By Mark Litwak

Runaway Home

Production incentives from foreign jurisdictions are **playing an increasing role** in determining where films are made

Even before globalization became a hot topic, California-based movie industry workers complained that their jobs were being exported. Producers seeking to reduce their expenses were moving their productions to distant locations and leaving many potential cast and crew members behind. What really irked the pool of highly skilled and trained industry workers in California were the generous production incentives—some enshrined in programs and others a by-product of a different economic climate—offered by other nations and even other U.S. states to lure producers away. This trend was confirmed by several studies. One study concluded that Canadian subsidies alone cost the U.S. economy 25,000 entertainment industry jobs per year.[1] The U.S. Department of Commerce estimated in 2001 that foreign entertainment industry tax incentives cost the U.S. economy more than $10 billion per year.

Despite this unfortunate impact on the U.S., California, and Los Angeles economies, production incentives for "runaway productions" are a reality. Entertainment lawyers and producer representatives need to be aware of their existence, as well as the pros and cons of taking advantage of them. A look at the more popular locations to which producers are shifting their work will illuminate the motivation behind runaway productions. These locales are attracting productions with the promise of reduced costs because of economic conditions as well as specially tailored incentive schemes, to which the California and U.S. governments are now attempting to respond.

Many countries consider their production incentives to be a reasonable and equitable device to level the playing field and enable their producers to compete against Hollywood. While some incentives are designed to attract production dollars from abroad into the local economy, other programs exist solely to protect local filmmakers and their native industry. Many countries believe that U.S. movies unfairly dominate their domestic box office, thus making it difficult for indigenous movies to attract even local audiences.[2] Indeed, the United States has some distinct advantages in regard to the production and distribution of motion pictures. With a home market of 250 million people, most of whom speak the same language, American producers have a substantial outlet for their movies even if they fail to attract foreign audiences. But beyond their own domestic advantages, many American movies are very popular worldwide. The U.S. movie industry is unique among American businesses in that

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it has a balance-of-trade surplus with every single country in the world.[3]

Recently the French film industry proudly announced that French films had briefly captured more than 50 percent of the French domestic box office. This was considered a significant feat as the French box office, like those of many other countries, is dominated by English-language (mostly U.S.) films.[4] If France, with a rich culture and language that it shares with many former colonies, cannot withstand the onslaught of U.S. films, one can understand how many smaller countries find it difficult to challenge U.S. films in their own markets as well as in the international arena.[5]

In 2002, U.S. films attracted 70 percent of all moviegoers in the European Union.[6] There were 665 million European admissions to U.S. films in 2002, compared to 182.3 million admissions to European films in their own market. Ticket sales for European films outside their domestic market amounted to only 73.8 million.[7] At the same time, foreign language cinema captures a mere one-half of 1 percent of the U.S. box office.[8]

The domination of American films is not purely an economic and trade issue. Foreign governments consider movies part of their culture, not just another export product. Motion pictures promote a country's language, customs, and attractions to audiences worldwide. Consequently, many governments encourage their citizens to create films, especially those with local content.

As a result of this competitive disadvantage and desire to promote their culture, many countries directly subsidize local film producers. Some have negotiated coproduction treaties to encourage their producers to collaborate with producers of other nations and pool their resources. (Not surprisingly, none of these treaties is with the United States.) While these coproduction agreements have undoubtedly helped some national cinemas survive, they have had unintended consequences as well. Because treaties require that technical and artistic participation be allocated among nationals from different countries, this can distort the creative process. An Italian actor, for instance, might be cast because of his nationality rather than because he is the best person for a part. European movies that become a mishmash of incongruous elements are sometimes referred to as Euro-pudding. Many of these films have been criticized for their lack of artistic merit as well as their dismal box office performance.

Subsidy incentives come in a variety of forms. Location-based rebates are given to producers based on the amount they spend in a community. Canada, Luxembourg, Iceland, and Australia, among others, offer such subsidies. While the rebate may not be disbursed until after production has been completed, sometimes funds will be advanced to the producer with the anticipated benefit as collateral. Similar incentives consist of free or reduced prices for locations, facilities, police, or permits.

Some incentive programs seek to support filmmaking by encouraging investors. The German film funds, the Netherlands' CV system of limited liability partnerships, French SOFICAs, and U.K. sales leasebacks are examples of this kind of incentive.

Some countries, U.S. states other than California, and foreign entities under the auspices of regional governments are offering loans on attractive terms as a means to encourage filmmakers. The United Kingdom and Italy have such programs, as does the state of New Mexico. Germany also offers this type of support on a regional basis. The European Investment Bank, an institution backed by the European Union, offers loan guarantees.

France, Spain, and the Nordic countries have schemes in which a small slice of box office revenue is siphoned off to be used to encourage future production. The EU's MEDIA Plus program uses box office revenue to assist distributors and exhibitors. Many European countries also provide subsidies and grants to films on cultural grounds. The Nordic countries provide significant support to encourage native filmmakers. The MEDIA Plus program provides script development and training funds.

