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## NOTE

DR. STRANGETAX  
OR: WHY PENNSYLVANIA SHOULD LEARN TO STOP WORRYING  
AND JUST END THE FILM TAX CREDIT

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# NOTE

## DR. STRANGETAX OR: WHY PENNSYLVANIA SHOULD LEARN TO STOP WORRYING AND JUST END THE FILM TAX CREDIT

*John W. Kettering\**

### I. INTRODUCTION

With the opening of the Batman film, *The Dark Knight Rises*, in the summer of 2012, careful viewers will have noticed that Gotham City looks strikingly similar to Pittsburgh, Pennsylvania in a number of scenes. A number of exterior locations were used when the movie was shot around the city in the summer of 2011.<sup>1</sup> Principally known for its industrial history and location at the confluence of three rivers, Pittsburgh is not usually thought of as being at the forefront of film productions, but that perception may be in need of a change. Between 2007 and 2011, forty-three different film and television productions shot footage in the Pittsburgh area.<sup>2</sup> When questioned why so many films shoot in the city, the most common answer given by production staffs is the Pennsylvania Film Production Tax Credit (PFPTC).<sup>3</sup> Signed into law in 2007 by Governor Ed Rendell, the PFPTC aimed to encourage filmmakers to work within Pennsylvania by giving them tax

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<sup>1</sup> Barbara Vancheri, *'Dark Knight' Filming Bids Farewell to 'Gotham'*, PITT. POST-GAZETTE, Aug. 23, 2011, at C-5, available at <http://www.post-gazette.com/pg/11235/1169111-60.stm>.

<sup>2</sup> *Filmography*, PITT. FILM OFF., <http://www.pghfilm.org/filmography.jsp> (last visited Dec. 27, 2012) [hereinafter *Filmography*].

<sup>3</sup> See, e.g., Laurie Bailey, *An Alien Ticket to Paradise: Movie Crew Invades Franklin Regional*, PITT. POST-GAZETTE, June 24, 2010, <http://www.post-gazette.com/pg/10175/1067653-59.stm>. Speaking about the movie *Abduction* that filmed in Pittsburgh the film's publicist said, "Basically, at the end of the day, the reason why we're here is because of tax incentives." *Id.*

credits for meeting certain production-related criteria.<sup>4</sup> Pennsylvania anticipated that the PFPTC would lead to increased film production within the state, which would in turn translate into local economic stimulation through both money spent and jobs created. At first glance, it seems to be an effective strategy. The forty-three productions shot in Pittsburgh during the five years after the passage of the PFPTC represent a sharp increase from only seventeen shot over the ten years before the credit's enactment.<sup>5</sup> This mirrors the statewide experience, as Pennsylvania also showed an increase with 258 productions shot within the state since 2007.<sup>6</sup> While impressive on its face, the positive gloss of these figures is dispelled under a closer examination of the economic data and by the actual effects of the tax credit as contrasted with its stated objective.

This Note demonstrates that the costs of the PFPTC outweigh its benefits.<sup>7</sup> Section II examines the credit and the history of this and similar credits. Section III describes the stated benefits of the law for the state of Pennsylvania. Section IV develops why the costs of the credit overshadow any realized benefits. Section V argues that the tax credit policy in Pennsylvania should change to reflect its overall ineffectiveness and to mitigate any potentially damaging economic consequences.

## II. BACKGROUND

Tax credits to production companies for filming done within the state fall under the umbrella term "Movie Production Incentives" (MPI).<sup>8</sup> While popular, tax credits are not the only means by which a state can incentivize such activity. Other options include cash rebates, grants, sales tax

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<sup>4</sup> 72 PA. CONS. STAT. ANN. §§ 8701-D–8712-D (West 2007).

<sup>5</sup> See *Filmography*, *supra* note 2.

<sup>6</sup> PA. DEP'T OF CMTY. & ECON. DEV., REPORT TO THE GENERAL ASSEMBLY ON THE FILM PRODUCTION TAX CREDIT PROGRAM 2 (2011), [http://filminpa.com/wp-content/uploads/2011/11/2010-11\\_FY\\_Film\\_Tax\\_Credit\\_Program\\_Report.pdf](http://filminpa.com/wp-content/uploads/2011/11/2010-11_FY_Film_Tax_Credit_Program_Report.pdf).

<sup>7</sup> 72 PA. CONS. STAT. ANN. § 8702-D defines film as "[a] feature film, a television film, a television talk or game show series, a television commercial or a television pilot or each episode of a television series which is intended as programming for a national audience." As such, when the note refers to "film" or "movies" it is intended to include the broader statutory definition.

