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IMPACT OF PATH ACT: SECTION 181 IRS CODE REVISIONS TO LIVE THEATER PRODUCTIONS

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On December 18, 2015, Congress passed and President Obama signed the PATH Act of 2015 which included revisions to section 181 of the Internal Revenue Code. One of the revisions was an extension of the film and television rules on expensing production costs for qualified live theatrical productions. This change in the federal tax code for theatrical production companies is arguably the single biggest legislative change affecting the industry in almost 20 years. The new law provides opportunities, but it presents challenges as well: the unique aspects of theater companies can create uncertainties as well as obstacles to implementation.

This extension will allow a theatrical production to deduct production costs in the year "paid or incurred", rather than capitalizing these costs and amortizing them using the income forecast method, provided certain steps are taken and rules are met:

1. The amendment only applies to productions that have their first paid public performance after December 31, 2015.

2. The aggregate of the production costs cannot exceed $15,000,000 for each qualifying production. This limit may be increased to $20,000,000 if the production costs are "significantly incurred" in a qualifying low-income area.

3.75% of the total compensation for services must be performed in the United States.

4. The election is required to be filed with the current tax return. A company that files this election will be allowed to treat the production costs as a deductible expense for the taxable year in which the costs are either paid (for companies that are using the cash method of accounting) or incurred (for companies which use the accrual method of accounting).

5. Production costs incurred before 2015 should be discussed with an accounting or professional services firm professional.

6. The changes did not alter the application of the passive loss rules that partnership investors may be subject to as that is an individual, rather than a partnership, determination.

7. This change does not apply to any theatrical productions commencing after December 31, 2016 unless extended.

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8. If a company makes an election under this new law for the current tax year, and in the next year, due to a change in circumstances that effect eligibility, the company's election will no longer qualify under section 181, the company will need to revoke the election and report as current year income the deduction taken in the previous year.

The Path Act of 2015 revisions to the code have potential benefits to theatrical production companies. As with any change in the law, the operating agreement should be reviewed to see what impact on capital balances this could have. Producers are advised to discuss the particulars of their productions with their respective accounting or professional services firm professionals to realize the full potential of the extension of these rules to live theatrical productions.

About Polina Inberg

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