Evaluating Benefits and Drawbacks

While many of these initiatives are for local filmmakers, some can be utilized for foreign productions. Moreover, producers usually consider other benefits that can arise from moving a production outside of the United States. In Eastern Europe, South Africa, and China, the wage scale is so low that crews, extras, and actors can be hired for a fraction of their rate in the United States. Likewise, food, lodging, and construction can be a bargain. If a producer can purchase services for 20 percent of their customary price, then the producer receives the equivalent of an 80 percent subsidy without the burden of completing complicated paperwork and incurring legal and accounting fees.

Another factor to consider is the currency exchange rate. Canada and South Africa are attractive locations in part because the U.S. dollar is strong compared to the local currency.

By international treaty, some countries encourage their nationals to collaborate with others by allowing them to aggregate incentives. Canada has treaties with 60 countries. These agreements allow its producers to pool financial, creative and technical resources with producers from other nations. The treaties lower the requirements that normally must be met in order for the producers to access incentives in their native lands and may reduce administrative burdens.

While the United States is not a party to any international coproduction treaties, U.S. filmmakers can contract on their own with foreign nationals. Even if no incentives are available, a local coproduction partner may have the savvy and relationships needed to secure the best deals and ensure compliance with local regulations. Moreover, a U.S. movie filming in another country that includes a local director or star may enhance the commercial appeal of the film in that country and thus increase the film's license fee.

Despite these financial attractions, distant locations may also present drawbacks and complications. Savings may be offset by increased travel and lodging expenses. Moreover, if a camera or critical piece of equipment fails in a remote location, it can take days to fly in a replacement. If a crew member becomes disabled, there may be a limited pool of skilled workers to draw upon for a substitute.

To be eligible for an incentive, a film may need to employ cast members from certain countries. It is not unusual for a U.S. producer to film abroad and bring one or two U.S. actors to star in the movie. These actors frequently are members of the Screen Actors Guild (SAG), while resident actors may be members of their local union. SAG's Rule One does not allow SAG members to work for producers that are not SAG signatories. In the past, SAG didn't enforce this rule when a SAG actor worked abroad, but on May 1, 2002, SAG announced that it intends to strictly enforce Rule One, and threatened disciplinary action against any SAG actors who work for nonsignatory companies. This policy is designed to force producers who are shooting abroad to become SAG signatories—with the accompanying obligations, including rules on working conditions and contributions to pension and health insurance plans—or to employ exclusively local, non-SAG actors.

When parties from different nations collaborate, they need to carefully consider the tax consequences. Careful structuring can minimize taxes. For example, a coproduction may be considered a partnership for tax purposes. As a partner engaged in a trade or business in the United States, a foreign national may be subject to U.S. income tax, and the partnership may be required to pay withholding tax on the foreign national's share of income. Since the U.S. tax rate may exceed what the foreign national is taxed in his or her country, this may be an undesirable consequence. On the other hand, if the deal

is fashioned so that the foreign investor is not a partner but instead licenses distribution rights for territories outside the United States, and if the foreign investor has no U.S. trade or business, it might avoid paying U.S. tax on income derived from the film outside the United States.

Conversely, an American individual or company may be subject to foreign taxes. Many countries withhold tax on income paid from sources in those countries to residents of other countries. The United States, however, has tax treaties with many countries that may reduce or eliminate such taxes. U.S. entities generally need to prove that they are U.S. residents to receive the treaty-reduced tax rate.[9]

Popular Incentive Programs

With these general considerations in mind, it is clear that certain incentive programs have been more successful than others in enticing U.S. producers to move the production of their films and television shows abroad. Canada, the United Kingdom, Australia, Germany, Ireland, and New Zealand have particularly popular production incentive programs. While foreign productions have been lured to these countries, some of the incentive programs offered by these locales are designed more with the aim of fostering and bolstering home-grown film industries.

Canada has been particularly successful in attracting U.S. producers. Toronto and Vancouver have deep reservoirs of skilled and experienced crew members, enabling numerous U.S. productions to choose these locations for their productions. A favorable exchange rate with the U.S. dollar provides another inducement.

Canada offers a variety of programs designed to support both Canadian and foreign producers. A distinction is made between Canadian content films, which receive a generous tax credit, and those films that do not possess Canadian content, which are eligible for a substantial but lesser credit. Both programs are jointly administered by the Canadian Audio-Visual Certification Office (CAVCO) and the Canadian Customs and Revenue Agency (CCRA). Producers

Melissa Gilbert: Bringing It All Back Home

The business reasons behind the decisions of foreign governments to lure Hollywood's motion picture and television production industry to their countries with tax and other financial incentives are obvious. But for Melissa Gilbert, the current president of the Screen Actors Guild, runaway production has become personal. "During the nine years I was on *Little House on the Prairie*, we were home. We filmed in Los Angeles and slept in our own beds," she recalls. "The *Little House* remake is slated for Canada. It's a sad commentary when even American stories are made outside the United States."

