

**GOVERNOR'S OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT  
California Film and Television Tax Credit Program 3.0**

Title 10, Chapter 7.75, Sections 5520-5528

**NOTICE OF PROPOSED RULEMAKING**

June 25, 2019

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 adopt new sections 5520 through 5528 in Title 10 of the California Code of Regulations in order to implement, interpret and make specific Revenue and Taxation Code sections 17053.98 and 23698 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 Agency. Written comments will be accepted by the Agency until August 19, 2019. Submit comments to:

Name: Nancy Rae Stone  
Address: California Film Commission, 7080 Hollywood Boulevard,  
Hollywood, CA 90028  
Email: Nancy.Stone@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 17053.98(e) and 23698(e) and in order to implement, interpret and make specific Revenue and Taxation Code sections 17053.98 and 23698.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Film Commission (CFC) proposes to adopt new sections 5520, 5521, 5522, 5523, 5524, 5525, 5526, 5527 and 5528. 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 Credit Program 3.0.

Existing law provides for a similar program, allocating tax credits to qualified taxpayers in the motion picture industry until July 1, 2020. The provisions in the existing program provide for applicants to file a written application for the allocation of the tax credit; and for the California Film Commission to 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 existing program limits the aggregate amount of credits that may be allocated to qualified motion pictures in any fiscal year to \$330,000,000. The California Film and Television Credit Program 3.0 includes the ability for all types of qualified productions to qualify for additional tax credits for the hiring of labor which resides and works outside the Los Angeles studio zone, bifurcates the Independent Film category by budget level, and includes a skilled pilot training program for underserved populations.

Section 5520 provides definitions of terms used in the California Film and Television Tax Credit Program. This section defines terms that are specific to this Program: Applicable Period, Applicant, California Film Commission, California in-state Vendor, Credit Allocation Letter, Contracted Services, Independent Film, Jobs Ratio, Local Hire Labor, Office or other place of business, Production Budget, and Reasonable Cause. This section also defines the following terms used in the statute or regulation that are industry terms: Feature Film, Force Majeure, Hiatus, Miniseries, Outside Los Angeles Zone Vendor, Pass-through Business, Pick Up Order, Pilot, Principal Photography Days, Producer, Production budget, Recurring Series, Television Project, Television Season, Television Series and Visual Effects. Local Hire Labor and Recurring series are new definitions added for clarity; Miniseries was redefined in the statute and the regulatory definition was re-written to conform to it. Defining these terms will clarify the requirements in these regulations.

Section 5521 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 based on category type. The application process shall be in two phases. Phase 1 requires the applicant to complete an online application and to submit a synopsis of the Qualified Motion Picture. The online application requires both the applicant's contact and business structure information as well as information on the project, such as proposed filming days and proposed qualified wages and expenditures. The project information allows the CFC to determine if there are any additional percentage points, known as "bonus points" in the industry, and to determine the Jobs Ratio of the applicant. The Jobs Ratio will be used to initially rank the applicants. The top ranked applicants will be notified and begin Phase II of the application process. Phase II will require the applicant to submit a qualified

expenditure budget, a One-Line Schedule, a Fringe Matrix, Screenplay, narrative statement or relocating statement, a financial plan. If the Applicant is a Pilot, Relocating TV Series or New TV series, a Pick-up Order is also required. Recurring TV series may submit an application without a pick up order but if not received within 140 calendar days, will be removed from the queue and may reapply during a future allocation period. All projects are required to submit their policies against unlawful harassment, specific company structural and financial information, and, excluding the lowest tier Independent Film, a summary of voluntary programs to increase representation of women and minorities as well as information about how these programs are publicized to interested parties. Materials will be reviewed for accuracy and an approved Adjusted Jobs Ratio will be determined. The top ranked applicants for which credits are available will be issued a Credit Allocation Letter (CAL), which is a reservation of tax credits. This section shall also require a production company to commence filming no later than 180 calendar days after the Credit Allocation Letter is issued; projects with qualified expenditures over \$100 million dollars have a deadline of 240 days. This program will also require specific production company staff to attend an orientation meeting with the California Film Commission. This section 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. However, a television series shall submit a new application each year and the queue placement will be based on the fiscal year of the original credit allocation and, if necessary, the current job ranking for that series.

Section 5522 identifies the eligibility requirements for Program 3.0. 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 New Television Series or a Television Pilot for a New Television Series to be qualified. It also states that an animated production is not a Qualified Motion Picture. This section also specifies the maximum qualified expenditure amount eligible for tax credits for an Independent Film and the maximum qualified expenditure amount for a Feature Film, Television series, Pilot or Mini-series. The same maximum per category applies to the 5% augmentation. Also included is a provision which states that revocation of the tax credit reservation is final and not subject to review.

