

## UNITED STATES OF AMERICA

### Fiscal Incentives for Audiovisual Production and Co-Production

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#### I. INTRODUCTION

The synergy between the film industry and government has created a proliferation of film incentives. Filmmaking is highly mobile; governments want to increase tax revenues. Competition to attract and retain film production is fierce. There are now more than 30 United States (U.S.) incentives<sup>1</sup> lucrative enough to affect production-location decision-making. Many others provide welcome cost savings.

According to the Motion Picture Association of America,<sup>2</sup> the average cost of a negative print for its members<sup>3</sup> exceeds \$70 million, with marketing and advertising costs approaching \$40 million. Given these skyrocketing costs, filmmakers look for cost savings wherever they can be found. Federal, state and local governments have an ongoing need to attract capital investment, create employment and job training, develop and enhance infrastructure, increase tax revenues, and promote tourism. These complementary needs have come together to create a number of highly successful production incentives.

Louisiana and New Mexico first enacted incentives in 2001 and 2002, respectively. Their incentive programs have a well-established record of success. The number of state incentives has grown quickly since that time, with the largest growth occurring in 2006.

Following is an explanation of the types of incentives<sup>4</sup> available in the U.S. and how they work. Basic details regarding incentive type, eligibility requirements, and benefits are summarized by jurisdiction in Section IV following an explanation of the basic concepts and terminology. (*See* Sections II and III.) A brief discussion of incentives designed exclusively for U.S.-based filmmakers is included in Section V, with an overview of how the U.S. Federal Government promotes the film industry.

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<sup>1</sup> Most of these incentives are enacted at the state level. Reference to “state” incentives is intended to include city, territory and District of Columbia incentives, as well.

<sup>2</sup> *See* <http://www.mpa.org/>

<sup>3</sup> Paramount Pictures, Disney, Sony Pictures, 20th Century Fox, Universal, and Warner Bros.

<sup>4</sup> There are also loan programs and infrastructure/investment tax credits available. Please contact Entertainment Partners or your advisor for further information.

## II. TYPES OF INCENTIVES

A production can receive cash payments through both *tax credits* and *rebates or grants*. The primary difference between the two is the procedure for claiming benefits. Tax credits are claimed on a tax return.

*Cash rebates and grants* do not require a tax return. They are processed through the Department of Commerce (or its counterpart), rather than through the Department of Revenue (or its counterpart). In many instances, cash grants and rebates are processed more quickly than tax credits, but this generalization is not always true. Local law establishes the prerequisites for filing a claim for credits and rebates/grants, and also governs whether interim benefit claims can be made before a project is "completed."

*Tax credits* fall into one of four categories: (1) refundable, (2) refundable and transferable, (3) non-refundable but transferable, and (4) non-refundable and non-transferable. The key difference between refundable, non-refundable but transferable, and non-refundable non-transferable tax credits is *liquidity*. Refundable and transferable tax credits can be converted to cash, but a non-refundable, non-transferable credit cannot be monetized.<sup>5</sup> These credits can be used, however, to reduce local taxes.

It is important to identify the type of tax liability against which the credit can be used. For example, some credits can only offset personal income taxes or corporate income taxes. Other credits may be used to offset a broader range of taxes; hence there may be a greater market for transfers. Typically, production companies are "cost centers," with costs exceeding revenues for an extended period of time—potentially forever, and have little or no tax liability to offset.

A tax return generally cannot be filed until after the end of the taxpayer's<sup>6</sup> tax year,<sup>7</sup> which will determine when benefits are received. Thus, cash from a refundable credit may take longer to receive than cash from a rebate or grant.

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<sup>5</sup> We understand that the U.S. federal incentive benefit (tax deduction) provided by Internal Revenue Code section 181, *infra*, can be monetized with sophisticated planning and potentially significant transaction costs.

<sup>6</sup> The terms "taxpayer" and "claimant" are used to denote the "eligible production entity," as defined by local law.

<sup>7</sup> There may be situations, however, where a "short-period" return can be filed earlier.

A *refundable* credit can be converted to cash when it exceeds the local tax liability, if any. A refundable credit is virtually the same as a cash rebate or grant. The distinction, if any, is in the processing time. Some states offer a *refundable or transferable* credit; they will buy back their own credits at a discount set by statute or allow a transfer of the credits to one or more taxpayers. A taxpayer may be able to receive cash sooner by choosing to transfer the credit, rather than waiting for a refund.

A *non-refundable but transferable* credit is used first to offset local taxes. The unused balance can be sold or assigned to a local taxpayer for cash in order to monetize the benefit earlier. Some statutes allow credits to be transferred to multiple taxpayers and/or multiple times. To be attractive to a buyer, a transferable tax credit must be discounted (below face value).

Brokers facilitate tax credit transfers by finding local taxpayers to buy unused, transferable tax credits. The broker's commission or fee adds to the transaction costs, which generally also include fees for a local accountant and/or attorney. Thus, a transferable tax credit is less valuable than a refundable credit unless the taxpayer can use the credit to offset its own taxes.

A non-recourse transferable credit is likewise less valuable than a transferable recourse credit. Statutes specify whether credits are to be transferred on a *recourse or non-recourse* basis. A recourse transfer is more valuable because the transferee can go back to the transferor to recoup the difference if the credit is ultimately reduced on audit due to lack of adequate substantiation for the expenses claimed.