SAG has been an industry leader in keeping production in Los Angeles. Much of its efforts have focused on educating federal, state, and local legislators on the palpable impact that the entertainment industry has on the local and national economies. These initiatives undoubtedly have had resonance, as indicated by a recent letter, signed by more than two dozen members of Congress, requesting that the upcoming Universal Pictures feature *Cinderella Man* not be filmed in Canada.

SAG's educational campaign goes beyond lawmakers. "One of our problems is our image," says Gilbert. "When people outside the industry think of entertainment, they think of stars who make $20 million per picture riding in a limo. One thing we need to do is to remind people that the majority of our members struggle daily just to keep food on the table." With this in mind, SAG has begun a campaign to put a "worker's face" on local filmmaking. Using public service announcements and billboards, SAG hopes to make residents of Los Angeles more receptive to having movies and TV shows shot on their streets and in their communities by emphasizing the jobs and economic opportunities that filming provides.

Another essential effort to counter runaway productions has been directed at SAG's own members. By making a public campaign out of enforcement of a union rule called Global Rule One, SAG has ensured that its members still get SAG contract protection wherever they work in the world. In the two years since its implementation on May 1, 2002, there have been some 200 foreign theatrical productions shot under SAG terms and conditions that traditionally might not have fallen under signatory agreements. These productions represent member earnings in excess of $100 million, plus vital pension and health contributions. Even more importantly, this initiative has worked to stem the tide of productions moving overseas just to save money on nonunion acting talent.

But SAG is not blind to the benefits of sharing production with other states. Working closely with SAG (and its sister union AFTRA), the Illinois legislature recently passed legislation designed to encourage more film and television production in its state. The Film Production Services Tax Credit Act allows for a credit of labor expenditures made by an entity for film or television production, including commercials, in Illinois. Similar SAG/AFTRA efforts have met with success in the development of favorable legislation in several other states, including New Mexico and Hawaii.

SAG also is a vocal member of the California Coalition for Entertainment Jobs, a group of labor unions working to combat runaway production. SAG and other coalition members—including the American Federation of Musicians, AFTRA, the Directors Guild of America, IATSE, the Teamsters, and the Writers Guild of America, west—have all made efforts and sacrifices to keep production at home. The coalition has been working diligently for the passage of wage-based tax incentives that will allow California to remain competitive when vying with other states and countries for motion picture and television productions.

Martha Coolidge, former president of the Directors Guild, assesses the impact of runaway production on her fellow unions by noting, "The issue of runaway production is of primary importance to all of us. We know the economic problems that our state and our country face, and entertainment brings in tremendous income." AFTRA President John Connolly goes further: "We are interpreted as whining babies who are overpaid and spoiled. The fact is that the vast majority of people working in this industry are hard-working people with skills and crafts who receive middle-class wages."

In summing up the advantages of keeping production at home, Melissa Gilbert says, "There is an emotional attachment to entertainment that you don't get with any other product or industry. We provide escape, education, information—the emotionality attached to what we do that is almost unquantifiable." What is quantifiable, in her view and the view of other entertainment union leaders, is the cost of runaway production in lost jobs and economic activity. It is a cost that they are not willing to pay.**—Editors**

cannot receive benefits under both programs simultaneously, but they may combine these incentives with those offered by Canada's provincial governments.

To be eligible for Canadian content incentives the company must be owned or controlled by Canadian citizens or permanent residents. Also, either the director or screenwriter, and one of the two highest-paid actors, must be Canadian. Moreover, the production must employ a certain amount of Canadian personnel, and 75 percent of production costs must be paid to Canadians.[10] A qualified applicant can receive a tax credit of 25 percent of labor expenditures (which usually amounts to 12 percent of total production costs.) Labor expenditures exclude payments to non-Canadians.

For productions that do not meet the criteria for Canadian content, the Production Services Tax Credit is available. This is a federal refundable tax credit to promote production in Canada. The applying corporation can be a production services company that has contracted with the copyright owner. The credit was recently raised from 11 percent to 16 percent of the amounts paid to Canadian residents for services that are rendered in Canada. U.S. film companies can benefit from this credit, but it only applies to movies with budgets of at least CAN$1 million (approximately US$678,000.) Some financiers will advance monies to a producer on the basis of this tax credit.

Although U.S. producers do not benefit from any coproduction treaties with Canada, their productions may be certified as a "Co-Venture," which is eligible for the enhanced broadcast license fees that are paid for Canadian programs. To be certified, the Co-Venture must meet the employment and production spending requirements for Canadian content films.

Canadian provinces provide their own incentives. For example, British Columbia offers a variety of benefits, including a production services tax credit of 11 percent of qualifying wages paid to residents of British Columbia.[11] There is also a regional incentive of 6 percent to encourage production outside of the Vancouver area. These incentives, combined with physical proximity, have made Canada an immensely popular place for U.S. producers to take their projects.

