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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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U. S. House of Representatives
Washington, DC 20515-0908

Attention:

Dear Congressman

I am responding to your inquiry, dated November 16, 2004, on behalf of your constituent,

requested further information on new legislation, enacted as part of the Jobs Creation Act, that provides a deduction for production costs of certain film or television productions (Section 181 of the Internal Revenue Code). Specifically, she asked whether the benefits of the provision will be available to corporate investors, individual investors, or both.

The producer of a qualified film or television production may elect to deduct certain production costs in the year incurred in lieu of capitalizing the cost and recovering it through depreciation allowances (Section 181 of the Code). The law limits the amount of production expense a taxpayer can deduct to \$15 million for each qualifying production. A taxpayer can deduct an additional \$5 million of production costs (up to \$20 million total) if he or she incurs a significant amount of the production costs in areas eligible for designation either as a low income community under section 45D of the Code or as a distressed county or isolated area of distress by the Delta Regional Authority.

The provision does not apply if the total cost of the production exceeds \$15 million (\$20 million in distressed areas). The law limits qualifying productions by more than one producer to a single \$15 million dollar deduction (\$20 million in distressed areas). The co-producers must allocate the benefit in a manner that reasonably reflects each owner's proportionate investment in, and economic interest in, the qualified production.

Other provisions may limit an investor's deductions (section 465 of the Code). The producer must elect to deduct production costs under this provision as prescribed by the Secretary of the Treasury and by the due date (including extensions) of the tax return for the taxable year in which production costs are first incurred for the production. Until the Treasury Department issues specific guidance, deducting qualifying costs on the appropriate tax return will constitute a valid election. Once a producer elects to deduct production costs for a qualified film or television production under section 181 of the Code, no other deduction for depreciation or amortization is available for that production. A producer cannot revoke this election without the Treasury Secretary's consent.

A qualified film or television program is any production of a motion picture (whether released theatrically or directly to video cassette or other format); miniseries; scripted, dramatic television episode; or movie of the week, if at least 75 percent of the total compensation spent on the production is qualified compensation. Qualified compensation is compensation for services performed in the United States by actors, directors, producers, and other relevant production personnel. For purposes of the 75 percent test, compensation does not include participations and residuals under section 167(g)(7)(B) of the Code. As to a television series, only the first 44 episodes qualify under the provision. Qualified property does not include sexually explicit productions (i.e. productions requiring maintenance of records under section 2257 of title 18 of the United States Code for any performer in the production).

Section 181 of the Code is effective for qualified film and television productions for which principal photography begins after October 22, 2004, and before January 1, 2009.

I hope our response is helpful to
contact me or

. If I can assist you further, please

Sincerely,

Charles B. Ramsey
Chief, Branch 6
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)