The least liquid, and consequently least valuable type of credit is both *non-refundable and non-transferable*. A non-refundable, non-transferable tax credit can only offset the taxpayer's local tax liability. If the taxpayer does not have a local tax liability, the credit has no value. If the taxpayer's local tax liability is not as large as the credit, statutes usually contain a "carry over" period for the unused credit to reduce taxes in later years.

### III. HOW STATE INCENTIVES WORK

#### Eligibility and Related Terminology

Incentive benefits are granted to "*eligible claimants*" for "*eligible projects*," as defined by local law. Filmmakers and projects outside the scope of these definitions are not entitled to claim the incentive benefits. Eligibility is the first hurdle to meet in accessing incentive benefits.

Many statutes define the incentive claimant as an "*eligible production entity*," with criteria such as legal status (e.g., corporation, partnership, individual), scope of allowed activities (e.g., primarily involved in the production and distribution of film), residence (i.e., local entity), etc. Some jurisdictions require that the producer have a distribution deal and/or financing in place before a project will be considered. Statutes also define "*eligible film projects*."

The scope of eligible projects may include some or all of the following: feature films, television, animation, music videos, commercial advertisements, interactive games, etc. Rules vary from jurisdiction to jurisdiction regarding the eligibility of documentaries and non-scripted programming. Projects such as pornography, awards shows, sports, and news events are frequently excluded.

Most jurisdictions impose a minimum "*local spend*" or "*filming days*" requirement, or some variation thereof. It is important for you to determine whether these requirements apply only to certain phases of production or to all phases, from development through marketing and distribution. The costs incurred during pre-production, production, and post-production generally qualify, while the costs of development, marketing, and distribution are typically excluded. Each statute is unique and must be carefully reviewed.

Many jurisdictions require acknowledgement for the "assistance" they provide through their production incentives in the form of an "*end credit*." The requirement for "end credits" is often overlooked but can prove to be very significant. Ensure that you can meet the local "end credit" requirements without violating applicable guild agreements.<sup>8</sup>

#### Qualifying Expenditures to Calculate the Benefit

To calculate the incentive benefit, multiply the incentive rate by the amount of "qualifying" expenditures or "*incentive base*." For example, as illustrated in the following charts, New Mexico's refundable tax credit is 25% of "qualifying spend."

In evaluating incentive benefits it is critical that you take into consideration not only the incentive rate, but also the scope of "qualifying spend." You may find that the jurisdiction with the highest incentive rate may not yield the greatest incentive—depending upon the breakdown of your budget and the scope of "qualifying spend."

For example, New York has a 30 to 35%<sup>9</sup> incentive rate but its incentive does not apply to above-the-line expenses. The Pennsylvania incentive has a 25% incentive rate and it does apply to above-the-line expenses, subject to a cap of \$15,000,000 on aggregate compensation. Depending upon the breakdown of your budget, Pennsylvania could yield a higher benefit despite the lower incentive rate.

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<sup>8</sup> Paragraph 8-103 of the Directors Guild of America, Inc. (DGA) Basic Agreement restricts the use of the word "Director." One jurisdiction requires an acknowledgement of support in an end credit using the term "Executive Director," which conflicts with the DGA Basic Agreement. See <http://www.dga.org>

<sup>9</sup> New York City has a 5% incentive rate that may be added to the 30% New York State rate.

Applicable statutes list or describe “*qualifying*” expenditures. Most incentive statutes include both local goods and services in the qualifying incentive base, although some incentives are labor-based and apply only to local labor.

One significant requirement frequently included in incentive legislation is that the expenditure be *taxable locally*. If the statutory definition for “qualifying spend” contains such a requirement, expenditures that are not subject to local tax will not qualify and will not be included in the incentive base.<sup>10</sup>

## Labor

Labor is frequently the largest component of a film budget, so it is important to understand how your labor expenses will be treated under the local incentive. When looking at labor expenditures you must distinguish between “*cast*” and “*crew*,” because they are frequently treated differently in the legislation.

Because one of the goals of incentive legislation is to promote training and employment for local residents, some statutes provide different incentive rates for “qualifying” residents and non-residents. Other states include only resident labor.

Some jurisdictions “*cap*” or set a limit on the amount of salary that can be included as “qualifying spend.” Salaries that exceed the “cap” are disregarded in their entirety and are excluded from the incentive base. In other states, there is a ceiling above which the salary will not “qualify,” so only the amount up to the cap will be included in the incentive base.

Some statutes “qualify” both *resident and non-resident* labor if local income taxes are withheld.<sup>11</sup> “Withholding” is a mechanism that requires an employer to deduct a statutory percentage from compensation payments to its employees for the taxes they will owe on that income. The tax withheld (and remitted to the government) will offset the employee’s year-end income tax liability, as shown on his or her tax return.

Withholding does not generally apply to independent contractors, who often perform services through *personal service* or “*loan-out*” entities (e.g., corporations, S-corporations, etc.). States must rely on self-assessment (voluntary reporting) in the absence of withholding.

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<sup>10</sup> See *infra* for a discussion of “Key Issues to Consider.”

<sup>11</sup> There may be an exception to this rule where non-residents are exempted from withholding by income tax “reciprocity agreements.” Check with your local advisor.

