February 2015

Credits & Incentives talk with Deloitte

Lights, Camera, Action… Incentives

by Kevin Potter,
Deloitte Tax LLP

Deloitte.

Journal of Multistate Taxation and Incentives (Thomson Reuters/Tax & Accounting)
Volume 24, Number 10, February 2015

CREDITS & INCENTIVES TALK WITH DELOITTE

Lights, Camera, Action . . . Incentives

KEVIN POTTER is a Director in Deloitte's National Credits & Incentives practice. Kevin currently manages all aspects of statutory credit and negotiated incentive reviews and other similar projects for large and mid-size multistate corporations. He is a graduate of Texas A&M University, a CPA (holding active licenses in Texas and New York) and is a Black Belt in Lean Six Sigma. You can follow Kevin on Twitter at Kevin_S_Potter.

In 2010, I had a small, non-speaking walk-on role in *Men In Black 3* (MIB^3), which I won in a charity auction. I learned that the producers of MIB^3 were drawn to New York not only because of its iconic surroundings, but also the pro-film environment that New York State and New York City have fostered, including making tax credits and incentives available to the film industry.

In fact, at one point a spokesperson for the film production company commented that they were changing their production schedule to make sure they could take advantage of "recent changes affecting New York State film incentives," which include a 30 percent tax credit for eligible costs while filming in New York State.[1] While my part in the movie ended up on the editing room floor, never to be seen by friends or family, MIB^3 was a huge success, grossing over $624 million at the box office.[2] This was my first foray into film and the start of a new-found fascination with the film industry.

During my day on the set, I witnessed firsthand the impact the film and television industry had on the local economy-the number of jobs created, the restaurants whose sales increased, and the hotels that were able to book open rooms, all driven by the filming of a new movie. In 2010, revenues from television production in the U.S. were estimated at $30.8 billion,[3] while revenues from movie and video production were estimated at $29.7 billion.[4]

The Motion Picture Association of America estimates that the U.S. film and television industry is directly responsible for creating or retaining 293,000 jobs and an estimated $46 billion in wages in 2013. It is further estimated that the industry supports 1.9 million workers across all 50 states and contributes $38 billion to over 330,000 businesses.[5]

The employment generated by this industry is not limited to big-name movie stars, but also involves costume designers, camera operators, writers, composers, set designers/builders, accountants, and many others. In Louisiana, for example, after the production incentive bill was passed in 2005, it was reported the industry added 13,445 jobs and created an additional $336.3 million in output over the prior two-year period.[6]

Similarly, New York Comptroller Thomas DiNapoli issued a report crediting the film production incentive programs with driving $7 billion into the state's economy between the programs' launch in 2004 through 2008. The published report also noted the incentive programs contributed to the employment of approximately 63,000 people in 2008, adding as much as $5 billion in wages to the New York economy and increasing state and local tax revenue.[7]

Job creation is not the only positive outcome from having film and television production in a community, as related benefits include small business and infrastructure development, the generation of tax revenue, and increased tourism.[8] For example, Dyersville, Iowa, home of the *Field of Dreams* movie, receives tens of thousands of visitors annually, pouring money into the local economy. I know I personally want to go visit Timberline Lodge in Mount Hood, Oregon, which was used as the Overlook Hotel in *The Shining.* Consider the impact film and television productions have on an economy when tourists are drawn to places they otherwise would never have heard about or thought of visiting.

This sizable financial boost to state and local economies is one of the reasons film and television tax credits and incentives have become so popular in the various state and local jurisdictions. These financial incentives, along with a combination of lower costs, infrastructure, and technical talent are enabling states such as Georgia, Louisiana, North Carolina, New Mexico, and New York to lure film and television production away from California.

Although California in 2012 had 52 percent[9] of all production jobs, the trend is that competition is shifting those jobs to other states, which perhaps one day could challenge Hollywood as the heart of the entertainment industry in the United States. In fact, the competition is so fierce that as of 2014, 39 states and Puerto Rico have some type of film production incentive on their books.[10]

While the incentive type (tax credits, exemptions, cash grants, locations at no cost, etc.) and size vary from jurisdiction to jurisdiction, they all share a similar goal, namely, to lure film or television production and drive economic growth. The following provides some examples of available tax credits and incentives.

