. Irrevocable Election to Apply Credits to Sales and Use Tax

A qualified taxpayer may make an irrevocable election to apply all or a portion of its certified credits against “qualified sales and use taxes” imposed on the qualified taxpayer.<sup>7</sup> Irrevocable elections to apply unused certified credits against qualified sales and use taxes must be made in the form prescribed by the BOE and include a copy of the credit certificate certifying the credits being claimed.<sup>8</sup>

Under certain circumstances, a qualified taxpayer, which is a member of a commonly controlled group, may elect to assign a portion of its unused certified credits to one or more affiliated corporations during a taxable year that the qualified taxpayer’s allowable credits exceed its franchise or income tax liability. The election must be made in the manner required by the FTB.<sup>9</sup> However, once the election is made, an affiliated corporation may elect to apply unused assigned credits against qualified sales and use taxes imposed on the affiliated corporation.<sup>10</sup> An

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<sup>1</sup> Revenue and Taxation Code sections 17053.85, subdivision (g)(1), and 23685, subdivision (g)(1). All subsequent “section” references are to the Revenue and Taxation Code unless otherwise indicated

<sup>2</sup> Sections 17053.85, subdivision (i)(1), and 23685, subdivision (i)(1).

<sup>3</sup> As defined in Sections 17053.85, subdivision (b)(4), and 23685, subdivision (b)(4).

<sup>4</sup> As defined in Sections 17053.85, subdivision (b)(17), and 23685, subdivision (b)(17).

<sup>5</sup> Sections 17053.85, subdivision (g)(2), and 23685, subdivision (g)(2).

<sup>6</sup> Sections 17053.85, subdivision (h), and 23685, subdivision (h).

<sup>7</sup> Section 6902.5, subdivision (b)(1).

<sup>8</sup> Section 6902.5, subdivision (c)(1).

<sup>9</sup> Section 23685, subdivision (c)(1).

<sup>10</sup> Sections 6902.5, subdivision (b)(2).

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election to assign certified credits to an affiliated corporation is irrevocable once the credits are allowed.<sup>11</sup>

The form for making the irrevocable election to apply unused certified credits to sales and use taxes will require taxpayers to:

- State that they are qualified taxpayers with unused certified credits or affiliated corporations that have been assigned unused certified credits;
- List the dates the “production period”<sup>12</sup> began and ended for the “qualified motion picture”<sup>13</sup> for which the CFC issued the credit certificate containing the credits to which the election applies;
- Specify the amount of unused certified credits which the taxpayer is irrevocably electing to apply against qualified sales and use taxes; and
- Identify the amount of qualified sales and use taxes the taxpayer remitted to the BOE during “the period commencing on the first day of the calendar quarter commencing immediately before the beginning of the production period, and ending on the date the claimant was required to file its most recent sales and use tax return with the Board” prior to making the election.<sup>14</sup>

Affiliated corporations will also be required to provide documentation supporting the assignment of any used certified credits.<sup>15</sup>

The BOE’s Sales and Use Tax Department (SUTD) is in the processes of developing forms for making irrevocable elections and applying credits and will be adding more requirements, including the requirements that taxpayers provide their seller’s permit or consumer use tax permit numbers and social security or taxpayer identification numbers.

#### **B. Ineligible Unused Credits**

Only a qualified taxpayer or affiliated corporation may apply credits against sales and use taxes.<sup>16</sup> If a qualified taxpayer sells credits attributable to an “independent film,”<sup>17</sup> the purchaser may be able to apply the credits against its franchise or income tax liabilities.<sup>18</sup> However, the purchaser will not be able to apply the credits against sales and use taxes.<sup>19</sup>

#### **IV. Qualified Sales and Use Taxes**

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<sup>11</sup> Section 23685, subdivision (c)(2)(B).

<sup>12</sup> As defined in Sections 17053.85, subdivision (b)(12), and 23685, subdivision (b)(12).

<sup>13</sup> As defined in Sections 17053.85, subdivision (b)(15), and 23685, subdivision (b)(15).

<sup>14</sup> Section 6902.5, subdivision (c)(1).

<sup>15</sup> Section 6902.5, subdivision (c)(1)(C).

<sup>16</sup> Section 6902.5, subdivision (b).

<sup>17</sup> Sections 17053.85, subdivision (b)(6), and 23685, subdivision (b)(6).

<sup>18</sup> Sections 17053.85, subdivision (c), and 23685, subdivision (c)(3).

<sup>19</sup> Section 6902.5, subdivision (b).

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“Qualified sales and use taxes” include the sales and use taxes allocable to the state’s General Fund. The General Fund taxes amounted to 6 percent as of April 1, 2009.<sup>20</sup> On July 1, 2011, the General Fund taxes are expected to be 5 percent.

Qualified sales and use taxes do not include the 0.25 percent sales and use taxes allocable to the state’s Fiscal Recovery Fund, the 0.50 percent sales and use taxes allocable to the state’s Local Revenue Fund, nor the 0.50 percent sales and use taxes allocable to the state’s Local Public Safety Fund. Furthermore, qualified sales and use taxes do not include local sales and use taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law nor district transactions and use taxes imposed under the Transactions and Use Tax Law.<sup>21</sup>

#### V. Creditable Periods

If a qualified taxpayer or affiliated corporation makes an irrevocable election to apply unused certified credits to qualified sales and use taxes, the credits may be applied to either of two sales and use tax periods.

