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# Curing Runaway Production:
## *Solutions Are Easy; Finding Legislators Willing To Implement Them Is Hard*

By David Albert Pierce, Esq.

"Runaway Production" is a term referring to film or television productions conceived in California, but shot out of state for economic reasons. Productions leave California to take advantage of "natural" and "artificial" economic conditions.

"Natural" economic conditions concern things such as the ease of shooting in a state that has a particular location that is ideal for the film, or that has a lower cost of living, which would lower overall production costs. Similarly, certain economic conditions exist in Los Angeles which do not exist elsewhere rendering filming elsewhere somewhat more advantageous. For example: sophisticated L.A. homeowners will demand top dollar for use of their property as a filming location whereas the novelty and excitement of having a film crew shoot in their backyard may often lead remote location owners in other states to provide their locations for free or steep discounts of what would be the "going rate" in Los Angeles. Also, unions based in Los Angeles tend to police local productions for union compliance with greater frequency and scrutiny then productions that may be more remote (this also causes a vicious cycle as the more productions that flee California, the higher the unemployment rates among union members and thus the vigilant unions become to seek a foothold in low budget films which might in the past have otherwise escaped the union's attention).

"Artificial" economic conditions concern things such as leaving California to shoot in another state or foreign country in order to take advantage of legislatively created (or artificial) financial incentives. Tax incentives are the predominant economic advantage that legislatures offer to lure productions to their respective jurisdictions. A total of 43 states and territories offer incentive programs in the form of either tax credits or tax rebates.

## The Adverse Effects of Runaway Production

According to the Milken Institute, in the year 2000, 272 movies were either fully or partially shot in California. In 2008, that number fell to 160. While this decrease can be attributed to multiple factors, the erosion of the Hollywood hegemony began in 2002 with the advent of state production tax incentives in other locales. These aggressive incentive programs and campaigns implemented by other states and foreign governments have attracted both high and low budget productions that are hoping to partially fund their films with monetary sources other than equity or debt.

In 2002, Louisiana and New Mexico became the first states to offer aggressive production incentive programs. Louisiana's program triggered an increase in the number of films shot in the state - from one film shot in the state in 2002 to 118 films entirely or partially shot in the state in 2010. Between these years, in-state production expenditure increased from $3.5 million in 2002 to $674.1 million in 2010. By 2005 Louisiana and New Mexico had skyrocketed into the top ten states for production revenue. As a result of the wild success of these programs, other states created incentive programs. The Los Angeles Times reported that in 2005, only 15 states had enacted programs, but by 2010 that number had increased to 43 states.

California is still the number one destination for filming and production in the United States. The Los Angeles County Economic Development Corporation reported that in 2009, the California motion

picture and video industry total economic output was $48.5 billion and represented a 59.2% domestic market share. The third quarter of 2013 saw the third straight period of growth for California's production industry, with nearly a 10% increase in production over the third quarter of 2012. However, the types of productions shooting in California are shifting; Los Angeles is seeing production increase, but rather than the return of high economic value television and film productions, the numbers reflect a multiplicity of new media and Internet productions.

There is no ignoring the tremendous loss in in-state monetary expenditures related to film production and the correlating tremendous loss to California's tax base. Productions are departing from California at an increasing rate as the incentives elsewhere become more aggressive and enticing. In recent years, Louisiana increased its tax credit to 30%, attracting films like *The Twilight Saga: Breaking Dawn II*, HBO shows *True Blood* and *Treme*, and FX's *American Horror Story Coven*.

Likewise, Georgia's 2008 Entertainment Industry Investment Act offers a 20% tax credit of all production costs for productions that spend more than $500,000 in the state. Like Louisiana, Georgia recently increased its maximum tax credit to 30%. The program gives an additional 10% to productions that display the Georgia entertainment logo in their credits. In 2011, Georgia had 24 films and 25 television series shot in the state. Last year, the Jackie Robinson bio-pic *42*, Clint Eastwood's *Trouble with the Curve*, and three Tyler Perry films shot in Georgia.

North Carolina ranks fifth in production revenue, according to its state film commission. North Carolina hosted the production of 24 movies and 5 television series from 2010 through 2011. In January 2011, new production incentives passed, offering a refundable credit for 25% of in-state production expenses for shows that spend at least $250,000, with a cap of $20 million total. *The Hunger Games*, *Iron Man 3*, season one of Showtime's *Homeland*, and Stephen King's *Under the Dome* were all shot in North Carolina.