Section 5523 identifies the provisions in the statute for Qualified Expenditures and clarifies that State and Federal income taxes, Certified Public Accountant (CPA) fees, expenditures for rentals or purchases out of the state, expenditures for services performed outside of California, financial contributions related to the pilot career pathways training program and expenditures for exhibition of the production are not qualified expenditures. This section also clarifies that elements created for foreign distribution and archival purposes are not considered final elements of the production. This section also states that the CFC shall provide charts identifying qualified expenditures and wages. These charts will be posted on the CFC website and provided only as a guide for the applicant.

Section 5524 provides for the procedures in allocating the tax credits. The section clarifies that the statute provides for the percentage of qualified expenditures allowed for a Qualified Motion

Picture. A provision is included which delineates how unused credits from previous tax credit programs will be allocated. This section also provides that if the tax credits have been allocated for any allocation period, any applications still in the queue will remain in their Jobs Ratio ranking order until allocations become available, the applicant withdraws the application or the allocation period ends. A provision in this section allows for a five percent augmentation to the tax credit allocated to the Qualified Motion Picture for productions that purchase or lease tangible personal property outside the Los Angeles zone during the applicable period and the personal property is used or consumed outside the Los Angeles zone or for a production company that incurs qualified wages for services performed relating to original photography outside the Los Angeles zone. This section also describes the methodology by which outside the Los Angeles zone partially consumed or totally consumed qualified non-wage expenditures are calculated and provides examples of totally consumed non-wage expenditures. A 10% additional augmentation to the tax credit for the hiring of local labor working outside the Los Angeles zone is included. This section will not apply to Independent Films or Relocating Television series already allocated 25% tax credits; however, these productions qualify for a 5% additional augmentation to the tax credit for the hiring of local labor working outside the Los Angeles zone.

Section 5525 sets forth the elements of Phase III and provides 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 and a report of any significant changes to the project, if applicable. This section also requires the production company to be involved in the local training and public service programs aimed at exposing high school, community college students, and/or approved career-based learning program participants to jobs in the entertainment industry. Specific time requirements for professional skills tours, faculty externships and internships are delineated and the minimum hours for workshops or panels have been eliminated. The applicant will also have the option to make a financial contribution based on 0.25 percent of the estimated tax credit reservation with minimum and maximum requirements. This section also outlines the requirement to make a financial contribution to fund a pilot career pathways training program. The contribution is based on 0.25 percent of the estimated tax credit and must be paid no later than 10 days after acceptance into the program. The contribution is refundable, in whole or in part, under specified circumstances.

Section 5526 provides for Phase IV - the issuance of the Tax Credit Certificate - which is the document issued to the qualified taxpayer upon completion of the Qualified Motion Picture. This section defines a completed project and requires the applicant to submit documents verifying the completion of the project: proof of copyright registration of the screenplay; seller's permit number, if applicable; documentation certifying date of completion of post-production; list of all cast and crew; and copy of script supervisor's lined script or continuity/spotting log of the project. The Expenditure Summary Report must be completed via the portal on the CFC website. The applicant will provide information related to the completed production, including qualified expenditures, production shoot days and locations, financial statistics, diversity and gender statistics for both qualified and non-qualified individuals which were voluntarily submitted by cast and crew and all other information needed to determine bonus points and augmentation to the tax credit. Also required: layout of the main and end titles; documentation for each visual effect, title, digital effects and /or post sound company contracted by the production company; a listing of locales outside of California where any member of the

applicant's combined reporting group has shot in the preceding year; updated company structure and financial information; verification of participation in a career based learning program; and payment for the pilot career pathways training program. The Agreed Upon Procedures report is required to be completed by an independent licensed Certified Public Accountant (CPA) who has attended a California Film Commission CPA orientation meeting whose firm has a successful Peer Review. Miniseries shall be required to submit additional documentation verifying initial distribution. This section states that if the application is disapproved, the finding is final and not subject to administrative appeal.

Section 5527 provides for the Jobs Ratio Ranking Process. The statute requires the CFC to rank the applications by a Jobs Ratio computation. The base ratio ranking is the amount of qualified wages paid to qualified individuals plus 35% of non-wage expenditures divided by the estimated amount of tax credits. Visual effects vendor expenditures for work performed in California will be apportioned 70% labor, 30% non-labor. This ranking will be calculated online based on the data entered by the applicant. This section also provides that an adjustment to the job ratio will be made for dollars spent on qualified visual effects performed in the state, number of principal photography days outside the Los Angeles studio zone and amount paid in qualified wages for music scoring and/or track recording. The Jobs Ratio calculation does not include tax credit amounts increased by the 5% or 10% augmentation for outside of the Los Angeles zone photography or visual effects spend. It also does not include a contingency or bond. Bonus points will be awarded in each area based on methodology provided for in this section. The ranges used to assign the bonus points will be posted on the CFC website before each application period. Overstatement of the production plan may result in penalties as per the statute.