<sup>8</sup> WILLIAM LUTHER, TAX FOUND., MOVIE PRODUCTION INCENTIVES: BLOCKBUSTER SUPPORT FOR LACKLUSTER POLICY 1 (2010), <http://taxfoundation.org/sites/taxfoundation.org/files/docs/sr173.pdf> [hereinafter BLOCKBUSTER SUPPORT].

exemptions, lodging, fee-free locations, and other exemptions.<sup>9</sup> The expectation for each of these options is that the small incentive extended to filmmakers, to promote in-state filming, will result in a larger economic benefit through money spent and jobs created when the film production comes to the state.<sup>10</sup>

A brief examination of the background of MPI's will provide a better understanding of how they came into effect in Pennsylvania. Starting in 1992, Louisiana was the first state to adopt MPI programs in an effort to lure film production to its area and reap the potential economic benefits.<sup>11</sup> The state gave a tax credit for investment losses in films with substantial Louisiana content.<sup>12</sup> While novel, the program failed to catch on nationwide. By 2002, only four states had adopted incentive policies for film production.<sup>13</sup> In 2003, Louisiana tried again to spur local film production by increasing the incentives to film in the state.<sup>14</sup> In an effort to "encourage increased employment opportunities within this sector and increased global competitiveness with other states in fully utilizing economic development options within the motion picture industry," the new statute gave increasing levels of tax credit, up to a maximum of 25%, depending on the level of in-state production.<sup>15</sup> The new tax incentive policy quickly spread throughout the country. Growing drastically from the initial four states, an overwhelming forty-four states had adopted some form of production incentive by 2009, with twenty-eight of them coming in the form of tax credits.<sup>16</sup>

Pennsylvania was one of the states to catch the MPI fever as it moved quickly to follow Louisiana's example. Pennsylvania fully embraced the policy in 2007 by passing the PFPTC.<sup>17</sup> It allowed for statewide tax credits

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> P.A. H.R. LEGIS. J., 187-47, 96th Sess., at 2200-01 (2003).

<sup>11</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3.

<sup>14</sup> LA. REV. STAT. ANN. § 47:6007 (2003).

<sup>15</sup> *Id.*

<sup>16</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 3-4.

<sup>17</sup> 72 PA. CONS. STAT. ANN. §§ 8701-D-8712-D (West 2007).

of \$75 million and permitted filmmakers to apply for a maximum tax credit for 25% of a film's "qualified Pennsylvania production expenses," which remove a portion of the state income tax owed by the production company.<sup>18</sup> The statute defines a "Pennsylvania production expense" as "production expenses incurred within the Commonwealth."<sup>19</sup> These expenses can include such things as compensation, transportation, insurance, and potentially music and story rights if bought from a Pennsylvania resident.<sup>20</sup> Overall, a film must incur 60% of its total production costs in the state to be eligible to apply for the credit.<sup>21</sup> Pennsylvania distributes the budgeted funds as they are available so not all applicants are guaranteed the credit.<sup>22</sup> Supporters were quick to hail the program as making the state competitive in the nationwide effort to attract filmmakers.<sup>23</sup>

While lauded for its ability to boost the economic fortune of the state, the PFPTC initially appeared in danger of being removed from the state budget in 2012. In 2011, Republican Tom Corbett succeeded the PFPTC's signor Ed Rendell as governor of Pennsylvania after running a campaign focused on reduced government spending. In the weeks leading up to his first budget proposal, the fear in the state was that Governor Corbett would discontinue the credit program in order to make up a multi-billion dollar budget deficit.<sup>24</sup> After weeks of worry, when Governor Corbett finally revealed his first budget plan, the film production tax was still included.<sup>25</sup> Not only did

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<sup>18</sup> *Id.* § 8707-D(b)(1).

<sup>19</sup> *Id.* § 8702-D.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See PA. DEP'T OF CMTY. & ECON. DEV., FILM TAX CREDIT PROGRAM GUIDELINES 2 (2008), [http://www.taxcreditsllc.com/PA\\_Regs\\_September%2008.pdf](http://www.taxcreditsllc.com/PA_Regs_September%2008.pdf). This first-come, first serve approach leads to other interesting possibilities. Production companies may aim to start their films as early in the fiscal year as possible to ensure funds are available upon completion. Other productions may wait or avoid the state if late in the fiscal year it appears there may not be enough funds. Overall, there appears to be opportunity for some level of gamesmanship in timing the applications.

<sup>23</sup> Barbara Vancheri, *Tax Credit to Lure Films to Pennsylvania Approved*, PITT. POST-GAZETTE, July 17, 2007, at A-8, available at <http://www.post-gazette.com/pg/07199/802441-42.stm>.

<sup>24</sup> Barbara Vancheri, *Film, TV Tax Credits Await Corbett Budget*, PITT. POST-GAZETTE, Feb. 23, 2011, at C-1, available at <http://www.post-gazette.com/pg/11054/1127176-60.stm>.

<sup>25</sup> Tim Schooley, *Gov. Corbett's Proposed Budget Calls for Film Tax Credit to Continue*, PITT. BUS. TIMES (Mar. 8, 2011, 2:15 PM), <http://www.bizjournals.com/pittsburgh/news/2011/03/08/Pa-film-tax-credit-to-continue.html>.

Governor Corbett keep it, in the weeks afterward, he insisted that he wanted to expand the credit program because he believed it delivered in generating the economic growth that it promised.<sup>26</sup> This dedication to the film credit program continued, and the program was included in the recently passed 2012–2013 budget.<sup>27</sup> While he did not expand the program, Governor Corbett kept the program in the budget at the same level of funding as prior years.<sup>28</sup> This commitment to the credit program makes it seem likely that it will survive in its current form for the near future. However, before making any long-term commitment to the film credit the state should thoroughly reevaluate the merits of the program. When this reevaluation takes place, as this Note shows, the state may realize that the costs of this program outweigh the anticipated benefits.

