

# How to Use Your Tax Credit

This document is provided as a resource guide. Please consult your tax or legal department for further details on utilizing tax credits. For more information, the [Franchise Tax Board](#) and the [California Department of Tax and Fee Administration](#) provide vital details on claiming tax credits.

For the period beginning January 1, 2020 and before January 1, 2023, Non-Independent tax credit recipients are limited to a cap of \$5million with respect to offsetting state income tax liability and a \$5million cap with respect to offsetting Sales and Use tax liability. This applies to projects in both Program 2.0 and Program 3.0 tax credit programs. The cap on credits against income tax liability are at the combined reporting group level; the cap on credits against Sales and Use tax liability can be claimed by affiliates.

Independent Films are also limited to the \$5million tax credit limitation for the next 3 years. Companies which purchase tax credits from Independent Films have the same limitations when they elect to utilize their credits against their state income tax liability. More information is included below.

## **GENERAL INFORMATION**

1. Qualified taxpayers, participating in the California Film & TV Tax Credit Program, or their affiliates are allowed a credit against the “net tax” in the amount specified on the Tax Credit Certificate.
2. Tax Credits are governed by the year the credit certificate is issued. Once a taxpayer receives a Credit Certificate, they can claim it on their tax return beginning with the year the Certificate was issued. (Rev & Tax Code 17053.95/98 (a)(2) and 23695/98 (a)(2) provided that the credit “*shall be allowed for the taxable year in which the California Film Commission issues the credit certificate.*”). The excess credit may be carried over to reduce the net tax in the following taxable year and succeeding five (Program 2.0) or eight (Program 3.0), if necessary. This means that for Program 2.0, the carry over may be extended to 6 years and Program 3.0 to 9 years. Due to the \$5million per year limitation the first 3 years of Program 3.0, the carryover may be extended from 6 to 9 years (2.0) and from 9 to 12 years (3.0). (See note below for clarification.)
3. The extension of the carryover period is only for the number of years that the credit was limited. For example, if a taxpayer has a Program 2.0 credit for \$15million that they are eligible to utilize in 2022, the taxpayer would be limited for only one year. Therefore, the credit would be allowed an additional year of carryover.
4. Tax credits may be assigned to one or more affiliates. “Affiliate Corporation” is defined in the Revenue & Taxation code as *a corporation that is a member of a commonly controlled group as defined in Section 25110 subdivision (b).*
5. Qualified Taxpayers may elect to split the credits and apply a portion to their income tax liability and a portion to their Sales & Use, however, only one Credit Certificate will be issued to the taxpayer.

6. There is no recapture provision for any Tax Credit Certificates issued.
7. Productions must retain all records pertinent to the Credit Certificate for a minimum of 3 years from the date of filing their tax return claiming the credit.
8. If an LLC elects to be taxed as a partnership or “S” corporation, the LLC is treated as a pass-through entity. In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer is made at the entity level. No amount of credit is allowed to the pass-through entity. The credit is passed-through to the partners, members, or shareholders.

### **TAX CREDIT OFFSET AGAINST INCOME TAX LIABILITY**

1. In the case where the credit allowed exceeds the “net tax”, the excess credit may be carried over to reduce the “net tax” in the following taxable year, and succeeding five taxable years (2.0) or eight taxable years (3.0) if necessary, until the credit has been exhausted.
2. Credits applied to income tax liability are not refundable.
3. Tax credits are not reportable as income if they are taken as a credit only. However, if the taxpayer sells the credit, the sale amount is reportable as taxable income. (*See Transferable Tax Credits below for more information.*)

### **TAX CREDIT OFFSET AGAINST SALES AND USE TAX LIABILITY**

1. There is a \$5million cap limitation to offset Sales and/or Use taxes for any return filed between January 1, 2020 and January 1, 2023. As a result, carry over for Program 2.0 and 3.0 has been extended. Any elections to take the credit against Sales and/or Use taxes which were made prior to January 1, 2020 are not affected.
2. The extension of the carryover period is only for the number of years that the credit was limited. For example, if a taxpayer has a Program 3.0 credit for \$15million that they are eligible to utilize in 2022, the taxpayer would be limited for only one year. Therefore, the credit would be allowed an additional year of carryover.
3. When used to offset Sales & Use tax liability, credits may be applied only to the General Fund portion of the statewide Sales & Use tax rate – 3.9375%. Credits will not apply to the following portions of the statewide Sales & Use tax rate: 0.50% Local Public Safety Fund, 0.50% Local Revenue Fund, 1.0625% Local Revenue Fund 2011, and 1.25% allocated to local funds.

