



New Jersey And Film: Perfect Together

From the creators of “The Sopranos” and “Goodfellas” to “Annie” and “On the Waterfront,” studios and production companies from across the country have made New Jersey one of the nation’s leading areas for film production. Several reasons explain this popularity. First, for such a small state, New Jersey offers a wide variety of locations that are connected by a well-developed infrastructure. Location scouts seeking beaches, military bases, picturesque farms, gritty urban streets, factories, scenic universities or virtually any other setting can find whatever they are looking for within a short distance. Such diversity, proximity and connectedness have the potential to significantly reduce travel and production costs. Second, given New Jersey’s long history of being the destination of choice for many filmmakers, the state boasts a large number of individuals and companies offering exceptional production services and facilities. Third, New York City’s close proximity provides a wealth of equipment suppliers and local talent, including experienced actors, performers and crew.

Finally, New Jersey is known for being a production-friendly state. To broaden this appeal, the state created the New Jersey Motion Picture & Television Commission in 1978. Since its inception, the Commission has helped attract and support over 13,400 feature films, television movies, television series, music videos, commercials and industrial and short films. In 2006 alone, the Commission supported a record 941 projects, including 94 features, four telefilms and mini-series, and 180 television series and specials. The many free services that the Commission offers production companies include:

- Assisting with location scouting through its database of thousands of pictures, categorized by subject matter and cross-referenced by county and town.
- Helping secure film locations and necessary permits, including those for filming, construction, child labor and use of firearms and explosives.
- Providing advice regarding New Jersey’s new tax credit program.
- Supporting production companies in finding providers of specific goods and services, including local crew members and props.

Runaway Productions: The Business Of Show Business

Since the creation of the motion picture, the United States has been the primary location for the production of filmed entertainment. In recent years, however, this dominance

Cultivating Entertainment In The Garden State

Financial And Production Incentives For Filming In New Jersey

By: Matthew Savare, Esq., John Genz, CPA, MST, and Christine Peluso, Esq.

has been eroded by foreign countries—such as Canada, Germany, the United Kingdom, Australia and New Zealand—offering highly attractive financial incentives to lure producers to shoot there. Regardless of the scope and budget of the film, production companies and studios have become more determined to cut their production costs, and the huge foreign tax credits, subsidies and tax write-offs offered by these countries have enticed many filmmakers to shoot outside the United States.

Such fierce global competition and the concomitant increase in the number of “runaway productions” forced the federal government and most of the states to pass their own incentive programs to lure film and television production back home. For example, in 2004, the American Jobs Creation Act was enacted, which permits investors to write off the costs of “qualified productions” in the year that the costs are incurred. Similarly, most of our 50 states, including New Jersey, the District of Columbia and Puerto Rico, have enacted their own incentive packages, offering everything from tax credits to grants and rebates.

Matthew Savare practices intellectual property, media, and entertainment law with Lowenstein Sandler PC. His e-mail is msavare@lowenstein.com.

John Genz specializes in multi-state and local tax incentives, research and planning, mergers and acquisitions and the accounting for income taxes under Financial Accounting Standard 109. John is Officer in Charge of the State & Local Tax Group of Amper, Politziner & Mattia. His e-mail is genz@amper.com.

Christine Peluso is a principal with Tax Credits, LLC, a company which specializes in the purchase and sale of Film Credits. Tax Credits, LLC has acted as an advisor to several other states considering similar tax credit programs and has been actively involved with suggesting legislation to improve several states’ film credit programs. Her e-mail is cpeluso@taxcreditsllc.com

New Jersey’s Tax Credit Program And Waiver Of Sales And Use Tax

In addition to the reasons cited above, production companies should consider shooting in New Jersey based on the state’s financial incentives: a 20 percent tax credit program and a waiver of sales and use taxes.

Film Tax Credit Incentives

The Garden State allows a production company to get 20 percent of its qualified film production expenses

("QFPE") back in the form of a tax credit, which can be used to offset New Jersey state corporate business tax. In order to qualify, 60 percent of the production company's total production expenses, excluding post-production costs, must be incurred in New Jersey. If the production company earning the tax credit cannot use it, which will often be the case, the tax credit may be sold to another eligible New Jersey taxpayer.

The production accountant's task of properly classifying QFPE in accordance with the Division of Taxation's interpretation of "used and consumed in New Jersey" can be complex. In some cases, goods and services purchased outside of New Jersey may be considered a QFPE; however, production companies should use New Jersey-based vendors whenever possible.

Significantly, a payment to a loan-out company that would otherwise qualify as a QFPE will qualify only if the loan-out company is authorized to do business in New Jersey. This can be a point of contention with many loan out companies, as many are not properly registered to do business in the state. Payments to unauthorized loan-out companies could put production companies at risk of losing a substantial portion or all of their QFPE credit since, in large part, production companies' budgets are typically paid to loan out-companies. Accordingly, production companies should insist that the loan-out company substantiate that it is authorized to do business in New Jersey.

In addition, principal photography must commence within 150 days after the initial approval of the taxpayer's application for the credit. Taxpayers must apply for the credit by submitting

an application to the director of the Division of Taxation and the New Jersey Economic Development Authority ("NJEDA"). The tax credit applies to tax periods beginning on and after July 1, 2005 and is set to sunset in 2015.

