

Runaway Film Production: Special Rules for Certain Film and Television Productions in H.R. 4520

FROM THE WEBSITE OF THE DIRECTORS GUILD OF AMERICA
(http://www.dga.org/thedga/leg_rp_updte-101104-a.php3)

Purpose: To encourage film and television production in the United States in response to an aggressive effort by other nations to steal U.S. jobs by luring away U.S. produced film and television productions with a variety of incentive programs.

Background: Today, a number of countries have enacted incentive programs to attract U.S. film productions as a means of creating local jobs. Those incentive programs are designed to lower the cost of producing a film or television production. Canada accomplishes this through a tax credit that is paid to producers based on the cost of hiring Canadian workers. The UK, Germany and other countries accomplish this by permitting the immediate write-off of film production costs which attracts investors tempted by the tax savings that can be realized through large deductions. Through either approach, it is possible to reduce the costs of production by approximately 7% to 15%.

HR 4520 Provision: Under the provision in the FSC/ETI Conference bill, a category of film and television productions, which are most likely to runaway to other countries, would be eligible for a tax incentive program. Under this program, the cost of production of qualifying films would be permitted to be immediately expensed – that is, fully deducted from income for tax purposes – in the year the expenditures occur. This would be in contrast to current law, where the cost of producing the film is usually recovered over a period of several years. This ability to immediately deduct costs from income will serve as a means of attracting investment capital into production where a portion of the tax benefits will flow through to reduce the cost of the production.

Specifics:

1. The cost of qualifying film and television productions would be permitted to be immediately written-off for tax purposes in the year the expenditure occurs in lieu of using the income forecast method for amortizing the costs of films.
2. The proposal applies only to qualifying film or television productions the aggregate cost of which does not exceed \$15 million.
3. A higher expenditure cap of \$20 million would apply to productions located in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress.
4. See: Description of the Chairman's mark for the Conference Committee on HR. 4520 (*Special rules for certain film and television production: Present Law*)
5. Qualified film and television productions would be limited to any production of a motion picture (whether released theatrically or directly to video cassette or any other format); miniseries; scripted, dramatic television episode; or movie of the week. Only the first 44 episodes, including the pilot production, of a scripted dramatic series would be eligible under this Act.
6. To qualify, at least 75 percent of the compensation expended on the production must be for services performed in the United States.
7. Qualified films would not include sexually explicit productions as defined in section 2257 of title 18 of the U.S. Code.
8. These provisions would be in effect for qualifying productions started after the date of enactment and sunsets for qualifying productions commencing after December 31, 2008. The Commerce Department would be directed to report by December 31, 2006 whether the provision materially aided in retaining film productions in the U.S.