

**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

**California Film and Television Tax Credit Program**

Title 10, Chapter 7.75, Sections 5500, 5501, 5505, 5506, 5507

**NOTICE OF PROPOSED RULEMAKING**

November 26, 2010

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 amend the 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 credit 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 Commission. Written comments will be accepted by the Commission until 5:00 p.m. on January 10, 2011. 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 amend sections 5500, 5501, 5505, 5506, and 5507. The regulations provide a procedure for allocating tax credits to qualified taxpayers in the motion picture industry.

Revenue and Taxation Code sections 17053.85 and 23685 provide that the California Film Commission 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.

The California Film Commission promulgated regulations in 2009/10 and implemented the California Film and Television Tax Credit program in June 2010. The program which specifically targets productions that are most likely to leave the state to take advantage of incentives being offered in other states and countries is very successful. However, in administering the program for the past five months, both staff and applicants have identified areas that should be amended to either facilitate or clarify the process of acquiring the tax credit.

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

Section 5500 provides definitions used in these regulations. Section 5500 is amended to add a definition of Hiatus. This term is used in these regulations and the practice is common in the filming industry.

Section 5501 provides for the application process for a tax credit allocation. Section 5501(c) provides for an amended Application Form, CFC Form A (Rev 10.20.2010), hereby incorporated by reference. This form has been amended to include a section on financing sources information, that was previously required on CFC Form B.

Section 5501(d)(5) repeals CFC Form B, Financing Sources Report. The supporting documentation in subsection (d)(5) is still required to be submitted with the application.

Section 5501(d)(7) repeals CFC Form C, Independent Film Declaration. The information on this form is proposed to be moved to the Application Form, CFC Form A. The repeal of the section will not have an affect on the regulated public.

Section 5501(h) is amended to add a requirement that if a production company implements a hiatus during the principal photography period, it may be no longer than 100 days.

Section 5505 provides the applicant with its ongoing responsibilities after being issued a tax credit allocation. Section 5505(a)(4) provides for an amended Fiscal Year-End Expenditure Report, Form K (Rev. 10/20/2010), hereby incorporated by reference.

Section 5506 provides for the process to attain the credit certificate after the Qualified Motion Picture is complete. This section is amended to delete the definition of a complete Qualified Motion Picture. The information is moved to a new subsection 5506(c).

Section 5506(a)(1) repeals the Request for Tax Credit Certificate, CFC Form J. The applicant will not be required to submit a separate form requesting this information. The information is proposed to be moved to the Expenditure Summary Report, CFC Form F.

Section 5506(a)(5) provides for an amended Expenditure Summary Report, CFC Form F, (Rev. 10/20/2010), hereby incorporated by reference. This section will also be renumbered to (a)(4).

Section 5506(a)(6) repeals the Employment Diversity Report, CFC Form H, which was incorporated by reference. This information is proposed to be moved to the Expenditure Summary Report, CFC Form F.

Section 5506(a)(7) is amended to require the CPA wanting to perform the Agreed Upon Procedures to attend a CPA orientation meeting held by the CFC. The CFC will hold a CPA orientation meeting annually. This section will also amend the revision date for the Agreed Upon Procedures, date 10/20/2010. The amended Agreed Upon Procedures will provide a sample format that the CPA is required to use when submitting the information required by the Agreed Upon Procedures Report. This sample format will not require the CPA to use any specific programs or applications. It is only required for consistent presentation of data.

Section 5506(a)(9) is editorially amended to renumber as (a)(7) and to add a requirement that documentation verifying the total dollar amount of work performed within California be submitted for any post sound company contract work. This section previously only required documentation from each visual effects, title and or digital effects work contracted by the production company.

A new section 5506(c) is proposed. This subsection will define when a Qualified Motion Picture is complete. This language is moved from 5506(a) and will have no affect on the regulated public.

Section 5506(c) is amended to clarify that the Director shall determine if the material submitted by the applicant are sufficient to meet the requirements of these regulations. The Director also may reject insufficient documentation not in compliance. This amendment will specifically provide for disapproval of the tax credit certificate because of insufficient documentation. This section is also renumbered to (d).

Section 5506(d) is amended to provide that upon rejection of insufficient documentation, the applicant will receive a notice of disapproval. This section is renumbered to (e).

Section 5507 provides for on screen credit and promotional requirements. Subsection (a)(1) is amended to require the on-screen acknowledgement to also include the "State of California". It previously only required the California Film Commission.

A new subsection (a)(4) is added to require the production company to add the California Film Commission official logo in the end credits.

#### California Film and Television Tax Credit Program Application Form, CFC Form A

The application form has been amended as follows: Section 1, company information, is amended to specify that the program requires "Today's" date, instead of date. The section requiring the applicant entity or Individual has been amended to require the "Title" of the Individual if applicable. The request for the company name has been amended to require the production company name and the address has been amended to require the "Applicant's" address.

