STAYING IN HOLLYWOOD AND THE BIG APPLE: THE EFFECTIVENESS AND DESIGN OF FILM PRODUCTION TAX CREDITS IN NEW YORK AND CALIFORNIA

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Film production tax credits have become an increasingly common feature of the state tax system. These tax credit programs were originally a response to worries about "runaway production" of films to foreign jurisdictions offering similar incentives. Now, even states with a historical comparative advantage in film production and strong in-state talent and expertise offer sizeable tax credits.

This Note will focus on the film production tax credits offered in states with a historical comparative advantage in filming, specifically New York and California. The Note begins by examining the evolution and expansion of the Empire State Film Production Credit and the California Film and Television Production Credit. Then, it compares the current design of these two tax credit programs, and discusses and critiques economic impact analyses used to evaluate these programs. The Note concludes by addressing whether it is advisable for a state with a historically strong film industry to offer a film tax credit, and which tax design features are appropriate for such a state, paying special attention to how a program determines eligibility for the tax credit, whether the credit can be refunded or transferred, and the credit's allocation mechanism.

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I. INTRODUCTION

In the United States, forty states offer film industry tax credits,[1] including those states with a historical comparative advantage in filming and an in-state talent base for production. In 2004, New York adopted its own program, which it later expanded to offer a refundable 30% tax credit for qualified production and post-production costs, 75% of

[1] Adrian McDonald, *Down the Rabbit Hole: The Madness of State Film Incentives as a "Solution" to Runaway Production*, 14 U. PA. J. BUS. L. 85, 86 (2011) (discussing the popularity of state film production tax credits).

which need to be incurred in New York State.[2] In 2009, California's Governor Schwarzenegger signed an economic stimulus package that included a transferable tax credit of up to 25% of production costs if a 75% in-state threshold, similar to New York's, is met.[3]

These tax credits received a varied reception in tax law and tax economics literature, with little consensus on which incentive design features are most efficient or effective and which states are best suited to tax credits.[4] This Note focuses on tax programs in New York and California, states that have a historical comparative advantage in film production. This comparative advantage may be attributed to factors that are exogenous to a strong entertainment industry such as temperate climate and identifiable landmarks, as well as endogenous factors like an existing large talent pool of production professionals.

This Note addresses whether states that have a comparative advantage in film production should offer tax credits. Part II provides a background of the development of the film production tax credit programs in New York and California. Then, Part III aggregates and compares existing empirical data to measure the effectiveness of California and New York's respective programs with respect to marginal increases in film production and any multiplier effect that extends to other areas of the economy. It also addresses the

2 Eric Homsi, Comment, *Financing Films One State at a Time: A Survey of Successful Film Incentive Programs*, 21 SETON HALL J. SPORTS & ENT. L. 149, 160–62 (2011) (outlining New York's Empire State Film Production Credit).

3 Michael H. Salama, *State Film Tax Incentives and the Related Potpourri of Federal Income Tax and Tax Accounting Considerations*, 62 TAX LAW. 1085, 1088, 1090 (2009) (explaining the inception of California's film production tax credit).

4 *See* McDonald, *supra* note 1; Homsi, *supra* note 2; Salama, *supra* note 3; Paul Battista, *"Runaway" Film and Television Production: Carrots, Sticks, & International Tax Reform*, 36 HASTINGS COMM. & ENT. L.J. 243 (2014); David A. Hughes, *State Film Tax Incentives: Which Plan Works Best When There Are So Many from Which to Choose?*, 23 J. MULTISTATE TAX'N & INCENTIVES 6 (2013).

significance of the popularity of tax credit programs in other states and countries on programs in New York and California. Part IV presents policy recommendations by identifying which tax credit design features should be employed in a state that has a historically robust film production industry to maximize marginal increases in film production. It examines what films ought to be eligible for the tax credit, whether credits should be transferable or renewable, and what allocation method is appropriate. The Note then concludes in Part V.

II. THE EVOLUTION OF FILM PRODUCTION TAX CREDIT PROGRAMS

Since the 1990s, popular news and academic literature has drawn attention to "runaway production," where foreign jurisdictions such as Canada offer tax incentives to lure film and television production away from historically popular movie-making destinations like California and New York.[5] State legislatures responded to the threat of foreign tax incentives with their own state film tax credits. Louisiana was the earliest adopter of film tax incentives in 1992; by 2010, over forty states were offering some form of tax credit for filming in state.[6]

A. New York's Empire State Film Production Credit

New York legislators first enacted the state's film tax credit, the Empire State Film Production Credit ("ESFPC"), in 2004.[7] The program initially offered a 10% tax credit,

5 Battista, *supra* note 4, at 266 (discussing the evolution of film production tax credits offered in Canada).

6 Hughes, *supra* note 4, at 8 (2013) (discussing the increasing number of states offering film production tax credits).

7 N.Y. STATE DEP'T OF TAXATION & FIN., REPORT ON THE EMPIRE STATE FILM PRODUCTION TAX CREDIT 1 (2008), https://www.tax.ny.gov/pdf/stats/policy_special/film_production_credit/report_on_the_empire_state_film_production_credit_september_2008.pdf [https://perma.cc/R6X4-2WUH] [hereinafter 2008 N.Y. STATE ESFPC REPORT].

limited to $25 million per year, and was scheduled to end in 2008.[8] In 2006, legislators expanded its annual cap to $60 million.[9] Despite the cap increase, ESFPC faced a precipitous 78% drop in applications from the year ending July 2006 to the year ending July 2007.[10] The Governor's Office for Motion Picture and Television Development, the body responsible for administering the tax credit, attributed the significant drop to "aggressive" newly instated tax credit programs in Connecticut, Rhode Island, Massachusetts, and Pennsylvania, as well as to uncertainty in the labor market because of potential Writers' Guild strikes.[11] The legislative response involved further amendments to the ESFPC in 2008, which included increasing the tax credit rate to 30%, extending the program to 2013, and gradually increasing the budget annually from $60 million in 2008 to $110 million in 2013.[12] Additional allocations of $350 million for 2009 and $420 million annually from 2010 to 2014 were approved in 2009 and 2010 respectively.[13]

Some of the tax credit design aspects of the ESFPC have stayed largely the same since its inception. The original 2004 program made feature length films, television films, pilots, and series eligible, and required that 75% of film production facility expenditures be spent at a "qualified film production facility."[14] If a film production company-taxpayer has met the

8 *Id.*

9 *Id.*

10 *Id.* at 16–17.

11 *Id.* at 15.

12 *Id.* at 1.

13 Homsi, *supra* note 2, at 161.

14 N.Y. STATE DEP'T OF TAXATION & FIN., REPORT ON THE EMPIRE STATE FILM PRODUCTION TAX CREDIT 1 (2006), https://tax.ny.gov/pdf/stats/policy_special/film_production_credit/report_on_the_empire_state_film_production_credit_march_2006.pdf [https://perma.cc/8BVW-FDK8]. A "qualified film production facility" means "a film production facility in New York State, which contains at least one sound stage having a minimum of 7,000 square feet of contiguous production space," with certain additional requirements applicable to facilities used by non-independent film

75% test, qualified production costs incurred at a qualified film production facility, generally consisting of below-the-line[15] items "for tangible property or services used or performed within New York directly and predominately in the production" of a qualified film, could be included in the calculation of the tax credit.[16] Qualified expenditures spent outside the qualified facility but within New York State related to pre-production may also qualify depending on total New York expenditures or percentage of location days in New York.[17] These eligibility requirements, including the 75% test and qualifying costs, are structured similarly in the current-day ESFPC.

Two key changes to the ESFPC have significantly changed incentives for film producers. First, the tax credit now preferences film production in upstate New York, and the elimination of a municipal tax credit in New York City compounds the effect of this preference.[18] Since 2005, New York City had offered an additional city tax credit of 5% for films predominantly shot and produced within the five

production companies. N.Y. COMP. CODES R. & REGS. tit. 5, § 170.2(z) (2006).

15 "Above-the-line" and "below-the-line" are terms of art used in film production. Generally, "above-the-line" refers to the cost of a "producer, director, writer, and principal talent," which are "often fixed fees." "Below-the-line" refers to "everything else, including atmosphere, talent, technicians, equipment, location costs, and film stock." GREGORY GOODELL, INDEPENDENT FEATURE FILM PRODUCTION: A COMPLETE GUIDE FROM CONCEPT THROUGH DISTRIBUTION 72 (3d ed. 2003).

16 2008 N.Y. STATE ESFPC REPORT, *supra* note 7, at 2.

17 *Id.*

18 N.Y. GOVERNOR'S OFFICE OF MOTION PICTURE & TELEVISION DEVELOPMENT, NEW YORK STATE FILM TAX CREDIT PROGRAM GUIDELINES 2 (2015), http://esd.ny.gov/businessprograms/Data/Film/2015/FilmCreditGuideline_rev_1142015.pdf [https://perma.cc/V879-FMX9] [hereinafter 2015 N.Y. STATE ESFPC GUIDELINES]; Kristoff Grospe, *Behind the Scenes of the City's Media and Entertainment Office*, CITYLAW, Mar.–Apr. 2012, at 47 (2012).

boroughs,[19] but this "Made in NY" city tax credit expired without renewal in 2009.[20] In contrast, the latest iteration of the state tax credit program offers an additional tax credit of at least 5% for post-production costs incurred outside of the Metropolitan Commuter Transportation District.[21]

Second, the post-production tax credit now has its own budgetary cap and unique design features. While post-production costs were included in the definition of "qualified costs" in the original 2004 program, the 2010 amendments required 75% of post-production costs be incurred in New York State,[22] and also created a separate post-production credit for projects where filming occurs out of New York State but post-production occurs in state.[23] In 2012, the post-production tax credit was increased from 10% to 30%, with an additional uplift for projects in upstate New York.[24] The focus on post-production in the upstate region may be an attempt to draw a certain segment of the industry to a part

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19 Joshua R. Schonauer, Note, *Star Billing? Recasting State Tax Incentives for the "Hollywood" Machine*, 71 OHIO ST. L.J. 381, 395 (2010) (explaining that the credit was available "for any qualifying film project that shoots at least 75% of its production in any of the five boroughs of New York City").

