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LAWYERS HELP FILMMAKERS TAP GROWING NUMBER OF U.S. PRODUCTION SUBSIDIES

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LOS ANGELES - Some states are showing filmmakers the money, and some entertainment finance attorneys are helping them find it.

Although European and Canadian governments have long offered tax incentives to lure filmmakers, similar measures are just beginning to pick up steam across the country. According to finance attorneys, about 30 states offer some sort of tax incentive to producers - anything from 10 to 15 percent transferable tax credits to 30 percent rebates on in-state supply expenditures.

"I'd say it's becoming rather huge," said Alan Schwartz, an entertainment attorney from Greenberg Traurig in Los Angeles.

Although using state subsidies to finance films is more common for independent film producers, who sometimes have trouble finding money up front, studios can take advantage of the incentives just as easily.

While he was at Manatt, Phelps & Phillips, Schwartz and then-partner Fredric Bernstein, now at Proskauer Rose, helped "The Producers" get financing using New York City's tax incentive program - the first film to take advantage of that program. Mel Brooks produced the film, which was distributed jointly by Sony and Universal in 2005.

"Our production ended up being the impetus for getting the New York City Council and ultimately the state to pass the legislation," Bernstein said. "But it was going to happen anyway at some point."

The "Made in NY" incentive program offers a 10 percent refundable tax credit from New York State and a 5 percent refundable tax credit from New York City based on New York production costs. There are also marketing incentives and discounts on hotels, car rentals and messenger services for productions taking place in the city's five boroughs.

In New York, which passed its state program in August 2004 and its city program in January 2005, there was a 35 percent increase in location shooting days in 2005, according to Julianne Cho of the New York Mayor's Office of Film, Theatre and Broadcasting.

The European and Canadian models upon which many of the state incentive programs are based have been around for much longer, according to Patricia Mayer, an entertainment finance attorney from Mitchell Silberberg & Knupp in Los Angeles.

"I think in Canada, the governments decided that local film production did two things," Mayer said. "It brought a lot of money into the local economy because people rent cars and hotels and hire foot massagers and whatever. But also, in Canada and Europe, they look at film as being the great art form of the 20th century and they wanted to encourage local film production with local talent and local content."

Although the first states to develop incentive programs were New Mexico and Louisiana in 2002, the New York program got a lot of attention in other states when it was created in 2004.

"Places all around the country are saying, 'We want in on that action,'" Bernstein added. "People have determined it does attract production."

In the last 18 months, according to Simon Horsman, an attorney and the chief executive officer of Future Films USA, a newly launched financier based in Santa Monica, other states have followed including Rhode Island, Connecticut and Illinois.

"Slowly but surely we've seen states get more and more involved in these programs and become more competitive with each other," Horsman said.

Louisiana offers 25 percent transferable tax credit, earning the nickname "Hollywood South." (Canada has been called "Hollywood North.") Rhode Island offers a 25 percent transferable tax credit. Illinois and Connecticut offer 20 percent and 30 percent transferable tax credits, respectively.

Aside from transferable tax credits, some states, like New Mexico, offer rebates. New Mexico offers a 25 percent rebate on all production expenditures, including the use of local labor, that are subject to taxation by New Mexico.

Staying on top of the new legislation and the requirements and qualifications for each state keeps entertainment finance attorneys busy. But it's also opening up a new industry in which finance companies buy the incentives from producers and then cash them in later from the state.

"There's a big business in selling the tax credits," Schwartz said. "People will pay you for the tax credit in cash, then turn it around and sell it to someone who can use it."

The transferable nature of the credits makes all the difference in the world to a producer who doesn't live in the state in which she is shooting, Schwartz said.

Horsman's company hasn't financed a film as yet but is developing several. But the company's parent, United Kingdom-based Feature Films Group, has been involved in film finance since 2000.

"The United States is a more attractive place to make movies now," Horsman said. "We lend the producer money secured against our receipt of the tax credit or rebate."

Horsman added that any money left over after the repayment of the loan plus interest is paid to the producer."

Such a model is most convenient for independent producers who might not have enough money when starting out on a film. With loans on tax credits and other incentives, they are able to move forward on projects.

And move they do - away from California where no such tax credits are offered.

According to Amy Lemisch, the director of the California Film Commission, in 2003, 2004 and 2005, a quarter of all studio feature films were shot exclusively in California. Based on data from studios, Lemisch is predicting 11 percent of studio feature films will shoot only in California in 2006.

Lemisch's commission and what she calls a broad coalition of entertainment industry groups, including the Directors Guild of America, the Screen Actors Guild, the International Alliance of Theatrical Stage Employees and the Teamsters, have been working for two years to pass a bill creating tax incentives in California. So far, they have been unsuccessful.

A lot of the delay, Mayer said, comes from the fact that the subsidies packages depend on public policy and legislative decisions. Mayer worked on the legislation passing some of the incentives while working as an attorney in England between 2000 and 2003.

"Not everybody believes that this is something that is the best utilization of state resources," Bernstein said. "It requires a lot of forward thinking and a belief that the programs will build enough infrastructure to create a level of permanence to that kind of activity."

Steve Fayne, an entertainment finance attorney from Los Angeles' Akin Gump Strauss Hauer & Feld, said the legislative process makes subsidies a bit treacherous because the state has to vote on how much money to allot to the program. Because the budget is finite, he pointed out, things can get competitive.

"You have to sit down and talk with these people, find out if it's first-come-first serve," Fayne said. "Who's in front of you? Can you get preliminary certification to get on the top of the list? It's not that simple."

But financiers and finance attorneys agree that using state subsidies to finance films is on the rise in the United States.

"For one, I think the unions and the people who work in the movie would like to work more in the States," Mayer said. "And independent film production is a difficult thing. Producers are always looking to find a way of helping out with production costs. Nobody likes to leave money on the table."