Section 5528 requires the holder of the Credit Certificate to comply with promotional requirements, including an on-screen acknowledgement to the CFC, CFC logo, and five production stills. The production stills must come with cast approvals and illustrate the diversity of California locations and/or job creation and are used for promotional purposes by the CFC.

This regulation will incorporate by reference the California Film Commission forms that are required to be submitted during the application, filming and completion of the motion picture phases of the process.

**The following forms are incorporated by reference in these regulations:**

Credit Allocation Letter, CFC Form D3 (new. 06/25/19) This form provides for the written approval of the applicant and identifies the approved jobs ratio number and the number of tax credits for which the applicant is eligible.

Local Community Expenditure Report, CFC Form LE3 (new. 06/25/19). This form provides production expenditure statistics on wage and non-wage expenditures outside the Los Angeles studio zone and is required of productions with expenditures of \$100,000 or more outside the Los Angeles studio zone.

The Tax Credit Certificate, CFC Form M3 (new. 06/25/19) is the actual tax credit certificate that will be issued by the CFC and is the document that will be submitted to the Franchise Tax Board or the Board of Equalization.

Career Readiness Forms, CFC Forms CR 1-5 (as applicable):

CFC Form CR1 (new. 06/25/19) verifies paid internship(s);

CFC Form CR2 (new. 06/25/19) verifies professional skills tour participation

CFC Form CR3 (new. 06/25/19) verifies faculty externship participation

CFC Form CR4 (new. 06/25/19) verifies classroom workshop/panel participation

CFC Form CR5 (new. 06/25/19) verifies financial contribution

**Consistency And Compatibility With Existing State Regulations:**

After conducting a review for any regulations that would relate to or affect this area, the California Film Commission Board evaluated this regulatory proposal and finds that it is not inconsistent or incompatible with existing state regulations.

**Anticipated Benefits of the Proposed Regulation:**

The proposed regulations will provide a program to the motion picture industry allocating tax credits for qualified motion pictures. These tax credit incentives will encourage production companies regardless of distribution outlet to film in California instead of other states, provinces and countries offering incentives. Program 3.0 is structured to emphasize job creation when allocating tax credits and provides separate funding categories to ensure tax credits for multiple types of productions. The program is enabling California to increase the number of productions and therefore, jobs and dollars spent in state.

**AUTHORITY AND REFERENCE**

The proposed regulations have been adopted under the authority of Revenue and Taxation Code section 17053.98(e) and 23698(e) to implement, interpret and make specific Revenue and Taxation Code sections 17053.98 and 23698.

## **ESTIMATES OF ECONOMIC IMPACT**

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. Small businesses in California do, however, provide goods and services to the businesses complying with these regulations and will benefit from the additional filming in California.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

Adoption of these regulations will: (1) facilitate the creation of jobs within California; (2) facilitate the creation of businesses within California; and (3) facilitate the expansion of businesses currently doing business within California. As stated above under Anticipated Benefits of the Proposed Regulation, these tax credit incentives will encourage production companies regardless of distribution outlet to film in California instead of other states, provinces and countries offering incentives. Program 3.0 is structured to emphasize job creation and provides separate funding categories to ensure tax credits for multiple types of productions. The program is enabling California to increase the number of productions and therefore, jobs and dollars spent in state.

## **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, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

### **Contact Person**

Inquiries concerning the proposed action may be directed to:

Name: Nancy Rae Stone  
Email: Nancy.Stone@film.ca.gov

The backup contact person for these inquiries is:

Name: Leah Medrano  
Email: Leah.Medrano@film.ca.gov  
Phone No.: 323-860-2960

Questions on the substance of the proposed regulations may be directed to:

Name: Nancy Rae Stone  
Phone No.: 323-860-2960

### **Availability Of Changed Or Modified Text**

After the close of the forty-five (45) day public comment period, the California Film Commission (CFC) may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the CFC regarding this proposal, the CFC may determine that changes to the proposed regulation are appropriate. If the CFC 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 CFC adopts the regulations as revised. The CFC 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 Nancy Rae Stone at the above email address. The CFC 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 CFC 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 Leah Medrano 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 CFC is required to prepare a Final Statement of Reasons. Once the CFC 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 Office 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 can be accessed through our website at: [www.film.ca.gov](http://www.film.ca.gov)