Some States Continue to Offer Film Production Tax Incentives, Others Seek to End Them

David M. Kall | Tuesday, April 14, 2015

About a year ago, the National Conference of State Legislators (NCSL) wrote a piece that discussed states' usage of film and television production tax credits, which is a relatively new phenomenon. Between 2000 and 2014, the number of states offering some sort of incentive grew from a mere handful to 39 states and Puerto Rico.

There is debate as to whether the programs are worthwhile, and several states have decided to abandon usage of such credits. Arizona, Idaho, Indiana, Iowa, Kansas, Missouri, and Wisconsin have ended their incentive programs or have not included funding for the programs in upcoming budgets. Likewise, Connecticut suspended its incentives for film production, but maintains tax credits for other types of media.

In addition, last month, the Michigan House passed HB 4122, which amends the film and digital media production assistance program to eliminate new and increased funding expenditures related to production, crew, and other personnel, beginning Oct. 1, 2015. However, other facets of the program survive, and the Michigan Film Office maintains a series of Fast Facts about it, including the following:

- Projects must have a minimum spend of at least $100,000 in Michigan to be eligible;
- The incentive rate is 25 percent of direct production expenditures and qualified personnel expenditures;
- An extra three percent is available for expenditures at a qualified facility or post-production facility or 10

percent for expenditures at qualified post-production facility; and
- Incentives for above-the-line ATL personnel are capped at 30 percent of total incentive.

Addressing Michigan's effort, the Tax Foundation noted its own criticism of film tax programs in general, for these reasons:

1. Jobs created from production are often temporary and may no longer be available once the company leaves the state to move on to another project;
2. It is highly unlikely that these programs will create a permanent film industry within a state if there wasn't one already;
3. These programs don't pay for themselves by generating new tax revenue from increased economic activity (most studies have found they lose money); and
4. The estimates of the economic activity generated by film production should be taken with a grain of salt because "…the fact that film productions impact the broader economy is not unique to this industry."

Whether Michigan actually does end the film production tax incentives remains to be seen. MLive.com revealed that Senate Majority Leader Arlan Meekhof (R-West Olive) views the house bill as a major shift in policy, a confrontation that makes things "very difficult" in light of the promises that have been made and the fact that the program has not fully matured.

On the other hand, the California Board of Equalization recently announced the establishment of a New Film and TV Tax Credit Program (Program) for taxable years beginning on or after Jan. 1, 2016. It permits a tax credit to be used to offset income and/or sales and use tax liabilities based on qualified expenditures for film and television shows produced in California.

Administered by the California Film Commission, the Program offers 20 or 25 percent tax credits, and implements meaningful changes. Among other things, it:

1. Increases tax credit program funding from $100 million to $330 million per fiscal year; extended for five years;
2. Expands eligibility to big-budget feature films, one hour television series (for any distribution outlet) and television pilots;
3. Eliminates budget caps for studio and independent films; and
4. Replaces current lottery with a ranking system based on jobs and other criteria.

It is easy to see why California is so heavily invested in these kinds of tax credits. What is surprising is the list of others doing the same.

Kentucky is a state which is expanding its film incentive program. Gov. Beshear signed **HB340** on March 30, 2015. The bill establishes or lowers thresholds for companies to qualify for film tax credit incentives, and increases current incentives for a motion picture or entertainment production filmed or produced in a Kentucky county, whether designated an enhanced incentive county or not.

Georgia, another state that provides film tax credits, offers production incentives of up to 30 percent of a qualified project's production expenditures in transferable tax credits. Other tax benefits include the following:

- 20 percent base transferable tax credit;
- 10 percent Georgia Entertainment Promotion uplift, which can be earned by including an embedded Georgia logo on approved projects and a link to TourGeorgiaFilm.com on the promotional website;
- $500,000 minimum spend to qualify; and
- No limits or caps on Georgia spend, no sunset clause.

The Georgia Department of Revenue (GDOR) recently released a 2014 ruling interpreting the rules pertaining to the transferability of tax credits. In that ruling, the GDOR determined that a taxpayer is permitted to rescind the sale of tax credits to one buyer and sell them to a different purchaser provided the terms and details of the transaction conform to the provisions in the law.

Nevada also offers the following transferrable tax credits, as of Jan. 1, 2014, for productions that shoot at least 60 percent in-state and spend a minimum of $500,000:

1. 15 percent of the cumulative qualified production costs;
2. 12 percent on wages, salaries, and fringe benefits to non-resident above-the-line personnel; and
3. 12 percent on wages, salaries, and fringe benefits for non-resident below-the-line personnel through Dec. 31, 2015 (reduced to 10 percent in 2016, and eight percent in 2017).

Other incentives include two percent bonuses under certain circumstances, and a four-year carry over period. The project cap is $6 million per production, and there are other applicable caps as well.

Finally, the Hawaii Film Office touts the Aloha State as "Hollywood's Tropical Backlot," where productions like *Top Chef*, *Wheel of Fortune*, and over 700 individual television episodes of shows like *The Lucille Ball Show*, *I Dream of Jeannie*, *Beverly Hills 90210*, *The Brady Bunch*, *Charlie's Angels*, *Murder She Wrote*, *China Beach, Eight is Enough*, *The Rockford Files*, *ER*, and *Las Vegas* were filmed. Of the hundreds of feature films that Hawaii hosted, their theatrical runs have produced more than $4 billion in gross revenues, 15 Academy Award nominations, and nine Oscars.

As of 2013, when Hawaii expanded its production tax credit, the state offers a 20-25 percent motion picture, digital media, and film production income tax credit. It is refundable, and is based on a production company's expenditures in Hawaii while producing a qualified film, television, commercial, or digital media project. The 20 percent credit applies to qualified production costs incurred on Oahu, and the 25 percent credit applies to costs incurred on the neighbor islands (Big Island, Kauai, Lanai, Maui, and Molokai).

Film Production Capital provides a five-star rating guide for all 50 states to determine which jurisdictions offer the best incentives.

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Team member bio