

**Title 10**  
**Chapter 7.75**  
**CALIFORNIA FILM COMMISSION**

**Article 3.**

**CALIFORNIA FILM AND TELEVISION TAX CREDIT PROGRAM 3.0**

**Section 5521. Application Process For Tax Credit Allocation**

(n) Any television series, relocated television series and any television series based on a pilot that has been approved and issued a Credit Allocation Letter, shall be given first priority for a credit allocation during an open allocation period in each subsequent year in the life of that series whenever credits are allocated and available within a fiscal year.

(1) Each recurring television series shall submit a new application and pick-up order, if available, for each season during any open television project application period as specified by the CFC in its written notification. The allocation amount requested shall be submitted in the manner prescribed in section 5521(k)(1)(C), and the per episode amount shall not exceed 105% of the per episode amount, as calculated by the CFC, approved in the previous season's credit allocation letter. The narrative statement requirement as set forth in sections 17053.98(g)(A)(x) and 23698(g)(A)(x) of the Revenue and Taxation code for all projects shall be deemed as met for recurring television series with the statement submitted by that series when it was accepted into the program as a pilot, new or relocating television series.

Authority Cited: Revenue and Taxation Code sections 17053.98(e) and (g) and 23698(e) and (g). Reference: Revenue and Taxation Code sections 6902.5, 17053.98 and 23698.

**Section 5524. Tax Credit Allocation**

(b) (1) One hundred percent (100%) of the Allocation of unused credits as provided in Revenue and Taxation Code 17053.85, 17053.95, 23685, and 23695 shall be allocated

as follows: 20% of unused credits each in fiscal year 2020-21, through 2024-25. This amount shall be added to the amounts specified in sections 17053.98(i)(A)-(D) and 23698(i)(1)(A)-(D) to determine the aggregate amount of credits available for allocation for fiscal year 2020-21. Credits shall be divided by percentage and project type as provided in sections 17053.98 (i)(E) and 23698 (i)(E) of the Revenue and Taxation Code.

(2) Once the aggregate amount of credits that may be allocated for a fiscal year is determined pursuant to subdivision (b), the amount of credits available for each classification of production described in 17053.98(i)(2) and 23698(i)(2) shall be determined as follows:

(A) Any television series, relocating television series or new television series based on a pilot for a new television series that has been previously approved and issued a credit allocation by the CFC under Revenue and Taxation Code sections 17053.85,

17053.95, 17053.98, 23685, 23695 or 23698 shall be issued a credit for that fiscal year.

(B) After the amount of credits necessary to satisfy the credit described in paragraph (1) are subtracted from the total aggregate amount of credits available for the fiscal year, that remaining amount shall be distributed by type of production according to the percentages and in the manner described in Revenue and Taxation Code section 17053.98(i)(2) and 23698(i)(2).

Authority Cited: Revenue and Taxation Code secs. 17053.98(e) and (g) and 23698(e) and (g). Reference: Revenue and Taxation Code sections 6902.5, 17053.98 and 23698.

## FINDING OF EMERGENCY

### CALIFORNIA FILM AND TELEVISION TAX CREDIT PROGRAM 3.0

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set for in Government Code Section 11349.6.

#### **1. STATEMENT OF EMERGENCY**

Deemed Emergency: As per Revenue and Taxation Code 17053.98(e)(2)(A) and 23698, section (e)(2)(A), the Legislature deemed that implementation of those sections (Sections 17053.98 and 23698) was an emergency:

*Implementation of this section for the 2020–21 fiscal year is deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare and, therefore, the California Film Commission is hereby authorized to adopt emergency regulations to implement this section during the 2020–21 fiscal year in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).*

#### **2. INFORMATIVE DIGEST**

In 2018, the Legislature passed Senate Bill 878 (Mitchell) (Statutes of 2018, Ch. 456) which extended the California Motion Picture and Television Production Tax Credit into its third iteration (Program 3.0). In so doing, the Legislature made a change from Program 2.0 directly relevant to the proposed emergency regulations. They amended sections 17053.98(g)(2)(E) and 23698(g)(2)(E) and added section 17053.98(i)(1)(E) and 23698(i)(1)(E), which had the combined effect of adding available tax credits left over from Programs 1.0 and 2.0 to the amounts available in Program 3.0 and allowing the California Film Commission to determine, by regulation, how much of the cumulative amount available from Programs 1.0 and 2.0 to add to the other amounts specified in sections 17053.98(i)(1) and 23698(i)(1) respectively to create the total pool of tax credits available for allocation in fiscal years 2020-21 through 2024-25.