California

California Motion Picture and Television Production Credit: For tax years beginning on or after January 1, 2011,[11] the California Film Commission (CFC) is authorized to allocate up to $100 million of available credit each year during the period 2009-2010 through 2016-2017 fiscal years on a first-come, first-served basis. Qualified taxpayers are allowed a credit of 20 percent against income/franchise and/or sales and use taxes, based on qualified expenditures attributable to the production of a motion picture in California, or 25 percent of the qualified expenditures attributable to an independent film or to the production of a television series that relocated to California.[12]

Tax credits applied to income/franchise tax liability are not refundable, but unused credits may be carried forward up to six years. Tax credits for independent films may be transferred or sold to an unrelated party.[13] Taxpayers must submit an application to the CFC in order to claim the credit.

Georgia

Georgia Entertainment Industry Investment Act: Taxpayers that have a minimum investment of $500,000[14] on qualified production activities in Georgia are allowed a 20 percent[15] income tax credit on their investment in the state. There is an opportunity to receive an additional 10 percent[16] income tax credit, for a total of 30 percent, for including a qualified Georgia promotion in the production.

A taxpayer may not claim a tax credit in excess of its prior year Georgia payroll.[17] This credit may be claimed against 100 percent of the production company's income tax liability, while any excess may be used to offset the production company's withholding taxes,[18] sold to another Georgia taxpayer,[19] or carried forward for five years from the close of the taxable year in which the investment occurred.[20] To receive the tax credit a taxpayer must be approved by the Georgia Department of Economic Development. In addition to the income tax credit, Georgia provides a sales and use tax exemption on qualified purchases.

Louisiana

Motion Picture Investment Credit: Louisiana provides qualified taxpayers a 30 percent[21] income tax credit on all investment in the state for state-certified production of motion pictures. There is an additional 5 percent tax credit on the amount expended on payroll for Louisiana residents employed in connection with a state-certified production.[22] While the taxpayer must apply to the state for certification, the Motion Picture Investment Credit is transferrable or saleable,[23] can be carried forward for up to 10 years, and is only capped in that it cannot exceed the total base investment in the production.

As with other states that want to encourage job and economic growth through entertainment-related incentives, it should be noted that Louisiana also has a Musical and Theatrical Production Credit (MTPC). The MTPC is an income tax credit of up to 25 percent of qualified production investment,[24] with an additional 10 percent income tax credit for payroll expenditures to Louisiana residents.

New Mexico

Film Production Tax Credit: New Mexico offers a 25 percent income tax credit for commercial films, audiovisual projects or television series produced in New Mexico.[25] The income tax credit is on the qualified direct production and post-production expenditures. An additional 5 percent credit is available for direct production expenditures of qualifying television series or payments to a resident crew for services during production in New Mexico if a qualifying production facility is utilized for a requisite number of days in principal photography.[26]

In addition, New Mexico offers the Film Crew Advancement Program, which is an incentive for production companies to help create more job opportunities for New Mexican film and television crew professionals. A production company is reimbursed 50 percent of a participant's wages for up to 1040 hours physically worked by the qualifying crew member in a specialized craft position.

Another incentive for film and television production applies to the New Mexico gross receipts tax, a sales tax imposed at the point of sale. This incentive is provided in the form of Type 16 Nontaxable Transaction Certificates (NTTCs). NTTCs, which are issued by the state to qualified taxpayers, are presented by taxpayers at the point of sale, with the result that no gross receipts tax is charged. This incentive cannot be utilized in conjunction with the 25 percent film production refundable tax credit.

North Carolina

Credit for qualifying expenses of a production company: North Carolina provides taxpayers, with at least $250,000 in qualifying production expenses, a 25 percent refundable income tax credit on qualifying expenses.[27] The tax credit is capped at $20 million for feature film production but other types of production are not subject to that same cap.[28] A taxpayer must notify the Division of Tourism, Film, and Sports Development in the Department of Commerce of the taxpayer's intent to claim the production tax credit.

New York

The New York State Film Tax Credit Program: New York State offers qualified taxpayers a 30 percent, fully-refundable tax credit based upon qualified production costs and post-production costs incurred in New York State.[29] The credit may be taken against tax imposed under Article 9-A (corporations) and Article 22 (personal income tax). In addition to the 30 percent credit, a 5 percent tax credit is available for post-production costs incurred in Upstate New York.[30] Also, for the period 2015-2019, productions with budgets over $500,000 can receive an additional 10 percent credit on qualified labor expenses incurred in certain counties.[31]

In addition to the credit for film production and post-production, New York State also has a Commercial Tax Credit Program, which is a credit against tax, imposed under Article 9-A (corporations) and Article 22 (personal income tax), of up to 20 percent of qualified production costs incurred in New York State over a base period. There can be additional credits of 5 percent of qualified costs if production is done in certain parts of the state. Similar to other states, New York also offers a sales and use tax exemption for qualified taxpayers engaged in film and television production.

