Production Incentives: Sorting Through the Complicated Maze

By Joe Bessacini

The world of film and television production incentives continuously evolves. The number of participating states and countries has changed markedly over the past few years and the programs within each of those jurisdictions have undergone changes as well. There currently are 34 states (down from the recent peak of 42) and more than 25 countries offering incentives programs.

To properly utilize the opportunities presented by these programs, producers need access to the most up-to-date information and must be cognizant of how these changes may impact their projects. Cast & Crew Financial Services, a unit of Cast & Crew Entertainment Services, has been providing production incentives counseling to the entertainment industry since 2008 and, in that time, we have addressed thousands of questions, both from producers very knowledgeable about incentives programs as well as first-timers with very limited knowledge about the process.

The queries, of course, fall into a range of categories, from the most generic, "Incentives 101" variety to very detailed and production-specific. A large number of them fall into the following categories:

- **Available Incentives.** Aside from sales tax exemptions/refunds and hotel tax relief, there are basically two types of motion picture production incentives: rebates (which are sometimes also referred to as grants) and tax credits. Many producers new to incentives don't fully understand that rebates/grants are refundable, while tax credits can be either refundable or transferable. There are a few states, including California, which offer nontransferable nonrefundable tax credit programs.
  - Rebates/grants return a cash payment to the producer, equal to 100% of the incentive earned.
  - Tax credits fall into the categories of being refundable or transferable although, as indicated above, there are several states that offer a nontransferable nonrefundable tax credit too.

    Refundable tax credits must be claimed on a tax return and return 100% of the incentive earned after being reduced by any tax liability of the production company. In order to monetize a transferable credit, the producer will generally work with someone that specializes in placing tax credits with companies or high net-worth individuals that have a tax liability in that particular jurisdiction. In these cases, the producer receives less than 100% of the incentive earned because the credit is sold at a discount.

- **Making the Choice.** This is an issue that can be addressed from multiple perspectives. Sometimes, for instance, a client's primary concern can be pretty straightforward: "We need a river … what have you heard?" And we'll share what we know. However, assuming the script lends itself to multiple locations, it's necessary to drill down into specifics, including how much money is still available if the preferred jurisdiction has an annual funding cap, what is the size of the budget and whether or not there are salary cap concerns, does resident and nonresident labor qualify, if not, how busy is the state and what is the depth of the local qualified crew at the time of production, among other things. In some instances, only below-the-line labor or above-the-line resident labor qualifies.
- **Film Production Company.** There are a great many things to think about and do at the start of a production. In order to optimize the benefits of an incentive, however, producers need to make sure they properly structure the film production company and be approved early on for the incentive in that jurisdiction so that when the production begins incurring costs, they will qualify for the incentive.
- **Timing.** When do I get it? A big mistake producers sometimes make is failing to realize how long it takes to actually receive the incentive money. Answer: Usually no less than 60 days and sometimes more than two years depending on the jurisdiction and the amount of the incentive earned. Independent producers may consider financing the tax credit in order to have funds when they need them most, during production.
- **Loan-Out Companies.** The treatment of loan-out companies varies from jurisdiction to jurisdiction. Some jurisdictions require withholding and/or registration and some do not.
- **Spending vs. Budget.** What if I go over budget? Does the incremental spend qualify? Generally, if a state has a funding cap you will not be able to claim qualified costs in excess of what was shown on the initial application. What if we come in under-budget? Unfortunately, only the actual costs incurred will qualify for the incentive.

All of these are important to know and understand.

However, my #1 piece of advice to a producer is the following: Align yourself as early as possible with the certified public accountant who is going to audit your production's costs. The CPA can steer you down the right path so there are no surprises and you both can be happy at the end. You don't want to find out at the end of a project that, had you only has structured this transaction in a specific way, it would have all qualified for the incentive. But, now that you didn't and the transaction is already completed, it does not qualify.

In most instances, the accountant has already built this consulting cost into their fee, so use it. Even if it costs you a little more money it's not the time to be penny-wise and dollar foolish, its money well spent. One

suggestion can more than pay for the cost and you'll both be happy in the end when you actually get the million-dollar incentive you believed from the start that you were going to get!

Bottom line, it is imperative that you stay current with production incentives. A jurisdiction with a new incentive program may offer a more lucrative incentive to attract business, while last year's front runner may have put a cap on their program.

Contact us. We're here to help.

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