4. Sales & Use tax liability for Company “A” (or its affiliates) applies only to Sales tax liability that Company “A” owes for retail sales to its customers and Use tax liability that Company “A” owes for purchases subject to Use tax, including purchases from out of state vendors and taxable rentals for use in California.
5. Credits cannot be applied to Sales taxes paid by Company “A” to its vendors on Company “A” purchases. Sales taxes paid or owed by California vendors are not the company’s Sales taxes, even if Company “A” paid Sales tax reimbursement to the vendors. When an individual or company pays Sales tax on an item purchased from a vendor, the purchaser is actually reimbursing the vendor for the Sales tax that the vendor will owe to the state.
6. Refund may only be for taxes paid during the period commencing on the first day of the calendar quarter in which the production period (pre-production) began and ending through the due date of the claimant’s most recent Sales & Use tax return.
7. To file a claim for a refund of Sales & Use tax, the taxpayer must complete California Department of Tax and Fee Administration form [CDTFA-318 Claim for Refund and Irrevocable Election to Apply Credits Against Qualified Sales and Use Tax Liability](#).
8. The California Department of Tax and Fee Administration (CDTFA) may issue a refund for qualified Sales & Use taxes paid through the due date of the claimant’s most recent Sales and Use tax return.
9. Credits may be claimed against Sales & Use taxes due for the six years (2.0) or 9 years (3.0) following the close of the production period, without regard to the fiscal year from which the credits were allocated. (See *points 1-2 in this section for restrictions*.) Production is considered complete when the process of post-production has been finished and a final composite answer print, delivery air master, or digital cinema files of the qualified motion picture is produced.
10. Qualified taxpayers may use certified credits against Sales & Use tax as soon as they are issued by the CFC. However, certified credits may not actually be assigned until the qualified taxpayer’s franchise or income tax return is filed. An affiliate cannot apply the credits against Sales and Use tax until the credits are actually assigned.
11. Credits may be applied to any General Fund tax liability that may come up as an assessment from an audit (subject to the provisions provided in Revenue and Taxation Code section 6902.5).

## **TRANSFERRABLE TAX CREDITS**

1. **ONLY** qualified taxpayers who receive credits attributable to an “**Independent Film**” may sell these credits to an unrelated party.

2. Tax credits for an Independent Film shall be applied to a maximum of \$10million dollars of the qualified expenditure budget. There is no maximum on the production budget. Credits cannot be sold to more than one party and may not be resold by the unrelated party to another taxpayer or other party.
3. If a taxpayer transfers and sells the credits, the sale amount is reportable as taxable income.
4. If a third-party purchases credits from an Independent Film production, the credits may only be applied to the purchaser's Income Tax liabilities – not the purchaser's Sales & Use taxes. For the period of January 1, 2020 and before January 1, 2023, the third-party purchaser will have the same \$5million limitation as the applicant.
5. A party that purchases tax credits from a qualified taxpayer shall be subject to all the same requirements that apply to the qualified taxpayer.
6. A party that purchases the tax credits must report income on the difference between what they paid and what the credit is worth. For example, Buyer purchases \$1million worth of credits from an independent film for \$800,000. Buyer applies that \$1million of tax credits to satisfy \$1million tax bill. Buyer pays tax on the \$200,000.
7. In no event may a qualified taxpayer assign or sell any tax credit that is claimed on any tax return of the qualified taxpayer. Should the taxpayer originally allocate a credit and a taxpayer to whom the credit has been sold both claim the same amount of credit on their tax returns, the FTB may disallow the credit of either taxpayer.
8. The qualified taxpayer selling credits to a non-related party is not required to file an Income Tax return prior to the sale of the credits.
9. If the taxpayer sells or transfers the tax credit, the taxpayer will need to submit [FTB Form 3551](#) (for independent productions selling or transferring tax credits).