20 Grospe, *supra* note 18, at 47.

21 2015 N.Y. STATE ESFPC GUIDELINES, *supra* note 18, at 2. Film production in certain counties in upstate New York will be rewarded with a 10% additional tax credit on qualified labor expenses. *Id.*

22 HR&A ADVISORS, INC., ECONOMIC AND FISCAL IMPACTS OF THE NEW YORK STATE FILM PRODUCTION TAX CREDIT 5 (2012), http://www.mpaa.org/wp-content/uploads/2014/01/Economic-and-Fiscal-Impacts-of-the-New-York-State-Film-Production-Tax-Credit.pdf [https://perma.cc/BH5W-8BTT] (report commissioned by the Motion Picture Association of America).

23 MARILYN M. RUBIN & DONALD J. BOYD, NEW YORK STATE BUSINESS TAX CREDITS: ANALYSIS AND EVALUATION 36 (2013), http://www.capitalnewyork.com/sites/default/files/131115__Incentive_Study_Final_0.pdf [https://perma.cc/T4PB-CLTT] (report prepared for the New York State Tax Reform and Fairness Commission).

24 Jonathan Randles, *NY Extends Tax Credits for Post-Production Film Industry*, LAW360 (July 24, 2012), http://www.law360.com/articles/363527/ny-extends-tax-credits-for-post-production-film-industry [https://perma.cc/H7GW-KTN3].

of the state that traditionally has not been an entertainment powerhouse.

B. California's Film and Television Production Credit

California adopted a film production tax credit program fairly late compared to New York and nearby states like New Mexico, perhaps because it was more immune to the threat of runaway production due to a storied history of film production in Hollywood. In early 2009 during the depths of the recession, former actor and then-Governor Schwarzenegger approved a film production tax credit as part of an overall economic stimulus package.[25] However, the 2009 California Film and Television Production Credit ("California I") was not the first film incentive program sponsored by the state. In 2000, the legislature enacted the Film California First program, which reimbursed certain filming costs incurred in state.[26] This program was more akin to a direct subsidy than a tax credit. That being said, subsidies and tax credits are functionally similar, insofar as both programs "reimburse" production companies for filming in California, albeit with the Film California First program offering reimbursement for limited number of expenses.[27] While the Film California First program was defunded in 2003,[28] it shows that the 2009 Film and Television Production Credit was not the first instance when the state government responded to the threat of runaway production.

Many aspects of the California program are similar to the New York program. The 2009 program had a budget cap of

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25 CAL. REV. & TAX. CODE § 17053.85(b)(15)(A) (West 2010). *See also* Richard Verrier, *California Budget Includes Tax Relief for Film, TV Shoots*, L.A. TIMES (Feb. 20, 2009), http://articles.latimes.com/2009/feb/20/business/fi-filmtaxcredits20 [https://perma.cc/47L2-Y68A].

26 Ashley Lavon Hines, *Chapter 10: Run Home to Hollywood! Run to California!*, 41 MCGEORGE L. REV. 759, 761 (2010).

27 *Id.* (noting in addition that a $300,000 cap per production existed for such reimbursements).

28 *Id.* at 762.

$100 million a year, with a total five-year cap of $500 million, and was scheduled to end in 2014.[29] Like New York, California has a 75% threshold test for films, which can be met either by having 75% of principal photography days take place in California or 75% of the production budget be spent in California.[30] Depending on the type of production in question, a tax credit of 20% or 25% is available, with the more generous tax credits offered to independent films and to television series willing to relocate to California.[31] A qualifying film also must fit into one of several prescribed categories, some of which have minimum or maximum budget requirements.[32] A project that meets the 75% test and fits within one of the prescribed film types can apply for a tax credit for qualified expenditures, which consist of expenditures in California for purchase or lease of personal property, wages, and services performed in California.[33] Like in New York, above-the-line expenditures, including payment for writers, directors, music directors, composers and supervisors, producers, and actors other than background actors are not considered qualified expenses eligible for tax credits.[34]

California legislators amended the program in 2012 to extend through 2017, with yearly caps remaining at $100 million and a total program cap of $800 million in tax credits.[35] Then in September 2014, instead of merely

29 CAL. REV. & TAX. CODE § 23685(i)(1)(A) (West 2010).

30 *Id.* § 23685(b)(15)(B)(i).

31 *Id* § 23685(a)(4). The program further specifies that a relocating series must film all of its prior seasons or its only prior season outside of California. *Id.* § 23685(b)(22).

32 *Id.* § 23685(b)(15). For example, in order to qualify for the tax credit, "feature films" are subject to a minimum $1 million budget and a maximum $75 million budget. *Id.* § 23685(b)(15)(A)(i).

33 *Id.* § 23685(b)(16).

34 *Id.* § 23685(b)(18)(B) (excluding such expenditures from the definition of "qualified wages," a term within the definition of "qualified expenditures").

35 CAL. REV. & TAX. CODE § 23685 (West 2012).

extending the term of the program, Governor Brown signed a bill substantially expanding and renewing the tax credit program.[36] The new program, later billed as the California Film and TV Tax Credit Program 2.0 ("California II"), increased the cap to $330 million annually,[37] expanded eligible film types,[38] included an allocation mechanism to prioritize projects that create the most and highest-paying jobs,[39] and included an uplift for projects that shoot or have other qualified expenditures outside the Los Angeles thirty-mile zone.[40]

Comparing the evolution of these two programs in states that traditionally dominate film production in the United States suggests that film tax credits are politically popular, and perhaps necessary, responses to other states' tax credit programs. In both New York and California, the programs have expanded dramatically over time, with an over fifteen-fold budget increase in New York,[41] and an over two-fold

36 Brian Bardwell, *California Governor Approves Film Credit Expansion*, ST. TAX TODAY, Sept. 19, 2014, at 1, LEXIS, 2014 STT 182-4.

37 *Id. See also* Kurt Orzeck, *Calif. Gov. Agrees To Boost Film, TV Tax Credits By $230M*, LAW360 (Aug. 27, 2014), http://www.law360.com/articles/571736/calif-gov-agrees-to-boost-film-tv-tax-credits-by-230m?article_related_content=1 [https://perma.cc/VC8S-VT63].

38 This includes: eliminating the feature film budget maximum and instead making only the first $100 million eligible, allowing TV shows to be licensed for any distribution outlet (including the internet) as opposed to only basic cable, and allowing a project that moved from California to another state that moves back to California to qualify as a relocating TV series. CAL. FILM COMM'N, CALIFORNIA FILM & TELEVISION TAX CREDIT PROGRAM 2.0 GUIDELINES 2, 3 (2015), http://film.ca.gov/res/docs/pdf/Incentives%20Documents/CFCGuidelines%202%200%20November%20%20Revised%2011-3-15.pdf [https://perma.cc/JPV5-K2LP] [hereinafter CAL. FILM COMM'N, GUIDELINES 2015].

39 Cal. Film Comm'n, *California Film Commission Announces First Round of TV Projects Approved for Expanded Tax Credit* Program, ST. TAX TODAY, June 3, 2015, at 106, LEXIS, 2015 STT 106-26.

40 *Id.*

41 *See* 2008 N.Y. STATE ESFPC REPORT, *supra* note 7, at 1; Homsi, *supra* note 2, at 161 (explaining changes in the budget caps). The

budget increase in California.[42] The expansion, and even the continued existence of these programs during times of tight state budgets, especially in the case of California,[43] is a testament to the political support that exists, especially in these states where the entertainment industry is an important constituency. Both programs have also gradually incorporated additional incentives for filming outside of the traditional film industry strongholds of Hollywood, the greater Los Angeles area, and the greater New York City area.[44] Trying to draw film production or post-production outside of those metropolitan areas is more akin to programs incentivizing production in an area without a history of movie production, like New Mexico or Louisiana have tried to accomplish, than trying to retain production in a traditionally popular filming locale. Politics, rather than efficient tax design, could also be motivation for the zone incentives. New York City and Los Angeles are already hubs for a myriad of industries, whereas areas like upstate New York were hit harder by the recession and see slower job growth.[45] Zone incentives may make film tax credits

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calculation used is as follows: ($420 million – $25 million)/$25 million = 1580% increase in the ESFPC's budget.

42 See CAL. REV. & TAX. CODE § 23685 (West 2010); Bardwell, *supra* note 36, at 1, for changes in the budget cap. The calculation used is as follows: ($330 million – $100 million)/$100 million = 220% increase from California I to California II.

43 *See* Martin Zimmerman et al., *California Budget Crisis Could Bring Lasting Economic Harm*, L.A. TIMES (May 23, 2009), http://articles.latimes.com/2009/may/23/business/fi-cal-econ23 [https://perma.cc/JD4G-MT7G].

