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Spotlight on Louisiana: An Overview of Louisiana's Motion Picture Investor Tax Credit

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The Louisiana Motion Picture Investor Tax Credit (LMPITC) is alive and well, helping Louisiana to become the third most popular state behind California and New York in terms of the number of productions that happen in the state. However, the credit underwent a significant change in 2009 that requires a bit of strategizing for those seeking to maximize their benefit from this credit. The LMPITC is one of four incentives administered by the Louisiana Office of Entertainment Industry Development (OEID), a division of the Louisiana Department of Economic Development. The other three are the Sound Recording Investor Tax Credit, the Digital Interactive Media Producer Tax Credit and the Musical and Theatrical Production Income Tax Credit.

Background

In 2009, the Louisiana legislature amended the LMPITC law, Louisiana Revised Statutes 47:6007, to provide that the credits earned in connection with a motion picture project that receives initial certification on and after July 1, 2009 may be sold to the OEID for 85 cents per credit. Insiders will say that this provision was a compromise with opponents of the credit, who argued for repeal in 2009, citing a state budget deficit and a lack of evidence that the credit is generating positive revenue for the state. The benefit to the state of this compromise is that instead of giving away one dollar of tax revenue for each credit claimed by a taxpayer, the state pays only 85 cents for each credit that it buys.

In addition to offering a close-to-market price of 85 cents for the credit, since enacting these amendments the OEID appears to have modified its policies to steer motion picture production companies into selling their credits to the state rather than to private buyers to ensure the state gets the benefit of its bargain. The OEID has done this by attempting to remove language from its certification letters that formerly offered credit buyers protection from recapture. The language basically provided that once the OEID has reviewed a production's expenditures and certified an amount of credits as having been earned, the credits would not be subject to recapture, disallowance, recovery, reduction, repayment, forfeiture, decertification or any other remedy that would have the effect of reducing or otherwise limiting the use of the credits. Removal of this kind of assurance that the credits, once bought, are free from recapture, is likely to make it more difficult to sell the credits on the open market to private buyers who might have been willing to pay a price higher than 85 cents, but not if there is some uncertainty that they will be able to keep the credits.

Issues to Consider

If a production company is happy with the 85 cents offered under the statute and intends to sell LMPITCs to the state, there are some issues to consider. First, the statutory provision that provides for the sale to the state is curiously worded in that it says the production company that earned the credits may transfer the credits to the OEID for 85 percent "of the face value of the credits." It is unclear what "face value" means here. For example, on the open market, if the production company had $100,000 worth of credits to sell (meaning the company spent $333,333.33 producing a motion picture in the state, assuming the company did not qualify for the additional 5 percent Louisiana payroll tax credit) and the price was 85 cents per credit, then that company would receive $85,000 from the tax credit buyer. The potential issue with this language is that, facing a severe budget deficit in the future, the state could argue that the face value of the credit is less than one dollar, so that the production company would no longer get 85 cents per credit as the statute would seem to require.

Additionally, the sale document the OEID requires to be used for selling credits to the state contains absolutely no language obligating the state to pay anything for the credits nor is the state a signatory on that sale document. One can imagine that a major studio selling millions of dollars worth of credits to the state might be uneasy with transferring its credits with only a hope that the state will fulfill its unwritten obligation and, more importantly, that it will have the financial wherewithal when it comes time to do so. For a single large production, the state's purchase price could be in the tens of millions of dollars.

If a production company can navigate through these issues and get comfortable with selling to the state rather than to a private taxpayer, there is a potential benefit. The transaction costs associated with selling to the state should be much lower than selling to a private taxpayer as the paperwork will be reduced and there will not be any negotiation over sharing the tax credit recapture risk, assuming that by buying the credits the state has no intention to later recapture them, although this may not be a safe assumption. On average a private taxpayer will only pay one to three cents above 85 cents per credit but this may not yield a net benefit if the transaction costs are sufficiently higher than selling to the state.

Summary

Obviously, the highest potential benefit that a production company can achieve earning any of the entertainment credits is to claim the credits on its own Louisiana tax return and thereby receive 100 cents on the dollar for the credit, provided the company claiming the credits has sufficient Louisiana income tax liability to absorb the credits or the credits are otherwise refundable.

If you would like to discuss strategies for earning and maximizing, or have questions about the Louisiana entertainment incentives, please contact any of the attorneys in the Firm's Tax Department.