It is important to distinguish between requirements that payments are “subject to tax” and that “taxes are paid.” If actual payment of the tax is required for payments to loan-outs to qualify, the producer will need to ensure that the tax is paid.<sup>12</sup> A requirement that the payment is merely “subject to tax,” imposes no such burden on the producer.

Local rules vary with respect to a number of labor-related expenses such as: payroll handling fees; worker’s compensation insurance; taxes (FICA, FUTA, SUI, Medicare, etc.); per diems (both taxable and non-taxable for federal purposes); box rentals;<sup>13</sup> pension, health and welfare contributions, etc. Be sure to find out which of these expenses qualify in order to accurately estimate your incentive benefits.

## Goods and Services

Goods and related services represent the second major component of a film budget. These expenses include: set construction, film processing, travel, lodging, catering, equipment, etc. As mentioned earlier, many statutes include these expenditures in the incentive base only when the transaction (e.g., purchase, rental, etc.) is *taxable locally*.

In jurisdictions where the infrastructure is still developing, it may be difficult to obtain the goods and services locally and therefore necessary to obtain them from out of state. In some cases, the cost of out-of-state acquisitions/rentals will “qualify” to the extent used for local production. Alternatively, the use of a local *procurement company* may “qualify” the cost of out-of-state acquisitions/rentals.

Insurance and airfare expenses may or may not be covered, depending on the location of the vendor. Likewise, travel may only be covered into or within the state, but not as a roundtrip (into the state and out again). Check the local law to find out which expenses qualify. The definition of qualifying expenses can be found in the incentive legislation, rules or regulations.

## Limits on Funding and Incentive Benefits

Some states limit incentive “*funding*” with annual caps. These caps limit the total incentive benefits payable for the year, and vary from relatively small amounts to very

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<sup>12</sup> In one jurisdiction where actual payment is required by loan-outs (not subject to withholding), producers use a “super loan-out” entity. The “super loan-out” is an entity controlled by the producer, which functions as an intermediary to ensure that the taxes are paid.

<sup>13</sup> “Box rentals” are fees or allowances paid to a crewmember for providing his/her own equipment or other specialized apparatus for use in a production.

large amounts. In states with funding caps, some allocate incentive benefits on a first-come, first-served basis. If so, find out how and when you can “lock in” your funding allocation. Few jurisdictions allocate incentives based on a discretionary method using criteria such as how a project promotes the locality and economy, or timing of the production.

In some jurisdictions, claims that exceed the current year's cap will carry over to the following year. Ensure that funding is available for your project before factoring in the incentive benefit.

Some statutes have "*project caps*" that limit the incentive benefit allowed for any film project. There may be different caps for different types of projects. For television projects, caps may apply on an episode, series, or season basis.

## **Key Issues to Consider**

### **Local Advice**

When looking for an advisor, it is best to find professionals experienced with the incentive you plan to access. You will need advice to ensure compliance with all applicable application, filing and reporting requirements—and to maximize your incentive benefits. Payroll service companies are frequently the most experienced advisors.<sup>14</sup>

Lawyers and accountants can advise regarding local "doing business" registration, legal and tax requirements. Foreign corporations and non-resident aliens establishing production service entities in the U.S. may have additional tax issues to consider at the federal level. Make sure you understand all of the requirements that must be met for your project to be “eligible” for the incentive benefits you seek.

### **Application Requirements**

As with everything else in the various U.S. states, film incentive application procedures vary from jurisdiction to jurisdiction. In some jurisdictions, you do not need to apply for eligibility until after you have incurred local expenses. More often, you must apply for

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<sup>14</sup> Entertainment Partners (EP) has been the leader in payroll and production management services to producers in the entertainment industry for more than 30 years. Please visit <http://www.entertainmentpartners.com> for more information. EP provides a variety of production incentive services to its clients, and updated production incentive information to the public on its website, <http://www.productionincentives.com>

approval or certification before your expenditures can "qualify." Ensure that you understand all filing requirements and meet all applicable deadlines to obtain your incentive benefits.

### **Confidential Information**

Many jurisdictions have statutes providing public access to government information. Film incentive applications may come within the scope of these disclosure statutes, often called "*Freedom of Information*" Acts. Find out if there are any such statutes in the jurisdiction where you plan to film, and if so, find out what you can do to protect confidential proprietary and financial information from public disclosure. Frequently, a claim of confidentiality must be made when the information is submitted. Don't lose protections otherwise afforded by failing to determine these rules in advance.

### **Residency Requirements**

If you plan to film in a jurisdiction that has residency requirements for certain expenditures to qualify, find out how the term is *defined* and what type of *proof* is required. In some states, expenses will only qualify after the recipient has filed a "declaration of residency."

### **Local Taxes**

In some states, *exemptions* may be claimed from local transaction taxes. Before claiming any exemptions, ensure that you will not lose the incentive benefits otherwise anticipated. Some states subject *loan-outs* to a tax at the entity level in addition to the tax on the owner/employee. Make sure these taxes are paid if you intend to claim payments to loan-outs as part of your incentive base.

### **Crew, Stage and Vendor Availability**

Find out how many other productions are scheduled to film when you plan to commence principal photography to determine crew and soundstage/location availability. Identify and locate vendors that can provide the goods and services you need to meet your production's budget.