44 California increases the tax credit rate by 5% for qualified expenditures outside the Los Angeles zone. New York increases the tax credit rate by 5% when production occurs in "Upstate New York," and by 10% when production occurs in specified counties upstate. *See also infra* Appendix, Table 1, Size of Credit and Preference Zone sections.

45 Jesse McKinley, *Cuomo Struggles to Maintain Momentum in Upstate Employment*, N.Y. TIMES (Nov. 6, 2015), http://www.nytimes.com/2015/11/07/nyregion/cuomo-struggles-to-maintain-momentum-in-upstate-employment.html?_r=0.

politically palatable to constituencies outside of the metropolitan areas home to the entertainment industry.

III. EFFECTIVENESS OF FILM PRODUCTION TAX CREDIT PROGRAMS IN NEW YORK AND CALIFORNIA

This Note uses the following criteria to evaluate and critique the efficacy and design of film production tax credits: (1) the return on investment ("ROI") to the state in the form of tax revenue; (2) the broader ROI to the economy, including direct, indirect, and multiplier effects; (3) job creation measured by the number of jobs created per million dollars of spending; (4) efficiency of the program and whether there are unintended distortions to the economy; (5) fairness and the potential for gaming; and (6) administration and presence of transaction costs.

Policymakers and politicians may be more likely to use criteria (1) through (3) in evaluating the potential return on adopting a tax credit program. In addition, criteria (4) through (6) offer a more holistic approach to evaluating the design of such a program.

A. A Detailed Comparison of the Programs

Table 1 (found in the Appendix) describes the film production tax credit programs in both states. It matches up their criteria for ease of comparison. Details for the California I and California II programs are included since there are some major design changes and the empirical study discussed below is based solely on the California I program. Only details for the 2015 New York program are included because the program has not changed substantially from the data collected for the Camoin study discussed below.

B. Comparing Empirical Studies

Both the New York and California tax credit program statutes require an impact analysis of the effectiveness of their respective film production tax credit programs.[46] However, depending on the choice of parameters and software used, economic models measuring the impact of the same tax credit in the same time period can come to different conclusions.[47] This Part of the Note reviews the two most recent studies of the New York and California programs and discusses the conclusions and shortcomings of the analyses.

The Southern California Association of Governments commissioned the Los Angeles County Economic Development Corporation to complete the most recent empirical study on the California Film and Television Tax Credit in 2014 ("LAEDC study").[48] This study evaluates only the California I program described above; data is not yet available for the California II program, since projects served by the latter program have not yet finished production. The LAEDC study utilizes data from 2009 to 2013, tracking the first three fiscal years of the California I program. During this time period, 113 eligible projects received tax credit allocations, but only 109 projects received their final tax credit certifications and could be included in LAEDC's

46 CAL. REV. & TAX. CODE § 38.9 (West 2014) (requiring the California Legislative Analyst's Office ("LAO") to report on the economic effects and administration of the film tax credit program); N.Y. COMP. CODES R. & REGS. tit. 5, § 170.12 (2014) (requiring the New York Department of Economic Development to file a biennial report including "an economic impact study prepared by an independent third party of the film credit programs").

47 *See, e.g.*, Eric Yauch, *Results of Industry's Film Credit Study Differ From State Study*, ST. TAX NOTES (Apr. 13, 2015), at 97, LEXIS, 76 State Tax Notes 97.

48 LOS ANGELES COUNTY ECONOMIC DEVELOPMENT CORPORATION, CALIFORNIA'S FILM AND TELEVISION TAX CREDIT PROGRAM: ASSESSING ITS IMPACT (Mar. 2014) [hereinafter LAEDC], http://laedc.org/wp-content/uploads/2014/03/SCAGFilmReport_FINAL.pdf [https://perma.cc/VX33-ZEZE].

analysis.[49] Following the release of this study, California's Legislative Analyst's Office, a non-partisan fiscal and policy monitor, offered their observations of California I and a critique of the LAEDC study, some of which are incorporated in the comparison below.[50]

In New York, Camoin Associates, an outside consulting group commissioned by Empire State Development, released an impact analysis in March 2015 ("Camoin study"). This study covers a two-year program from 2013 to 2014. The Camoin study separates out results by the production credit and the post-production credit, and neglects to provide the impact analysis per dollar of tax credit. Accordingly, this Note attempts to weigh the production and post-production credit impacts and provide a rough measure of the overall effect of the program.[51] It also provides a per-dollar calculation to make the New York and California studies comparable despite differences between the two studies.[52]

Both the California and New York studies try to measure the economic impact of the state film production tax credit program by measuring the direct impact of the production credit, and extrapolating the indirect impact on the economy. The LAEDC study uses models and software developed by IMPLAN Group, LLC,[53] whereas the Camoin study uses a model designed by Economic Modeling Specialists, Intl.[54]

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49 *Id.* at 7.

50 MAC TAYLOR, CAL. LEGISLATIVE ANALYST'S OFFICE, FILM AND TELEVISION PRODUCTION: OVERVIEW OF MOTION PICTURE INDUSTRY AND STATE TAX CREDITS (2014) [hereinafter LAO], http://www.lao.ca.gov/reports/2014/finance/tax-credit/film-tv-credit-043014.pdf [https://perma.cc/CYC8-UZ2W].

51 This Note also provides the unaggregated data for clarity and comparison.

52 This Note uses the discounted present value in the New York calculations, as the LAEDC does.

53 LAEDC, *supra* note 48, at 16.

54 CAMOIN ASSOCS., ECONOMIC IMPACT OF THE FILM INDUSTRY IN NEW YORK 12 (2015) [hereinafter CAMOIN], http://esd.ny.gov/Reports/Report

Both of these models are regularly used input-output models that can estimate the ripple or multiplier effects of a policy throughout a complex local economy.[55] The "total economic impact" measured includes (i) direct effects, consisting of the first round of spending (such as wages paid to production employees or costumes purchased), (ii) indirect effects, consisting of spending throughout the supply chain, including spending by suppliers down the chain (such as the wardrobe supplier that buys from the fabric supplier that buys from the cotton producer), and (iii) induced effects, which arise out of spending by those employed by the production company and the suppliers.[56] Jennifer Weiner explains that these models "capture how increases in film production expenditures ripple through the rest of the state's economy" by relating "spending in one sector . . . to spending in other sectors."[57] She stresses that even studies produced by the same software can have discrepancies in magnitude depending on the calibration of the model, which is generally not described in detail, a problem that "plague[s] most tax credit evaluations."[58] These models rely on geographically specific data critical to inter-industry analysis. For example, the inter-industry linkages are likely much stronger in New York and California than they would be in jurisdictions that did not have a strong existing film industry prior to the tax

FINAL_March2015_ImpactAnalysis_ESDNYSFilmStudy.pdf [https://perma.cc/54LJ-MTT7].

55 *See* Duanjie Chen, The Framework for Assessing Tax Incentives: A Cost-Benefit Analysis Approach 21 (Apr. 23, 2015) (unpublished manuscript), http://www.un.org/esa/ffd/wp-content/uploads/2015/04/2015TIBP_PaperChen.pdf [https://perma.cc/H5J7-TMD6].

56 *See id.* at 12; LAEDC, *supra* note 48, at 16; CAMOIN, *supra* note 54, at 25.

57 JENNIFER WEINER, NEW ENG. PUB. POLICY CTR. AT THE FED. RESERVE BANK OF BOS., MEMORANDUM ON ERNST & YOUNG ANALYSES OF NEW MEXICO AND NEW YORK FILM TAX CREDITS 2, 3 (2009), https://www.bostonfed.org/economic/neppc/memos/2009/weiner040209.pdf [https://perma.cc/Q269-9QZD].

58 *Id.* at 3.

credit, because supply chains are much more likely to remain exclusively in-state. Table 2 presents a comparison of the New York and California programs.

Table 2. Comparison of Camoin and LAEDC Impact Analyses

	CA LAEDC 2014[59]	NY Camoin 2015 (both tax credits)[60]	NY Camoin 2015 (production tax credit)	NY Camoin 2015 (post-production tax credit)
ROI to State per dollar tax credit[61]	$0.65	$0.49	$0.49	$0.42
ROI to all State fiscal authorities per dollar tax credit	$1.11	$1.09	$1.09	$0.94
Economic output per dollar tax credit	$19.12	$8.76	$8.81	$7.48

59 All figures in this column are found in the LAEDC study, LAEDC, *supra* note 48, at 9, with the exception of ROI to State per dollar tax credit, which uses the LAO estimate to provide a figure directly comparable to the Camoin New York studies. LAO, *supra* note 50, at 23.

60 All figures in the remaining three columns are found in the Camoin study, CAMOIN, *supra* note 54.

61 ROI is defined differently in various studies. *Compare* LAEDC, *supra* note 48, at 1 (assessing "state and local tax revenue per dollar credit"), *with* CAMOIN, *supra* note 54, at 22 (combining tax collection of New York state, New York City, and all other New York local government tax collection, discounted to net present value).

	CA LAEDC 2014[59]	NY Camoin 2015 (both tax credits)[60]	NY Camoin 2015 (production tax credit)	NY Camoin 2015 (post-production tax credit)
Labor income per dollar tax credit	$7.15	$3.00	$3.02	$2.56
GDP per dollar tax credit	$9.48	N/A	N/A	N/A
Jobs per million dollars of tax credit	92.73[62]	54.23	54.51	46.29
Average wage per job[63]	$71,749	$55,346	$55,337	$55,362
Qualifying expendi-tures as % of direct expendi-tures	63.2%[64]	N/A	N/A	N/A

62 The calculation is as follows: 22,300 jobs/$230.4 million. LAEDC, *supra* note 48, at 1 (providing the 22,300 jobs figure).

