US Federal Tax Incentives for Film and TV

January 7, 2011 by Bob Tarantino

THR, Esq. reports on news that the US Congress has renewed a federal tax incentive program through 2011: Production Tax Incentives Extended, but Should Hollywood Care? (The text of Section 181 of the US Internal Revenue Code can be found here.) Unlike Canadian tax incentives for film and television productions, which are structured as tax credits (meaning that the eligible applicant receives an actual payment from the government), the US federal incentive is structured as a tax *deduction* - meaning that it can be used only to lower taxes which would otherwise be payable. The THR, Esq. article includes an interesting debate between various entertainment lawyers, some of whom laud the federal credit and others who question its practical utility:

At the most basic level, cautions tax counsel Bernard Topper of New York entertainment law firm Frankfurt Kurnit Klein & Selz, people confuse tax deductions with tax credits. Credits reduce taxes dollar for dollar: a $100 tax credit reduces your taxes by $100.

In contrast, a deduction comes off of taxable income. That results in a lower savings. For instance, if you're being taxed at 30%, then a $100 tax deduction saves just $30 in taxes.

Many state and foreign production incentives are tax credits, whereas Section 181 provides a deduction, which is less valuable. Still, says Topper, the combination of federal and state incentives is "fairly powerful." He asserts that Section 181 has helped reduce foreign runaway production – the flight of film production to foreign countries. ...

[Schuyler Moore] couldn't disagree more. Where Selz sees a provision that's "very valuable" to investors and has been used "fairly aggressively," Moore sees "kind of a hill of beans" for the independent world.

Why the difference in opinion? Section 181 provides investors with "passive losses," since most don't actively participate in making the movie. Those passive losses can only be offset against passive income, such as income from the movie itself or from certain other investments, such as real estate or oil and gas wells.

For previous Signal discussion about US and Canadian tax incentives for film and TV projects, **see here**