### III. SUPPOSED BENEFITS TO THE STATE

In 2009, in an initial effort to evaluate the viability of the film credit, Pennsylvania retained the services of the Economic Research Associates (ERA) to assess the economic effectiveness of the program.<sup>29</sup> In doing so, the ERA found that, overall, the program was an asset to the state and that the entire industry produced \$4.5 million of economic growth for the 2007–2008 year.<sup>30</sup> Pennsylvania has based its continued support for the PFPTC and the state’s film industry on this report.

In understanding why the ERA Report found that the PFPTC resulted in a positive economic impact, it is first important to appreciate the reasoning behind choosing the film industry as a sector for state support. In an effort to stimulate economic growth, states will typically support an industry that generates successive rounds of spending from the initial

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<sup>26</sup> Tony Romeo, *Gov. Corbett Is a Big Fan of Pa. Film Tax Credit*, CBS PHILLY (July 29, 2011, 4:35 AM), <http://philadelphia.cbslocal.com/2011/07/29/governor-tom-corbett-is-a-big-fan-of-pennsylvanias-film-tax-credit/>.

<sup>27</sup> COMMONWEALTH OF PA. OFFICE OF THE GOVERNOR, GOVERNOR’S EXECUTIVE BUDGET 2012–2013 D14 (2012), [http://www.portal.state.pa.us/portal/server.pt/document/1224435/2012-13\\_budget\\_document\\_web2\\_pdf](http://www.portal.state.pa.us/portal/server.pt/document/1224435/2012-13_budget_document_web2_pdf).

<sup>28</sup> *Id.*

<sup>29</sup> ECON. RESEARCH ASSOCS., PENNSYLVANIA’S FILM PRODUCTION TAX CREDIT AND INDUSTRY ANALYSIS 1 (2009), <http://lbfc.legis.state.pa.us/reports/2009/35.pdf> [hereinafter ERA REPORT].

<sup>30</sup> *Id.* at 54.

activity.<sup>31</sup> This economic multiplier theory, or multiplier effect, stipulates that every dollar of initial spending will produce more than a dollar in state-related income as that dollar moves through the economy.<sup>32</sup> The film industry is within the top 10% of industries in Pennsylvania in terms of its economic multiplier and therefore exists as one of the most efficient ways to generate personal income through government spending.<sup>33</sup> This gets at the heart of why the state has targeted incentivizing in-state film production as a basis for economic growth.

The ERA Report came to a number of conclusions about the positive economic impact of the PFPTC. The broadest finding was that in 2008, the year after the PFPTC's enactment, over 200 films, television (TV) episodes, made-for TV movies, TV series, direct to video movies, and live action video games took place, at least in part, in Pennsylvania.<sup>34</sup> This was an increase over the 150 productions from 2007.<sup>35</sup> While impressive, the numbers used in the ERA Report represent a broad oversampling of production within the state. In a required annual report, the Pennsylvania Department of Community and Economic Development (DCED) found that while over 200 productions may have taken place in the state, only fifty-nine projects filed for reimbursement under the tax credit.<sup>36</sup> This implies that some productions chose Pennsylvania for reasons other than the tax credit; that they did not meet the filming levels required by the statute, or perhaps, that they were unaware of the newly-enacted credit.<sup>37</sup>

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<sup>31</sup> *Id.* at 1.

<sup>32</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 10.

<sup>33</sup> ERA REPORT, *supra* note 29, at 1.

<sup>34</sup> *Id.* at 2–3. The ERA Report cites the Internet Movie Database as its basis for this claim of over 200 productions in 2008. This is a vastly broad claim and is difficult to reconcile with the annual reports from the Pennsylvania Department of Community and Economic Development that show far less production within the state.

<sup>35</sup> *Id.*

<sup>36</sup> See PA. DEP'T OF CMTY. & ECON. DEV., REPORT TO THE GENERAL ASSEMBLY ON THE FILM PRODUCTION TAX CREDIT PROGRAM 12–15 (2008), <http://www.newpa.com/sites/default/files/uploads/Film-Tax-Credit-Report-June-2008.pdf> [hereinafter 2008 DCED REPORT].

<sup>37</sup> *The Dark Knight Rises*, which is often considered the biggest success of PFPTC, actually chose Pittsburgh for reasons completely unrelated to the tax credit. Thomas Tull is chairman and CEO of Legendary Pictures and served as executive producer for *The Dark Knight*. He also is partner in the ownership group of the Pittsburgh Steelers football team. Using these influential positions, he was able to convince the film studios to film a large portion of the film in Pittsburgh. Barbara Vancheri, *From*

In presenting the benefits of a tax credit for film production the ERA Report comes up with two broad justifications behind the policy: the employment rationale and the growth rationale. The employment rationale is simply that the credit leads to increased employment and higher paying jobs.<sup>38</sup> The report states that an estimated “60 to 70 percent of the average film or television budget goes into salaries,” and therefore, filmmakers are thought to be significant local employers for the duration of the production.<sup>39</sup> This comports with the findings from Pennsylvania’s annual reports on the PFPTC. In the 2007–2008 fiscal year, the first after the credit came into effect, the state estimated its passage created 4,355 new jobs in the state.<sup>40</sup> For the 2010–2011 year, the most recent year available, Pennsylvania found that 2,159 jobs arose from credits awarded and claimed that year.<sup>41</sup> In total, the state finds the increased economic activity associated with the credit has supported nearly 14,500 jobs in the four years it has been in place.<sup>42</sup> These figures tie into another important employment consideration behind the PFPTC. The ERA Report states that the jobs created in the film productions are much higher paying than comparable non-film employment.<sup>43</sup> The ERA Report claims, for example, that a costume designer can earn nearly twice as much working on a film production than in a non-film related position.<sup>44</sup> While these figures certainly seem impressive, further examination in the next section will show that they are fleeting and do not represent the true economic reality of the PFPTC.