Michigan is another frequent player in luring productions and has drawn in high-budget major movies with tax credits totaling well over thirty million dollars. Disney's *Oz the Great and Powerful* received an award of $39.96 million for filming in Michigan. *Transformers 4* will also be shot in Detroit and receive $20 million toward its $82 million budget. Michigan lured Warner Brothers' *Man of Steel* sequel, set to star Henry Cavill as Superman and Ben Affleck as Batman, with a $35 million tax credit. The film will shoot in Detroit in early 2014.

Other states are also vying for the chance to bring productions into their states, and this competition leads to states attempting to out do one another with increasing tax rebate and tax credit programs. For a state-by-state review of tax incentives see: http://www.mpaa.org/policy/state-by-state.

Not only does California have to compete with other states, but foreign countries are now offering aggressive incentive programs to lure productions out of the US as well. For example, Canada has offered a generous tax incentive program since 1997, and provinces of Ontario and British Columbia have programs dating back even further. The result is a layering of Canadian province and federal incentives that make Canada an attractive destination for productions. These programs have been going on for so long that crews and infrastructure designed to support production in Canada have grown to a level that rivals Los Angeles' crews and infrastructure. Spending in 2012 was on track to reach Canadian $1.26 billion (US $1.25 billion) for domestic and foreign production in Ontario, with $976 million spent in Toronto alone.

Statistics gathered by Film LA report that the number of production days for which permits were issued for on-location television shows filmed in Los Angeles county peaked in 2003 at 23,000 days and decreased by 32% to less than 16,000 days in 2009. Most alarming is the fact that the California

Film Commission reported that the share of one-hour network series filmed in California has declined from 89% in 2005 to a mere 37% in 2012. The effects on the California economy are well known and have been readily measurable for years. Yet, the California legislature has simply sat on the sidelines and watched hundreds of millions of dollars flee the state treasury as a result of production going elsewhere.

**California's Attempt to Fix the Problem Has Been Too Little (But Hopefully Not Too Late)**

In February of 2009, California finally passed a $100 million a year film and television tax credit program that was implemented in July 2009. The legislation is by most accounts anemic in that it fixes only a fraction of what could be fixed. For example, hour-long network series (the type for which the California Film Commission reported a drop from 89% shot in California in 2005 to only 37% in 2012) are not even eligible for the current incentive program. Moreover, the program is executed through a lottery system, so productions don't know if they can even count on a tax credit until the lottery winners are revealed. In addition, the program expressly excludes motion pictures with budgets exceeding $75 million; yet these are the same productions that will spend millions in taxable dollars at the shooting locations, not to mention the additional millions of taxable dollars that will be spent independently by cast and crew on local businesses situated near those locations.

While California's attempt to stem runaway productions has been anemic, even this non-aggressive small step has yielded quantitative positive results which should send a message to any reasonable legislature that the program should be expanded. A 2011 study by the Los Angeles County Economic Development Corporation Fund found that in its first two years, the California tax credit generated more than $3.8 billion in economic output, supported 20,000 jobs, and returned more than $200 million in taxes to state and local government. In 2012, Governor Brown signed legislation extending California's $100 million a year film and TV tax credit program until July 2017.

California's tax incentive program has brought several shows back to Los Angeles. *Teen Wolf* has moved from Georgia back to California, thanks to a television relocating credit of $11.09 million; *Major Crimes* was lured back with a $9.1million allocation; *Rizzoli & Isles* received $8.55 million; and *Pretty Little Liars* received $8.04 million.

And, this year, the California Film Commission reports that 380 applications were submitted for the latest lottery round of California Film and Television Tax Credit, an increase of 18% over last year's 327 submissions. However, less than 10% of applications to the California lottery-style incentive program for the year 2012 actually received a credit. While other state incentive programs provide the producers with large guaranteed financial benefits, California offers a 1 in 10 chance of reward and the maximum dollar cap on the program does not keep pace with the clear demand. This uncertainty, plus the relative small scale of the program, has led California to recoup only a small fraction of what could obviously be recouped if the state were to adopt a program even remotely in line with those of its competitors. If the award of tax credits to 1 in 10 applicants yields the positive effects detailed by the Economic Development Corporation's statistics, then imagine what positive effects could result if the lottery was abolished and tax credits were simply given across the board to those that meet qualification criteria.

**An Alarm Is Needed— "State of Emergency" Is More Than Just a Clever Sound-Bite**

Tax incentives are not a novel idea. The success of California's small lottery system and the success of the much larger and well established incentive systems in states such as Louisiana and New York demonstrate that incentives work. Incentives are good for the economy and good for the state's tax base. Current Mayor of Los Angeles Eric Garcetti's campaign platform was partially based on his

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plans to slow the exit of major productions from Los Angeles. Upon becoming mayor, Garcetti proclaimed a "state of emergency," and appointed former Motion Picture Academy president, and Fox executive Tom Sherak as "film czar" to lead the effort to stem runaway production.