Anticipating that many production companies may not have a New Jersey state tax liability against which the tax credit may be utilized, the legislation allows for the sale of the tax credit, in full or in part, to any other taxpayer that may have a tax liability under the gross income tax or the corporation business tax. The production company must receive at least 75 cents on the dollar for the value of the tax credit transferred. Any amount of a tax credit used by a purchaser will be subject to the same limitations and conditions that apply to the use of the gross income tax credit for film production expense, including the right to carry unused credits forward.

Applications for the tax credit must be submitted to the NJEDA and are considered for approval on a first in time basis. A completed application must include, but is not limited to, a projected budget for the film project with a breakout of costs, including post-production costs; the anticipated "in-state" spend; a description of the project (plot summary, genre, rating, principals, actors, locations and schedule); the anticipated or actual date of commencement of principal photography; whether the applicant is a partnership or limited liability company; a list of members or owners applying for a tax credit under this program, including the percentage of ownership interest of each; and the applicant's New Jersey privilege period or taxable year.

Upon completion of the project, the production company will have its expenses verified by a third-party independent CPA utilizing "Agreed Upon Procedures." The spend reports, as well as "final cut" of the picture or project, will be delivered to the NJEDA and then to Division of Taxation for final review and issuance of the tax credit certificate.

The Division of Taxation will issue tax credit certificates within 30 days of receipt from the NJEDA evidencing its final approval. In the case of entities taxed as partnerships for New Jersey purposes, the certificate, if it is not intended to be sold, will be issued to the entity, and the names of the partners will appear on the certificate. Thereafter, the credit will be allocated to the partners based on profit and loss sharing agreements, and each partner must claim its proportionate share of its credit on its own tax return.

Sales And Use Tax Incentives

New Jersey provides a broad exemption from its seven percent sales and use tax for purchases of tangible personal property purchased for use in the production of a film in New Jersey,

Save the Date ~

June 21st
7 p.m.

SAG Foundation Benefit and Gala

312.573.8081 or sag.org/chicago

NORTH SHORE DISTILLERY

SCREEN ACTORS GUILD 1933 75 2008

GOOSE ISLAND Beer Company CHICAGO

which extends to motor vehicles, replacement parts, tools and supplies such as camera, lighting equipment and lumber. The exemption does not apply, however, to tangible personal property, the use of which is incidental to the production of the film or video.

A New Jersey sales tax exemption applies to the following: sales of films, records, tapes or any type of visual or sound transcriptions produced for exhibition in or use through the medium of theaters and radio and television broadcasting stations or networks, and not used for advertising purposes. For more information about these programs, including links to the necessary applications, visit the New Jersey Motion Picture and Television Commission's website at www.njfilm.org.

The Incredible Saleable (And Transferable) Credit: Buying And Selling Tax Credits

Key to the success of the film tax credit program is the provision giving the production company the option to sell its tax credit to another corporate taxpayer. Because the credits must be marketable or risk-free to the buyer, pricing in any state is dependent on several factors. First, the tax credit itself must be "clean," that is, it must not be subject to recapture or invalidation by the state. In New Jersey, recapture is not allowed, so if the expenses upon which the tax credit was granted were overstated (mistakenly or fraudulently), the state has no authority to recapture the improperly issued credits from the good faith purchaser (though it still has recourse against the production company). In states where there recapture is permitted (e.g., Rhode Island), indemnities are often used for every transaction, and pricing generally reflects the added credit risk.

Second, the buyer of a tax credit must be able to carry it forward, in the event they over-buy or miss projections. In states where there is no right to carry forward credits (e.g., Pennsylvania), buyers are forced to "haircut" their purchase so as not to risk buying credits they cannot ultimately use. Finally, in some states where the credit is otherwise "clean," pricing may be low because there simply is not enough demand for credits. In those states, the amount of available credits on the market outweighs the amount of liability necessary to absorb those credits, which drives prices down.

In New Jersey, production companies are getting \$.88 per tax credit dollar, (buyers are paying \$.92) which is among the strongest pricing in the U.S. It is critical that production companies research current pricing in a particular state and obtain a commitment from an eligible buyer through the services of a competent placement specialist or broker before green-lighting a project.

In the more mature film tax credit markets, some banks are beginning to "cash flow" anticipated tax

credits, advancing production companies capital prior to commencement of principal photography. In order to qualify, production companies must have a completion bond to insure that the project will be finished and will therefore earn the anticipated tax credit, and eligible buyers must commit to take the credits upon the issuance of a certified film tax credit by the NJEDA and Division of Taxation. Now, in addition to providing a back-end reward for filming in New Jersey, the tax credit program may even help eligible projects fund the gap in their financing. Again, an early relationship with a competent placement specialist is highly advisable to maximize the value of the incentive and explore leveraging opportunities, as well.

It's A Wrap

Myriad factors must be considered when analyzing where to shoot all or part of a motion picture. Locations, budgets, cast, crew and schedules all drive where a film is ultimately shot. Increasingly, however, the financial incentives offered by a particular state or nation impact this critical decision.

Authors' Note: The New Jersey Motion Picture & Television Commission is at risk of losing state funding. Although the incentive programs will survive, the film community will suffer great hardship without the aforementioned services of the Commission. We encourage you to contact the New Jersey Governor's office today at the following numbers to register your support of the Commission: fax: (609) 292-3454, phone: (609) 292-6000.

//www.njfilm.org