An emergency petition was submitted to the CFC attesting that the statute compels a regulation that gives first priority on the aggregate credit pool to these television productions that received a previous allocation of tax credits from the

CFC. This is due to the legislative mandate expressed in Revenue and Taxation Code sections 17053.98(g)(2)(D)(v) and 23698(g)(2)(D)(v) that television series that had received a prior tax credit under Programs 1.0, 2.0 or 3.0 have priority:

*“(v) Notwithstanding any other law, any television series, relocating television series, or any new television series based on a pilot for a new television series that has been approved and issued a credit allocation by the California Film Commission under this section, Section 17053.98, 17053.85, 17053.95, 23685, or 23695 shall be issued a credit for each subsequent season, for the life of that television series whenever credits are allocated within a fiscal year.”*

The petition asserted that any alternative interpretation of section 23698 that would deny tax credits to previously approved recurring TV projects in subsequent years when credits are allocated would be inconsistent with legislative intent in its adoption. The suggested amendments to the Program 3.0 regulations were analyzed and discussed by the CFC Board of Directors and approved with further amendment.

#### **A. Amendments**

There is an immediate need for two related, yet distinct amendments based on the legislative intent referenced above. The first is an amendment to determine the overall size of the pool of credits available for allocation in Fiscal year 20/21.

##### **Amendment to Regulation Section 5524**

The statute provides unrestricted authority for the CFC to determine by regulation the proportion of the total amount of unallocated credits from Programs 1.0 and 2.0 that are included in the aggregate pool in any given fiscal year. The current regulations allow for 20% of the unallocated credits from previous programs to be added to the aggregate pool of tax credits each fiscal year.

The emergency amendment provides that 100% of the total amount of unused tax credits attributable to Section 17053.85, 17053.95, 23685, or 23695 are available for allocation in fiscal 20/21. These unused credits from Programs 1.0 and 2.0, added to the fiscal year 20/21 annual funding, will be sufficient to fund the recurring TV series and still allow tax credits to be allocated to the various types of productions specified in section 23698(i)(2). This would not be possible with only a 20% rollover of credits from past programs.

Maximizing the amount available for immediate distribution will also assist in economic recovery resulting from the COVID-19 economic shutdown of the motion picture and television production industry. Augmentation of the aggregate pool in this manner will bring certainty and clarity to applicants as to the overall amount of credits available.

#### **B. Amendment of Section 5521**

The proposed amendment in this section is necessary for it provides the CFC the ability to estimate the amount of credits which must be reserved for recurring TV series in order to satisfy the statutory requirement. The limitation of no more than a 5% per episode increase from the previous season enables the CFC to be able to more accurately estimate the amount of tax credits required for recurring TV series than if there were no cap at all.

Historically, the CFC has observed that from one television season to the next, recurring TV series episodes have increased in cost significantly. Without any predictability as to episode increases in subsequent seasons, the CFC would not be able to estimate the amount of credits needed for that category, or any other category.

Without a cap on recurring TV series tax credits, it is unlikely the CFC would be able to allocate tax credits to any category *except* recurring TV series, as it would need to retain all tax credits throughout the fiscal year for recurring TV series allocation periods. And, as TV series oftentimes have additional episodes ordered later in their season (“backorders”), the CFC would not be certain that it had allocated all the tax credits needed for any one season until the end of all TV allocation periods. This would mean that credits for the other categories would have to be scheduled for the very end of each fiscal year, which would be very limiting in terms of when credits would be available for those categories.

A 5% per episode cap provides some degree of certainty with respect to estimated credits needed; however, the number of episodes that could be requested in a fiscal year would be unpredictable. With the rollover of 100% of the unused tax credits from Program 1.0 and 2.0 in the first fiscal year, however, the program will have more credits than it normally allocates so as to accommodate this unpredictability.

3. **AUTHORITY AND REFERENCE:** The authority to adopt regulations implementing the California Film and Television Tax Credit Program 3.0 is found in Revenue and Taxation Code sections 17053.98(e)(2)(A) and (g)(2) and 23698(e)(2)(A) and (g)(2). The proposed emergency regulations implement, interpret and make specific Revenue and Taxation Code sections 6902.5, 17053.98 and 23698.
4. **DOCUMENTS RELIED UPON:** None.
5. **DEPARTMENT OF FINANCE COST ESTIMATES (Form STD 399) – Fiscal Impact –** the statute which the emergency regulations implement also contains the following express relief from the requirement in Government Code section 11346.5(a)(6):

*(e)(3) The California Film Commission shall not be required to prepare an economic impact analysis pursuant to the Administrative Procedure Act (Chapter 3.5*

*(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) with regard to any rules and regulations adopted pursuant to this subdivision. (Revenue and Taxation Code 17053.98(e)(3) or 23698(e)(3)*

6. Regulatory Compatibility

The CFC has determined that the proposed changes to the regulations are not inconsistent or incompatible with the existing regulations.

7. Local Mandate Determination:

Mandate on local agencies or school districts: None.

8. Cost or savings to any state agency: The amendments to the regulation do not increase or decrease costs for any state agency.