

# FEDERAL TAX INCENTIVES FOR FILM PRODUCTIONS EXPIRE

## NOW WHAT?

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*The primary federal tax incentive for film and television production in the U.S. expired on December 31, 2009. Only those films or programs where principal photography commenced prior to January 1, 2010, qualified for the incentive.*

### LIKELIHOOD OF EXTENSION

Legislation to extend the film incentive and 50 other tax breaks is pending. The expiration date of these incentives has been extended frequently. The research credit has been extended 13 times since 1981. Many of these extensions have been retroactive and in some cases the retroactivity covered a period of more than a year. Even so, uncertainty remains.

### THE FEDERAL FILM INCENTIVE PROGRAM

Alarmed by a trend to film overseas to take advantage of incentives offered by other countries, Congress approved a tax incentive (Film Incentive) designed to encourage film and television production here. Producers of qualified film and television productions may elect to deduct the costs of producing a film or program in the year during which the expenditure occurs, even though the film or program is not yet completed and ready for exhibition. Deductions are limited to the first \$15,000,000 of costs of program (with a further limit of 44 programs for a television series). The deduction limit is raised to \$20,000,000 where the costs are incurred in a designated low income community. Costs in excess of the limits are capitalized and amortized over the useful life of the production.

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At least 75% of the total compensation of the production must be for services performed in the U.S. by actors, directors, producers, and production personnel, who provide services directly related to producing the film or program.

The deduction has flexibility and may be allocated among multiple investors in a manner that reasonably reflects each owner's proportionate investment and economic interest in the film or program.

### OTHER INCENTIVES—THE DOMESTIC MANUFACTURING INCENTIVE

Film producers may also deduct 9% of the income derived from domestic manufacturing activities. To qualify as a domestic activity, not less than 50% of the total compensation relating to the production of the film or program must be compensation for services performed in the U.S. by actors, production personnel, directors, and producers.

The definition of the qualified film is limited to the master copy of the film and does not include tangible personal property embodied in the qualified film such as DVDs.

### BONUS DEPRECIATION—NOT AVAILABLE TO FILM PRODUCTION

Bonus depreciation has been a primary incentive to encourage economic activity. Bonus depreciation permits a taxpayer to take a significant deduction in the year property is first placed in service. In some years, the bonus depreciation has been as high as 50% of the cost of property.

Television and film productions do not qualify for bonus depreciation. But, there are many legislative proposals to permit film and television production to so qualify. Perhaps, if the Film Incentive is not extended, bonus depreciation incentives will be made available.

