

2021 Instructions for Form FTB 3551

Sale of Credit Attributable to an Independent Film

What's New

Sales and Use Taxes – For taxable years beginning on or after January 1, 2020, and before January 1, 2023, a taxpayer who has made an irrevocable election with the California Department of Tax and Fee Administration (CDTFA) to apply a qualified motion picture tax credit against qualified sales and use taxes shall not receive refunds or credit offsets in excess of \$5,000,000, for any taxable year.

A taxpayer may use the credit amount, or assigned portion, that exceeds the \$5,000,000 limitation against the qualified sales and use tax imposed during the reporting periods in the five years following, including the reporting period beginning on and after January 1, 2024. This limitation does not apply to irrevocable elections made prior to January 1, 2020.

Program 3.0 California Motion Picture and Television Production Credit – For taxable years beginning on or after January 1, 2020, California Revenue and Taxation Code (R&TC) Sections 17053.98 and 23698 allow a third film credit, **program 3.0**, against tax. The newest tax credit is allocated and certified by the California Film Commission (CFC). The credit is:

- 25% of the qualified expenditures attributable to the production of a qualified motion picture in California where the qualified motion picture is a television series that relocated to California in its first year of receiving an allocation of this tax credit or an independent film.
- An additional credit may be allowed in an amount equal to 5% of qualified wages paid for services performed relating to original photography outside of the Los Angeles zone to qualified individuals who reside in California but outside the Los Angeles zone for the production of a qualified motion picture.
- 20% of the qualified expenditures attributable to the production of a qualified motion picture in California including, but not limited to, a feature or a television series that relocated to California that is in its second or subsequent years of receiving an allocation for this tax credit.

Additional credits may be allowed for the following:

- 5% of qualified expenditures relating to original photography outside the Los Angeles zone, excluding qualified wages used to calculate the 10% credit listed below.
- 5% of qualified expenditures relating to qualified visual effects attributable to the production of a qualified motion picture in California.

- 10% of qualified wages paid for services performed relating to original photography outside of the Los Angeles zone to qualified individuals that reside in California but outside of the Los Angeles zone would be allowed for the production of a motion picture within California.

For more information, go to the CFC website at film.ca.gov and search for **incentives**.

Important Information

New film credit – For taxable years beginning on or after January 1, 2016, R&TC Sections 17053.95 and 23695 allow a qualified taxpayer credit against the “net tax” (individuals) or “tax” (corporations) for a percentage of the qualified expenditures for the production of a qualified motion picture in California.

Original film credit – For taxable years beginning on or after January 1, 2011, R&TC Sections 17053.85 and 23685 allow a qualified taxpayer a credit against the “net tax” (individuals) or “tax” (corporations) for a percentage of the qualified expenditures for the production of a qualified motion picture in California.

A qualified taxpayer may sell the original film credit allowed under R&TC Sections 17053.85 and 23685, the new film credit allowed under R&TC Sections 17053.95 and 23695, and the third film credit allowed under R&TC Sections 17053.98 and 23698 that is attributable to an independent film to an unrelated party.

The film credit allowed under R&TC Sections 17053.95 and 23695 and R&TC Sections 17053.98 and 23698 are both available for the 2020 taxable year.

The CFC determines the amount of the credit and issues a tax credit certificate to the qualified taxpayer showing the amount of the credit. The maximum amount of credit that can be sold is the amount shown on the credit certificate. The full amount of credit or a portion of it may be sold.

Any portion of the credit that is not sold can be used by the qualified taxpayer to offset income or franchise tax or CDTFA qualified sales and use taxes. Credit not sold may also be assigned to an affiliate.

The qualified taxpayer selling the credit is required to report information related to the sale to the Franchise Tax Board (FTB) no later than 30 days after the sale of the credit. The requirement to notify FTB of the sale also applies to a partner, member, or shareholder who will sell any portion of their distributive share of the credit. After the sale of the credit, the unrelated party that has acquired the credit is subject to the requirements and restrictions of R&TC Sections 17053.85 and 23685, R&TC Sections 17053.95 and 23695, or R&TC

Sections 17053.98 and 23698. The unrelated purchaser may use the credit against income or franchise tax, but may not sell it, assign it, or use it against CDTFA qualified sales and use taxes.

General Information

A Purpose

Use form FTB 3551, Sale of Credit Attributable to an Independent Film, to report the sale of a credit attributable to an independent film.

The requirement to notify FTB of the sale also applies to a partner, member, or shareholder who will sell any portion of their distributive share of the credit.

See Section C Rules, for rules that apply to the selling of the credit and how to go about notifying FTB of the sale of the credit.

B Definitions

California Film and Television Tax Credit Program Tax Credit Certificate (hereafter, CFC Tax Credit Certificate) means the actual tax credit certificate that is issued by the director of the CFC. This document may be requested by the FTB or the CDTFA. This certificate details the maximum amount of the credit that can be sold.

Independent film as defined in R&TC Sections 17053.85 and 23685 means a motion picture with a minimum budget of one million dollars (\$1,000,000) and a maximum budget of ten million dollars (\$10,000,000) that is produced by a company that is not publicly traded and publicly traded companies do not own, directly or indirectly, more than twenty five percent of the producing company.

Independent film as defined in R&TC Sections 17053.95 and 23695 and R&TC Sections 17053.98 and 23698 have a minimum budget limitation of one million dollars (\$1,000,000), but no maximum budget limitation.

