

## **2004 Tax Law Provides Incentives to Television and Film Producers**

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When Congress passed the American Jobs Creation Act of 2004, it amended Internal Revenue Code Section 181 to allow taxpayers to deduct the full cost of certain qualified television or film productions in the year expended. Under prior law, the taxpayer was allowed to depreciate the cost of the production using the income forecast method (over a period of years corresponding to when the income was expected to be received). Under the revised law, a taxpayer is allowed an immediate deduction in the first year for all of the expenses associated with the qualified production.

### **What types of productions qualify for this deduction?**

The taxpayer must be careful to determine whether the production qualifies for this deduction. The following are the criteria:

- 1) the production must be a motion picture film or video tape,
- 2) if the production is a television series, only the first 44 episodes are taken into account,
- 3) at least 75 percent of the total compensation of the production must be paid for services performed in the United States by actors, directors, producers, and other relevant production personnel (participations and residuals are excluded from this calculation),
- 4) the production must have expenses that *do not exceed* \$15 million, or \$20 million “for certain productions the expenses of which are significantly incurred in a low-income community, or a distressed county or isolated area of distress as designated by the Delta Regional Authority,”
- 5) the basis of any qualified production may *not* also be otherwise depreciated or amortized, and
- 6) the production must have commenced *after* October 22, 2004 and *prior to* December 31, 2008.

### **How does a taxpayer elect to take the deduction?**

An election to take the deduction must be made by the due date (including extensions) for the tax year in which the qualified production activities are first incurred. However, once made, an election can only be revoked with the consent of the Secretary of the Treasury.

### **Caution!**

The IRS rule that treats controlled groups as a single taxpayer also applies to this deduction. For example, if two corporations or partnerships have qualified production

expenses, and those corporations would be considered a controlled group under the relevant rules, then the expenses of both entities must be taken into account when considering the maximum expense of the qualified production.

With respect to deceased taxpayers, the rules applicable to apportionment between the income beneficiary and fiduciary of an estate apply with respect to this deduction.

If the production is subject to the rules covering productions with sexually explicit conduct, then it *does not* qualify for this deduction.

As you can see, Congress has provided a large incentive to taxpayers who produce relatively inexpensive film and television productions. Assuming the production qualifies, the tax benefit should be considerable, since the revised law provides an immediate deduction rather than spreading the tax relief over many years.

This deduction may be short lived, since the law is due to sunset as of December 31, 2008. Additionally, the IRS has designated this deduction as a priority for which it intends to issue further clarification and/or guidance during 2005 and 2006. Commentators also expect Congress to amend the law to make technical corrections to the statute, which could have a dramatic impact on the way the deduction operates and its potential benefits.

With all of these uncertainties, you should stay tuned and remember that we will be on the verge of having a new President, and possibly a very different Congress, by the time this law is due to sunset.