ANA

The Found Money of State Commercial Production Incentives

Many states now offer financial incentives to advertisers to shoot commercials in their states. Although such incentives originated about ten years ago, more recently they have expanded to additional states and have become increasingly attractive to advertisers. The savings can be quite significant, often ranging from between 15 to 30 percent of 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 that there is competition to acquire this incentive money.

"All advertisers should be aware of the benefits of state commercial production incentives and the opportunities to positively impact production budgets."

Valerie Light
Broadcast Production Manager
Verizon
Co-Chair, ANA Production Management Committee

Background

Pure and simple, production incentives help states create jobs and attract investment. Their long-term desire is to encourage infrastructure investment so that filmmaking (feature films, television programs and commercials) becomes an integral component of a state's industry and tax base. Several studies, by firms including Ernst & Young, show that for each production incentive dollar spent, some multiple of that dollar (e.g., four to seven times) is created in economic activity in the state where the project takes place.

The film and television industries have historically benefited greatly from these state production incentives. The incentives are clearly geared to reward companies for making the decision to produce in a particular state. Incentive programs target the companies that fund productions and give final approval on the shoot location. In the feature film arena, the largest recipients of these incentives are the major motion picture studios. More recently, advertisers have been participating. Savings can be achieved without sacrificing quality, as many states have been very successful in building the production infrastructure required by the industry.

"Shooting in a production incentive state can give advertisers the opportunity to put more of their production dollars up on screen, while simultaneously investing in local economies."

John Lick
Executive Producer, Broadcast Production
Target Corporation
Co-Chair, ANA Production Management Committee

Expenses That Qualify for State Production Incentives

States base incentives on hiring as many locals and purchasing/renting as much as possible from local vendors. Typically, all expenditures incurred in the state related to pre-production, production, and post-production qualify for state production incentives, although specifics vary from state to state. These items can include:

- Labor expenses associated with crew and talent for work performed in the state
- Agency labor as it relates to the project, if the agency is located in the selected incentive state
- Location fees, sound stages
- Set design, set construction, props, lighting
- Purchase/rental of production equipment, production software
- Insurance purchased through in-state vendor
- Wardrobe, makeup, makeup accessories
- Airfare purchased through in-state travel agency or company
- Meals and lodging for people working on the production
- Vehicle rentals
- Film processing
- Post-production work, post-production equipment, post-production software
- Editing, sound mixing
- Special effects, visual effects, audio effects
- Music

None of the states prohibit bringing in out-of-state directors or talent; however, those expenditures would most likely not be considered allowable expenses for state production incentives.

The general rule of thumb is that the more the advertiser spends in the state, the greater the potential savings from the incentive.

"Investigating the feasibility of shooting your TV commercial in an incentive state should be part of every advertiser's standard operating procedure. The tangible benefit is much-needed dollars that brands can funnel back into their campaigns and the risk, when managed properly, is negligible."

Barbara Vollrath
Category Strategy Manager, Creative Agencies
Pfizer Inc.

The Process

Marketers are encouraged to exercise due diligence regarding production incentives and determine whether or not they wish to pursue them. Marketers should also be aware that the requirements of incentive programs can vary significantly from state to state. The necessary steps to go about this are:

Step 1: Most jobs, if not all, should be evaluated for the potential to shoot in an incentive state. Shoots that require particular scenery, weather, or talent may not be appropriate. In many cases, the potential to shoot in an incentive state can be determined at the pre-bid stage, before the job is bid out to production companies. If a brand's agency does not have in-house expertise, consultants are available to provide this service. Of course, the advertiser must consider not only the potential savings but also any additional expenses, including travel costs and the extra effort required to pursue the incentive.

Step 2: If a decision has been made at the pre-bid stage to shoot in, or seriously consider, an incentive state, then the job spec requirements from the agency to the production company should specify that at the bid stage. Further, the contract between the agency and the production company should explicitly stipulate that the production company is mandated to abide by all state laws and requirements for the state incentive and to provide all requested documentation.

Step 3: During the bidding stage, the production company should be provided a list of guidelines so that the company purchases/rents items in a manner that will qualify the expenditures for the incentive. Examples include purchasing airline tickets from a travel agent located within the target state and renting equipment from local vendors. It is imperative that the client receive confirmation that the production company understands and will comply with the required guidelines. These decisions could affect their bid.

Step 4: At the shoot stage, the crew will be required to provide, along with all start-of-employment paperwork, proof of residency for those states requiring such proof. In many states, personal service corporations, also called loan-out corporations (i.e., corporations set up to loan out the services of talent, directors, DPs) will be required to be registered or incorporated in that state and pay appropriate state withholding to qualify for the incentive.