Further away geographically, but offering a familiar language and a sympathetic culture, is the United Kingdom. The United Kingdom provides an array of production incentive programs, including funds for education and training, lottery monies for production, and tax credits. The United Kingdom also participates in the European MEDIA Programme.[12]

The United Kingdom provides incentives in the form of sale-leaseback transactions. A U.K. taxpayer can qualify for a 100 percent capital allowance in the year in which production expenditures are incurred for British films. To qualify, the film must be made by a company that is registered and managed in the United Kingdom, the European Union, or certain countries that have signed an association agreement, and 70 percent of production costs must be spent in the United Kingdom. These deals are structured so that the U.K. taxpayer purchases a qualified British film from the seller (i.e., the production company), and then the U.K. taxpayer leases it back to the seller, who then arranges for its distribution. The seller is required to deposit with a bank most of the purchase price as security for the rental payments due under the lease, which may extend for up to 15 years. A qualifying film can earn a benefit of approximately 10 percent of its budget through a sale and leaseback transaction.

The British government created the Film Council in April 2000 to provide public funding to assist British film production. The Film Council has supported such recent films as *Gosford Park*, *Bloody Sunday*, and *The Magdalene Sisters*. The Film Council has established three lottery-based funds for production and development: the Premiere Fund, the New Cinema Fund, and the Development Fund. The film *Bend It Like Beckham* received £1 million from the lottery. There is also a Training Fund for scriptwriters and producer/filmmakers and a United Kingdom-wide First Light film production initiative for young people.[13]

Another lottery fund distributor is Scottish Screen, which is responsible for developing the film industry in Scotland.[14] It provides about £3 million per year for film production. Feature funding is available for up to £500,000 per project. Funds are also available for the production of shorts, script development, and other activities such as a script polish, preparation of a film schedule, budget and casting, and print and advertising costs. Funds of up to £75,000 are available as working capital for companies to support a slate of projects.[15]

In Ireland, filmmaking has been on the rise thanks to a good currency exchange rate and what is known as the Section 481 initiative.[16] Under Section 481 of the Revenue Code, producers can reduce their budgets by about 12 percent by selecting Ireland for location work.[17] In 2005, Section 481's cap on investment will be increased to 15 million euros from the previous limit of 10.48 million euros. Section 481 applies only to qualifying films, which are those deemed by the government to develop the Irish film industry and promote Irish culture.

Ireland also offers an artists exemption to people relocating to Ireland. Under this program, individuals who become residents are entitled, upon request, to tax-free income if the income is derived from the publication, production, or sale of books, screenplays, plays, and musical compositions deemed original and creative and possessing cultural or artistic merit.[18]

Ireland's relatively low 10 percent income tax rate provides a stimulus for foreign investment in Ireland. It can apply to film production companies, and film finance, distribution, and licensing companies located in designated areas. Certain double taxation agreements permit foreign owners to receive after-tax profits without incurring tax liabilities in their home country or allow them to defer further taxation.[19] When a double taxation agreement applies, dividends, interest, or royalties paid to an Irish company will incur minimal, if any, withholding tax. The tax rate payable by companies on Irish profits is 12.5 percent for 2003 and beyond.

Ireland has entered into coproduction treaties with Canada and Australia. In addition, the country has ratified the European Convention on Cinematic Co-Productions. The aims of this convention are to promote the development of European multilateral cinematographic coproduction, to safeguard the creation of works and freedom of expression, and to defend the cultural diversity of the various European countries.[20]

Elsewhere in Europe, Germany has promulgated incentives, though they are not designed specifically for the motion picture industry but are part of Germany's general tax law. An amendment to the German tax law in 1999 was responsible for the tax-sheltered film fund explosion that attracted scores of investors in the last several years. These funds offered investors in a film an immediate deduction of the entire invested sum for the film from their annual German income. By classifying the investors as "producers," the law allowed the investors a 100 percent deduction as a "business expense." This created an attractive climate for film financing, in which investors were less concerned with the economic performance of their films, and there were no legal or administrative restrictions on where or how the raised money needed to be spent.

Concerned with the increasing amount of local tax money directed toward foreign projects, the German government initiated a review of their media funds system and relieved an anxious film industry by putting to rest any concerns that the future of the funds might be in jeopardy. In a statement dated August 5, 2003, the German government validated the continued existence of the funds but detailed a reform of the relevant rules, including a stricter interpretation of the

circumstances under which an investor will be classified as a producer. Under the amended rules, an investor claiming to be a producer must be "in a position, both legally and factually, to determine essential aspects of production," particularly "plot, screenplay, cast, budget, film plan and financing."[21]

These amendments mean that decisions by investors must now proceed through an investor committee, which must be established after 50 percent of the fund's capital has been raised. Since many investors are inclined to invest during the last two months of each fiscal year, there will not be much time available before the end of the year for the investors to make project decisions. Of potentially greater concern is the possibility that increased investor participation could expose investors to liability. Since the fund's initiator traditionally assumed the risk of liability, private investors may find the new process to be unacceptable. Finally, by placing investors in the process of determining elements of a production, film producers will be forced to compromise their level of autonomy, a circumstance that is fraught with the potential for battles and other difficulties.