Section 2, Production Information, Section A. has been amended to apply to Primary Production Company or the “Studio” Representative. A box has been added that allows the user to skip to the next section, if the information is the same as in Section 1. This section also now requires the “Company Name”, specifies the “Company” address, instead of just address and also asked for the “Country”.

A new Section is proposed to be added to Section 2. Subsection M. will request information on the CPA firm and CPA that will complete the Agreed Upon Procedures Report. There is a box that can be checked that indicates that it is “To be Determined”.

Section 3. Eligibility Determination, is amended to add a new subsection B. Independent Film Declaration. This information was moved from CFC Form C, rev 9/01/2009. This is only required to be completed by an independent film and requires the company owners and the percentages of ownership. There are no new requirements as it is proposed in this section.

Subsection D. Principal Photography Days, is amended to add a new section that requests information on the estimated total California 2<sup>nd</sup> Unit, stunt and/or VFX days.

Section 4. Financing Sources, is a new section on this form. This information was moved from CFC Form B, Financing Sources Report, new 6/1/2009. The section requires information on the financing sources, name of funds, the amount and the percentage of the total financing. There are no new requirements as proposed in this section.

Section 5. Production Statistics, is a new section on this form and new to the program. This section will require the applicant to estimate the numbers of cast members, base crew members, extras and stand-ins. It will also ask if 75% of total production budget will be spent in California. This amendment will require the production company to provide additional information about the production when submitting an application.

Section 6. Estimated Tax Credit Allocation, is amended to add two boxes, that are for CFC Use Only. This will not have any effect on the regulated public.

Section 7. Required Materials Checklist, is amended to add a hard copy of the Application Form, CFC Form A. The One-line Shooting Schedule that is required to be included with the application, is amended to also specify that it must include “scene descriptions”.

#### Financing Sources Report, CFC Form B

This form will identify the financing sources for the production. This form is repealed and all the requirements are moved to the Application Form, CFC Form A.

#### Independent Film Declaration, CFC Form C

This form is required if the Qualified Motion Picture meets the criteria for an independent film. This form is repealed and all the requirements are moved to the Application Form, CFC Form A.

#### Expenditure Summary Report, CFC Form F

This form is used to gather final expenditure information and statistics upon completion of a Qualified Motion Picture. The form has been reformatted with new header print and type. A CFC Use Only box has been added. These changes will not affect the regulated public.

Section 1. Applicant Information, is amended to specify that the program requires “Today’s” date, instead of date. The section requiring the “Applicant” is amended to require “Applicant” entity or “Individual/Title” if applicable. The address has been amended to require the “Applicant’s” address.

This section will also require the Taxpayer ID#, Seller's Permit# and Copyright Registration#.

A new Section 2. Production Information is added to this form. This section will require the primary production company or Studio representative's Name, Title, Company Name, Company Address, City, State, Zip, Country, Email, Phone, Cell phone and fax. A box has been added that allows the user to skip to the next section, if the information is the same as in Section 1. This section will also require Payroll Service information, Distributor Information, and CPA Information.

Section 3. Eligibility Determination is amended to request a "Wrap Date". It will also require additional information on the principal photography days, including days specifically in Los Angeles, days outside 30-mile studio zone, total percentage of California principal photography days and total California 2<sup>nd</sup> Unit, stunt and/or VFX days. It also will require the production company to identify the counties outside the studio zone where filming occurred, and any locations outside of California.

Section 4. Production Statistics, is amended to require the applicant to provide the numbers of cast members, base crew members, and vendors. It also amends the section requiring the total number of California resident and non-residents. The amendment will specify to include both qualified and non-qualified residents and non-residents are to be included in the totals. This amendment will require the production company to gather updated and additional information about the production before submitting this form, which is necessary to obtain the Tax Credit Certificate.

This section also amends the California Taxable Spend/Taxes Withheld information required. The production company will be required to submit qualified and non-qualified expenditures on goods and services. It will also clarify that they should report the total state income taxes withheld for both qualified and non-qualified wages.

A new subsection will require the production company to submit Total Production Budget which is the total California Expenditures, qualified and non-qualified.

A new subsection D, Employment Diversity Information, moves the requirements from CFC Form H, Employment Diversity Report, new 6/1/2009, to this section. There are no new requirements.

Section 5. Tax Credit Allocation, is amended to add a third column that sums the numbers given in this table relating to Qualified Expenditures. This will not require additional information to be submitted.

In the Tax Credit Allocation Due Box, a Note has been added relating to the qualified expenditures percentages allowed by statute. This does not have a regulatory affect.

A new line was added requesting the amount of the credit allocation letter and the Final Credit Allocation, which is the lesser of the qualified spend or the original amount allowed on the credit allocation letter.