### **Sunset Dates**

Many incentive statutes are limited in duration. The legislation will have a termination date or "sunset date." You will want to determine if there is a "*sunset date*" as soon as you consider accessing a specific incentive. If there is a sunset date, find out whether it relates to the timing for initial application, commencement of principal photography, completion of the project, etc.

## **IV. INCENTIVE BASICS BY JURISDICTION**

Following are three charts listing incentive "basics" by state, city, and territory. ***This information changes frequently.*** Please check with your advisors for the most current

information.

Chart I lists the "type" of *production incentive* offered, and also indicates whether or not relief is available from sales and use (similar to IVA) and hotel occupancy taxes. Chart II lists the *eligibility requirements*, including incentive caps on a per project basis, if any, and annual funding limitations, if any. Chart III lists the *maximum incentive benefit* available by incentive rate and base. For example, the incentive rate might be 40% of qualifying goods and 30% of qualifying labor.

**CHART I (as of October 10, 2008 from [www.productionincentives.com](http://www.productionincentives.com))**

STATE	TYPE OF INCENTIVE	Sales Tax Relief	Hotel Occupancy Tax Relief
Alabama		NO	NO
Alaska	Transferable tax credit	NO STATE SALES TAX	NO
Arizona	Transferable tax credit	YES	NO
Arkansas		NO	NO
California	Legislation pending	YES	YES
Colorado	Rebate	NO	YES
Connecticut	Transferable tax credit	YES	YES
Delaware		NO STATE SALES TAX	NO
District of Columbia	Grant	NO	NO
Florida	Rebate	YES	NO
Georgia	Transferable tax credit	YES	NO
Hawaii	Refundable tax credit	NO	NO
Idaho	Rebate	YES	YES
Illinois	Transferable tax credit	NO	YES
Indiana	Refundable tax credit	YES	YES
Iowa	Transferable tax credit	NO	YES
Kansas	Non-refundable, non-transferable tax credit	NO	YES
Kentucky		YES	YES
Louisiana	Partially refundable, transferable tax credit	NO	NO
Jefferson Parish	Rebate		
Maine	Rebate	YES	YES
Maryland	Rebate	YES	NO
Massachusetts	Partially refundable, transferable tax credit	YES	NO
Michigan	Refundable tax credit	NO	YES
Minnesota	Rebate	YES	YES
Mississippi	Rebate	YES	NO
Missouri	Transferable tax credit	NO	NO

Montana	Refundable tax credit	NO STATE SALES TAX	YES
Nebraska		NO	YES
Nevada		NO	YES
New Hampshire		NO STATE SALES TAX	NO
New Jersey	Transferable tax credit	YES	YES
New Mexico	Refundable tax credit	YES	NO
New York	Refundable tax credit	YES	NO
New York City	Refundable tax credit		
North Carolina	Refundable tax credit	YES	YES
North Dakota		NO	YES
Ohio		NO	YES
Oklahoma	Rebate	YES	NO
Oregon	Rebate	NO STATE SALES TAX	YES
Pennsylvania	Transferable tax credit	NO	YES
Rhode Island	Transferable tax credit	NO	NO
South Carolina	Rebate	YES	YES
South Dakota		YES	YES
Tennessee	Grant and refundable tax credit	YES	YES
Texas	Grant	YES	YES
Utah	Rebate	YES	YES
Vermont		YES	YES
Virginia	Rebate	YES	YES
Washington	Rebate	YES	YES
West Virginia	Transferable tax credit	YES	YES
Wisconsin	Refundable tax credit and non-refundable tax credit	YES	NO
Wyoming	Rebate	NO	YES
Puerto Rico	Transferable tax credit	NO	NO

**CHART II (as of October 10, 2008 from [www.productionincentives.com](http://www.productionincentives.com)):  
ELIGIBILITY REQUIREMENTS**

STATE	PROJECT CRITERIA	COMPENSATION CAPS/ CAPS PER PROJECT/ FUNDING PER YEAR
Alabama	Not applicable.	Not applicable.
Alaska	Minimum local spend = \$100,000 in consecutive 24-month period.	Aggregate tax credits ≤\$100,000,000.
Arizona	Minimum local spend = \$250,000 in 24 months; 50% of full-time employees = residents	\$7,000,000 per project in 2008, \$8,000,000 per project in 2009, and \$9,000,000 per project in 2010;

	in 2008-2010.	\$50,000,000 total funding for 2008, \$60,000,000 total funding for 2009, and \$70,000,000 total funding for 2010, 5% of the total is reserved for use with respect to commercial advertisement and music video production.
Arkansas	Not applicable.	Not applicable.
California	Not applicable.	Not applicable.
Colorado	Minimum local spend = \$100,000 for qualified local companies, \$1,000,000 for out of state companies; $\geq 75\%$ of below-the-line budget = qualified local spend; $\geq 75\%$ payroll = qualified local payroll.	2007-2008 FY funding set at \$600,000 by the General Assembly.
Connecticut	Minimum spend for the production expense credit is $> \$50,000$ per year (an interactive website must spend $> \$500,000$ per year; for state-certified infrastructure projects costing $> \$15,000$ and $< \$150,000$ , the credit is 10% of the investment; if the cost is $\geq \$150,000$ but $< \$1,000,000$ , the credit is 15% of the investment; and for projects costing $\geq \$1,000,000$ , the credit is 20%.	Compensation is capped at \$15,000,000 per person; no project caps for the production expense and infrastructure credits; the digital animation production credit is capped at \$15,000,000 per year.
Delaware	Not applicable.	Not applicable.
District of Columbia	Minimum local spend = \$500,000, and must film for 5 or more days in the District.	\$1,600,000 per year.
Florida	$\geq 50\%$ of cast and below-the-line crew must be residents or eligible students; minimum local spend = \$625,000 for general production projects; minimum local spend = \$100,000 and maximum spend = \$625,000 and must employ Florida worker in six key positions for independent Florida filmmaker projects; minimum local spend = \$300,000 for digital media projects.	Cap on residents' compensation of \$400,000 for the general production and independent Florida filmmaker queues, and \$200,000 for the digital media queue; \$5,000,000 (for the fiscal year beginning July 1, 2008) annual fund with 85% appropriated for general projects and 5% appropriated to independent Florida filmmaker projects and 10% appropriated to digital media projects; first-come, first-served on a fiscal year basis; productions can cross fiscal years.