63 The calculation is as follows: Labor income/jobs. It is unclear in the LAEDC study if a "job" is defined annually if it is long-term. If a "job" can last longer than a year, then this overestimates the average income per job. The Camoin study defines a "job" as "one person employed for some amount of time (part-time, full-time, or temporary) during 2013 or 2014" and states that "if a person is employed full-time in 2013 and 2014 that would be considered two jobs." CAMOIN, *supra* note 54, at 12.

64 The calculation is as follows: (1.2/1.9)*100%. LAEDC, *supra* note 48, at 1 (providing the $1.2 billion and $1.9 billion figures).

Comparing these two analyses, California's tax credit produces better metrics in all categories above. However, in terms of fiscal impact, neither the California nor the New York film production tax credit program is revenue-neutral for the state government, with California coming out slightly ahead of New York. In both cases, the state government loses revenue by offering the program. That being said, once ROI to city governments through tax revenue and ROI to the state government through non-income and sales tax measures are included in the analysis, all of the programs other than the New York post-production credit have positive returns. This suggests that the film tax credit programs functionally provide transfer payments from state to local governments. Municipal governments capture the economic benefits of these tax credit programs without having to fund them.[65]

On measures of economic impact, directly comparing the two studies ($19.12 in California versus $8.76 in New York) suggests the California program produces more than double the economic output per tax credit dollar.[66] The data also suggests California produces more than double the labor income per dollar tax credit. One wonders how much the LAEDC study's extremely impressive positive results are attributed to the assumptions made by the authors or the calibration of the models, and how much they are attributed to the historic and present strength of California's film industry.

The LAEDC study attributes the success of the California program both to the design of the tax credit and the comparative advantages that already exist in the state. It

65 *See* BOS. CONSULTING GRP., THE MEDIA AND ENTERTAINMENT INDUSTRY IN NYC: TRENDS AND RECOMMENDATIONS FOR THE FUTURE 9, 26 (2015), http://www.nyc.gov/html/film/downloads/pdf/bcg-report-10.15.pdf [https://perma.cc/7N5Y-S4U5] (finding empirical data that supports the finding that the "NY state tax credit remains a key enabler for production in NYC" and qualitative data that suggests there is an abundant talent pool in the state that is supported by the state tax credit).

66 *See supra* Table 2.

claims that the "overriding factor" that determines the ROI is "the proportion of expenditures made in California that qualify for credits."[67] Broadly speaking, this likely does not explain the differences between New York and California because both tax credits are statutorily designed to only include below-the-line tax credits, and the proportion of above-the-line to below-the-line expenses is unlikely to vary state to state. The other potential cause for variance of the proportion of qualified expenditures to direct expenditures is the amount of above-the-line expenses incurred in state. If this were a primary cause for the variance, it would suggest that many more above-the-line workers (e.g., actors, producers, and directors) live in California rather than New York. This also seems unlikely to be a huge difference since anecdotally movie stars choose to reside in both in the Los Angeles and New York City areas in large numbers.[68]

The other factors the LAEDC study cites as contributing to California's tax credit's strong performance are a well-established film industry, a large and diversified state economy, relatively progressive income taxes, and film tax credits that are less generous than other states.[69] California has more than half the U.S. motion picture production employment, compared to New York's slightly less than quarter,[70] which suggests that the strength of supplier networks and the film industry in California would be greater—resulting in a greater multiplier effect per dollar of tax credit and less leakage in spending to other states. As well, California's tax credit offered a 20% to 25% tax credit whereas New York offers a 30% tax credit.[71] This too may explain why California's tax credit measures as more

67 LAEDC, *supra* note 48, at 1.

68 *See* BOS. CONSULTING GRP., *supra* note 65, at 7 (listing as one factor that leads to productions filming in New York City the likelihood that the lead actor or director lives in New York City and prefers to film locally).

69 LAEDC, *supra* note 48, at 8.

70 LAO, *supra* note 50, at 10.

71 *See supra* notes 12, 31 and accompanying text.

efficient. The other two rationales would not seem to apply to a California/New York comparison. New York also has a similarly large and diversified state economy, and is also a location where those who work in the entertainment industry would want to live, buy property, and spend their earnings. Also, New York's income taxes are fairly comparable to California's.[72]

Given that differences between the states are unlikely to account for all or even many of the differences in measured efficacy of tax credit programs described above, perhaps methodology of analysis can explain the differences. The methodological concerns and differences between the California and New York studies are discussed below.

C. Critique of Empirical Studies

These impact analyses are useful in comparing variations between state programs and help explain trends in the film industry. However, they may be flawed in their research query. State-commissioned studies are influenced by what sorts of analyses are feasible, what data is measurable, and what is politically palatable. The LAEDC study produced an impact ratio described as "measur[ing] the economic and fiscal impacts in terms of the current dollar value of the discounted tax credit certificates issued."[73] From a fiscal perspective, the study claims "for each dollar of tax credit certificate issued, $1.11 was returned to local and state governments, which is the real rate of return on the investment of public funds."[74] Some of the academic policy

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72 *See* Shan Li, *California Second Only to New York in High Taxes, Study Says*, L.A. TIMES (Mar. 20, 2014), http://articles.latimes.com/2014/mar/20/business/la-fi-mo-taxes-states-20140320 [https://perma.cc/R8Y6-B534] ("Those living in the Golden State shell out about $9,509 for state and local taxes, 36% more than the national average. New York residents pay $9,718, or nearly 40% more than what people pay on average in the country.").

73 LAEDC, *supra* note 48, at 1.

74 *Id.*

analysis argues state and municipal revenue should be considered equivalent, since tax dollars are going into a collective public purse.[75] However, from the perspective of state legislators, municipal tax revenue is different from state tax revenue. The California Legislative Analyst's Office ("LAO") criticized the LAEDC's $1.11 ROI figure as an overstatement of the fiscal impact because the figure includes "local tax revenue, fees for services, and payments for unemployment benefits"; it noted that the disaggregated measurement of "sales and use tax, personal income tax, corporation tax, and other tax revenue the state receives or that directly reduces state costs" yielded a ROI of $0.65.[76] Arguably, since the state government provides the tax credit, the measure of ROI should only include funds that return to the state government entity as tax revenue. Tax revenue flowing to municipal government entities highlights the positive multiplier effects arising from state tax policy, but should not be included in the state's calculation of its costs or benefits arising from the credit. On the other hand and consistent with the California LAEDC study, the Camoin study from New York also includes tax revenue to New York City and other New York state municipalities in its widely cited ROI of $1.09 per dollar of tax credit.[77]

A more analytically accurate inquiry into ROI demands considering the opportunity cost of a film production tax credit. The question ought not be how much is returned to the state government in tax revenue per tax credit dollar, but rather, what would the fiscal rate of return be for each dollar on an alternative project if the state government were

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75 *See e.g.* FLA. OFFICE OF ECON. & DEMOGRAPHIC RESEARCH, RETURN ON INVESTMENT FOR THE ENTERTAINMENT INDUSTRY INCENTIVE PROGRAMS 33–34 (2015), http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms.pdf [https://perma.cc/PT7A-VAAR] (discussing and critiquing the practice of including local revenues).

76 LAO, *supra* note 50, at 23.

77 CAMOIN, *supra* note 54, at 23. Camoin provides disaggregated measures in their study, *id.*, making it easy to compare their figures to the LAEDC and LAO figures.

not allocating it to a film tax credit?[78] To frame it another way, the comparison should be between the ROI of film tax credits and the ROI offered by other potential projects, especially that of the next best alternative. The rationale behind this is that if it were not for the film tax credit program, the money allocated to those programs would be allocated to a different program. Both the California and the New York state constitutions require the governor to submit a balanced budget.[79] This means that in order to offer the tax credit, the state government must "either cut spending or increase other taxes to offset the loss in tax revenues," which would be "likely to have negative effects that offset the economic benefits of the credit . . . ."[80] Those negatives include a multiplier impact, because "[u]nder a common budget constraint, the revenue loss from a given tax incentive program must be offset by a spending reduction or tax increase outside of such a tax incentive program; such a spending reduction or tax increase can have a negative multiplier impact on the economy."[81] For example, if sponsoring a film production tax credit entails shutting down a tax credit for another industry, some of the jobs in that industry may be lost and income taxes paid would be reduced. This dilemma exists even if one believes these

78 *See* FLA. OFFICE OF ECON. & DEMOGRAPHIC RESEARCH, *supra* note 75, at 30 ("A recurring criticism of proponent studies is the failure to factor opportunity costs in the economic analysis."); LAO, *supra* note 50, at 24 (noting that California could have funded another state program instead of the film production tax credit, and "any alternative funding decision would have created economic benefits through an economic multiplier effect. This is important because it is possible that an alternative funding decision could have a greater economic benefit than the film tax credit.").

79 NAT'L CONFERENCE OF STATE LEGISLATURES, NCSL FISCAL BRIEF: STATE BALANCED BUDGET PROVISIONS 3 (2010), http://www.ncsl.org/documents/fiscal/StateBalancedBudgetProvisions2010.pdf [https://perma.cc/K2MN-H2J6].