Favorable tax treatment is not the only lure that Germany provides for film producers. Germany also offers a national film fund as well as a large network of regional film funds for each state, with money accessible to producers on the condition that they reinvest the money in the region extending the funds.

Beyond Europe is Australia, whose federal government has offered a variety of incentives to encourage production in that country. Australia offers a tax offset for big-budget films (above AUS$15 million) shot in Australia. This benefit (known as 10B under the tax code) is equivalent to 12.5 percent of a film's qualifying Australian production expenditure. The offset amount is applied against Australian federal tax liabilities accrued in the production of the film, with any excess refunded. This program is not for low-budget independent films, and since the benefit is in the form of a tax credit, it does not provide actual cash to make the movie. Unless a bank or other lender is willing to lend against this tax offset, the producer has to find another way to finance production.

Several U.S. studios have taken advantage of the 10B tax offset for their movies, including *The Matrix*. However, the Australian government has been concerned that producers may no longer be eager to film in Australia after investors were denied deductions on two recent movies, *Moulin Rouge* and *Red Planet*, because of allegations of tax evasion.

The 10BA program aims to encourage private investment in culturally relevant, high-quality Australian film and television productions by providing an accelerated tax deduction of 100 percent in the year the investment is made. To be eligible, the film needs to be certified as a "qualifying Australian film." This means that the film is substantially made in Australia, or is an official coproduction, or has significant Australian content. Projects certified under this program can also apply for investment by the Film Finance Corporation Australia (FFC).[22]

The FFC received AUS$50 million from the Australian government for financial year 2002-03 to support a variety of Australian films, TV movies, miniseries, and documentaries. The FFC invests in projects that are cofinanced by private investors and/or other partners, such as a distributor. For feature films, the FFC will generally invest no more than 50 percent to 60 percent of the budget. The FFC requires producers to demonstrate that there will be a market for a project when it is completed. Consequently, as a prerequisite to providing financing, the FFC expects a producer to enter into one or more arm's length transactions with third parties, such as a television license, or guarantees, advances, or pre-sales from distributors.

Most government incentives available to non-Australian films are made pursuant to an official coproduction treaty. Australia has entered into such treaties with the United Kingdom, Canada, Ireland, Italy, Israel, France, and New Zealand.[23]

Producers may be eligible for various incentives offered by Australian state governments as well. For example, Queensland offers a payroll tax rebate, a cast and crew salary rebate (8 percent to 10 percent of weekly wages), an internship scheme (that pays for 80 percent of wages), and a traffic and fire services rebate.[24] Immigration laws in Australia are exacting, however, so a producer may experience difficulty in obtaining permission to bring in an actor from abroad.

Well before the massive success of *The Lord of the Rings* trilogy, New Zealand was interested in assisting films with local content as well as foreign productions that would spend large sums in the country. Private investors in New Zealand films can take advantage of special tax incentives available as a result of the Income Tax Act 1994. To qualify for these tax incentives, a film must first be certified as a New Zealand film. The New Zealand Film Commission is authorized to certify a film or television program as a New Zealand film if the film contains significant New Zealand content, as described in Section 18 of the New Zealand Film Commission Act 1978.

New Zealand also has adopted a Large Budget Screen Production Grant scheme.[25] The program provides a rebate for major film and television productions of 12.5 percent of their New Zealand-based expenditure. Major productions are defined as those spending at least NZ$15 million (US$10 million) in New Zealand. For productions spending between NZ$15 million and NZ$50 million, the New Zealand portion of the spending must also be at least 70 percent of total spending. Productions spending more than NZ$50 million are not subject to such a requirement. For television series, the average production spending in New Zealand must be at least NZ$500,000 per episode, with a minimum NZ$15 million required within one year of the commencement of the series. The program is administered by the New Zealand Film Commission. The scheme does not apply to documentaries, and it will be reviewed in 2006.

Production Incentives in the United States

With all of the efforts being made by foreign governments to enhance their own film industries and entice foreign productions, and the obvious impact these initiatives have had on U.S. domestic employment and spending in the entertainment industry, the U.S. government has been slow to respond. Unlike nations with significant programs for filmmakers, the United States does not provide specific tax benefits or incentives to encourage motion picture production. The United States also is not a party to any international coproduction treaties. Perhaps because U.S. films are such a successful export, generating more revenue than films exported from any other country, the federal government has not felt much need to assist or protect its producers. However, as the global marketplace for production has become increasingly competitive, there are indications that this hands-off policy may change.

