



UPDATE Tax Planning and Representation

JUNE 2010

Film Tax Credits Criteria Changed—But Incentives Left Intact

On June 7, 2010, Governor M. Jodi Rell signed Public Act 10-107, which modifies the criteria for entitlement to film production and film infrastructure tax credits but essentially leaves these key incentives intact for Connecticut's emerging film and digital media production industry. The legislation did not make any changes to the law providing tax credits for digital animation production companies.

FILM PRODUCTION TAX CREDIT

Originally enacted in 2006, the film production tax credit applies to a wide variety of motion picture, television, digital, and other entertainment production activities conducted in Connecticut. The credit is in the amount of 30 percent of qualifying production expenses, applies to either the insurance premium or corporation business taxes, can be carried forward for three years, and may be sold up to three times. To qualify for the credit, an entertainment production must be prequalified with the Department of Community and Economic Development (DECD), and qualifying costs associated with that production must be tracked carefully. Once credits are approved by DECD, they are not generally subject to recapture.

The 2010 legislation provides that the credit will no longer be applied to costs incurred in the "development" of a qualified production, referred to in the Office of Legislative Research Analysis of the legislation as the activity of developing "an idea for film." On the other hand, preproduction costs continue to qualify, and there may be some room for interpretation regarding the distinction between development and preproduction.

Although personnel compensation expenses related to a qualified production qualify for the credit (subject to a \$20 million "star cap"), the 2010 legislation provides that compensation for this purpose is limited to base salary or wages and does not include bonus pay, stock options, restricted stock, or similar arrangements.

The prior law required production companies to conduct not less than 50 percent of principal photography days in Connecticut or expend not less than 50 percent of postproduction costs in Connecticut. The 2010 legislation reduces the principal photography threshold to 25 percent and adds an additional qualification alternative for companies that expend at least \$1 million of postproduction costs in the state.

Although the bill as originally proposed would have eliminated the activity of producing interactive Web sites from the list of productions qualifying for the credit, that proposal was dropped.

INFRASTRUCTURE TAX CREDIT

The insurance premium and corporation business tax credit for capital expenses incurred on a project providing buildings, improvements, or installations required for the digital media or motion picture industries in Connecticut applies on a sliding scale from 10 percent to 20 percent of qualifying project costs, based upon the size of the project. The 20 percent credit applies for projects with a cost equal to or exceeding \$1 million. Like the production and digital animation credits, the infrastructure credit has a three-year carryover and may be transferred up to three times.

The 2010 legislation made only one change to the infrastructure credit legislation, requiring that qualifying leasing costs be limited to capital rather than operating leases of property.

NO CHANGE TO THE TAX CREDIT FOR DIGITAL ANIMATION PRODUCTION COMPANIES

The insurance premium and corporation business tax credit was adopted in 2007 to attract Blue Sky Studios to locate its production facilities in Connecticut. The credit is in the amount of 30 percent of what is generally referred to as "all-in costs" of a qualified digital animation production company, subject to an aggregate annual cap of \$15 million. In other words, the credit is not calculated on the basis of discrete entertainment productions; rather, it is measured by the total costs incurred by an eligible production company. Like its counterparts referred to above, the credit may be carried forward for three years and is transferable up to three times.

The 2010 legislation did not make any changes to the tax credit for digital animation production companies.

SUMMARY

Notwithstanding the fiscal strains confronting the State of Connecticut, and the opposition in some political quarters to entertainment production tax credits, there appears to be reasonable political consensus that these three tax credits are working to bring investment and jobs to Connecticut.

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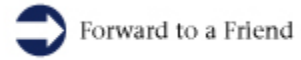
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