80 WEINER, *supra* note 57, at 3.

81 *See* Chen, *supra* note 55, at 11 ("It is, however, uncommon to see policy makers acknowledge the negative multiplier impact of the revenue loss from tax incentives.").

programs are revenue-neutral; the opportunity cost of these programs may still be above zero if there are, for example, industries in which one could get a better fiscal rate of return per dollar of tax credit. Furthermore, tax credits incur costs and require financing in the short term, whereas the fiscal return is spread out over time.[82]

Beyond the ROI, these empirical analyses consider the benefit to the state economy as a whole. Studies refer to this as a measure of the "economic output per dollar of tax credit," sometimes referred to as the impact ratio, or even more euphemistically as a measure of the amount that total economic activity in the state increased by for each dollar of tax credit certificate issued.[83] These labels are misleading because they assume that, but for the tax credit, the film production company would not have chosen to locate its production in the state.[84] The LAEDC study, while making this assumption explicit, claims that "[t]he loss of production activity to other states and nations in response to competing incentives lends support to this assertion."[85] This is simply not an accurate counterfactual, *especially* in historical hotbeds of film production such as California and New York. While it may be appropriate to make such an assumption for a state that has little history of attracting film production, there are plenty of reasons for a film production company to choose to film in New York or California besides their tax credits, not limited to the availability of a deep talent pool, specialization of labor, existing advanced facilities for post-production, existing relationships with vendors, and the

82 WEINER, *supra* note 57, at 3.

83 LAEDC, *supra* note 48, at 9.

84 *Id.* at 17 ("In this analysis, as in other studies, the return on investment is calculated based on the assumption that the projects that qualified for tax incentives and received allocations would not have taken place in California in absence of those incentives.").

85 *Id.*

multitude of scripts that are actually set in one of the two states.[86]

This assumption is certainly not limited to the LAEDC study. Weiner explicitly criticizes Ernst and Young's 2009 impact analysis of New York's ESFPC program for assuming that "the film projects receiving credit assistance were actually induced by the credits," while pointing out that other studies make some attempt to differentiate between production that would have occurred even in the absence of the film credit and that which was induced by the film credit.[87] The Camoin study tries to distance itself from the problematic but-for assumption discussed above. In discussing methodology, it claims that unlike a previous study, they use a "more conservative" approach and "only include[] the spending by productions that received the tax credit and can be reasonably assumed to have been induced to New York State as a result of access to the credit program."[88] While Camoin should be commended for its effort, there are few details provided as to how the study achieved this conservative approach.

It is extremely difficult to untangle causation in macroeconomic models, especially when the implementation and design of film production tax credits are themselves likely endogenous variables. There may be confounding factors that impact a legislature's decision to enact or expand a film tax credit program, which also affect a film production company's decision to film in a particular jurisdiction. If that is the case, the legislature is likely to misattribute an impact to the tax credit if the outside factor is not controlled for, and it is difficult to control for all these potential confounding variables, especially in an interconnected macro economy. The 2007–2008 Writers Guild strike illustrates this

86 *See* WEINER, *supra* note 57, at 3; Jennifer Carr, *Film Tax Credit Studies Fail to Deliver on Big Promises*, ST. TAX NOTES, Apr. 7, 2014, at 29, LEXIS, 72 State Tax Notes 29.

87 WEINER, *supra* note 57, at 3.

88 CAMOIN, *supra* note 54, at 6.

phenomenon. The strike and its surrounding uncertainty may have been factors suppressing film production in the late 2000s,[89] which in turn may have contributed to the implementation of the film tax credit program in California or the expansion of the New York program. Once the legislatures implemented these programs, however, the threat of the strike had already passed.[90] This prompts the tricky question: how much of the increased filming in California and New York was due to the end of the Writers Guild strike? Despite these analytical difficulties, even a crude estimate of the fraction of film productions receiving tax credits that would have occurred even without the credits would increase accuracy.

IV. POLICY RECOMMENDATIONS

A. Comparative Advantages of a Film Production Tax Credit Program

States with a historical comparative advantage in film production, such as New York or California, should adopt a film production tax credit program. The rationale behind this recommendation is two-fold. First, when more than forty states and even more foreign locales have adopted such tax credit programs, a race-to-the-bottom phenomenon occurs and even states with a comparative advantage in the industry must participate in these programs.[91] These states and foreign jurisdictions are unlikely to overcome the collective action problem and jointly agree to end their tax incentive programs. Other states with tax credit programs distort the market by reducing the tax cost of filming and production in their locales. Thus, to maintain their comparative advantage in the film production arena, New

89 *See* 2008 N.Y. STATE ESFPC REPORT, *supra* note 7, at 17 (discussing the effects on production of a potential writers' strike).

90 *See id.*

91 *See* McDonald, *supra* note 1, at 86.

York and California must also continue their tax credit programs. This is especially the case when states near New York or California have these programs and are easily able to benefit from their geographic proximity to popular film production locales. For example, after Connecticut established its own tax credit program, a large digital design firm moved from White Plains, N.Y. to Greenwich, Conn.[92] It is no more difficult for a film production team to visit Greenwich, which is ten miles away from White Plains, and so this studio benefits from its geographic proximity to the film production occurring in New York while being able to benefit from Connecticut's tax credit program.[93]

Second, thankfully for New York and California, because of their comparative advantage in film production, tax credit programs in those two states can be more efficiently run. Since the film industry is already established, entrenched, and large in New York and California, there are cluster effects, benefits to specialization, and increasing returns to scale. The Camoin study describes a "virtuous self-reinforcing cycle" in which non-eligible productions are attracted to New York because of the existing film production industry and the specialized services and talent are more available as a result.[94] Cluster effects exist as well. Here, states with a comparative advantage in film production draw in types of production that are not eligible for the tax credit, but are nevertheless attracted to the state because of the existing facilities and expertise that have been developed as a result of the production induced by the tax credit.[95] These clusters also extend to the development of physical infrastructure, such as studios, and this infrastructure construction can also stimulate the state's

92 Susan Christopherson & Ned Rightor, *The Creative Economy As "Big Business": Evaluating State Strategies to Lure Filmmakers*, 29 J. PLAN. EDUC. & RES. 336, 346 (2010).

93 *Id.*

94 CAMOIN, *supra* note 54, at 17.

95 *See, e.g.*, *id.*

economy.[96] In addition to these factors, one wonders whether there are increases in productivity because of the sheer number of films produced by the industry in New York or California. This phenomenon has been documented in the economics literature of other industries, which finds that worker productivity increases because there is a "learning by doing" effect.[97] All of these "effects" suggest that the ROI of film tax credits is likely higher in a state with a comparative advantage in film production.

As such, the rationale for a film production tax credit in a state with a comparative advantage, such as New York or California, is very different from that in a state with a non-existent or nascent film industry. States with a comparative advantage in film production should offer tax credits in response to the threat resulting from other subsidies.[98] As a result, their tax credit program design must fit these needs.

B. Tax Credit Design Evaluation and Suggestions for New York and California

The efficacy and efficiency of the ESFPC and California I and II depend upon the design and structure of these film tax credit programs. This Part discusses the existing programs' designs and suggests improvements.

1. Films Eligible for the Program

The New York and California programs both limit eligibility to feature films, TV series, and TV movies, which may discourage production of documentaries, news programs, reality TV shows, sporting events, commercials,

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96 *See, e.g.*, *id.*

97 Steven D. Levitt et al., *Toward an Understanding of Learning by Doing: Evidence from an Automobile Assembly Plant,* 121 J. POL. ECON. 643, 644 (2013).

98 *See* Christopherson & Rightor, *supra* note 92, at 336 (discussing the issue from an economic policy perspective).

and music videos in the states.[99] On one hand, feature films and non-reality TV have the largest budgets and can result in the most spending in state. Moreover, these productions are most likely to require special effects expertise, or other specialized expertise likely to exist in New York or California. TV shows with multiple seasons are also most likely to provide long-term jobs. On the other hand, documentaries, reality television shows, and sporting events are more location-dependent, and thus more likely to stay in New York or California regardless of whether a tax credit is offered. Furthermore, New York and California are cultural capitals outside of the film industry and inspire more reality TV shows and documentaries.[100] Similarly, sporting events typically occur where the teams in the league are located. As such, they are likely less responsive to tax credits, and tax credit programs are better off offering credits to programs that will respond to incentives.

In an interesting twist on tax credit design, California offers an increased tax credit rate for TV series willing to relocate to the state. A relocating TV series in its first season in California (that filmed its previous season in another state) receives a tax credit five percentage points greater than a new TV series or a TV series that relocated to California but is in its second year in California.[101] This would appear to be a fairly effective mechanism for encouraging TV productions to move to or return to California. Unfortunately, one wonders whether the particular regulations promulgated in the California II program will encourage tax games. For example, a program could lower its tax liability by filming in a nearby state,

99 CAL. REV. & TAX. CODE § 23685(b)(15)(A) (West 2010) (defining "qualified motion picture"); 2015 N.Y. STATE ESFPC GUIDELINES, *supra* note 18, at 2. *See also infra* Appendix, Table 1, Eligible Projects section.

100 *See, e.g.*, *Real Housewives of New York City* (Bravo television broadcast 2008); *Real Housewives of Beverly Hills* (Bravo television broadcast 2010).

