received a $33.9 million tax credit for its work at the Maison Blanche building, while the Waldorf Astoria reaped a $23.1 million tax credit for its 2009 renovation of the Fairmont Hotel building.

New Orleans's Waldorf Astoria received a $23.1 million tax credit for its 2009 renovation of the Fairmont Hotel building.

### Deck Stacked Against American Tax Payers

When voters of Ohio approved the building of the first casino in the state, did they know they would ultimately be the ones paying for the construction? The Horseshoe Casino in Cleveland opened on May 14, 2012 and is the first casino in Ohio's history. Caesars Entertainment and Dan Gilbert's Rock Gaming companies decided to build their casino in the former Higbee Building at Tower City Center in downtown Cleveland. The renovation cost the companies $44,829,620 which in turn received an $8,965,924 Historic Tax Credit. The casino features more than 1,600 slot machines, 200 video poker machines, 89 table games,[108] and raked in $242,646,044 in revenues FY 2013.[109] Most taxpayers would agree that Horseshoe Cleveland did not need an $8 million tax break.

Controversy struck during the renovation of the Higbee building. Dan Gilbert, the owner of the casino, wanted to build a skywalk from his casino's parking garage to the Higbee building. According to the National Park Service (NPS), in order for a building to qualify for the Historic Tax Break, the renovation has to be relevant to the building's original structure. The plan for the skywalk was denied by the NPS, appealed and ultimately the ruling held up. Dan Gilbert built the skywalk anyway and forwent the Historic Tax Break. The National Park Service's decision brought light to the Historic Tax Break issue; you may build casinos but no skywalks.

## Recommendation

The National Historic Tax Credit is duplicative, costly, and unnecessary. Eliminating this tax break would not preclude states and local communities from implementing, maintaining, or expanding historic preservation programs on their own. Nor would eliminating this tax credit lead to the collapse of iconic historic structures that have long been protected and preserved by the federal government. Instead, this will prevent the federal government from doling out hundreds of millions of dollars to luxury vacation destinations, major league baseball teams, and practically any other renovation project in the one million plus buildings eligible for a tax credit under the program.

**THE NATIONAL HISTORIC TAX CREDIT IS DUPLICATIVE, COSTLY, AND UNNECESSARY.**

# Hollywood Boulevard

Some Hollywood executives must have taken a lesson from *Mr. Smith Goes to Washington*, the American classic depicting a young man winning over many in Washington. With one tax carve-out, the rich and famous have hit a billion-dollar bonanza.

"You've heard of Farm Subsidies. Well, Congress in essence created subsidies for the film industry through Section 181," wrote one industry insider of the Hollywood tax break.[110]

Under the special tax rules, film and TV producers can deduct 100 percent of their costs, up to $15 million, regardless of their overall budget and expected revenue, if at least 75 percent of a project's compensation takes place in the United States. If a project is produced in a low-income area, the tax benefit rises to $20 million. Furthermore, each of the first 44 episodes in a television series is treated as an independent production, and qualifies for the full amount of the deduction.

The only excluded types of film or TV are productions with any sexually explicit material.

There is no limit to the benefits or frequency with which a producer uses the special tax break. An unlimited number of projects can use the break, since the rules apply uniquely to each project.

## History

Congress first passed the Hollywood tax break in 2004, with the intention of preventing "runaway production" – the so-called phenomenon of film production going abroad.[111] Other foreign countries began luring moviemakers with subsidies, with one report stating billions were leaving the U.S. economy.[112] The initial version of the benefit was set to be a temporary handout, and only applied to smaller productions with a total budget of $15 million (or $20 million if produced in a low-income area). It was also set to be a temporary benefit to the industry.

Inevitably, the subsidy was later expanded in 2008 by eliminating the budget requirement, so that any film or T.V. production could take advantage of the tax break. Set to expire once again in 2012, Congress extended the tax break through December 31, 2013. Productions commencing before that date will still be able to utilize the provision in future years. Looking forward, Congress is likely to extend the provision again.

## Cost and Usage

Extension of the provision was included in the Senate's 2014 extenders legislation, the EXPIRE Act of 2014. Assuming continued extension, the provision is estimated to cost $126 million in 2014 and $838 million over five years.[113] Since its inception in 2004, the special deduction may have cost taxpayers over $1.3 billion.[114, 115] No data exists on the geographic or income distribution of the deduction's recipients.

## Analysis

While the intent of the tax program was to save jobs, no evidence exists to show it has actually saved any but it certainly has given an added boost to an industry that fared very well even during the recent economic downturn. Since 2004, ticket sales have increased from $9.11 billion to an estimated $10.9 billion for 2013.[116] Last year, *The Avengers* smashed box office records on its way to becoming the third-highest grossing move of all time at just over $623 million.[117]

One 2013 industry analysis states, "Film and other entertainment sectors are constantly outperforming and seem to be more resistant to untimely global events and adverse economic conditions."[118]

A variety of other television programming is eligible for the tax break. No list of recipients has been published, but

> [r]eality shows like *American Idol, So You Think You Can Dance*, etc., qualify, as do quiz or game shows like *Deal Or No Deal* or *Smarter Than A Fifth Grader.* Similarly, the regulations make eligible documentaries, religious or spiritual shows, sports programs, interview and talk shows, movies of the week, as well as news programs,

according to one analysis of the tax code.[119] Commercials and YouTube video production may even qualify for the tax break.[120, 121]

Congress did not foresee so many productions potentially raiding the Treasury. When creating regulations to implement the new law in 2004, the IRS noted Congress' intention "arguably would exclude productions that do not fall within these delineated categories."[122]

One peculiarity may benefit TV shows even more than film producers. Since every episode of a series qualifies for the full deduction up to 44 episodes, TV producers may receive up to a $660 million deduction for a single show. For shows produced in low-income areas, the maximum deduction is $880 million per show.