To stop fleeing television shows, in October 2013, the L.A. City Council passed a bill, co-authored by Mayor Garcetti, to waive municipal fees on pilot production. While the effects of the bill remain to be seen, it is logical that if a pilot shoots in Los Angeles, the series is more likely to be shot in Los Angeles. Every piece of legislation helps.

But, while the Los Angeles Mayor may not be afraid to tackle the issue of runaway productions (and is doing so in the little way that a municipality as opposed to a state government can), a majority of other state representatives are reluctant to support production measures. This reluctance does not come from bickering economists or data. Rather, the reluctance comes entirely from fear.

Opponents of subsidies for the entertainment industry demonize such measures as "corporate welfare." As a result, few politicians outside the "Studio Zone" have supported measures to slow runaway production, even if they are astute enough to genuinely understand how much increased tax revenue will actually result from a competitive tax credit system. The political sound-bite that combating runaway production is really just old-fashioned "pork barrel politics" for the wealthy— is the single biggest impediment to resolving the runaway production crisis. Governor Arnold Schwarzenegger recognized tackling the problem of runaway productions as a potential political nightmare. Already branded as a Hollywood insider, he could not afford to be seen by constituents in areas such as San Francisco, Bakersfield, Fresno, and San Diego as someone looking to line the already-well-lined pockets of Hollywood producers. If a governor with a resume that includes involvement with films that have made billions (with much of that money staying in California) cannot champion film tax credits as a way to revitalize the state, who can become the hero to do so?

Producers are not the ones injured by runaway productions-- rather, the people injured are the crews, the vendors, and the entire support system of a town that is being devastated while the tax basis is being eroded. Until San Francisco, Bakersfield, Fresno, and San Diego realize that the loss from runaway productions decimates the state's treasury and causes both unnecessarily large unemployment and business closures, it is unlikely that Sacramento will do what so obviously needs to be done to rectify the runaway productions problem. Until San Francisco, Bakersfield, Fresno, and San Diego realize that the loss from runaway productions decimates the entire State's treasury and causes both unnecessarily large unemployment and business closures, it is unlikely state legislators will be moved to do what is so obviously needed to be done to rectify the problem.

## <u>**Real Action Needs To Be Taken**</u>

A state-wide awareness campaign is needed to inform constituents that, "*As goes Hollywood, so goes Barstow*." This campaign needs to be extensive, expansive, and aggressive. Changing the hearts and minds of the California constituents is essential to bring about the changes that this state needs in order to stop the tide of runaway production. Without a multi-million dollar media campaign on par with the general Californian tourism ad campaigns, few politicians outside the "Studio Zone" will lend their support, even if they are astute enough to understand how much increased tax revenue will actually result from a competitive tax credit system. The ad campaign explaining the bona fide net positive gain to the entire state must be so massive that political campaign opponents will look ignorant and fiscally out of touch if they try to claim that tax credits benefit only wealthy producers.

Not enough attention is given to this essential piece of the puzzle. However, any reasoned analysis as to why the state has not solved this problem already will always come down to the simple

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explanation that 80% of this vast state views the issue as an "L.A. problem," when in reality, it is every bit as much a problem for Oakland or San Louis Obispo.

Once the hearts and minds of the California electorate have been won, and all Californians understand that their individual lives will be far better and more prosperous if the problem of runaway productions is remedied (by way of more people put to work and an increased tax base that exceeds the tax credit), then the legislation that follows is a piece of cake. Establish an environment where the problem is clearly known and understood, and then legislators can have fun arguing over whether a 15% rebate would be more beneficial to the state than a 20% tax credit.

The number of applicants for the current California tax credit lottery demonstrates that California's tax incentive program does not have to match the programs of other states-- it just has to be competitive. Even a simple 10% across the board cut of everything-- cast, crew, vendors, locations, etc. (no exceptions)-- would likely be enough to do the trick, and if there is no cap and no limitation on the number of producers that can use it, then California will restore its tax base and be far ahead in terms of tax revenues versus tax credit pay-outs.

If we can come close to leveling the playing field via "artificial" economic legislation, then California's own non-economic "natural" motivators will add to the allure of bringing productions home— natural motivators such as, the desire of producers and cast to sleep in their own beds at night during production, and the convenience and reliability of Hollywood's infrastructure (including legions of talented craftsmen, ancillary suppliers, and vendors) that for years has served the biggest, the smallest, the most bizarre, and the most obscure production requests.

Legislative proposals and industry fixes are easy-- everyone's got one and California has some of the finest macro-economists in the nation who, if put to work, could create a winning system. But it all begins and ends with the essential paradigm shift that this is a statewide crisis that can no longer be ignored.

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