101 CAL. REV. & TAX. CODE § 23685(a)(4)(B) (West 2014).

returning to California for a season, then returning to the nearby state, and then returning to California again. In that case, unless anti-abuse rules are developed, that production would benefit from the 25% tax credit rate in both California filming years, whereas if the program stayed in California for three seasons, its effective tax credit rate would be 21.7%. California I would not have spawned this abuse because the increased 25% credit only applied to films that never filmed in California that were moving to California. As a result, this Note recommends that the California Film Commission limit the 5% uplift for relocation to TV series that have either (i) never filmed in California prior to relocation, or (ii) have moved filming out of California and are moving back to California. A TV series moving out and then back into California more than once is likely playing tax games. If the Commission wants to allow for more flexibility, it could allow applicants to appeal this rule and prove that they are moving filming in and out of the state for non-tax purposes (e.g., because of plot twists).

California's tax credit program also restricts eligible new TV series to those with a one-million-dollar budget per episode, and each episode must be scripted and at least forty minutes long, exclusive of commercials.[102] This likely distorts the market towards dramas and away from comedies, since most comedies are a half-hour long.[103] Curiously enough, relocating TV series have no episode length requirement, meaning that a twenty-two minute sitcom that relocates to

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[102] CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38, at 3.

[103] *See* Alyssa Rosenberg, *Why Are Dramas An Hour Long and Comedies a Half Hour?*, THINKPROGRESS (July 16, 2012, 5:07 PM), http://thinkprogress.org/alyssa/2012/07/16/518811/why-are-dramas-an-hour-long-and-comedies-a-half-hour/ [https://perma.cc/97SH-MBDG]. In fact, the Television Academy recently ruled that only half-hour shows are eligible for the comedy award at the Emmys, though an hour-long comedy series may petition to be considered. ACAD. OF TELEVISION ARTS & SCI., 2015 PRIMETIME EMMY RULES CHANGES 1 (2015), http://www.emmys.com/sites/default/files/Downloads/2015-whats-new-v1.pdf [https://perma.cc/H5GC-SAQH].

California is eligible for the tax credit whereas one filmed in California from the start is not.[104] This may encourage an enterprising comedy producer to choose to film one season of a half-hour show out of state in order to take advantage of the tax credit in subsequent seasons.

The rationale for requiring an episode length of forty minutes is unclear. Does the California legislature want to create a disincentive for the production of comedies, because they see dramas as a purer art form, or because they believe they are more likely to earn critical acclaim?[105] Or did the California legislature want more comedies filmed in an hour-long (inclusive of commercials) format? Or perhaps the California legislature did not carefully examine the potential market-distorting effects of an episode length requirement and believed it to be a reasonable means of attracting more expensive productions to California, since a forty-minute episode has higher production costs than a twenty-two-minute episode? If the last is the case, one wonders why the minimum one-million-dollar budget to qualify for the tax credit, which applies across the board to new and relocating TV series, is not sufficiently effective on its own to maintain a minimum level of spending in the state. In conclusion, it seems bizarre that California would want to shift the market away from producing comedies, or would want to encourage comedies to film in another state (at least for one season). If this is an unintended consequence, the program should be amended to strike out the episode length requirement. If this is an intended consequence, the California legislature should examine whether it is advisable to encourage the production

104 CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38, at 3.

105 One wonders if there is a "drama" lobby and a "comedy" lobby in California. Interestingly enough, bias against comedies is a real concern amongst Oscar contenders. *See* Tim Dirks, *Academy Awards Best Picture Genre Biases*, AMC: FILMSITE (2014), http://www.filmsite.org/bestpics2.html [https://perma.cc/LR39-C2U8].

of one entertainment form over another, when there is no apparent public policy justification for doing so.[106]

2. Whether Credits Are Transferable or Refundable

Transferability allows for the recipient of the tax credit to sell the credit to another taxpayer. This allows taxpayers who do not have a tax liability in the state, or whose tax liability is not large enough, to take advantage of the entire tax credit.[107] If a tax credit is refundable as opposed to transferable, the taxpayer need not sell the tax credit to another tax payer if he or she is unable to use the tax credit, or the entirety of it.[108] Instead, the state will issue the taxpayer a refund. In the arena of film production tax credits, many states allow tax credits to be transferred or refunded.[109]

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106 In comparison, there is a more obvious public policy justification for the tax credit's exclusion of sexually explicit films, since many taxpayers would likely be displeased if tax incentives were being offered to adult film production. California, like most states, does not allow the tax credit to apply to sexually explicit material that would fall under Section 2257 of Title 18 of the United States Code. CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38, at 4; CAL. REV. & TAX. CODE § 23685(b)(15)(D) (West 2014) (providing for exclusions from the definition of "qualified motion picture").

107 *See* Thomas W. Giegerich, *The Monetization of Business Tax Credits*, 12 FLA. TAX REV. 709, 799 (2012).

108 *See* Jennifer A Zimmerman & Danny Bigel, *The Transferability and Monetization of State Tax Credits—Part II*, 25 J. MULTISTATE TAX'N & INCENTIVES 20, 21 (2015) (discussing the differences between transferable and refundable tax credits).

109 Transferable film production tax credits even inspired a film producer to launch "the Online Incentive Exchange, a new market where prospective buyers of transferable tax credits can compare prices and complete deals." Josh Goodman, *Tax Breaks for Sale: Transferable Tax Credits Explained*, PEW CHARITABLE TRUSTS: STATELINE (Dec. 14, 2012), http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/12/14/tax-breaks-for-sale-transferable-tax-credits-explained [https://perma.cc/6L52-CX3Z].

Under the California II program, film producers generally cannot transfer tax credits; however, there is an exception for independent films.[110] Independent films may sell their tax credits to an unrelated party, subject to the following restrictions and requirements: (i) credits cannot be sold to more than one party by the tax credit recipient, (ii) the purchaser of the tax credit may not resell to another party and may only apply the credit against income taxes (and not to sales and use taxes), (iii) the independent film producer tax credit seller must include the sale of the tax credit as taxable income, and (iv) the purchaser of the tax credit must report the purchase price of the tax credits.[111] In contrast, in New York, film producers may not transfer tax credits, but they can claim a refund on unused tax credits, which may take up to three years to be refunded.[112] Specifically, if the refund is less than one million dollars, it can be claimed in its entirety for that taxable year.[113] If the credit is between one million and five million dollars, it is claimed over two years.[114] If the credit is greater than five million dollars, it is claimed over three years.[115]

Most film producers subject to the California II regime are not able to sell their tax credits or apply for a refund if they do not have liabilities that make full use of their tax credits. This treatment seems reasonable because film producers who do not qualify for "independent" status in California are either publicly traded or at least 25% owned

110 *See* CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38, at 3–4.

111 CAL. FILM COMM'N, CALIFORNIA FILM & TELEVISION TAX CREDIT PROGRAM 2.0: FACT SHEET: USING THE TAX CREDITS 2–3 (2015), http://www.film.ca.gov/res/docs/FACT%20SHEET-%20%20Using%20the%20Tax%20Credits%20June%202015.pdf [https://perma.cc/ZK6L-QGJ8] [hereinafter CAL. FILM COMM'N, FACT SHEET].

112 N.Y. TAX LAW § 24(a)(2) (McKinney 2016).

113 *Id.*

114 *Id.*

115 *Id.*

by publicly traded companies.[116] In addition, the taxpayer can assign tax credits to "one or more affiliates," defined as any corporation that is a member of a commonly controlled group.[117] These film producers are likely repeat players in the film production market, and thus, even if some of their films flop, enough of the films produced by the commonly controlled group produce income to fully utilize the tax credit. Many producers also produce other films or content ineligible for tax credits, so credits could also be applied to income generated by those ventures. Furthermore, comparatively more film production companies may reside in California, and are likely to be subject to California state taxes, so disallowing transfer or rebates for most film producer taxpayers seems reasonable.

In contrast to refundable tax credits, transferable tax credits do not require additional direct government expenditures or administration, which reduces the cost of implementing the tax credit program and may be more palatable to certain political constituency groups.[118] However, transferable tax credits may not be economically equivalent to refundable tax credits from the perspective of the taxpayer. While there are no publicly available statistics for the selling price of one dollar of a film production tax credit in California, it is almost certainly less than one dollar.[119] Buyers are not willing to pay dollar for dollar

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116 CAL. FILM COMM'N, GUIDELINES 2015, *supra* 39, at 3; CAL. REV. & TAX. CODE § 23685(b)(6) (West 2010) (defining "independent film").

117 CAL. FILM COMM'N, FACT SHEET, *supra* note 111, at 1. For example, Warner Brothers' subsidiaries include New Line Cinema and Castle Rock Entertainment. If New Line Cinema was unable to utilize its full tax credit, it could assign its portion to Warner Brothers or Castle Rock Entertainment.

118 *See* Clinton G. Wallace, Note, *The Case for Tradable Tax Credits*, 8 N.Y.U. J.L. & BUS. 227, 271 (2011).

119 The price of transferable tax credits in a different industry can serve as comparison. For example, the market price of Low Income Housing Tax Credit reached a high of $0.95 for every $1 of tax credit. *Id.* at 264.

because of transaction costs associated with transferring a tax credit, including fees to accountants, lawyers, and brokers.[120] Furthermore, the seller of the tax credit gets cash immediately, whereas the buyer must wait for the government to issue a tax refund after filing, so buyers must be compensated for the time value of money.[121] The sale of a tax credit is includible in income, which further reduces the taxpayer's economic benefit.[122] As such, transferable tax credits are not a paragon of efficiency, because the intended beneficiary of the tax credit is likely receiving less than a dollar per dollar of tax credit, but the tax credit still costs the government one dollar of tax revenue.

