<u>Revised Sec. 181 of the Internal Revenue Code allow for a dollar-for-dollar, 100% tax write-off</u>

<u>PRIMARY BENEFITS</u>:

Section 181

How this Revised Provision Can Lower Production Budgets and Keep Film and Television Production in the United States. On October 3, 2008, Congress approved an extension and modification of "Section 181" a federal tax incentive designed to combat runaway theatrical and television productions to Canada and Mexico throughout 2013, and can allow grandfathering.

Qualifying Film Expenses Immediately Deductible.

Producers or active financial participants in qualifying film and television productions may elect to immediately deduct the cost of qualifying film expenditures in the year the expenditure occurs.

Qualified film and television productions include any single (1) film or video tape production of a single (1) motion picture or multiple television show episodes whose costs would otherwise be required to be capitalized but for section 181. Each of the first 44 episodes, including the pilot production, of a television series are eligible and deductible as separate productions (no minimum TV episode time limit) under the law.

In the case of a film co-produced by multiple investors, the deduction for qualifying expenditures must be allocated among the owners of the film in a manner that reasonably reflects each owner's proportionate investment and economic interest in the film.

Qualified films do not include sexually explicit productions as defined in section 2257 of title 18 of the U.S. Code.

Qualifying Expenses Include the First $15 Million of Expenditures. The proposal applies to the first $15 million in production costs for qualifying film or television productions. This is a major expansion from the previous law which only applied to productions with production costs under $15 million.

Definition of Qualifying Production.

To qualify, at least 75% of the total compensation expended on the production must be for services performed in the United States. Qualifying compensation includes payments for services performed in the United States by actors, directors, producers, and other relevant production personnel for salary, 162 bonus, perks and life & health insurance. Compensation does not include participations and residuals.

A higher expenditure cap of $20 million applies to productions the aggregate costs of which are "significantly incurred" in: a) areas eligible for designation as a low-income community under the New Markets Tax Credit program,1 or b) areas eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress. A minimum $1,000,000 production budget is required.

As defined by the New Markets Tax Credit program, qualifying low-income communities include any census tract if (a) the poverty rate for such tracts is at least 20%; or (b) (1) in the case of census tracts not located within a metropolitan area, the median family income for the tract does not exceed 80% of statewide median family income, or (2) in the case of a tract located within a metropolitan area, the median family income for the tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income. Information on qualifying communities can be found at: http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 A list of areas eligible under the Delta Regional Authority statute as distressed counties or isolated areas of distress are at: http://www.dra.gov/site-map/?aspxerrorpath=/about/maps.aspx

The IRS temporary regulations (T.D. 9312) outline two alternative tests to determine if costs are "significantly incurred" in qualifying low-income areas. The first test is based upon production costs and establishes a 20% threshold for the test. It compares production costs incurred in first-unit principal photography that takes place in a designated area to all productions costs incurred in first-unit principal photography.

This does not include preproduction, editing and post-production costs. The second test is based upon the number of days of principal photography. If at least 50% of the total days of principal photography take place in the designated area, the production will be deemed to satisfy the significantly occurred test.

FREQUENTLY ASKED QUESTIONS

Q: What is Section 181 – The "Runaway Production" Federal tax incentive?

A: Section 181, which was first enacted by Congress in 2004, was extended and modified as part of the financial rescue package recently passed by Congress and enacted into law on October 3, 2008. It was extended for one year for qualified productions that begin the first day of principal photography before January 1, 2013. Importantly, it was also significantly modified so that the first $15 million ($20 million in the case of productions in certain low-income and eligible areas of the country) of film and television may be immediately written-off for tax purposes. This now makes the incentive available for film and television productions of all sizes, small or large. In addition, the new rules are retroactive for all productions commencing after December 31, 2007 and through 2013, unless renewed by Congress.

Q: When do productions need to commence to qualify for the new incentive?

A: The incentive, which is ongoing since 2004, has now been broadened to include qualified productions commencing after December 31, 2007, and before December 31, 2013 (unless principal photography is already underway).

Q: Can the immediate write-offs be taken in more than one year?

A: Yes, if an election is made to use the incentive, the immediate deduction takes place in the year the expenditure is incurred. Therefore, if production expenditures are incurred in more than one year, the immediate tax deduction will be taken in more than one year.

Q: When, where and how does the "election" to immediately deduct the qualifying expenditures apply?

A: The election is to be made on the tax return for the taxable year in which the production costs are first incurred. The election must be made by the due date (including extensions of time) of such return.

Q: What tax form do I need to fill out to get the incentive?

A: Currently, there is no specific form to fill out. The IRS temporary regulations require that you declare in a separate statement that you are electing to utilize Section 181. The legislative history also states that: "deducting qualifying costs on the appropriate tax return shall constitute a valid election." Therefore, deducting the production costs (that would otherwise be capitalized) on your tax return will qualify as electing to take advantage of this incentive.

Q: Does it apply to all productions (e.g., big budget productions)?

A: Yes, as mentioned above, the immediate write-off provision now applies to the first $15 million (or $20 million in low income or distressed areas) of costs for all productions regardless of the aggregate cost of the project.

Q: What is the real benefit of this incentive?

A: This is a significant Federal tax incentive that allows producers of qualifying productions to take an immediate tax deduction for the full or partial costs of a production in the year the cost is incurred (as opposed to having to spread or amortize those costs over a period of years beginning after the film goes to market).