ANA

U.S. Commercial Production Tax Incentives

Many states offer financial production incentives to advertisers which shoot commercials in their states. The savings can be quite significant, often ranging from 10 to 40 percent of qualified production spending in that state. The purpose of this paper is to provide an overview of these incentives, outline the process for participating, and make advertisers aware of these incentives. Commercial production tax incentive programs are designed to provide economic stimulation and promote growth and job opportunities for the residents of a particular state.

Tax incentive programs started to appear about 30 years ago in the feature film and television industries to keep U.S. productions from going offshore for lower costs. Not all states offer tax incentives, and not all states which offer tax incentives to the advertising industry are equal. Typically, rules governing tax incentives are written into law, and have their own qualification structure, requirements, schedules, and minimum and maximum spending limits. Tax benefits to the advertiser can come in different forms, including transferable tax credits, rebates, refunds, tax exemptions, and free goods and/or services.

Three Types of Returns

1. Refundable Tax Credit
   - Complete application and audit review of qualified spend
   - Some states require tax filing for state income tax; others don't
   - Depending on state, may be used to offset local income tax. Some states may also allow one to buy back the credit at an established rate
   - If a tax return is required, the refund will be reduced by any state taxes owed
   - May need applicant to register as a "doing business as" (DBA) in the state
2. Transferable Tax
   - Complete application and audit review of qualified spend
   - Transferable (may be sold to businesses or individuals with tax liabilities; 80 to 90 cents/dollar)
   - Proceeds come back to party which filed (production company, agency, advertiser)
3. Rebates/Grants
   - Complete application and audit review of qualified spend
   - State film office issues a check to applicant after approval

U.S. COMMERCIAL PRODUCTION TAX INCENTIVES

Refundable tax credits offer the largest opportunity for advertisers. These can net back 10 to 40 percent of qualified spend depending on specific state eligibility requirements, which must be met to pursue the incentive. Eligibility falls into certain categories:

- **Qualifying Expenditures:** There is a specific list by state of what items may qualify as part of the program. The amount of the credit will equal the percentage of "qualified" expenditures.
- **Production Types:** States vary in what production types qualify. While many states favor feature film and television productions, commercials can still qualify. Some will also cover online videos, social videos, tabletop gaming, and animation production.
- **Fees:** Some programs come with pre-determined fees and process mandates which will affect the net return. The most common are application, filing, and/or accounting fees.
- **Minimums:** Most programs have minimum in-state expenditures to qualify for incentives (e.g., $50,000 in Illinois). Some may have a minimum percentage of principal photography being filmed in the state to qualify (e.g., 75 percent in Massachusetts). It is important to note that qualified spend can be inclusive of all work performed in the state, not just production costs. For example, in Illinois, the $50,000 minimum qualified spend can be inclusive of production, photography (with live action), talent, and post/edit if all done in the state of Illinois.
- **Caps/Limits:** Programs may have caps on overall annual incentive allocations. Check in advance to make sure the funds are still available.
- **Sunset:** Certain programs have expiration dates, after which funds may be unavailable.

Not every project is appropriate for shooting in an incentives state, but each project should be evaluated during the creative conception phase for incentive potential. The most generous program may not necessarily be the best fit. It is important when considering shooting in an incentive location to assess:

- **Production Schedules:** Most of the programs need upfront consideration to ensure you are following all application procedures. Build the time in the schedule to meet required deadlines.
- **Production Infrastructure:** Returns are calculated on the amount of in-state spend. The more items (crew, equipment, etc.) you need to bring in from out of state, the smaller the qualifying spend (although some states will allow for out-of-state crew to qualify).
- **Talent:** Some states will allow out-of-state talent to qualify, including celebrity talent. An assessment should be done to understand all factors and limitations before application.
- **Creative Needs:** A client's creative needs should still be executed to the highest level, irrespective of location. How will local weather, terrain, production crew expertise, and talent availability affect this creative product?

U.S. COMMERCIAL PRODUCTION TAX INCENTIVES

Unlike the feature film and television industries where the producer is the copyright holder, in the advertising industry, the client is generally both the copyright holder and financier of the production and is therefore the "producer" (unless a unique licensing scenario is present). All discussions regarding the incentive filing, and how the credit is realized and distributed, are at the client's discretion. Including language in production guidelines outlining ownership of incentives, as well as a process for pursuing opportunities, is strongly suggested to ensure clarity and success. Otherwise, it is possible for the production company or agency to file for the incentive, sometimes without the knowledge or permission of the marketer. This can create a lack of transparency for where the money ultimately goes. Even when partners offer a discount in exchange for keeping the incentive, the benefit for advertisers is far greater if they keep it themselves.