Despite these drawbacks to the efficiency of transferable tax credits, the state has used them with some success for independent film producers. Without allowing transferability for independent producers, those producers would likely not be incentivized to produce in California because they may not generate enough income to fully utilize a tax credit or may not be certain that they will have enough income to do so. Furthermore, independent producers are less likely to be repeat players in the film production market or to be able to predict their income because their ventures are riskier. The tax credit program should appeal to both big and small players for political expediency. Policymakers may even want to pay more attention to independent producers because they may be even more motivated by budgetary

120 *See* McDonald, *supra* note 1, at 110.

121 Arguably it is economically fair that the seller should have to compensate the buyer for this time value of money, since the seller receives the money at point of sale.

122 This is also the point of view the IRS takes with respect to federal taxes. The IRS has "maintained a consistent view" that when a taxpayer sells a state tax credit to another party, the transaction is to be treated as sale of property, with the "seller accordingly recogniz[ing] gain to the extent its amount realized exceeds its basis in the credit, and the buyer takes a cost basis in the credit." Adam C. Kobos, *Recent Developments in the Taxation of Transferable State Tax Credits*, CORP. TAX'N, July/Aug. 2011, at 38, 38.

concerns and have a greater willingness to film in other nearby states where the cost of location and labor may already be cheaper than in California.

In comparison, New York's program allows tax credits to be refunded, with the refund potentially spread out over three years.[123] On one hand, the taxpayer-film-producer does not need to find a purchaser for the tax credit, thereby decreasing transaction costs. On the other hand, the taxpayer may have to wait up to three years to obtain the entirety of the tax credit. This means that the present value of each dollar of tax credit varies depending on how large the credit is, which determines the spread of the payments over a one-, two-, or three-year period.

On the whole, allowing for refunds or transfers, or disallowing them, has benefits and drawbacks. Compared to most other states, New York and California can viably disallow refunds or transfers given the high likelihood that a film-producing entity needs to pay tax in those states because many producers are based in one state or the other.[124] California II's general policy of no transfers or refunds is possible because of the concentration of film production in the state. That being said, independent producers should be able to refund or sell their credits; otherwise they would not be incentivized to produce in California. In New York, only taxpayers who do not have enough of a tax liability to take advantage of the full value of the credit can take advantage of refunds. As such, small or independent producers may be the only ones eligible for a credit refund, making the ESFPC not inherently more generous than the California policy. Since the tax credit has already been enacted, the political cost of direct expenditures by the government as opposed to transfers between private parties is a moot concern. Therefore, efficiency is the prime

123 N.Y. TAX LAW § 24(a)(2) (McKinney 2016).

124 *See* LAO, *supra* note 50, at 10 fig.3 (illustrating that nearly three-quarters of all film production jobs in the United States in 2012 were located in either California or New York).

factor in evaluating whether transferable or refundable tax credits are more appropriate, and it is unclear whether the transaction costs of transfer or the time-value costs of spread out refund payments (unique to New York's refund design) are more acute. As it stands, both refunds and transfers have their benefits and drawbacks and there is not a clear winner.

3. Allocation of Tax Credits

Both the California and New York programs have budgetary caps, which means that potentially not all productions eligible will receive a tax credit. In California, policymakers have debated tax credit allocation, which they were particularly concerned about during the California I program due to its smaller budget.[125]

The New York program has the most straightforward allocation mechanism, which is simply first come, first served, based upon "receipt of a complete final application."[126] Most rational taxpayers would simply file a complete final application at the first moment they were eligible to do so, necessitating some tie-breaking mechanism. One assumes that because New York's allocation mechanism has not been hotly debated or commented on, perhaps scarcity of tax credits is not a significant issue. California changed its allocation mechanism from a lottery system to one that incentivizes job production. The California I program accepted applications on a first come, first serve basis, like New York, but also provided for a lottery as a tie-breaking mechanism. If more than one application was received on the same date, a lottery determined the order of all applications received on that date.[127] While this would

125 *See Federal Legislators Urge California to Reauthorize Film Tax Credit*, ST. TAX TODAY, July 29, 2014, at 1–2, LEXIS, 2014 STT 146-18.

126 N.Y. COMP. CODES R. & REGS. tit. 5, § 170.5 (2015).

127 *See California Film & Television Tax Credit Program Guidelines,* CAL. FILM COMM'N 9 (2014), http://www.film.ca.gov/res/docs/pdf/Incentives%20Documents/CFCGuidelines%20March%202014.pdf [https://perma.cc/F2PF-TKSA] [hereinafter CAL. FILM COMM'N, GUIDELINES 2014].

seem fair to taxpayers applying for the credit, it reduces the expected value of the tax credit. If a taxpayer-producer knows ten taxpayers are applying for credits on that day, and there is only room in the budget for two tax credits, then his or her expected value from the tax credit would be 20% of the value of the tax credit. This makes the tax credit less valuable from a net present value perspective, reducing the expected rate of return some producers may use to decide whether or not to engage in a new film project.

The California II program replaced the lottery system with a "Jobs Ratio" measure. The base jobs ratio is determined by adding together qualified wage expenditures and 35% of qualified non-wage expenditures, and then dividing that total by the amount of tax credits requested. The base jobs ratio can be increased via "Bonus Points," which are earned by spending on visual effects,[128] principal photography days at principal production facilities (in relation to days filming in-state but not at a listed facility), and principal photography days outside of the "Los Angeles Zone."[129] The top 200% of Jobs Ratio ranked projects are asked for supporting documentation, and the highest ranked projects are then assigned tax credits.[130] The Jobs Ratio was adopted to "identify those projects which create the most jobs and increase economic activity in the state."[131] The Jobs Ratio seems like it would be effective at doing so by incentivizing film producers to create more jobs, or pay higher wages. Granting Bonus Points for filming at a principal production facility increases the return of capital investments in these facilities. Bonus points for filming outside of Los Angeles further incentivize job creation in areas of California that are not traditionally filming areas. One assumes the California legislature intended these

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[128] Visual effects are also eligible for a 5% uplift. CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38, at 10.

[129] *Id.*

[130] *Id.* at 6–9.

[131] *Id.* at 10.

effects. The California allocation method is designed to effectuate a race to the top, insofar as creating marginally more jobs or paying marginally more wages may yield a tax credit that more than compensates for marginal increases to production costs. Producers will then try to marginally inch out the competition in the Jobs Ratio metric, leading to slight upwards pressure on wages and job creation. As such, the Jobs Ratio mechanism is a well-designed tax credit feature resulting in effects that are in line with government intentions.

V. CONCLUSION

New York and California currently have robust film production tax credit programs that should be continued in the future. Economic impact analyses suggest that though neither program is truly revenue-neutral for each state's fiscal budget, the return on investment for all fiscal authorities in the state is positive. Moreover, New York and California's relatively efficient tax credit programs can thank the states' historic strength in film production, which resulted in tight networks of suppliers, for pushing the estimated effects of the ripple throughout the economy per dollar of tax credit spending over \$8 in New York state and over \$19 in California. These economic impact analyses also have their shortcomings: they do not consider the opportunity cost to the state of implementing a film production tax credit over other fiscal policies, they often use the questionable counterfactual "but for the film credit, a film producer receiving the credit would film elsewhere," and they often cannot separate out causation from correlation. Despite these issues, the generally positive results from these studies suggest that film production tax credit programs should be continued in states like California and New York.

Going forward, this Note offers a few suggestions as to how these programs should be designed, taking into account the historical strength of the film industry in both these states. When deciding which films are eligible for the tax credit, legislators need to be aware of the danger of unintended distortions to the film industry. For example, California's forty-minute television episode length requirement encourages the filming of dramas over comedies. As with all tax design, there is also a danger of encouraging tax games, which California's definition of a relocating television series may do. Additionally, there are benefits and drawbacks to allowing recipients to refund or transfer the credits, and it does not seem like one is clearly more optimal than the other. Lastly, it is unclear why New York has not elucidated a tie-breaking mechanism in its allocation system, whereas California's new Jobs Ratio system has the benefit of exerting upward pressure on wages and job creation. All in all, these film production tax credits are necessary to respond to the threat of migrating film production as a result of other states' adopting tax credit programs, and thoughtful design can make these programs as non-distortive and efficient as possible.

APPENDIX

Table 1.

	California II (2014)[132]	**California I (2009)**[133]	**New York (2015)**[134]
Budget Allocation	$1.55 billion, 5-year program. $230 million for 2015/16, then $330 million per following year. This year's funding allocates: • 40% to New TV Series, TV Pilots, Movies of the Week ("MOWs"), Mini-Series, Renewed Series; • 5% to Independent Projects; • 35% to Non-indie Feature Films; and • 20% to relocating TV Series.	$500 million, 5-year program. (Later amended to authorize $800 million in tax credits.) $100 million/year through 2015/16. $10 million of credits (10% of total) reserved for independent projects.	$420 million/year through 2019. Up to $25 million/year may be used for post-production credits. Up to $5 million/ year can be allocated for 10% tax credit increase for qualified labor expenses in certain counties. No cap per project.

132 CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38. Major changes to the program relative to California I appear in bold.

133 CAL. FILM COMM'N, GUIDELINES 2014, *supra* note 127.

134 2015 N.Y. STATE ESFPC GUIDELINES, *supra* note 18.