Georgia	Minimum local spend = \$500,000.	There is a \$500,000 per person, per project cap on W-2 salaries, but no cap on compensation paid to loan-outs or subject to 1099 reporting; no project or funding caps
Hawaii	Minimum local spend = \$200,000.	\$8,000,000 per project; no annual cap.
Idaho	Minimum local spend = \$200,000; from July 1, 2008 through June 30, 2010, 20% of the crew working on the production must be Idaho residents; the requirement increases to 25% on July 1, 2010; 30% on July 1, 2011; and 35% on July 1, 2012.	\$500,000 per project; NOT YET FUNDED.
Illinois	Minimum local spend > \$50,000 for productions < 30 minutes; > \$100,000 for productions $\geq$ 30 minutes.	Compensation not to exceed \$100,000 per resident employee; no project or funding caps.
Indiana	Theatrical and television projects must incur or make qualified production expenditures $\geq$ \$100,000; digital media productions, audio recording or music video, radio or television advertising, and training, external marketing or communications media productions must incur or make qualified production expenditures $\geq$ \$50,000.	No per project cap; \$5,000,000 funding per year.
Iowa	Film, television, and video projects that are registered, with a minimum qualifying local spend $\geq$ \$100,000 to residents or Iowa-based business; labor and personnel = below-the-line.	The qualifying investors' 25% credit of the eligible spend is capped at each investor's pro rata share of that amount up to 25% of qualified expenditures on the project.
Kansas	Minimum spend if $\leq$ 30 minutes > \$50,000; > \$100,000 if > 30 minutes.	\$2,000,000 per year.
Kentucky	Not applicable.	Not applicable.
Louisiana	Minimum local spend > \$300,000.	Infrastructure credit is capped at \$25,000,000 per project, with special rules for earning and structuring the

		credit; no caps for the motion picture production tax credits.
Jefferson Parish	Minimum local spend = \$150,000; must either (1) have local production office or (2) utilize soundstage or alternative filming facility located in Jefferson Parish.	\$100,000 per project cap for new productions by a production company which has not previously received Jefferson Parish incentives; \$115,000 per project cap for subsequent productions (must bring project within 12 months of prior project); \$10,000 increase to per project cap for productions having a production office and lease a soundstage in Jefferson Parish; annual program funding varies.
Maine	Minimum local spend = \$250,000 in 12 consecutive months.	Wages are capped at \$1,000,000 per person; no project or funding caps.
Maryland	Minimum local spend = \$500,000; > 50% of production must be local.	No per project cap; \$4 million program budget for 2008-2009 fiscal year beginning July 1 <sup>st</sup> .
Massachusetts	Minimum local spend = \$50,000.	No caps.
Michigan	Minimum local spend = \$50,000 for direct production and qualifying personnel credit; \$100,000 for the infrastructure investment credit prior to January 1, 2009, and \$250,000 after December 31, 2008.	\$2,000,000 cap per person for compensation for personal services for direct production and qualifying personnel expenditures; \$20,000,000 annual cap for infrastructure investments.
Minnesota	Minimum local spend = \$5,000,000 within a 12-month period.	\$1,299,000 appropriation to film jobs production program during fiscal year 2009.
Mississippi	Minimum local spend = \$20,000 in base investment and/or payroll.	Up to \$1,000,000 on individual resident and non-resident payroll qualifies for the rebate; \$8,000,000 rebate cap per project; \$20,000,000 fiscal year cap.
Missouri	Minimum local spend = \$50,000 if < 30 minutes and \$100,000 if > 30 minutes in length.	\$1,000,000 per taxpayer per year (1 project per taxpayer); \$4,500,000 annual funding.
Montana	No minimum spend; certification.	Cap of \$50,000 on resident wages; no project or annual caps.
Nebraska	Not applicable.	Not applicable.
Nevada	Not applicable.	Not applicable.
New Hampshire	Not applicable.	Not applicable.
New Jersey	≥ 60% of total spend (excl.	Cannot reduce tax liability by > 50%;