That amount is more than enough to cover production of many of the most expensive shows. *Game of Thrones* – the HBO drama based on a popular book series – reportedly costs $6 million per episode.[123] *X Factor* has a per-season budget of $100 million.[124]

Major league sports games even qualify for the deduction (though it is unclear if major networks are utilizing the tax loophole). "[I]t would apply to the entire cost of producing 'Monday Night Football,' including the cost of acquiring the underlying rights," wrote one entertainment tax expert.[125] Many sports stadiums are located in low-income areas, as designated by the Census Bureau, so television programs produced there qualify for a larger deduction. Stadiums such as Sports Authority Field at Mile High (home of the Denver Broncos), Fedex Field (home of the Washington Redskins), or Nationals Field (home of the Washington Nationals), are all in qualifying areas.[126]

Each National Football League game alone can cost the major networks millions of dollars just for the purchase of rights to broadcast.[127] The NFL itself has a network – the NFL Network – that televises Thursday night games. This multi-billion dollar enterprise may also be able to claim the tax break for each of its productions.

The benefits to Hollywood extend beyond a write-off. "[T]he section 181 deduction can create a net operating loss (NOL) which can be carried back (two years), up to five years for certain taxpayers, and forward (20 years)....This seems to be a potential tax shelter," concluded one study of the provision.[128] A profitable company could purchase a film or TV company just to get an offset for future income tax liability.[129]

Most states have also created a number of special incentives for the film industry. North Carolina, for example, gives film producers a 25 percent cash tax rebate.[130]

No clear evidence exists to demonstrate whether the federal or state incentives are actually achieving their goals of preventing "runaway production." There is also no data to suggest the cost to taxpayers is worth subsidizing a multibillion industry.

Hollywood is also able to take advantage of several other tax loopholes. The first is through Section 199, which allows for a deduction of costs related to domestic production activities. The film industry received a special carve-out to utilize this section in 2007, several years after the provision was first created.[131] Motion picture and sound recording companies received $744 million in domestic production tax benefits in 2010.[132] Other tax sheltering schemes advocated by an industry tax expert include use of a Domestic International Sales Corporation and offshore tax structures.[133]

### Recommendation

Congress should eliminate this special depreciation schedule. This provision was started as temporary assistance to an industry allegedly being lured away by foreign countries. During the 2009 consideration of the stimulus legislation, the Senate voted 52-45 to strip the bill of an accelerated depreciation preference for Hollywood, worth $246 billion over 11 years.[134]

As middle-class families struggle to make ends meet, Hollywood bigwigs should not be receiving special assistance from Uncle Sam, especially since the industry is more stable even in tough economic times.

## Tax Provisions for Magazines

### Expensing of Magazine Circulation Expenditures

Magazine publishers retain a special exemption to business depreciation rules, a benefit worth roughly $50 million per year and at least $100 million from FY 2014 through FY 2018.[135]

Under normal tax rules, businesses are required to depreciate their capitalized investments over a set number of years (which is determined by the IRS). Magazine companies are allowed to fully deduct any "expenditures to maintain, establish, or increase circulation in the year when they are made."[136] For other businesses, such activities would be considered investments that need to be depreciated over a number of years. Living the "LIFE," magazine companies get the extra benefit of accounting for the expense immediately. Getting their tax benefit early significantly decreases a publisher's cost of doing business. In general, other businesses are not given such preferential treatment.

Though this provision largely benefits a few publishers, it may simplify tax compliance for businesses and administration for the IRS. However, it is more appropriate to eliminate this special carve-out as part of tax reform and instead lower overall corporate income tax rates.

### Special Rules for Calculations on Returns

Magazine and book publishers have their own special page in the tax code for returned items. The overall benefit for these special provisions is less than $50 million annually, but at least $200 million from FY 2014 through FY 2018.[137]

Under special rules passed in 1978, if these companies receive returns – such as books – from vendors within a certain timeframe after a tax year ends, they can still exclude that income from last year's tax returns. Normally, a company would have to wait until the following year to exclude the income from taxes. Magazines must be returned within 75 days after the tax year, and paperback books and musical albums within 95 days. Hardback books, however, are not allowed.

The apparent reasoning for the rule is the unique nature of the industry.

> A common practice in the publishing industry is to ship substantially more magazines than are expected to be sold to enable the retailers to keep their shelves stocked. Keeping the retailers' shelves stocked promotes visibility of the magazines and insures [sic] that there will be an adequate stock of undamaged magazines on hand,

notes one description of the loophole.[138] At the same time, many other retail industries have returns, and do not have or need special tax breaks. They set aside cash in reserve accounts to offset the expected cost of product returns.

### Recommendation

Eliminating these premiums would bring overall simplification to the tax code, as noted previously by the Reagan Administration.[139] IRS administration would also be easier, since the agency would not have to verify whether income was adjusted properly.[140] Businesses of different sectors would be placed on a more equitable competitive footing.