##### A. **Refund Period**

A qualified taxpayer or affiliated corporation may apply credits to obtain a refund of qualified sales and use taxes the qualified taxpayer or affiliated corporation remitted to the BOE during an initial refund period. However, the BOE will not pay interest on any amount refunded due to the application of credits.<sup>22</sup>

The initial refund period includes taxes remitted during the period:

- Commencing on the first day of the calendar quarter commencing immediately before the beginning of the production period for the qualified motion picture for which the CFC issued a credit certificate; and
- Ending on the date the claimant was required to file its most recent sales and use tax return with the BOE prior to making the irrevocable election.

A qualified taxpayer or affiliated corporation must file a claim for refund with its irrevocable election to apply unused certified credits to qualified sales and use taxes remitted during the refund period. BOE will not grant a refund, unless a claim for refund is filed within the applicable statutes of limitations.<sup>23</sup> Furthermore, BOE will not grant a claim for refund that exceeds a qualified taxpayer’s unused certified credits or an affiliated corporation’s assigned unused certified credits.<sup>24</sup>

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<sup>20</sup> Section 6902.5, subdivision (a)(5).

<sup>21</sup> Section 6902.5, subdivision (a)(5)(B).

<sup>22</sup> Section 6902.5, subdivision (d)(2).

<sup>23</sup> Section 6902.

<sup>24</sup> Section 6902.5, subdivision (d)(1).

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#### B. Secondary Offset Period

If a qualified taxpayer or affiliated corporation files an irrevocable election to apply unused certified credits to qualified sales and use taxes and does not immediately claim a refund or claims a refund and still has unused certified credits to which the election applies, the unused certified credits may be used to offset and obtain a refund of qualified sales and use taxes imposed on and remitted by the qualified taxpayer or affiliated corporation during a secondary offset period. The secondary offset period includes all of the qualified taxpayer's or affiliated corporation's reporting periods during the five years following the end of the refund period.<sup>25</sup>

Again, a qualified taxpayer or affiliated corporation must file a claim for refund to apply unused certified credits to qualified sales and use taxes remitted during the secondary offset period. Furthermore, BOE will not grant a refund, unless a claim for refund is filed within the applicable statutes of limitations, and BOE will not grant a claim for refund that exceeds a qualified taxpayer's unused certified credits or an affiliated corporation's assigned unused certified credits.

Credits may not be used to offset or obtain refunds of qualified sales and use taxes imposed or remitted for periods other than the initial refund period and the secondary offset period.

#### VI. Processing and Information Sharing

##### A. Sales and Use Tax Department

SUTD staff will process irrevocable elections to apply credits to sales and use taxes and contact the FTB as necessary to verify credit information. The SUTD will also periodically transmit relevant information to the FTB to ensure that certified credits are only used once.

The SUTD's Audit Determination and Refund Section (Refund Section) will review claims for refunds of sales and use taxes and audit sales and use tax credits in the same manner as other types of claims for refund. In each case, staff will determine:

- Whether the taxpayer is a qualified taxpayer with unused credits or an affiliated corporation with assigned unused credits;
- How much qualified sales and use taxes the taxpayer remitted to the BOE during the primary refund period or secondary offset period; and
- Whether or not the taxpayer qualifies for a refund and in what amount.

If the Refund Section approves a refund due to the application of a credit, staff will transmit the relevant information to the FTB to ensure that the credit is only used once.

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<sup>25</sup> Section 6902.5, subdivision (d)(2).

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Pursuant to the Rules for Tax Appeals Regulation 5237, *Board Approval Required for Refunds over \$100,000*, staff recommendations for refunds in excess of \$100,000 will be submitted to the Board of Equalization Members for approval.

If the Refund Section is not satisfied that a taxpayer has computed and paid the correct amount of sales and use tax to the BOE, staff may issue a notice of determination and impose penalties. Furthermore, staff may issue a notice of determination to recover a refund of sales and use taxes that was erroneously issued or a credit against sales and use taxes that was erroneously allowed.<sup>26</sup> Interest will accrue on any unpaid sales and use taxes collected through the issuance of a notice of determination.<sup>27</sup>

#### B. Appeals Processes

If a taxpayer disagrees with staff's decision to deny a claim for refund in whole or in part, the taxpayer may appeal the staff's decision in the manner provided in article 3<sup>28</sup> of chapter 2 of the Rules for Tax Appeals.<sup>29</sup> If a taxpayer disagrees with a notice of determination, the taxpayer may appeal by filing a petition for redetermination in the manner provided in article 2A<sup>30</sup> of chapter 2 of the Rules for Tax Appeals. More information on the appeal processes is available in Publication 17, *Appeals Procedures Sales and Use Taxes and Special Taxes*.<sup>31</sup>

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<sup>26</sup> Section 6961, subdivision (b).

<sup>27</sup> Sections 6481 through 6486.

<sup>28</sup> California Code of Regulations, title 18, section 5230 et seq. The Rules for Tax Appeals

<sup>29</sup> Available on the BOE Website at [http://www.boe.ca.gov/meetings/pdf/RTA\\_July\\_2008.pdf](http://www.boe.ca.gov/meetings/pdf/RTA_July_2008.pdf)

<sup>30</sup> California Code of Regulations, title 18, section 5210 et seq.

<sup>31</sup> Available on the BOE Website at <http://www.boe.ca.gov/pdf/pub17.pdf>.