Step 5: Upon completion of the shoot, the agency and client must provide copies of travel expense reports. Many of those expenses will qualify for the incentive; what specifically qualifies varies from state to state. In addition, the agency must provide proof of payment for expenditures such as talent session fees, residuals for talent (for states in which those items qualify), post-production expenses and music if performed in the state. As the required paperwork is collected from the agency and production company, the advertiser may be contacted for clarification or to help speed up the process. The advertiser may also be required to post the state's logo somewhere on the company's web site in order to qualify for the incentive. Once the audit is complete and the state approves the incentive, the advertiser will usually receive compensation for the incentive within a year, depending on the state (some states require filing at year-end).

The list of states that offer commercial production incentives and the specific details for each state are continually evolving. Commercial production incentives are currently available from Alaska, Connecticut, Florida, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, New Mexico, North Carolina, Oklahoma, Pennsylvania, Puerto Rico, Texas, Washington, and West Virginia. California and New York—two long-time commercial production centers—have active state film offices but do not offer commercial production incentives that advertisers can utilize. While there may be other states that offer commercial production incentives, those with overly complicated processes have not been included in the aforementioned list.

All states are different—with different rules, application processes, and ways of inadvertently having the incentive disqualified, in part or in total. As with all state laws, the regulations can change rapidly, so having current information is critical. One resource available to help stay up to date on the various state policies is The Official Guide to United States Production Incentives at www.easecommercial.com.

"Production incentives are another tool that marketing procurement professionals can add to their tool box. Where appropriate, they can help optimize production investments without impacting creativity."

Johnson & Johnson

Sal Vitale
Category Management, Agencies
Johnson & Johnson

Case 1

Two professional athletes were engaged for a shoot. The location options were a non-incentive state and Chicago. Since one of the athletes was an Illinois resident and would qualify for the incentive, the advertiser selected Chicago. With a production budget of $492,000, the advertiser was able to secure a net savings of $121,000 (25 percent) by qualifying the fee paid to the celebrity talent in addition to the production costs.

Case 2

The advertiser intended to shoot in New York, with a production budget of $1.3 million. By crossing over into Connecticut to a stage still within the union zone (and therefore not incurring union travel time), a net savings of $200,000 (15 percent) was realized.

Whose Money Is It?

Production incentive rebates belong exclusively to the advertiser, not the production company or the agency. These rebates are assets associated with the advertiser and its trademarks and should be guarded like all other assets.

As noted above, the film and television industries have historically benefited greatly from these incentives and more recently advertisers have begun participating. States were initially slow to realize that in the advertising world marketers give the final approval on production recommendations as it's their money being spent. In many states, the initial production incentive legislation allowed only production companies to file for rebates; but some states have since realized the flaws in that requirement and more now allow the advertiser to file. It is clearly not the intention of any state to pay production incentives unbeknownst to advertisers for commercials they funded.

The AICP (Association of Independent Commercial Producers) is the trade association representing production companies. Marketers should be aware that AICP has advised its members that their position is that "production companies should receive the FULL benefit of the incentive." ANA vigorously disagrees with that perspective as commercial production is funded by the advertisers. (It is recognized that there is extra administrative work/bookkeeping required from the production company and therefore an incremental fee should be added to the budget so that the production company does not incur an unreimbursed expense.) It is the advertiser who funds the production and gives final approval on the shoot location, not the production company.

Importantly, contracts with agencies and production companies should be written to reflect the fact that any production incentive associated with the work covered by that contract is the sole property of the advertiser.

"In the course of doing business, we always explore options to produce in incentive states, all other things, including production quality, being equal or better. The incentives frequently influence the decisions we make about where to direct our production projects."

Debra Giampoli
Director of Global Strategic Agency Relations
Kraft Foods, Inc.

Summary

State commercial production incentives represent a meaningful opportunity for advertisers and states. It's a win-win situation. States have invested time and capital in creating these incentives to woo advertisers to shoot commercials in their state to help build their economies. Advertisers have a fiduciary responsibility to evaluate the use of these incentives. It is the advertiser's money and the advertiser's ultimate choice as to the selection of a production location. Advertisers should guard the financial incentives associated with their trademarks and copyrights. Utilized fully, these incentives can help significantly stretch marketing budgets.

Acknowledgements

We would like to recognize the following companies for their support of ANA's position on state commercial production incentives.

- Advertising Production Resources (APR)
- Bird Bonette Stauderman
- Ease Commercial Services
- Ernst-Van Praag
- The Landgraf Consulting Group
- Madison Advertising Management
- Mavis & Co.
- MBc services
- MRA
- Triad Consulting Corporation

April 2012