Section 6. Required Materials Checklist is added to this form. This section lists all documents that are required to be submitted pursuant to the regulations.

A new provision states that all electronic files must be submitted on a CD or USB flashdrive along with paper documentation. This is not a new requirement and is added for clarification.

Section 7. Signature, is amended to require the person signing the form, to sign under penalty of perjury.

#### Employment Diversity Report, CFC Form H

The CFC is required by statute to report on the diversity of the workforce in the Qualified Motion

Pictures produced as a result of this program. This form will be repealed and all provisions moved to CFC Form F, Expenditures Summary Report.

#### Fiscal Year End Expenditure Report, CFC Form K

Some of the information required on this form is identical to the Expenditure Summary Report, CFC Form F. The applicable sections have been amended to be consistent with that form.

The form has been reformatted with new header print and type. A CFC Use Only box has been added. These changes will not affect the regulated public.

Section 1. Applicant Information, is amended to specify that the program requires “Today’s” date, instead of date. The section requiring the “Applicant” is amended to require “Applicant” entity or “Individual/Title” if applicable. The Company Name is amended to request the “Production” Company Name.

Section 2. Labor Statistics for in-State Work, is amended to require the applicant to provide the numbers of cast members, base crew members, and vendors. It also amends the section requiring the total number of California resident and non-residents. The amendment will specify to include both qualified and non-qualified residents and non-residents are to be included in the totals. This amendment will require the production company to gather additional information about the production before submitting this form.

Section 3. California Taxable Spend, is amended to add to the title “Taxes Withheld”. The production company will be required to submit qualified and non-qualified expenditures on goods and services. It will also clarify that they should report the total state income taxes withheld for both qualified and non-qualified wages.

The signature box is amended to require the person signing the form, to sign under penalty of perjury.

#### Agreed Upon Procedures (AUP), dated October 20, 2010

The AUP is a technical tool for the CPA to determine what is required and expected in the Agreed Upon Procedures Report and is required to be submitted by the Qualified Taxpayer in order to be issued a Tax Credit Certificate. The AUP has been amended to be consistent with all the changes to form requirements in these regulations.

The AUP General Section was amended to state that the CPA must submit with the report a copy of their CPA license or privilege permit number and contact information.

#### Section IV. Agreed Upon Procedures

Eligibility. This section is amended to require the preparer to identify litigation or insurance claims and the impact on the total production expenditures.

Expenditures. Section g. is amended to provide for procedures for qualified items which required full or partial payment made prior to the issuance of the Credit Allocation Letter.

A new section (i) requires that the preparer confirm the expenditure is pro-rated to reflect any usage out of the state.

A new section (j) requires that the preparer confirm that insurance deductible were not included.

Section 3. is amended to clarify that the preparer is to obtain a fixed asset listing and list the type of assets

included. This section also provides for detail on assets over \$10,000 and the procedures to follow.

Section 7 is amended to require the preparer to adjust the Qualified California Production Expenditures for known errors.

#### Payroll.

Section 1 is amended to provide more specific instructions to the preparer on obtaining detailed payroll reports, including requiring them to compare and reconcile the payroll reports.

Section 2 is amended to specify that the CPA must select a sampling of qualified wages in the Bible and reconcile the amount for the individual with the payroll report.

New sections (f), (g), and (h) specify regulatory parameters which the CPA must confirm during sample testing.

Section 3 is amended to specify those individuals who receive both an above the line and a below the line credit and the amount of the below the line salary that is considered qualified.

Sections 4 and 5 are amended to specify that the production expenditures must be adjusted for known errors.

New section 5(c) is added and specifies that a listing of exceptions be included.

#### Related Parties and Other Affiliations.

This section was amended to clarify the details on obtaining a schedule listing of all related party transactions from the production company. It will also require the preparer to select samples of related party transactions for testing. The preparer will also need to note any transaction not at an arms length standard and provide a listing of all related party transactions.

Exhibit A is amended to include a Final Credit Amount, which is the Tax Credit Allocation based on all the findings. A non-substantive change was made for reference under the Eligible Tax Credit, to show the percentages allowed by statute.

An Appendix B, Sample Format for the Agreed Upon Procedures Report is proposed to be added to the AUP. This format is identical to the requirements in the Agreed Upon Procedures, except for requiring the information on the production and the CPA in the beginning of the report. It will also require the CPA to provide a statement establishing the intent and procedures followed to complete this report.

### **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 Rae 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 Commission 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 Commission may determine that changes to the proposed regulation are appropriate. If the Commission 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 Commission adopts the regulations as revised. The Commission 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 Commission 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 Commission 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 Contact Person designated in this Notice.

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

The Commission is required to prepare a Final Statement of Reasons. Once the Commission 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 Contact Person identified in this Notice.

### **Office Internet Website**

The Commission 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)