	post-production) must be local; local digital media content production expenses must be $\geq$ \$2,000,000.	\$10,000,000 per year.
New Mexico	None.	There is a \$5,000,000 cap per project on the credit for all "performing artists" compensation (i.e., amounts paid to performing artists in excess of \$20,000,000 will be not be eligible for the credit); there are no other project or funding caps.
New York	Qualified production costs at a qualified film production facility must $\geq$ 75% of such costs within and outside NY (requires at least 1 day at a qualified facility on a set); if production costs at a qualified facility < \$3,000,000, then shooting days in NY outside qualified production facility must $\geq$ 75% of shooting days within and outside NY. The investment tax credit is available for tangible property containing at least one sound stage $\geq$ 7,000 SF, which is principally used as a qualified film production facility and the taxpayer provides $\geq$ 3 qualified services, including but not limited to: studio lighting grid, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation and A/C.	\$65,000,000 in 2008, \$75,000,000 in 2009, \$85,000,000 in 2010, \$90,000,000 in 2011 and 2012, \$110,000,000 in 2013; annual allotment on first come, first served basis (if exhausted, carries over to next year's allotment).
New York City	Qualified production costs at a qualified film production facility must $\geq$ 75% of such costs within and outside NYC. If production costs < \$3,000,000, then shooting days in NYC outside qualified production facility must $\geq$ 75% of shooting days within and outside NYC.	\$30,000,000 annual cap on first come, first served basis (if exhausted, carries over to next year's allotment).

North Carolina	Minimum local spend = \$250,000.	Cap of \$1,000,000 on compensation; \$7,500,000 per feature film; no other caps.
North Dakota	Not applicable.	Not applicable.
Ohio	Not applicable.	Not applicable.
Oklahoma	Minimum budget for film must be $\geq$ \$500,000 and $\geq$ \$300,000 = local spend; can aggregate projects in 1 year with budgets $\geq$ \$250,000 to meet requirements if local spend $\geq$ \$300,000; if budget is $\geq$ \$5,000,000 or $\geq$ 50% of crew is resident = 15%; 10% if 25% to 49% of crew are resident; 5% if $<$ 25% of crew is resident; crew requirements can be waived if residents unavailable.	\$5,000,000 per year.
Oregon	Minimum local spend = \$750,000 for OPIF; minimum local spend = \$1,000,000 for GOLR.	No per project cap; \$5,000,000 annual funding cap for the OPIF (10% labor and 20% local goods/services rebate); no annual funding cap for 6.2% GOLR.
Pennsylvania	Minimum local spend $\geq$ 60% of the budget.	There is a \$15,000,000 per project cap on aggregate compensation paid to performing artists, and an annual funding cap of \$75,000,000.
Rhode Island	$>$ 50% of principal photography days must be local; minimum budget = \$300,000.	No per project cap; annual cap of \$15,000,000.
South Carolina	Minimum local spend $\geq$ \$1,000,000 during tax year.	No project caps; annual funding of \$10,000,000 for wage rebate and 26% of admissions tax collected for previous year for the supplier rebate, approximately \$5,500,000 for fiscal year 2007-2008.
South Dakota	Not applicable.	Not applicable.
Tennessee	Minimum local spend within 12 months of \$500,000 if headquartered outside the state, \$200,000 if within; \$1,000,000 local spend to qualify for the headquarters rebate.	Compensation for above-the-line personnel capped at \$100,000 per function; cap on additional 2% rebate for qualifying music expenses of \$100,000; funded by gifts, grants, donations and appropriations by the General Assembly, with approximately \$17 million available on June 1, 2008.
Texas	Minimum local spend = \$1,000,000 for film or	Project caps: \$2,000,000 for a film, \$2,500,000 for a television program,

	television program, or \$100,000 for a commercial, series of commercials; $\geq 70\%$ of cast and crew must be residents; $\geq 80\%$ of the moving image must be filmed locally.	\$200,000 for a commercial or series of commercials, and \$250,000 for a digital interactive media production; salaries are capped at \$100,000 per worker (or \$200,000 per department head) per season on episodic television, and \$50,000 per worker (or \$200,000 per department head) on all other projects; \$10,000,000 annual fiscal year funding on September 1, with a contingency rider to supplement in \$5,000,000 increments as needed.
Utah	Minimum local spend = \$1,000,000.	\$500,000 per project; \$5,500,000 for fiscal year 2009.
Vermont	Not applicable.	Not applicable.
Virginia	Performance-based incentive that provides cash rebate at the Governor's discretion, taking into consideration length of filming, job creation, trainees hired, goods and services purchased	Based on funding appropriated by General Assembly; fiscal year funding ending June 2009 is \$200,000.
Washington	Minimum local spend = \$500,000 for feature films, \$300,000 for television productions, \$150,000 for commercials.	\$3,500,000 per year annual funding.
West Virginia	Minimum local spend = \$25,000; note limitations if the Federal New Markets Credit is accessed.	No per project cap; \$10,000,000 annual funding.
Wisconsin	Minimum local spend for productions $\geq 30$ minutes = \$100,000 (for productions $< 30$ minutes = \$50,000) aggregate compensation within 12 months of the start of principal photography.	\$25,000 per person cap for resident employee payroll credit; no project or funding caps.
Wyoming	Minimum local spend = \$500,000.	No per project cap; \$2,000,000 currently appropriated for fund.
Puerto Rico	$\geq 50\%$ of principal photography must be local; minimum budget for short-subject films = \$100,000, for series = \$1,000,000; for infrastructure projects, budgets $> \$5,000,000$ qualifying spend or investment $\geq 25\%$ of	50% of the cash invested as equity in the film project; \$15,000,000 per year (project cap can be raised on a per project basis).