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*Burgh to Batcave: Six Degrees of Separation Lie Between Pittsburgh and ‘Dark Knight’, Including Return Trips to Town by Cast*, PITT. POST-GAZETTE, July 13, 2012, at C-1, available at <http://www.post-gazette.com/stories/ae/movies/six-degrees-of-separation-lie-between-pittsburgh-and-dark-knight-644508>.

<sup>38</sup> ERA REPORT, *supra* note 29, at 9.

<sup>39</sup> *Id.*

<sup>40</sup> 2008 DCED REPORT, *supra* note 36, at 1.

<sup>41</sup> PA. DEP’T OF CMTY. & ECON. DEV., REPORT TO THE GENERAL ASSEMBLY ON THE FILM PRODUCTION TAX CREDIT PROGRAM 11 (2011), [http://filminpa.com/wp-content/uploads/2011/11/2010-11\\_FY\\_Film\\_Tax\\_Credit\\_Program\\_Report.pdf](http://filminpa.com/wp-content/uploads/2011/11/2010-11_FY_Film_Tax_Credit_Program_Report.pdf) [hereinafter 2011 DCED REPORT].

<sup>42</sup> *Id.* at 2.

<sup>43</sup> ERA REPORT, *supra* note 29, at 9.

<sup>44</sup> *Id.*

The second justification behind the PFPTC, the growth rationale, is the theory that the locales chosen to host film production will see a significant economic boost that is independent of the immediate increase in film-related jobs. One of the first economic improvements will be what the ERA deemed “local spin-offs.”<sup>45</sup> Local spin-offs are businesses that benefit directly from the film production being located in that area, such as transportation, lodging, car rentals, and restaurants.<sup>46</sup> For example, in the 2008 annual report, the state found a 30% increase in sales for Enterprise Rental Car services.<sup>47</sup> Likewise, the 2010 report included testimony that the film production for *Unstoppable* rented out a quarter of the Laurelwood Inn & Steakhouse Motel in Coudersport, Pennsylvania.<sup>48</sup> The ERA Report also speculates that over time these “spin-offs” can evolve into long-term film production activities, such as the creation of permanent facilities (like a soundstage) or the establishment of a local editing enterprise.<sup>49</sup>

Another growth rationale highlighted by some states is the potential tourism that arises from their association with a given film. The ERA cites examples such as Madison County, Wisconsin, which experienced a decade-long tourism boost after the release of *The Bridges of Madison County*, and the city of Deadwood, South Dakota, which had an increase of 800,000 tourists annually after the premiere of the hit HBO show *Deadwood*.<sup>50</sup> While impressive, with regard to Pennsylvania, the annual PFPTC reports give no figures on potential or realized tourism boosts from films shot in the state. The ERA Report does state, without giving figures, that Scranton has seen an increase in tourism due to the television show *The Office* being set, but not filmed, there.<sup>51</sup> In addition, Lancaster filmmaker Mary Haverstick cites the 1985 film *Witness*, in which Harrison Ford goes into hiding with an Amish family and which was filmed in Lancaster

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<sup>45</sup> *Id.* at 10.

<sup>46</sup> *Id.*

<sup>47</sup> 2008 DCED REPORT, *supra* note 36, at 3.

<sup>48</sup> PA. DEP’T OF CMTY. & ECON. DEV., REPORT TO THE GENERAL ASSEMBLY ON THE FILM PRODUCTION TAX CREDIT PROGRAM 7 (2010), [http://filminpa.com/wpcontent/uploads/2009/07/FilmProductionTaxCreditProgramReport\\_2010.pdf](http://filminpa.com/wpcontent/uploads/2009/07/FilmProductionTaxCreditProgramReport_2010.pdf) [hereinafter 2010 DCED REPORT].

<sup>49</sup> ERA REPORT, *supra* note 29, at 10.

<sup>50</sup> *Id.* at 12–13.

<sup>51</sup> *Id.* While *The Office* is set in Scranton, it actually films in Los Angeles.

County, as a driving force for tourism to the area.<sup>52</sup> She claims that for years, if not decades, Lancaster benefitted from increased tourism because of the movie.<sup>53</sup>

Closely associated with tourism, the final growth rationale given by the ERA is the free marketing and promotion that occurs when film production occurs within the state.<sup>54</sup> When a film is released and portrays an area in a positive light, it can help shape the public perception of the state, potentially draw more tourism, and in turn provide an economic boost.<sup>55</sup> The ERA Report cites a state-requested media consultation that found a media impact in excess of \$900,000 in 2001 as a result of the film *Wonder Boys* being shot in the Pittsburgh area and featuring the city by name.<sup>56</sup> This \$900,000 media impact represents the amount the state needed to spend to generate the same advertising that it got through the film's release.<sup>57</sup> While the numbers may be hard to quantify, they represent another benefit that the tax credit supposedly brings.

