

## **Motion Picture Industry Benefits Accompany Emergency Economic Stabilization Act of 2008**

**October 13, 2008**

You no doubt already are aware that the Emergency Economic Stabilization Act of 2008 (the Act) was recently signed into law. But you may not be aware that among the “sweeteners” that were added to the bill are a few items that will be of benefit to the motion picture industry. The changes with the most direct impact on the industry are:

1. Availability of the Internal Revenue Code (IRC) Section 181 tax benefit has been extended through the end of 2009. Section 181 permits the owner of a qualified film or television production to elect to deduct production costs in the year the costs are paid or incurred in lieu of capitalizing the costs and recovering them through depreciation allowances if certain requirements are met. A film or television production is a qualified film or television production if 75% of the total compensation of the production is compensation for services performed in the United States by actors, directors, producers, and other relevant production personnel.
2. The Section 181 tax benefit will also now be available for larger films than before. Previously, the tax benefit was not available for a film with qualified costs in excess of \$15 million (\$20 million if a significant portion of the production costs are incurred in certain designated areas). The new legislation will replace the exclusion with a cap on the benefit, so that the first \$15 million of costs (or \$20 million if a significant portion of the production costs are incurred in certain designated areas) will be deductible even if the total cost of the film exceeds that amount.
3. There are also changes that are specifically targeted to the film industry with respect to the IRC Section 199 special deduction for domestic production activities. This is a special deduction that was created as part of the American Jobs Creation Act of 2004. Domestic production activities include a variety of commercial and industrial activities, including exploitation of a “qualified film.” For purposes of computing the allowable amount of the deduction, a special rule has been added so that all “compensation for services performed in the United States by actors, production personnel, directors, and producers” are treated as “W-2 Wages” even though many of those people may not be employees of the production company claiming the deduction.
4. Clarifying language has also been added to remove some of the ambiguity from the definition of “qualified film” for purposes of the Section 199 deduction.

5. A change has been made regarding the way in which the Section 199 deduction would apply to partners in a partnership. The proposed language states that, in the case of a partner of a partnership or a shareholder in a Subchapter S Corporation that owns at least 20% of the capital interests in such partnership or of the stock in such Subchapter S corporation, “(I) such partner or shareholder shall be treated as having engaged directly in any film produced by such partnership or S corporation, and (II) such partnership or S corporation shall be treated as having engaged directly in any film produced by such partner or shareholder.”
6. Section 312 of the Act also extends by two years (until January 1, 2010) the life of the Section 199 deduction for activities in Puerto Rico.

For more information about the changes discussed in this LawFlash, please contact the following Morgan Lewis attorney:

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