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**CHART III (as of October 10, 2008 from [www.productionincentives.com](http://www.productionincentives.com))**

STATE	MAXIMUM BENEFIT
Alabama	Not applicable.
Alaska	30% of qualifying production local spend, plus 10% for wages paid to Alaska residents, plus 2% for expenditures in a rural area, plus 2% for expenditures between October 1 and March 30.
Arizona	20% of qualifying production local spend between \$250,000 and \$1,000,000; 30% of qualifying production local spend > \$1,000,000; 15% of base investment in eligible infrastructure projects.
Arkansas	Not applicable.
California	Not applicable.
Colorado	10% of qualifying local spend.
Connecticut	30% of production expenses with phase out of those incurred outside the state and used within (January 1, 2009 = 50% exclusion, January 1, 2012 = 100% exclusion); 10% to 20% of qualifying infrastructure investments; 30% of qualifying digital animation production costs, including optioning or purchase of IP rights if such expenses are < 35% of the costs incurred by the eligible production company (maintaining facilities within the state, employing ≥ 200 full-time employees within the state).
Delaware	Not applicable.
District of Columbia	The lesser of 10% of qualified spend, or 100% of the sales and use taxes paid to the District on qualified expenses.
Florida	15% of qualifying local spend (10% for digital media projects); 5% bonus if 75% of production days in Florida between June 1st and November 30th (digital media and independent filmmaker projects are not eligible for the 5% bonus); additional 2% family-friendly bonus with strict definitions.
Georgia	20% of the "base investment" in the state, plus 10% if the qualified production activities include a "qualified Georgia promotion."
Hawaii	15% of qualifying spend in Hawaiian counties with a population ≥ 700,000 (currently only Honolulu county) and 20% of qualifying spend in Hawaiian counties with a population < 700,000.
Idaho	20% of the qualified production's expenses.
Illinois	20% of qualifying local spend, plus 15% of the Illinois labor expenditures generated by the employment of residents of geographic areas of high poverty or high unemployment, as determined by the Department of

	Commerce and Economic Opportunity.
Indiana	Up to 15% of qualified production expenditures for productions based on agreement executed with Film Indiana and the Indiana Economic Development Corporation.
Iowa	25% of qualified spend on eligible projects; and 25% of investment in registered projects.
Kansas	30% of qualifying local spend.
Kentucky	Not applicable.
Louisiana	25% of qualifying local spend, and 10% of resident payroll if ≤ \$1,000,000; 40% of investment > \$300,000 in state-certified infrastructure projects.
Jefferson Parish	3% of qualifying lodging, payroll expenses for residents, and other local spend.
Maine	Wage rebate is 10% on non-residents, 12% on residents.
Maryland	25% of qualifying local spend.
Massachusetts	25% of payroll in the state (excluding persons paid ≥ \$1,000,000); no 50% test (see below) for payroll credit; and, 25% of local spend (including salaries ≥ \$1,000,000) if either: (i) > 50% of total production expenses are incurred within the state, or (ii) ≥ 50% of principal photography days are within the state.
Michigan	*42% of qualifying direct production expenditures in "core communities" or 40% of direct production expenditures in other locations; and 30% of qualified personnel expenditures (or 50% qualified job training expenditure credit for resident below the line crew"). 25% infrastructure investment tax credit. (*.5% of each credit is deducted as an application and redemption fee payable to the "Michigan film promotion fund," reducing the benefit to 41.5%, 39.5% and 29.5%, respectively, for production and personnel, 49.5% for qualified job training, and 24.5% for infrastructure investment.) * Note the current version of Senate Bill No. 1535 caps the credits issued under MCL 208.1455 at \$50,000,000 per calendar year.
Minnesota	20% of qualifying local spend.
Mississippi	20% of the qualifying local spend; 20% of payroll paid to non-residents and 25% of payroll paid to residents.
Missouri	35% of qualifying local spend, excluding compensation > \$1,000,000 paid to any person (less a 2.5% issuance fee).
Montana	14% of residents' wages; 9% of qualifying local spend; new requirement that eligible expenditures must be paid in full before credit is claimed.
Nebraska	Not applicable.
Nevada	Not applicable.
New Hampshire	Not applicable.
New Jersey	20% of qualifying local spend and qualified digital media production spend.

New Mexico	25% of qualifying local spend.
New York	30% of qualifying production local spend, and 4% to 5% of the eligible investment credit base.
New York City	5% of qualifying local spend, and outdoor media valued at 1%.
North Carolina	15% of qualifying local spend (NC income tax credits are subject to NC tax; therefore, net film credit is 13.97% after tax).
North Dakota	Not applicable.
Ohio	Not applicable.
Oklahoma	5% to 15% of qualifying local spend.
Oregon	Up to 16.2% of wages paid (residents and non-residents and exclude entire compensation if Oregon compensation > \$1,000,000 for each individual); 20% of qualifying local goods/services (other than wages).
Pennsylvania	The credit is 25% of qualifying local spend.
Rhode Island	25% of qualifying spend.
South Carolina	20% of all wages subject to withholding paid to actors (including stunt performers), SC residents and anyone working on a TV series (excluding persons paid ≥ \$1,000,000); 10% wage rebate for non-resident crew up to \$3,500 per person; and 30% of qualifying local spend (paid to eligible SC suppliers).
South Dakota	Not applicable.
Tennessee	13% to 17% of qualifying local spend (from Film Commission) and an additional 15% refund for qualifying local headquarters (from Dept. of Revenue); (additional 2% if ≥ 25% of cast and/or crew are resident; additional 2% if ≥ \$20,000 spent during post-production on qualifying music).
Texas	5% of qualifying local spend, including residents' wages; if ≥ 25% of filming days are in "underused areas," the grant is increased by 1.25%.
Utah	15% of qualifying local spend.
Vermont	Not applicable.
Virginia	Discretionary cash rebate.
Washington	20% of qualifying local spend (compensation of resident cast and crew capped at \$250,000).
West Virginia	27% of qualifying local spend and an additional 4% if ≥ 10 or more residents employed full time, for a maximum of 31%; beginning January 1, 2010, the base credit is reduced to 22%, with no change in the incremental increases for local hires, for a maximum of 26%.
Wisconsin	25% of qualifying local spend (the two highest paid employees' wages are excluded for the resident employee payroll credit); non-resident wages qualify for the refundable production expenditure credit provided that they (1) meet the statutory definition of production