In support of the report's findings about the positive impacts of the tax credit, Pennsylvania Film Office Director, Jane Saul, stated before the state Legislative and Budget Committee that the program was a complete success.<sup>58</sup> She revealed that in Fiscal Year 2008–2009, the Film Office received applications for over \$173 million in tax credits, which is more than double the amount allocated in the fiscal budget.<sup>59</sup> Furthermore, she

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<sup>52</sup> David N. Dunkle, *Pa. Towns Draw Film Projects, but Generate Film Tax Credit Critics*, PENNLIVE.COM (Nov. 26, 2011, 10:13 PM), [http://www.pennlive.com/midstate/index.ssf/2011/11/cinematic\\_state.html](http://www.pennlive.com/midstate/index.ssf/2011/11/cinematic_state.html).

<sup>53</sup> *Id.* This conclusion assumes that the increased tourism does not bring other downsides. For example, while *Witness* may bring increased tourism, this tourism can often result in travelers gawking at the Amish community. It will not be reflected in economic data, but it can make the community spiteful of the increased tourism and shows that increased tourism may not be an absolute benefit.

<sup>54</sup> ERA REPORT, *supra* note 29, at 13.

<sup>55</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 11.

<sup>56</sup> ERA REPORT, *supra* note 29, at 13.

<sup>57</sup> *Id.*

<sup>58</sup> STATEMENT OF JANE SAUL, DIRECTOR OF PENNSYLVANIA FILM OFFICE BEFORE THE LEGISLATIVE BUDGET AND FINANCE COMMITTEE (2009), <http://lbfc.legis.state.pa.us/reports/2009/17prs.PDF>.

<sup>59</sup> *Id.*

stated that she fully supported the credit, concurred with the findings of the report, and insisted that the employment and economic benefits are real gains and not just theoretical ones.<sup>60</sup>

Other states have adopted similar tax credit programs to attract filmmakers. While each state differs in its individual policy, there are overall trends. In New Mexico, one of the first states to adopt a credit policy, a study by Ernst & Young found that the state received \$1.50 in tax revenue for every \$1.00 spent in support of the tax credit.<sup>61</sup> The study also found that when adding the direct jobs created by film production with the jobs attributable to film-related capital expenditures, almost 6,000 jobs were directly attributable to the film production tax credit.<sup>62</sup> In New York, another Ernst & Young study found that the state's tax credit produced results that are even more favorable.<sup>63</sup> New York's tax credit generated, and the state retained, a whopping 19,000 jobs and, when examined with a multiplier effect, it created a \$1.90 return on investment for every \$1.00 spent in 2007.<sup>64</sup>

All of these figures and testimonials give the appearance that a film tax credit is the panacea for any state's economic woes. While it appears that a film production credit does bring with it some economic improvement, a more thorough analysis shows that the costs incurred in generating the improvements outweigh its benefits.

#### IV. OVERSHADOWING COSTS OF THE TAX CREDIT

One of the reasons that movie tax credits have nationwide appeal is the overall visibility of movies shot within the state. When a big-budget movie comes to town, citizens claim to see a conclusive result from the tax policy while elected representatives are able to boast about the positive impact.

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<sup>60</sup> *Id.*

<sup>61</sup> ERNST & YOUNG, ECONOMIC AND FISCAL IMPACTS OF THE NEW MEXICO FILM PRODUCTION TAX CREDIT 15 (2009), [http://blogs.courant.com/rick\\_green/ErnstandYoung.pdf](http://blogs.courant.com/rick_green/ErnstandYoung.pdf).

<sup>62</sup> *Id.* at i.

<sup>63</sup> ERNST & YOUNG, ESTIMATED IMPACTS OF THE NEW YORK STATE FILM CREDIT 1 (2009), [http://www.southwindsor.org/pages/swindsorct\\_IT/ct\\_studios/Credit\\_Study.pdf](http://www.southwindsor.org/pages/swindsorct_IT/ct_studios/Credit_Study.pdf) [hereinafter NEW YORK STATE FILM CREDIT].

<sup>64</sup> *Id.*

When *The Dark Knight Rises* filmed in Pittsburgh during 2011, for example, local business owners praised the policy for bringing filming to the state and bringing a boost to the local economy.<sup>65</sup> Films like *The Dark Knight Rises* appear to provide visible results, even if they are not actually efficient or effective. These highly visible spectacles overshadow some of the real costs associated with the tax policy. The state should focus on these costs and realize that they may well outweigh the benefits of the policy.

One of the reasons the film industry is a favored sector to credit and subsidize is the belief in its potential multiplier effect.<sup>66</sup> While it is extremely efficient to support an industry that “ripples” through the economy, the film industry is not as effective as believed in achieving this goal. First, the multiplier effect should only apply to movies that the credit draws to film in the state. An examination by the Boston Federal Reserve on the Connecticut tax credit policy stated: “While induced and non-induced film production expenditures will both ripple through the economy, only economic activity stemming from *induced* film production should really be attributed to the credit.”<sup>67</sup> This rings true for examples in Pennsylvania. Both the blockbusters *The Dark Knight Rises* and *Transformers: Revenge of the Fallen* shot scenes in Pennsylvania but neither applied for a tax credit according to DCED press secretary Steven Kratz.<sup>68</sup> It is possible that neither met the statutory threshold of Pennsylvania production expense. Whatever the reason, they should not be represented in the multiplier effect as being induced by the tax credit. Unfortunately, there is no evidence in the ERA Report to suggest that films shot in Pennsylvania, but not induced to do so by the credit, were excluded from the multiplier effect.<sup>69</sup> This leads to the conclusion that a large part of

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<sup>65</sup> Joey Nolfi & Dan Majors, *Businesses Get Major Boost from Batman Film*, PITT. POST-GAZETTE, Aug. 20, 2011, at A-1, available at <http://www.post-gazette.com/pg/11232/1168640-53.stm>.

