

Proposed Regulatory Text

Single Underline = additions

~~Single strikethrough~~ = deletions

**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 amount shall not exceed the amount, as calculated by the CFC, approved in the previous season's credit allocation letter or letters. 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~~ 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). The amounts distributed pursuant to this subparagraph shall not exceed \$115,500,000 for feature films, \$56,100,000 for relocating television series \$10,560,000 for independent film with a qualified expenditure budget exceeding \$10,000,000 and \$15,840,000 for independent films with a qualified expenditure budget less than or equal to \$10,000,000. In the event that projects drop out, funds will be allocated to the waitlisted projects in the category from which the credits were sourced. If there are no waitlisted projects, the funds will be distributed in the manner described in Revenue and Taxation Code section 17053.98(g)(2)(D)(v) and 23698(g)(2)(D)(v).

Section 5524: Note: Authority cited: Sections 17053.98(a), 17053.98(e), 17053.98(g), 17053.98(i), 17053.98(j), 23698(a), 23698(e), 23698(g), 23698(i) and 23698(j), Revenue and Taxation Code; and Section 11152, Government Code. Reference: Sections 17053.98 and 23698, Revenue and Taxation Code; and Section 14998.1, Government Code.

**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).*

Continuing shortfalls in the amount of tax credit allocation available in FY 2021-22 for recurring television series has made it necessary to further limit the amount of credit allocation to recurring TV series applicants to no more than received in their previous season. In order for applicants and the CFC to be adequately prepared to make the appropriate allocations by the start of the new fiscal year (July 1, 2021) an emergency exists.

The Covid-19 pandemic brought the entertainment industry -- CFC stakeholders -- into crisis mode, and the need to focus on the safety procedures needed to keep the industry afloat and with it, thousands of jobs. With safety procedures in place, the CFC and its stakeholders have begun discussions regarding the changes needed to finalize the regulations. The re-adoption of the emergency

regulations with its revision allows stakeholders and CFC the additional time needed before proceeding with the rulemaking process.

## **2. INFORMATIVE DIGEST**

### **A. Background**

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 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 in 2019 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 series 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.

However, even with the addition of the surplus funds from Programs 1.0 and 2.0 provided by the emergency regulations of 2019, there will be inadequate

tax credits to provide for the 5% growth increment embodied in the 2019 regulations. To avoid a further shortfall in this area, these emergency regulations freeze the maximum amount of available credit allocation for which a previously approved recurring television series may apply to the amount received in the previous season's allocation letter received from the CFC.

The emergency petition provided the authority for 100% of unused credits to be rolled over into the first fiscal year. Once all recurring TV series had received an allocation, the rest of the funds were to be distributed to the remaining categories. These emergency regulations further clarify that process so as to enable the surplus to be allocated to the Relocating, Feature and Independent Film categories up to their normal fiscal year cap, with surplus funds held to help abate the recurring TV series shortfall in future fiscal years. It also allows for tax credits to be allocated to waitlisted projects should projects drop out.

#### **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 to the amount received in the previous season's credit allocation letter from the CFC enables the CFC to be able to more accurately estimate the amount of tax credits required for recurring TV series and meet the increasing constraint on the amount of available credits.

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.

#### **C. Amendment of Section 5524**

The proposed amendment in this section is necessary to allow the CFC to

reserve surplus tax credits for recurring TV series while also providing that the other categories receive, as much as possible, tax credits up to the normal statutory fiscal year allocation. Without this restriction, the other categories could potentially receive more than their normal statutory percentages while creating an even greater shortfall of recurring TV series credits in future fiscal years. In addition, the proposed amendment provides that if credits become available and there are waitlisted projects, these unallocated tax credits may be used to provide credits to waitlisted projects from the same category.

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.