Lawmakers have introduced legislation to create U.S. production incentives. One bill, the "U.S. Independent Film and Television Production Incentive Act of 2001," was designed to attack the problem of "runaway film and television production." The legislation aims to keep more production in the United States by creating a targeted tax credit for low-budget, independent film and television projects filmed in the United States. The bill proposes a wage tax credit for any public entertainment or educational motion picture film, television, or cable program—including miniseries, episodic television, movies of the week, or pilots—produced in the United States with total wage costs between $200,000 and $10 million. The credit would be a "general business credit" in the tax code, a dollar-for-dollar offset against federal tax liability in the amount of 25 percent of the production com-

pany's total wages and salaries.[26] This credit would only be available on the first $25,000 in wages per employee. When the bill was originally proposed, it did not move forward because there was no relevant tax legislation to which it could be attached.[27] The bill was re-introduced in 2003,[28] and in September 2003 it was referred to the Senate Committee on Finance.[29]

Despite the absence of federal incentives, numerous states have instituted programs to attract productions away from Southern California. New Mexico and Hawaii have been innovative leaders in this effort.

New Mexico offers producers a choice of two incentives. The first is a gross receipts tax deduction allowing filmmakers to avoid sales tax (of 5 percent to 7 percent, depending on the locality) for certain production costs, including those incurred for the script, talent, construction, wardrobe, sound and lighting, and editing, as well as location fees. Sales tax can be avoided for renting facilities and equipment but not for lodging costs, the rental of vehicles, or catering. Alternatively, a filmmaker can elect to receive a 15 percent film production tax credit. This credit applies against the filmmaker's New Mexico income taxes and to New Mexico-based production expenditures that are taxable in New Mexico. In order to qualify, production companies need to register with the New Mexico Film Office, and they may only take advantage of one type of incentive for each purchase. New Mexico also waives location fees for the use of its 800 state-owned buildings (including a now-shuttered 1940s era maximum-security prison facility). The state also is willing to invest in productions or loan funds to producers meeting certain criteria. Under the New Mexico Film Investment Program, up to $7.5 million can be invested in a New Mexico film private equity fund or New Mexico film project.

Hawaii recently enacted some very impressive and generous tax incentives. Hawaii's high tech investment tax credit provides a 100 percent return on cash investments in a qualified high tech business (QHTB) over 5 years (35 percent credit in the year of investment, 25 percent in the following year, 20 percent in the third year, then 10 percent each in the fourth and fifth years). Qualified research activities include performing arts products, such as motion pictures. The credit is designed to give a 100 percent return for investments up to $2 million per year per taxpayer. The credit applies only against Hawaii income tax liability. The credit can be taken by individuals or corporations paying Hawaii income tax, and by banks and insurance companies against their franchise and insurance premium taxes.[30] Studio movies made under the QHTB program include *Blue Crush* and *The Big Bounce*.[31]

California has attempted to address the issue of runaway productions with its own incentives. The problem with devising a program to encourage production in California is determining how to tailor it so that it attracts producers who are inclined to shoot elsewhere rather than subsidizing producers who intend to shoot in California notwithstanding any incentives.

Resource Guide for International Production Incentives

Australia

Australian Film Commission: http://www.afc.gov.au/filminginaustralia/taxfins/federal/fiapage_56.aspx
Film Finance Corporation Australia: http://www.ffc.gov.au/
Department of Communications, Information Technology and the Arts
(for information about 10BA and 10B taxation incentive schemes: http://www.dcita.gov.au

- State Government Incentives

New South Wales: http://www.fto.nsw.gov.au/fund.asp?id=193&content=2
Queensland: http://www.pftc.com.au/shootInQLD/tax_assistance.asp
South Australia: http://www.safilm.com.au/content.aspx?p=16
Tasmania: http://www.screen.tas.gov.au
Victoria: http://www.film.vic.gov.au
Western Australia: http://www.screenwest.com.au

Canada

Canada Revenue Agency: http://www.ccra-adrc.gc.ca/taxcredit/ftc/questions-e.html

- Provincial Government Incentives

Alberta: http://www.cd.gov.ab.ca/affta
British Columbia: http://www.bcfilm.bc.ca
Manitoba: http://www.mbfilmsound.mb.ca
New Brunswick: http://www.nbfilm.com
Newfoundland and Labrador: http://www.newfilm.nf.net
Nova Scotia: http://www.film.ns.ca
Ontario: http://www.omdc.on.ca
Prince Edward Island: http://www.gov.pe.ca and http://www.techpei.com
Quebec: http://www.investquebec.com and http://www.sodec.gouv.qc.ca (for dubbing tax credit)
Saskatchewan: http://www.saskfilm.com
Yukon: http://www.reelyukon.com

Ireland

Film Institute of Ireland: http://www.fii.ie
Irish Business and Employers Confederation: http://www.ibec.ie
Irish Film Board: http://www.filmboard.ie
Irish Film Board Incentive information: http://www.filmboard.ie/incentives.php
Irish Revenue Office: http://www.revenue.ie/services/film.htm
Minister for Arts, Culture and the Gaeltacht: http://www.ealga.ie
Tax relief for investment: http://www.boylandodd.com/film.html