	California II (2014)	**California I (2009)**	**New York (2015)**
Allocation of Credits	(1) Top 200% of ranked projects in terms of "jobs ratio"[135] asked for supporting documentation. (2) Highest ranked projects then assigned tax credits until "allocation within each category is exhausted."[136] (3) Waitlist for applicants in the top 200% of jobs ratios who do not receive tax credit allocation.[137]	Lottery system of allocation. (1) Applications accepted on "first-come, first-served basis" based upon date applications received by the California Film Commission ("CFC") Director. (2) "[R]andom selection process administered by the Director of the CFC shall determine the order of all applications received on the same date."[138]	First-come, first-served system of allocation, based upon "receipt of a complete final application" for the ESFPC and upon "the date of the approval of an applicant's final application" for the ESFPC.

135 The jobs ratio is intended to identify "projects which create the most jobs and increase economic activity," as determined by "qualified wages and qualified non-wage expenditures" as well as "bonus points" for expenses such as visual effects. CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38, at 10. "To determine the jobs ratio of each project, 35% of the non-wage expenditures are automatically added to the qualified wage amount, which is then divided by the amount of tax credits requested." *Id.*

136 *Jobs Ratio Calculation and Ranking*, CAL. FILM COMM'N, http://www.film.ca.gov/CFC%20Tax%20Credit%20Job%20Ratio%20Ranking.htm [https://perma.cc/EAP2-LCRR].

137 CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38, at 9.

138 CAL. CODE REGS. tit. 10, § 5501(b) (2009).

	California II (2014)	**California I (2009)**	**New York (2015)**
Eligible Projects	(1) Must be one of the following types of film and meet the following requirements: (a) Feature film • min. $1 million budget (tax credits apply to first $100 million) (b) MOW OR Mini-series • min. $500k budget (c) New TV Series • **episode >40 minutes excluding ads** • **min. $1 million budget per episode** **OR Pilot** • **min. $1 million budget** • **can be licensed for any distribution outlet** (d) TV Series that relocates to Cal. • **most recent season filmed**	(1) Must be one of the following types of film and meet the following requirements: (a) Feature film: • min. $1 million, max. $75 million production budget (b) MOW OR Mini-series • min. $500k budget (c) New TV Series • episode >60 minutes including ads • min. $1 million budget per season • must be licensed for original distribution on basic cable (d) TV Series that relocates to Cal. • all prior season(s) filmed outside Cal. • no episode length req. • no min.	(1) Must be one of the following types of film: (a) Feature film (b) TV Series (c) Relocated TV Series (d) TV Pilot (e) TV Movie (Exclusions: documentaries, news, talk shows, instructional videos, sports shows/events, daytime soap operas, reality programs, commercials, and music videos, among others.) (2) Additional Requirements: (a) If production budget is over $15 million OR film is being produced by a company that is more than 5% publicly owned, then min. 10% of total principal photography shooting days must be at a

	California II (2014)	California I (2009)	New York (2015)
	outside Cal. • no episode length req. • no min. budget • any media outlet (e) Independent Film, TV Series, Mini-series, or MOW • **min. $1 million budget** • must be produced by non-publicly traded company • publicly traded companies must not own >25% of producing company AND (2) must meet 75% test (a) 75% of principal photography days[139]	budget • any media outlet • TV pilots ineligible (e) Independent Film, TV Series, Mini-series, or MOW • min. $1 million production budget • max. $10 million qualified expenditure budget • must be produced by non-publicly traded company • publicly traded companies must not own >25% of producing company AND (2) must	qualified production facility ("QPF")[140] in New York State ("NYS"). (Exception: pilots.) (b) If production budget is less than $15 million and film is being produced by independently owned companies, then must shoot min. 1 day of principal photography at a QPF. (c) If a pilot, then must shoot min. 1 day of principal photography at a QPF AND 75% of all production expenses at all facilities utilized must be related to filming at QPF. (d) If more than one production

139 Principal photography does not include filming of primarily backgrounds, visual effects, action and/or crowd scenes by the second,

	California II (2014)	**California I (2009)**	**New York (2015)**
	must occur wholly in Cal. OR (b) 75% of production budget must be used for goods, services, and/or wages in Cal.	meet 75% test (a) 75% of principal photography days must occur wholly in Cal. OR (b) 75% of production budget must be used for goods, services, and/or wages in Cal.	facility used, then 75% of all qualified costs incurred must be incurred at a QPF. (3) A film production company can qualify for post-production credit if: (a) Visual FX and animation costs incurred at a qualified post-production facility in NYS are min. 20% total such costs OR min. $3 million dollars OR (b) qualified post-production costs incurred at post-production facilities in NYS make up min. 75% of total post-production cost.

stunt or visual effects units. CAL. FILM COMM'N, GUIDELINES 2015, *supra* note 38, at 3.

140 2015 N.Y. STATE ESFPC GUIDELINES, *supra* note 18, at 3.

	California II (2014)	California I (2009)	New York (2015)
Eligible expend-itures	Must be incurred in Cal.; services must be per-formed in Cal.; purchases and rentals must be made and used in Cal. Can include: • crew/staff salaries, wages, and fringe benefits • facility rentals /equipment • production operation costs. Exclusions (not limited to):	Must be incurred in Cal.; services must be per-formed in Cal.; purchases and rentals must be made and used in Cal. Can include: • crew/staff salaries, wages, and fringe benefits • facility rentals /equipment • production operation costs. Exclusions (not limited to):	(1) If 75% test met (min. 75% of costs at QPF, if more than one facility used), one may also qualify for credit based upon qualified expenditures[141] outside QPF that are related to pre-production, location production, and post-production, subject to the following requirements: (a) if production spends <$3 million on all costs related to

141 Qualified production costs are "tangible property or services used or performed within NYS directly and predominantly in the production of a qualified film." They generally include below-the-line expenses and excludes above-the-line expenses. 2015 N.Y. STATE ESFPC GUIDELINES, *supra* note 18, at 5. Qualified post-production costs are those "associated with the production of original content for a qualified film employing traditional, emerging and new workflow techniques used in post-production for picture, sound, and music editorial, re-recording and mixing, visual effects, graphic design, original scoring, animation, and musical composition; but *shall not include the editing of previously produced content for a qualified film*." Only work done in NYS is included. *Id.* at 6.

	California II (2014)	**California I (2009)**	**New York (2015)**
	• Above-the-line expenditures (writers, directors, music supervisors, producers, performers) (exception: background actors with no scripted or ad-lib lines) • Expenses related to marketing, publicity, financing, distribution of qualified motion picture • Expenses related to secondary markets, creation of ancillary products • CPA work • Fed payroll taxes • Expenses outside time period of credit allocation letter (30 days after post-production is completed)	• Above-the-line expenditures (writers, directors, music supervisors, producers, performers) (exception: background actors with no scripted or ad-lib lines) • Expenses related to marketing, publicity, financing, distribution of qualified motion picture • Expenses related to secondary markets, creation of ancillary products • CPA work • Fed payroll taxes • Expenses outside time period of credit allocation letter (30 days after post-production is completed)	work done at a QPF, then min. 75% of principal photography days shot on location must be in NYS OR (b) if production spends >$3 million related to QPF expenses, then all qualified expenditures related to pre-production, location production, and post-production in NYS are eligible.

	California II (2014)	**California I (2009)**	**New York (2015)**
Size of Credit	25% for: (1) Independent film; (2) Relocating TV series in first season in Cal. 20% for: (1) Feature film; (2) MOW, mini-series; (3) New TV series, **pilot**; (4) Additional (not first) seasons of a relocating TV series. **5% uplift.** Non-independent productions and non-relocating TV series receive an additional 5% in tax credits for: (1) visual effects performed in Cal.; (2) music scoring	25% for: (1) Independent film; (2) Relocating TV series in first season in Cal. 20% for: (1) Feature film; (2) MOW, mini-series; (3) New TV series; (4) Additional (not first) seasons of a relocating TV series. No uplifts.	30% of qualified production costs incurred in NYS. Additional 5% (35% total) of qualified post-production costs incurred in Upstate NY (outside of NYC, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester counties). Additional 10% credit for qualified labor expenses incurred in specific upstate counties for production or post-production on projects with budgets over $500k.[142]

142 The eligible counties are: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St.

	California II (2014)	California I (2009)	New York (2015)
	and/or music track recording; (3) qualified wage and non-wage expenditures outside the LA zone.		
Transferability	Generally non-transferable. Exception: credits for independent films.	Generally non-transferable. Exception: credits for independent films.	Not transferable.
Refunds	None.	None.	Available. If an applicant's approved amount of credits exceeds the max. amount of credits for a given year, that applicant's credit will be allocated on a priority basis the next year.[143] The credit can be claimed in the later of (1) the year the taxable year production is complete or (2) the taxable year

Lawrence, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates. *Id.* at 2.

143 N.Y. COMP. CODES R. & REGS. tit. 5, §§ 170.1, 230.5 (2014).

	California II (2014)	**California I (2009)**	**New York (2015)**
			following the year the film has been allocated credit.[144] May be issued in one to three payments depending on size of refund. If refund is <$1 million, then can be claimed in its entirety. If credit is $1–$5 million, it is claimed over two years. If credit is >$5 million, it is claimed over three years.[145]
Preference Zone	5% uplift for qualified wage and non-wage expenditures outside the LA zone.	None.	5–10% increase in tax credit for filming outside Metropolitan Commuter Transportation District, depending on county.

144 N.Y. EMPIRE ST. DEV., FILM TAX CREDIT PROGRAM GUIDELINES: APPLICATION PROCESS—STEPS TO THE CREDIT 2 (2014), http://esd.ny.gov/businessprograms/Data/Film/2014/StepstoCreditMAY2014.pdf [https://perma.cc/64J5-69LN].

145 N.Y. TAX LAW § 24(a)(2) (McKinney 2016).