New York State also utilizes the Investment Tax Credit to support the film and television industry. In addition to the incentives discussed above, New York provides an income and/or franchise tax credit of 5 percent for the investment in qualified tangible personal property and other tangible personal property, including buildings and structural components of buildings that were acquired, constructed, reconstructed or erected after December 31, 1968. The credit is refundable for new businesses, and for other businesses any unused credit is treated as an overpayment to be credited against the next year's tax.

As evidenced by the sample programs discussed above, film and television incentives can be a significant factor in determining which states will bring job growth and positive impact to their economy. While the competition continues to grow, some states are choosing to move away from film and television incentive programs. This movement is often attributed to negative voter perception of such programs, but could ultimately have an unfavorable effect on the amount of production done in those states.

For example, North Carolina announced plans to terminate its current program (summarized above) at the end of 2014 and replace it with a grant program that some believe represents a much more modest taxpayer contribution.[32] In contrast, while North Carolina was reeling in its program, California tripled the state's program to an annual $330 million in incentives over five years.[33]

Over the next few years tax credits and incentives could potentially play a large role in determining whether the epicenter for the entertainment industry remains in California or perhaps moves east to Louisiana, Georgia, North Carolina, or New York. This will not just involve a fight to see which state can grow their entertainment jobs and increase their economy, it will also entail a battle to keep film and television production in the U.S., as Canada and Europe continue to vie for an increased share of the market.

Film and television incentives will need to play an important role if the U.S. wants to continue to support the approximately 2 million workers involved and see almost $84 billion dollars continue to flow into the U.S. economy.

[1] http://www.thelocationguide.com/blog/2010/10/newsflash-men-in-black-3-cites-ny-tax-credit-changes-for-location-filming-delay/

[2] *MIB 3 (2012),* Box Office Mojo, retrieved November 1, 2014.

[3] *IBISWORLD US Television Production Market Research Report,* IBISWorld.

[4] *IBISWorld US Movie & Video Production in the US,* IBIS World.

[5] http://www.mpaa.org/creating-jobs/

[6] *Key Economic Impact Findings for Louisiana Film Industry: Summary,* Louisiana Department of Economic Development, December 2006.

[7] Szalai, Georg, *N.Y. film tax credit is economic driver* (13 October 2010).

[8] *Key Economic Impact Findings for Louisiana Film Industry: Summary,* Louisiana Department of Economic Development, December 2006.

[9] *Film and Television Production: Overview of Motion Picture Industry and State Tax Credits,* The Legislative Analyst's Office: www.lao.ca.gov.

[10] Connecticut, Idaho and Oklahoma provide film production incentives; however, incentives programs in these states have been suspended, or funding has not been provided.

[11] Cal. Rev. & Tax. Code § 2368(a)(1).

[12] Cal. Rev. & Tax. Code § 23685(a)(4).

[13] Cal. Rev. & Tax. Code § 23685(c)(3)(a).

[14] Ga. Code Ann. § 48-7-40.26(b)(7)(B).

[15] Ga. Code Ann. § 48-7-40.26(c)(1).

[16] Ga. Code Ann. § 48-7-40.26(c)(2)(A).

[17] Ga. Code Ann. § 48-7-40.26(e)(7).

[18] Ga. Code Ann. § 48-7-40.26(f)(1).

[19] Ga. Code Ann. § 48-7-40.26(g).

[20] Ga. Code Ann. § 48-7-40.26(h)(3).

[21] La. Rev. Stat. Ann. § 47:6007(C)(1)(c)(i).

[22] La. Rev. Stat. Ann. § 47:6007(C)(1)(c)(ii).

[23] La. Rev. Stat. Ann. § 47:6007(C)(4).

[24] La. Rev. Stat. Ann. § 47:6034(C)(1)(a)(iii)(cc).

[25] N.M. Stat. Ann. § 7-2F-1(B).

[26] N.M. Stat. Ann. § 7-2F-1(C).

[27] N.C. Gen. Stat. § 105-130.47(b).

[28] N.C. Gen. Stat. § 105-130.47(f).

[29] N.Y. Tax Law § 210.24-a(2).

[30] http://esd.ny.gov/BusinessPrograms/filmCredit.html.

[31] http://esd.ny.gov/BusinessPrograms/filmCredit.html.

[32] *NC's film industry shaken as incentive program shifts*, http://www.wral.com/nc-s-film-industry-shaken-as-incentive-program-shifts/14066395/#mr70JeID02o42LVB.99

[33] *California Aims to Lure Movie Industry Back,* The Wall Street Journal, October 19, 2014, http://online.wsj.com/articles/california-aims-to-lure-movie-industry-back-1413756702