New Zealand

Incentive information: http://www.filmnz.com/pguide/shooting/taxation/index.html
Film Commission: http://www.nzfilm.co.nz
Film Factory New Zealand: http://www.filmfactorynz.co.nz/film_factory_news.htm

United Kingdom

British Film Commission: http://www.britfilm.co.uk
British Film Institute: http://www.bfi.org.uk
British Film Office (Los Angeles): http://www.britfilmusa.com
The Film Centre (lists U.K. funding agencies): http://www.filmcentre.co.uk/faqs_fund.htm
Film Council: http://www.filmcouncil.org
Media Agency for Wales: http://www.sgrin.co.uk
Northern Ireland Film and Television Commission: http://www.nifc.co.uk
Scottish Screen: http://www.scottishscreen.com
Ingenious Media: http://www.ingeniousmedia.co.uk—**M.L.**

Under the Film California First program, which is not currently available, filmmakers could have received reimbursement of up to $300,000 for qualified productions that film on public property in California. Rebates were given for public labor costs and location fees for the use of public properties. The program reimbursed the cost of local law enforcement at a rate of up to $750 per day, with a maximum cap of $3,000 per production.[32] Reimbursements from the fund were on a first-come, first-served basis. The funds available fluctuated depending on annual allocations in the state budget. A production company was required to complete production before applying for benefits under the program.[33]

The State Theatrical Arts Resources (STAR) program provides filmmakers with the use of state-owned surplus, such as vacant buildings, at little or no charge. The properties that are available can be viewed online by the use of the CinemaScout locations database.[34] California also offers some other incentives. There is no state hotel occupancy tax. There are no sales or use taxes on production or postproduction services on motion pictures or TV programs. There is a 5 percent sales tax exemption on the purchase or lease of postproduction equipment for qualified persons. Recent Assembly Bill 2747 would create a 15 percent wage-based tax credit for the first $25,000 paid to each employee involved in California films with budgets between $200,000 and $10 million beginning in 2004, but its passage is far from assured.

It is still unclear what effect the election of Arnold Schwarzenegger as governor may have on runaway production. As the star of *Terminator 3: Rise of the Machines*, Schwarzenegger played an influential role in encouraging the producers of the film to shoot it in California. However, the state's fiscal crisis has made it difficult for the state to offer incentives in an environment in which massive cuts to existing programs are needed to balance the budget. As a result, the California Film Commission has been nearly gutted, and the existing Film California First incentive program has been discontinued. The program's fate, along with the Independent Film and Television Production Incentive Act, remains as unpredictable as next week's box office returns.

Production incentives in California and throughout the world frequently change, so it is important to gather the most up-to-date information regularly through direct contact with appropriate agencies regarding eligibility and rules and regulations and also through Web sites containing the latest details.[35] (See "Resource Guide for International Production Incentives," page 30.) One fact will remain unchanged: In the competitive and high-risk business of motion picture production, investors, producers, and government agencies worldwide will continue to rely on incentives to help themselves garner a share of the lucrative global film market. ■

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[1] THE CENTER FOR ENTERTAINMENT INDUSTRY DATA AND RESEARCH, THE MIGRATION OF FEATURE FILM PRODUCTION FROM THE U.S. TO CANADA AND BEYOND: YEAR 2001 PRODUCTION REPORT, *available at* http://www.ceidr.org.

[2] It can be difficult to characterize films according to nationality in an age of multinational corporations and producers with dual citizenship. For example, the *Harry Potter* movies are based on a book by an English author and shot in the United Kingdom with a British cast. Even so, they are produced by a U.S.-based studio and, therefore, considered to be U.S. films. Twentieth Century Fox is considered to be a U.S. company, but it is controlled by Rupert Murdoch, an Australian who became a U.S. citizen. Sony has Japanese owners, but it produces mostly English language films with U.S. actors. Universal has had successive owners from different countries: the United States, followed by Canada, Japan, and France. At present there is a merger pending with NBC, a U.S. company.

[3] Testimony of Jack Valenti, Executive Director, MPAA, before the U.S. Senate, Feb. 28, 2002, *available at* http://www.canadianembassy.org/trade/filmfacts-en.asp.

[4] By the fall of 2003, French films accounted for 42.3 percent of admissions compared to 47 percent for U.S. films. Fiona Vanier, *Market Share of U.S. Films in Europe Increases by 5%*, SCREENFINANCE, Oct. 22, 2003, at 5 [hereinafter Vanier].

[5] In 2003, Hollywood had captured 82 percent of the British market and 65 percent of the Italian market. In Germany, local pictures constituted approximately 18 percent of their own market. Japanese movies had an unusually strong year, with 40 percent of their market share. Local films in France secured 38 percent of the box office for the first 11 months of the year. In Spain, local movies captured 15 percent of their box office, but local Australian films grossed a mere 3.7 percent of their market. Elizabeth Guider, *Pix Suffer from Audience Deficit Disorder*, WEEKLY VARIETY, Jan. 5-11, 2004.

