Max Incentives: Five Best Practice Tips to Get the Most Out of Your Tax Incentives

By David Albert Pierce, Esq. on January 28, 2016

So you've read our Best Places to Live and Work as a Moviemaker in 2016 lists (Big Cities and Small Cities and Towns), and your bags are already packed. Before you can call "action," though, you'll have to enter the labyrinthine world of state tax incentives.

A majority of states in the U.S. offer productions some form of incentives to shoot on their territory—often with bonuses designed to aid their communities, e.g. purchasing local goods and services, filming on under-utilized land, or participating in education programs for residents. It's not just about the percentage figure, though—these incentives come with a host of qualifications and fine-print, and knowing how to properly address each aspect of a package can make a real difference to your bottom line. So before you dive in, keep these five tips in mind.

1. Understand the difference between a credit and a rebate.

Credits are like coupons. If you have a coupon for three dollars off at Big Kahuna Burger, but you never eat at Big Kahuna Burger, the coupon is worthless to you. However, you might be able to find someone who loves Big Kahuna Burgers and is willing to pay you two dollars for that coupon. The burger lover saves a dollar on his next tasty burger, while you put the two dollars in your pocket.

Tax credits work the same way. If you film in Louisiana, but don't live and pay tax in Louisiana, a

$300,000 coupon toward your next tax payment in Louisiana is meaningless to you, unless you sell it to a fat cat in Louisiana who purchases your tax credit for $250,000. He saves $100K on his state taxes, and your film pockets $250K.

By contrast, a tax rebate is pure cash paid directly to you by the state. So, a $300K rebate will be of greater value to you than a $300K credit, unless you live and pay a lot of taxes in the state issuing the credit.

2. Understand the application process and the rules for pre-qualifying for the incentive.

If you don't follow all the rules and bureaucratic red tape required to properly apply for a rebate or credit, you will not receive the money. Many states allow you to pre-qualify, or receive an opinion letter from experts that discusses whether you are likely to meet all the requirements and have all the proper paperwork in order to obtain the rebate or credit. For the most updated and comprehensive information on a state's incentive program, visit the state film commission's website. Individual cities occasionally offer incentives on top of the state's, so it's worth visiting city commission sites as well.

3. Verify that the information you have about the incentive is still viable and applicable.

States can change their mind about tax credits and rebates with each new fiscal year and each new election. Likewise, the amount of the incentives and the procedures to obtain them can change. Read the fine print early and regularly to ensure that you have the most up-to-date information about the program.

4. Determine your cash flow needs in relation to when you receive the incentive money, and plan for how to cover that gap.

The number-one mistake novice producers make concerning tax incentives is failing to realize how long it takes to actually receive the tax incentive money. Usually, the incentive will not be issued until well after the post-production period. So you will need to take a short-term loan and figure out another way to cash flow the completion of your film while awaiting the tax incentive money to be issued to you.

5. Contractually obligate key players with loan-out corporations to register their businesses to do business in the state, providing tax incentives to maximize the pay-out.

High-profile cast and crew often employ "loan-out companies" as a method to be paid their earnings. Many states require these loan-out companies to register to do business in their state, in order for the production company to include their earnings as "qualified spending" (i.e. money which is counted in the calculation of the ultimate tax incentive amount paid to the producer).

Some agents and managers hate having their clients register to do business in another state, because the cast or crew member is then fully "on that state's radar," and must pay state tax at the end of the year for all earnings made while filming on location. This can be a material deal point so it's best to raise it with the agent at the time the offer is rendered. If they give you a hassle, remind them that paying tax in the state in which money is earned is an obligation, not an option.

Be kind to the taxman and hopefully he'll be kind to you. ■

Looking for the right place to shoot your next film? Check out the **Best Big Cities** *and* **Best Small Cities and Towns** *to Live and Work as a Moviemaker in 2016.*

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