<sup>66</sup> *Supra* notes 31–33 and accompanying text.

<sup>67</sup> Memorandum from Jennifer Weiner, Policy Analyst, New England Pub. Policy Ctr., to Ellen Scalettar, Dir. of Policy, Research & Legislation for the Conn. Senate Democrats 4 (Jan. 19, 2009), <http://www.bos.frb.org/economic/neppc/memos/2009/weiner011609.pdf> [hereinafter Conn. Memo].

<sup>68</sup> Dunkle, *supra* note 52. See also *supra* notes 34–37 and accompanying text. Despite this broad claim of over 200 films coming to that state, it is clear that not all were induced or they would have filed with the state for tax credits.

<sup>69</sup> See ERA REPORT, *supra* note 29.

the findings about the overall effectiveness of the credit may be grounded on an inappropriate foundation and needs more critical examination.

Another important factor regarding the multiplier effect is that often the state granting the credit does not get the positive “ripple,” but instead loses it to another state.<sup>70</sup> The Boston Federal Reserve Report states that salaries paid to out-of-state employees are less likely to have an effect in the state where they were earned.<sup>71</sup> That is, nonresident employees are not as likely as resident employees to spend a significant amount of their salary in the state that granted the tax credit.<sup>72</sup> A report on the Massachusetts movie credit found this to be the exact case.<sup>73</sup> An *Associated Press* examination on the Massachusetts program found that \$82 million of the \$330 million spending associated with eligible credits went to pay the salary for nonresident actors earning over \$1 million.<sup>74</sup> In effect, the Massachusetts credit is providing vast economic benefits to other states while Massachusetts is stuck subsidizing the production. The ERA Report on Pennsylvania does not tackle this issue directly when addressing the multiplier effect, but it does look to capture the direct and indirect impacts of spending.<sup>75</sup> For direct impacts, the report looked only to the spending within Pennsylvania of those who received the credit to support core activities.<sup>76</sup> Section 8702-D of the statute defines a Pennsylvania production expense as “payment to a personal service corporation representing individual talent if the tax imposed by Article IV will be paid or accrued on the net income of the corporation for the taxable year.”<sup>77</sup> Therefore, like Massachusetts, the high salaries paid to nonresident actors in a Pennsylvania film could count as inflating the in-state impact of

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<sup>70</sup> Conn. Memo, *supra* note 67, at 4.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Steve LeBlanc, *State Tax Credits Help Covers Stars' Pay*, ASSOCIATED PRESS, Jan. 13, 2011, [http://articles.boston.com/2011-01-13/ae/29338558\\_1\\_tax-credit-credit-program-film-industry](http://articles.boston.com/2011-01-13/ae/29338558_1_tax-credit-credit-program-film-industry).

<sup>74</sup> *Id.*

<sup>75</sup> ERA REPORT, *supra* note 29, at 45. Indirect impacts are changes in inter-industry spending, which are predominantly business-to-business transactions. While important, they are not at play when addressing nonresident actor's salary.

<sup>76</sup> *Id.*

<sup>77</sup> 72 PA. CONS. STAT. ANN. § 8702-D (West 2007).

the multiplier when in all likelihood the impact is going predominantly out of state.<sup>78</sup>

As a final word on the misuse of the multiplier effect relating to the Pennsylvania tax credit, the ERA Report states that for film production within Pennsylvania the multiplier effect is 1.9602.<sup>79</sup> This means that for every dollar spent on the motion picture industry an additional \$0.96 is created in other industries through direct and indirect spending.<sup>80</sup> While the ERA Report touts this as being within the top ten percent of industry multipliers within the state, it indicates there are other industries that will provide a more efficient way to stimulate the economy.<sup>81</sup> Within the Commonwealth, cheese manufacturing, hand tool manufacturing, and poultry processing would provide higher multiplier effects.<sup>82</sup> While the ERA Report does not reveal the entire top ten percent of industries, it states that manufacturing industries usually have the highest multiplier,<sup>83</sup> while other states have found higher multipliers in sectors such as automotive manufacturing and nuclear power plants.<sup>84</sup> Thus, while it is possible to boast about the multiplier effect in film production, the fact remains that there are other sectors of the economy with higher impacts, which might represent a better potential investment for public funds.<sup>85</sup>

Aside from the multiplier effect, the single largest rationale behind the tax policy is the belief about its ability to create jobs.<sup>86</sup> In fact, most states look only to issues of job creation, such as how many people will be hired for the production and at what salary, when deciding on the merits of a film-related tax policy.<sup>87</sup> While job creation is a paramount rationale behind

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<sup>78</sup> *Id.* Pennsylvania does limit this possibility by capping the amount payable at 15 million.

<sup>79</sup> ERA REPORT, *supra* note 29, at 46.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 10.

<sup>85</sup> ERA REPORT, *supra* note 29, at 46.

<sup>86</sup> *See supra* notes 38–44 and accompanying text.

<sup>87</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 7.

the policy, the figures cited are often misused and misunderstood which in turn lead to inaccurate and untrustworthy findings.