	expenditures, which does NOT include talent and marketing, (2) are for services provided directly to an accredited production in the state, and (3) are paid by an entity other than claimant, such as a payroll service company.
Wyoming	12% to 15% of qualifying local spend.
Puerto Rico	40% of qualifying local spend; for infrastructure projects, the lesser of 40% of the cash investment or 20% of the budget.

## V. BACKGROUND

U.S. incentives are found in statutes enacted by the legislative branch of the federal, state, or local government. Federal incentives are found in the Internal Revenue Code.<sup>15</sup> State incentives are generally found in the state Revenue and Taxation Code or the Commercial Code.

Most states have annual legislative sessions. The legislature can enact, repeal, or amend an incentive whenever it is in session. In addition to the legislation, there may be administrative rules and regulations, guidelines, and rulings. Ensure that you are looking at the current law (including regulations, rulings, and guidelines), and that you know whether or not any proposed changes are pending that may affect your project.

Incentive statutes delegate responsibility for administration, review, and enforcement to specific government bodies such as the Department of Revenue, Department of Commerce or Film Office. It is important to pay close attention to which government entity is granted responsibility for each aspect of the film incentive approval process, because only the authorized entity can issue a legally binding decision regarding project certification, eligibility requirements, claim approval, etc.

Many statutes delegate substantial authority for review and approval to the Film Office, in coordination with one or more government entities.

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<sup>15</sup> Title 26, United States Code, hereinafter referred to as "I.R.C."

## U.S. Federal Film Incentives

Unlike some other countries, the executive branch of the U.S. Government does not have a single agency responsible for promoting the film industry. The legislative branch of the U.S. Government promotes the film industry through acts of Congress. In recent years, Congress has passed two statutes designed to encourage U.S. filmmakers to make films in the U.S. These statutes created tax incentives for films that meet U.S. "labor and spend" tests.

Both incentives benefit the film copyright owner when reporting and paying U.S. income tax. One of the incentives is an accelerated tax deduction for qualifying film costs.<sup>16</sup> The second incentive is a partial exclusion from taxable income for qualifying U.S. films.<sup>17</sup>

## VI. CONCLUSION

***The only constant in the area of production incentives is change.*** Film Offices, payroll service companies, and tax and legal professionals can assist you in accessing production incentives and ensure that you have the most current information.

The Film Office is a valuable resource and should be contacted once a jurisdiction has been selected as meeting both the creative and economic needs for your project. It can help you with location scouting, sound stages and warehouse facilities, vendors of goods and services, and local crew.

The Film Office will also know how many other projects will be underway when you plan to shoot, and whether any legislation is pending that might affect the local incentive. Most importantly, the Film Office should be able to tell you how to obtain a commitment for the incentive benefits that you expect to receive.

You or your advisors must carefully review the local law to ensure that you meet the necessary requirements before including an incentive benefit in your budget. If there are any areas of uncertainty as to whether an expenditure or project qualifies for the incentive, obtain a ruling from the appropriate governing body.

Finally, if you are interested in filming in a jurisdiction that does not have an incentive, talk to the Film Office and ask. Some jurisdictions provide financial benefits on a "one-off" basis.

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<sup>16</sup> I.R.C. § 181.

<sup>17</sup> I.R.C. § 199.

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## BIOGRAPHY AND CONTACT INFORMATION OF THE AUTHOR

BARBARA L. ROSENFELD, Esq.

Barbara Rosenfeld is a consultant to Entertainment Partners (EP), the leader in payroll and production management services for the entertainment industry for more than thirty years. Barbara works with Joseph Chianese and Marco Cordova, who provide EP's clients with assistance in accessing production incentives. In connection with these services, EP has a website with up-to-date incentive details at: <http://www.productionincentives.com> In addition, Barbara, Joseph, and Marco are editors of the quarterly publication, *The Essential Guide to U.S. and International Production Incentives*.

Barbara is a seasoned tax lawyer with expertise in tax-based production financing and related issues. As VP and General Tax Counsel to the Motion Picture Association of America (MPAA) for over a decade, Barbara became familiar with both domestic and foreign production incentives. She represented the MPAA's members (Disney, Fox, MGM, Paramount, Sony, Universal and Warner Bros.) with Governmental agencies in addressing tax issues related to the production and distribution of filmed entertainment.

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