Qualified taxpayer means a taxpayer who has paid or incurred qualified expenditures and has been certified and issued a credit certificate by the CFC.

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. Pass-through entity means any entity taxed as a partnership or “S” corporation.

Face amount of credit means the amount shown in the Final Tax Credit box on the CFC Tax Credit Certificate.

Consideration received means the dollar amount the seller receives from the buyer for the sale of the credit. Stock, securities, or other property also count as consideration received.

C Rules

The qualified taxpayer selling the credit must submit form FTB 3551, no later than **30 days** after the sale of the credit to notify FTB of the following:

- Name, address, and tax identification number of the film company listed on the CFC Tax Credit Certificate, the seller, and the buyer.
Note: If the film company is a pass-through entity, the qualified seller is the partner, member, or shareholder.
- Tax Credit Certificate number shown on the CFC Tax Credit Certificate.
- Final Tax Credit amount shown on the CFC Tax Credit Certificate.
- Partner's, member's, or shareholder's name, address, tax identification number as well as the distributive share of the credit.
- Amount of credit that will be sold.
- Amount of consideration the seller will receive from the buyer.
- Amount of credit the seller has applied or will apply against CDTFA qualified sales and use taxes. **Important:** This portion of the credit may not be sold.

Only qualified taxpayers who receive credits attributable to an independent film may sell the credit to an unrelated party.

A credit cannot be:

- Sold to more than one taxpayer.
- Resold, assigned, or used against CDTFA qualified sales and use taxes by the unrelated purchaser.

In no event may a qualified taxpayer assign or sell any tax credit to the extent the tax credit allowed is claimed on any tax return of the qualified taxpayer.

In the event the taxpayer that earned the credit and the buyer both claim the same credit amount on their tax return, the FTB may disallow the credit of either taxpayer.

D Gain on Sale of Credit

The sale of the credit is a sale of property. The seller is required to report gain from the sale. Basis in property is generally the cost of the property. Since the seller did not pay for the credit, the seller does not have a basis in the credit.

The gain from the sale of the credit is the excess of the total consideration received over the basis. The total amount of consideration received is the sum of any money received plus the fair market value of the property (other than money) received. Since the seller's basis in the credit is \$0 (zero), the seller will recognize and report gain on the full amount of consideration received.

E Filing Form FTB 3551

The form may be sent by mail or by fax to the following PO Box address or fax number:

INDEPENDENT FILM TAX CREDIT MS F350
FRANCHISE TAX BOARD
PO BOX 1779
RANCHO CORDOVA, CA 95741-1779
Fax: 916.855.5666

Specific Instructions

Part I – Seller and Buyer Information

If the seller is a single member limited liability company (SMLLC) or limited liability company (LLC), select the appropriate box. If the LLC is electing to be treated as a partnership then the LLC must fill out Part III, box 6. Since the LLC is a pass-through entity each member is considered the responsible party and each member's name, address, tax identification number and distributive share must be disclosed for all levels of the pass-through entity.

Sellers of this credit must complete the "Seller" entity box by providing the qualified taxpayer's information, which is found on the CFC Tax Credit Certificate.

The seller completes the second entity box only if the seller is a partner, member, or shareholder, selling their distributive share of pass-through credits.

The seller completes the third entity box with the buyer's information.

Part II – Independent Film Questionnaire

The seller answers questions 1 and 2 in Part II to determine if the credit meets the requirements to be sold. If any of the requirements are not met, the credit cannot be sold.

If the answer to question 3 is "Yes," attach a schedule listing the **same information** as requested in the seller entity box in Part I for each entity which the credit passed-through. Begin with the entity which generated the credit and end with the entity of which the seller is a partner, member, or shareholder.

If the credit does not meet the requirements to be sold, see "Important Information" section.

Part III – Credit Information

Box 4 – Tax Credit Certificate # and Seller's Permit No.

A copy of the CFC Tax Credit Certificate is needed to complete this box. Enter the tax credit certificate number and the seller's permit number from the CFC Tax Credit Certificate.

Do not enter the credit allocation or copyright registration number.

For more information, please call the CFC at 323.860.2960 or 800.858.4749.

Box 5 – Final Tax Credit amount shown on certificate

Enter the amount shown in the Final Tax Credit box from the CFC Tax Credit Certificate.

Box 6 – Distributive share of credit from Schedule K-1

Enter the distributive share of credit from the applicable Schedule K-1 (565, 568, or 100S), Share of Income, Deductions, Credits, etc. Sellers who are partners, members, or shareholders must enter the distributive share of credit from Schedule K-1 (565, 568, or 100S). Attach a schedule showing the names, addresses, tax identification numbers, and the ownership percentages of the pass-through partners, members, or shareholders.

Box 9 – Total amount of credit applied to CDTFA qualified sales and use taxes

A qualified taxpayer may make an irrevocable election to apply the credit or a portion of it against CDTFA qualified sales and use taxes. If you made or will make this election, enter the amount of credit you applied or will apply against CDTFA qualified sales and use taxes. If you did not make or will not make the election, leave blank.

Do not enter more than box 5 minus box 7.

Important: If box 6 was completed, do not enter more than box 6 minus box 7.

Important: You may not apply any of the credit being sold against CDTFA qualified sales and use taxes.