One of the biggest misunderstandings about job creation related to movie credits is the fact that they are largely fleeting.<sup>88</sup> By their nature, film productions are temporary. The jobs they create are not permanent and, once the production finishes, much of the “new” workforce is left behind and will become unemployed unless another new stream of income rises.<sup>89</sup> The Boston Federal Reserve’s examination of the Connecticut credit policy came to the same conclusion.<sup>90</sup> While there is an initial spike in employment associated with the first year of the credit, this increase quickly retreats to the baseline unless there is another source of income.<sup>91</sup> In an economic analysis of the Massachusetts tax policy, Pacey C. Foster and David Terkla found that, while jobs are created during movie production, there is a high rate of fluctuation within the jobs due in part to their temporary status and to the seasonal nature of film production.<sup>92</sup> They also found that the Massachusetts film industry was able to absorb many jobs that were lost in other economic sectors, but these are still only temporary fixes.<sup>93</sup> Overall, this seems to reveal that the benefits associated with the policy are not long-term solutions, but instead temporary gains that are only maintainable by continued subsidization of the industry.<sup>94</sup>

Another incriminating conclusion about the supposed job creating ability of the credit is that most of the jobs being “created” are actually just jobs shifting from either another location or another sector.<sup>95</sup> When a film production comes to town, the assumption is that the jobs created come

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<sup>88</sup> *Id.* at 7–8.

<sup>89</sup> *Id.* at 8.

<sup>90</sup> Conn. Memo, *supra* note 67, at 9.

<sup>91</sup> *Id.*

<sup>92</sup> Pacey C. Foster & David Terkla, *Film and Television Production in Massachusetts: The Beginning of Hollywood East?*, 13 MASSBENCHMARKS, No. 2, 2011 at 21 (2011), available at <http://www.massbenchmarks.org/publications/issues/vol13i2/5.pdf>.

<sup>93</sup> *Id.* These economic sectors like construction and electricians faced heavy unemployment during the 2008 recession. Many were able to migrate to the film industry for jobs such as set creation or lighting.

<sup>94</sup> Conn. Memo, *supra* note 67, at 2.

<sup>95</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 8.

from the local workforce. In practice though, “[m]ost film production jobs are filled by out-of-state residents specializing in particular areas of audio or visual production.”<sup>96</sup> This location shifting also supplements the findings of the *Associated Press* that most of Massachusetts’ tax credits ended up going to nonresident actors and thus, the credit misfired in its intended multiplier effect.<sup>97</sup> Sector shifting of jobs can result in the skewing of data that point favorably towards the effectiveness of the tax policy.<sup>98</sup> William Luther of the Tax Foundation writes that while a “new” job results when a hairstylist stops serving the public and works on set, it is actually just a shift in production from another sector to the movie industry.<sup>99</sup> This sector shift results in a job lost for the employee’s previous sector, which is rarely counted and can skew the findings.<sup>100</sup> In Pennsylvania, neither the ERA Report nor any of the annual DCED reports touch on any potential for jobs lost, which implies that the data surrounding the potential job creation of the credit may be flawed.<sup>101</sup>

The tax credit also affects individual states on a larger scale. With so many states turning to film credits to spur investment and job creation, the national trend is one of decreasing marginal benefits.<sup>102</sup> This nationwide trend represents a race to the bottom where, “[e]ach year, legislators have gone back to the drawing board to outdo the incentives of neighboring states and give their home state an edge in attracting movie production.”<sup>103</sup> As the Boston Federal Reserve stated in 2009, this cycle of competition makes it difficult for a state to establish a sustainable film industry.<sup>104</sup> This

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<sup>96</sup> *Id.*

<sup>97</sup> LeBlanc, *supra* note 73.

<sup>98</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 8.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> See ERA REPORT, *supra* note 29; 2008 DCED REPORT, *supra* note 36; 2010 DCED REPORT, *supra* note 48; 2011 DCED REPORT, *supra* note 41.

<sup>102</sup> See David Zin, *Film Incentives in Michigan*, SENATE FISCAL AGENCY 1 (Sept. 2010), <http://www.senate.michigan.gov/sfa/Publications/Issues/FilmIncentives/FilmIncentives.pdf> (During 2009–2010, Michigan spent 100 million dollars in credit to stimulate “\$59.5 million in private sector activity.” *Id.*).

<sup>103</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 15.

<sup>104</sup> Conn. Memo, *supra* note 67, at 2.

plays out in an almost perfect symmetry as neighboring state New York undercut Connecticut just a year earlier by offering an even more generous credit to stem perceived losses to Connecticut's film program.<sup>105</sup> This regional warfare is not the type of tax policy that Pennsylvania should support. The race to the bottom forces taxpayers to support rapidly ballooning incentive policies in an effort to keep up with the continuing credit arms race.<sup>106</sup> Overall, it increases costs while providing diminishing marginal gains.

