Insights

January 7, 2019

INSIGHT: Section 181 and Film Financing

By Kelly L. Frey
Bloomberg Daily Tax Report

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In an article published on Jan. 4, 2019 in Bloomberg Daily Tax Report, Kelly Frey discusses the 2017 Tax Cuts and Jobs Act's (The Act) impact on film financing.

"Prior to the Act, tax code Section 181 was used as a buzzword by film financiers to describe the complete deductibility by passive investors in pass-through entities of film production expenses in the year those expenses were incurred," states Frey. "This pass-through deduction against earned income of the investor was a significant selling point for passive equity ownership in these single-purpose independent film production companies – ultimately reducing the actual money at risk by a passive investor in proportion to the highest marginal tax rate of the investor."

The practical result was that investors with taxable income subject to a more than 30 percent marginal rate would have only 70 percent (or less) of every invested dollar actually "at risk." The Section 181 pass-through deduction reduced, dollar for dollar, the passive investor's taxable income subject to this highest marginal rate in the tax year the costs of production were incurred.

The Act also ushered in limitations on excess business losses. Such limitations capped losses at $250,000 for single taxpayers or $500,000 for married or filing jointly taxpayers, with all disallowed loss being characterized as net operating loss that can be carried forward indefinitely, but which cannot be carried back and which loss carried forward is limited to 80 percent of taxable income of the investor.

Frey explains, “The end result is that under The Act, individual investors who historically invested in independent film can no longer realize the same tax savings they enjoyed under the prior incarnation of Section 181.”
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