[6] Vanier, *supra* note 4, at 5. Because the origin of a film is not always obvious, for the purposes of this calculation, the two *Harry Potter* films each captured about 5 percent of the market and were considered U.S. films despite their distinctly British pedigree.

[7] Vanier, *supra* note 4, at 5.

[8] Steven Gaydos, *European Cinema*, WEEKLY VARIETY, Dec. 1-7, 2003, at 47.

[9] The Internal Revenue Service will certify U.S. residency using Form 6166, which is a computer-generated letter on Treasury Department letterhead. This document, and any application forms required by a foreign country, will need to be sent to the appropriate agency in the foreign country in order to claim the benefit of a tax treaty. *See* IRS Publication 686, *available at* http://www.irs.gov.

[10] Certain costs are excluded from this total, such as postproduction costs, amounts paid to key creative personnel covered by the point system, and legal, accounting, insurance, and financing costs.

[11] *See* http://www.bcfilm.bc.ca.

[12] Web sites offering information on British incentive programs include the British Council, http://www.britfilms.com; the British Film Commission, http://www.bfc.co.uk; the British Film Institute, http://www.bfi.org.uk; the UK Film Council US, http://www.britfilmusa.com; the Department for Culture, Media and Sport, http://www.culture.gov.uk; and The Film Centre (which lists UK funding agencies),

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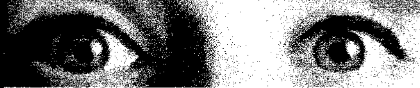

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http://www.filmcentre.co.uk/faqs_fund.htm.
[13] More information about the Film Council and the funds it administers can be found at http://www.filmcouncil.org.uk.
[14] For more information, *see* http://www.lotterygoodcauses.org.uk/scottishscreen.htm.
[15] *See* http://www.scottishscreen.com.
[16] *See* http://www.revenue.ie/publications/leaflets/it_57.htm. Section 481 was formerly Section 35.
[17] *See* http://www.filmboard.ie/template.php?id=9.
[18] The scheme guidelines are available from Michael Howard, Ext: 24106, Revenue Commissioners, Dublin Castle, Dublin 2, telephone +353 1 679 2777, fax +353 1 679 9287. *See also* http://www.revenue.ie.
[19] Ireland has entered into comprehensive double taxation agreements with Australia, Austria, Belgium, Bulgaria, Canada, China, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, India, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, South Africa, South Korea, Spain, Sweden, Switzerland, the United Kingdom, United States, and Zambia.
[20] Additional information on Irish incentives is available from the Film Institute of Ireland, http://www.fii.ie; the Irish Business and Employers Confederation, http://www.ibec.ie; the Irish Film Board, http://www.filmboard.ie, with incentive information at http://www.filmboard.ie/incentives.php; the Irish Revenue Office, http://www.revenue.ie/services/film.htm; and the Minister for Arts, Culture and the Gaeltacht, http://www.ealga.ie. For further information on tax relief for investment, *see* http://www.boylandodd.com/film.html .
[21] Hammonds, *Reform of the Taxation of German Media Funds*, *available at* http://www.hammonds.com/Default.aspx?sID=17&cID=20830&ctID=21.
[22] The 10B program is more liberal than 10BA in that it accepts more formats, including series, multimedia, and educational programs. It requires first ownership of the copyright to the production and offers a tax deduction over two financial years. 10B films are not eligible for FFC financing.
[23] For coproduction program guidelines, *see* http://www.afc.gov.au/filminginaustralia/copros/fiapage_2.aspx.
[24] *See* http://www.pftc.com.au/shootInQLD/qld_film_incentives.asp#payroll.
[25] For more information, *see* http://www.filmfactorynz.co.nz/FilmGrantGuidelines.DOC.
[26] In qualifying low-income areas, the credit would be 35 percent.
[27] *See* http://www.dga.org/news/pr_expand.php3?331.
[28] Senate Bill S1613, House Bill HR715.
[29] The text of Senate Bill S1613 is available at http://thomas.loc.gov.
[30] For additional information about Hawaii's tax incentives, *see* http://www.state.hi.us/tax/hi_tech.html.
[31] The grant of tax credits for *Blue Crush* was controversial because this Imagine/Universal production was already planning to shoot in Hawaii. The producers received an estimated benefit of $15 milllion to $18 million. Moreover, while the intent of this law was to build a movie industry infrastructure in Hawaii, Imagine and Universal shot the picture and left without putting down any roots. As a result, the tax department will no longer provide QHTB status for one-picture deals.
[32] *See* http://www.film.ca.gov *and* http://www.film cafirst.com.
[33] For additional information about California incentives, *see* http://www.film.ca.gov.
[34] *See* http://www.cinemascout.org.
[35] *See* Entertainment Legal Resources, *available at* http://www.marklitwak.com, for an extensive listing of domestic and worldwide production incentives.