It is imperative to name a point person who will follow through with the application and administrative details. Depending on state requirements and the type of return, there could be various options as to who can file and oversee the incentive on behalf of the advertiser, including the production company, creative agency, advertiser, or third-party facilitator. Parties should collaborate on the best approach to ensure they are maximizing the credit. In some instances, especially when an in-state legal presence is required, a third party may be best suited to manage the incentive process. In addition, some states require that all eligible production costs run through a local resource to qualify. Fair compensation to the point person/company filing is suggested, and that is at the discretion of the advertiser.

Please note that a credit won't necessarily lower the cost of the current production immediately — it can take six months to more than two years from the time of production to monetize an incentive. However, while the application can be complex and time-consuming, the payoff can be in the hundreds of thousands of dollars. The return and benefits can be significant, and if properly planned and executed, incentives can net back sizeable returns: up to 40 percent of production, talent, and other qualified in-state spend.

It is important to define a plan for how the advertiser is set to receive the funds as soon as possible. Since it may take six to 24 months to receive the tax benefits, it is not always feasible to align the rebate to the project within the fiscal year. Because applications with the states are time-sensitive (you must apply prior to production), there is opportunity to apply and workshop internal process after initial deadlines are met. Things to consider:

- ✓ If the client is not the filer, determine how the funds will be returned to the client.
- ✓ Will the credit be monetized and brokered, or will the client use the tax credit to offset their tax liability in that state?
- ✓ Will and/or how does the credit come back to the client's marketing budget?

NOTE: State legislatures and government entities may change the details of their commercial production tax incentive programs at any time. Be sure to identify the most up-to-date information from the appropriate state entity, or from an informed third party.

U.S. COMMERCIAL PRODUCTION TAX INCENTIVES

Key Takeaways

- Production incentives can result in cash savings to the advertiser.
- The best time to consider incentive opportunities is upfront in the creative development process, well before pre-bid.
- You must apply for an incentive prior to production.
- Third parties can help advise and execute on these opportunities, as well as help navigate internal processes.
- Savings can take time, but there is opportunity for immediate savings through incentive financing.

Previous work the ANA has done on this topic:

- **The Found Money of State Commercial Production Incentives**, April 2012
- **State Commercial Production Incentives – Principles for Fair Business Practices**, April 2014

Acknowledgements

We would like to recognize the following members and companies for their support of this report on state commercial production incentives:

ANA Production Management Committee Co-Chairs
Brendan O'Malley, Senior Manager, Broadcast Production at Verizon
Kristin Schaack, Senior Manager, Creative Producer at Target

Advertising Production Resources (APR) is a women-owned and women-led content creation optimization consultancy that oversees over $1 billion in annual production spend and agency fees for more than 70 advertisers around the globe. With hands-on production backgrounds in TV, print, OOH, digital videos, web, mobile, social, and experiential marketing, our team of over 200 members around the world collaborates with advertisers and their creative resources to establish best practices and locate efficiencies in their content creation ecosystems. Our integrated approach and world-class benchmarking drives innovation, improves production acumen, and increases return on investment for all of our clients.

Landgraf Consulting Group specializes in advertising production cost reduction. We work with advertisers and ad agencies to maximize production investments by applying our rich and diverse industry intelligence to your process or project. Strategizing and executing tax credit rebates is only one of the many creative cost savings opportunities we offer our clients.

At **TPC**, production incentives are what we do. TPC's mission is to make U.S. state production incentives easily accessible and effective for all advertisers, regardless of size or scale. Our advocacy has improved state program accessibility while our education and administration has secured more than $100 million in U.S. production incentives directly for advertisers. Combining in-depth production knowledge, program expertise, and familiarity with state rules and regulations, we facilitate maximized returns while minimizing brand involvement. These efforts have ranked TPC as the industry's most recognized and trusted authority on production incentives year after year since 2009.

Commercial Production Tax Incentives by U.S. State And Territory

Many U.S. states and territories offer production tax incentives, but not all of them offer commercial production tax incentives. Those listed below offer commercial production tax incentives. The links were compiled by the ANA and last checked on December 19, 2022.

ALABAMA

COLORADO

CONNECTICUT

DISTRICT OF COLUMBIA

GEORGIA

HAWAII

ILLINOIS

LOUISIANA

MAINE

MARYLAND

MASSACHUSETTS

MINNESOTA

MISSISSIPPI

MONTANA

NEVADA

NEW MEXICO

NORTH CAROLINA

OHIO

OKLAHOMA

OREGON

PENNSYLVANIA

PUERTO RICO

RHODE ISLAND

SOUTH CAROLINA

TENNESSEE

TEXAS

VIRGINIA

WASHINGTON

December 2022