Some of the other reasons given in support of the tax program, like increased tourism and free marketing, are speculative and difficult to quantify. William Luther writes: "While tourism is expected to be positively correlated with movie productions, there is no reason—or evidence—that this correlation is very large or powerful."<sup>107</sup> In an annual report on the Massachusetts movie credit, the state department of revenue does not even include the tourism effect because no economic model can correctly capture all the variables.<sup>108</sup> Citing a study for *The Annuals of Tourism Research*, the Massachusetts report states that there must be a "strong iconic identification with a particular location" and that the identification is not part of most movies.<sup>109</sup> Pinning the success of a large-scale economic investment on the faint hope that a particular location becomes "iconic" appears to be reckless. In fact, it may result in further state involvement with film production including efforts to censor and shape potential films into showing the state in the most positive light.<sup>110</sup> While increased tourism and free advertising remain a

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<sup>105</sup> NEW YORK STATE FILM CREDIT, *supra* note 63, at 1.

<sup>106</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 15.

<sup>107</sup> *Id.* at 11.

<sup>108</sup> NAVJEET K. BAL, A REPORT ON THE MASSACHUSETTS FILM INDUSTRY TAX INCENTIVES 22 (2009), <http://www.mass.gov/dor/docs/dor/news/2009filmcentivereport.pdf> ("As we have noted previously, we are not aware of any economic model that can reliably estimate such impacts, which depend on several variables, including how many people view the films made in Massachusetts, the demographics of the audience, whether particular motion pictures are set in Massachusetts and include recognizable Commonwealth scenery, and whether the films portray the state in a positive, negative, or neutral light.").

<sup>109</sup> *Id.* The examples they do show are Devil's Tower in *Close Encounters of the Third Kind*, Badlands National Park in *Dances With Wolves*, and the Texas Book Depository in *JFK*.

<sup>110</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 11.

possible way to offset the cost of the Pennsylvania credit, it is hard to quantify and difficult to realize.

Looking to some of the other rationales given in support of the credit policy, the evidence becomes even more convincing that the credit is not worth keeping. It is undisputed that local businesses see increased activity when a film production comes to town, but the cost of bringing the film outweighs the benefits to the state and misdirects investments from sectors more likely to produce returns.<sup>111</sup> Wisconsin painfully discovered this fact when the film *Public Enemies* was shot in that state under the state's credit program.<sup>112</sup> The spending associated with filming the production totaled roughly \$18 million, but only \$5 million, or about 27%, was in-state spending.<sup>113</sup> Using this data to determine the best-case scenario for indirect impact within Wisconsin from filming results in a finding of only \$1.70 return for every dollar spent.<sup>114</sup> The state concluded that when the tax was used to lure out-of-state Hollywood productions, it was 75 times less effective at generating revenue than the next least effective program.<sup>115</sup>

In Pennsylvania, the evidence supports that the PFPTC is not a credit that provides an asset to the state. The policy rationale behind incentivizing film production teeters on faulty assumptions and uneasy facts. In the ERA Report for Pennsylvania this is unequivocally true. As its conclusion, the report found that the \$75 million credit generated \$4.5 million in economic benefits to the state.<sup>116</sup> While already a surprisingly small return, it becomes even more disheartening that the ERA Report bases its entire findings on the assumption that all film production and related activity would evaporate if the credit were not in effect.<sup>117</sup> This assumption that all related activities,

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<sup>111</sup> See *supra* notes 81–84 and accompanying text.

<sup>112</sup> Patrick Marley & Stacy Forster, *State Reimburses 'Public Enemies' for Nearly Every Dollar Spent Here*, MILWAUKEE JOURNAL SENTINEL (Feb. 13, 2009), available at <http://www.jsonline.com/news/statepolitics/39572587.html>.

<sup>113</sup> WIS. DEP'T OF COMMERCE, COST BENEFIT ANALYSIS OF WISCONSIN FILM TAX CREDIT (2009), <http://www.ctvoices.org/sites/default/files/bud09wisconsinppt.pdf>.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> ERA REPORT, *supra* note 29, at 54.

<sup>117</sup> BLOCKBUSTER SUPPORT, *supra* note 8, at 12.

even ones not receiving the credit, would cease to exist is simply wrong.<sup>118</sup> This faulty assumption is the basis on which the findings are drawn and leaves the finding of a net \$4.5 million gain as largely speculative. While difficult to gauge the true economic effect of the credit within Pennsylvania, one estimate shows that it may be as damaging as a \$40 million loss.<sup>119</sup>

## V. CONCLUSION

The evidence leads to the finding that the Pennsylvania Film Production Tax Credit is inefficient in its efforts to improve the state economy. While film production does create jobs within Pennsylvania, nonresident employees fill most of the openings. Further, looking to the evidence collected by other states, these nonresident employees do not spend a significant amount of the money within the state. This leads to the state funding the production through its subsidy, while not realizing a substantial economic boost through the multiplier effect. Additionally, the jobs created are usually temporary and not an effective method of building a long-term economic foundation. Other supposed economic effects, such as increased tourism, remain speculative and hard to assess accurately.

The effort by Pennsylvania to spur economic development through tax credits that incentivize film production, while well intentioned, is ineffective. The overall costs of implementing and retaining the credit outweigh the economic benefits to the state. It is not to say that in-state film production is unable to generate a positive economic impact, only that the impact is disproportionately less than the expenditure of the program. As the costs of the program significantly outweigh the realized and potential benefits of the program, the state should consider ending the tax credit.

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<sup>118</sup> Mark Robyn, *Fiscal Fact: Florida's Sales Tax Holiday and Film Tax Credit Proposals Will Not Deliver on Exaggerated Promises*, TAX FOUND. 2 (Feb. 17, 2010), <http://www.taxfoundation.org/files/ff210.pdf>.

<sup>119</sup> *Id.*