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Think Tank: Oregon's Rich Reap Profits Through Film Credit Scheme

by Amy Hamilton

Summary by taxanalysts

Wealthy Oregon taxpayers are buying film production tax credits worth $100 for every $90 to $95 spent, guaranteeing them 5.3 percent to 11.1 percent in gains, according to an issue brief released February 8 by the Oregon Center for Public Policy.

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"We use the word 'scheme' in the report, and it is a scheme," Chuck Sheketoff, the center's executive director, told Tax Analysts. "You can walk into a bar, or go to a sporting event -- other than the suite boxes -- and just ask anyone on the street in Portland how to invest in film subsidies, and no one would know. It's a very small group of wealthy taxpayers and their accountants who know about this. They get in line, they buy these, and they make easy money."

The state established the Oregon Production Investment Fund to provide direct rebates instead of tax-based subsidies to film and television producers. That fund is financed by donations from private Oregon individuals; in return, the donors get a $100 tax credit for every $90 to $95 they contribute, depending on the rate in effect at the time of the contribution.

"In that sense it's a 'voluntary' system offered to individual Oregon taxpayers who see value in bringing in film productions to Oregon; otherwise the state's tax dollars will not be funding the tax credit," according to the Oregon Film and Video Office, which administers the fund and credit.

The center is calling on the Legislative Assembly to let the current form of the credit expire and instead provide film production subsidies directly through the general fund or lottery fund.

Meanwhile, Gov. John Kitzhaber (D) has recommended that the 2011 Legislative Assembly extend the subsidy program through 2017 and increase the amount that can be provided in credits from $15 million to $35 million for each two-year budget cycle. (For coverage, see *Doc 2011-2700*.)

"From the beginning, we decided we wanted to be in control of the tax credit sales and transactions," said Vince Porter, executive director of the Film and Video Office. "In other states, it's traditionally been the case that when a film company gets a tax credit, they then sell it to local individuals or businesses that have a tax liability in the state -- and they sell it at a discount as low as 75 or 80 cents on the dollar.

"Other states have tried to be more in control of that rate so that people selling the credits are making less of a profit. We're selling them upfront so people are buying them at 95 cents on the dollar."

He noted that by statute the state is allowed to sell the credit for as low as 90 cents on the dollar but that over the last two years, it has sold them for 95 cents on the dollar. "If it was a scheme to make the rich wealthier, we would have kept it at 90 cents and everyone could make more than a 10 percent profit," Porter said.

"Oregon said we're not going to have wild sales of these credits," Sheketoff concurred, "but Vince Porter, in his infinite wisdom, said the minimum profit is going to be 5.3 percent."

Yes, Sheketoff said, the statute sets a potential maximum profit at 11.1 percent because the office can sell the credit at a low of 90 cents on the dollar. But Porter, Sheketoff said, established a minimum profit guarantee. "He said we're going to charge you no more than 95 cents, so by rule he is guaranteeing a 5.3 percent profit when there is no such guarantee by statute," Sheketoff said.

The issue brief released by Sheketoff's group provides the example of Mark and Greg Goodman, prominent Portland businessmen who each contributed more than $427,000 to the film production fund in 2008. This resulted in tax credits of over $475,000 each.

"As a result, Oregon taxpayers paid each Goodman about $47,000 profit just for being the middlemen in funding the subsidy program," the brief says. "Cutting out the Goodmans' credit and using a direct appropriation would have been more efficient. An appropriation of $854,000 in general fund or lottery funds would have accomplished the same thing for the film industry while preserving about $94,000 for other public purposes."

"It's ridiculous," Sheketoff told Tax Analysts. "If this tax credit were a movie, it would be XXX rated." He said that when the legislature expanded the yearly cap from $5 million to $7.5 million for tax year 2010, the additional $2.5 million that became available on July 1 in film production tax credits sold out in 15 minutes, a fact confirmed by Porter's office.

Sheketoff said that right now the most Porter's office can get to subsidize film or television production is $14.25 million instead of $15 million per two-year budget cycle, because his office is giving a minimum $750,000 in profit to the taxpayer investors. "The legislature could just appropriate $14.25 million and not make this handful of fortunate taxpayers that much more fortunate."

Porter, meanwhile, said changing the film subsidies to general funding or lottery funding would limit the state's ability to recruit new film and television productions. The office has already recruited enough production business to take the maximum amount the fund is able to distribute in rebates, so any companies interested in coming to Oregon would be discussing rebates that wouldn't be available until next year, he said. "With general funding we just wouldn't be able to have these conversations with a film company; there'd be no assurance at what level it would be funded. So that's the big challenge for us, for about six months every two years, we would not be able to actively recruit."

Sheketoff strongly disagreed. Porter, he said, "has no certainty of long-term commitments from any TV show. Hollywood has made no commitment to Oregon. In fact, [the television series] *Leverage* extended its season knowing the tax credit program had a sunset."

Leverage has brought more than $178 million to the state and hired 471 locals to work on the show for more than 200,000 hours, Porter said. The producers made the decision to go with Oregon on a Friday, signed leases by the following Tuesday, and had production crews working within six weeks.

"The one thing I want to point out is that the vast majority of those people are affiliated with a union or guild that requires a company to make a contribution into their pension, health, and welfare fund," Porter said, adding that the show provided almost $1.9 million in pension, healthcare, and welfare payments.

Oregon's union movement is vocally supporting the governor's expansion of the credit. According to the state's AFL-CIO, the credit stands out for its extensive tracking and reporting of jobs created and for its strong record of bringing money into Oregon.

Sheketoff said his center is trying to set up meetings with the state's AFL-CIO to see if it would recognize it might want to bifurcate its analysis. "You might like the subsidy, but is it funded the right way?" Sheketoff asked.

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