



## Finding the Money

### Innovative Ways To Finance Your Film

by Ethan Bordman, Esq.

You've got a great script, a great director, a great cinematographer and several great actors all interested in your project. All you need is the financing to make it happen...

Academy Award winning director Billy Wilder understood how much work is involved before principal photography begins, commenting that "we spend 80% of our time making deals and 20% making pictures."

Two of the biggest obstacles you will face in bringing your project from script to screen are: 1) financing it; and 2) distributing it, once completed. For many filmmakers, financing is a catch-22. Providers of financing want to know that you have reputable professionals involved, including the director, cinematographer, and actors. Conversely, directors, cinematographers, and actors all want to know—before they sign on—that you are able to compensate them and have sufficient funding to ensure that the film can be completed. One scenario needs the other to work.

If you have confidence in your project, you will find a way to get it financed and produced. Below are some methods of finding funding for your project.

#### State Tax Credits, Rebates and Loans: "Free" Money

There are more than 40 states that offer financing incentives in an effort to attract movie projects and the economies they create. An entertainment project brings business not only to the state's film office, but also to a variety of business owners and actors. Local production companies provide equipment; hotels, restaurants, catering companies, and office space in the area are likely to see a surge in business during the production. People in the community are hired to assist with the production—resident actors get an opportunity to work on a motion picture, which saves the production the cost of flying in and housing a supporting cast. If the experience is successful, the producers may choose to return to the area for another project.

States offer three types of incentives: 1) loans; 2) rebates (often called tax rebates); and 3) tax credits.

1) Loans are the least common incentive. States can offer filmmakers a loan at a fixed rate. For example, New Mexico's rate is the National Prime Rate plus 1.50%, based on the date the project is approved by the state. Other conditions must be met; a *signed* distribution contract must be in place (letters of intent and deal memos are not usually accepted). A certain percentage of the crew must be state residents, and a certain percentage of the film must be shot in the state. In New Mexico, these percentages are 75% and 85%, respectively.

2) States that offer rebates will return, or refund, to the production company a percentage of the monies spent to produce the film. A rebate is a check—issued by the state—whose value is based on monies qualified under the production. This check is paid approximately six months after all the paperwork and accounting is filed with the state.

Michigan's Film and Digital Media Assistance Program allows for a rebate for expenditures of \$100,000 or more. The amount of the rebate varies based on the type of expenditure and whether an individual is a Michigan resident. The rebate is paid to "eligible production companies", defined as "a company that bears the overall responsibility for making (or producing) the movie or other entertainment project as a whole." Michigan resident personnel expenditures—including salaries—qualify for a 32% refund. Nonresidents who work in an "above the line" capacity, such as the director, producer, writer, actors with starring roles, and others who guide and manage the creative process qualify for 27%. Nonresidents whose work is considered "below the line," such as sound, light, and special effects technicians; the supporting acting cast; and others who are involved in the physical production of the project qualify for 25%. Direct production expenditures, including development, pre-production, and post-production qualify for 27%.

For more details, visit [www.michiganfilmoffice.org](http://www.michiganfilmoffice.org). Be sure to check with the state's film office as soon as possible before beginning your project as not every project or every expenditure is covered by the incentive.

It should be noted, the incentive will be reduced for some expenditure categories annually. For example: nonresident "below the line" refunds will decrease 5% *annually* until 2015, and many other refund categories, including personnel expenditures for Michigan residents, will decrease effective January 1, 2015. The decision on how to allocate the rebate is made by the production company—though rebates are often used to pay back investors.

3) Tax credits are used to lower taxes incurred by the production. One advantage of tax credits is that the credit may be traded to any other business in the state—whether entertainment-related or not. This allows any state business to benefit from the incentive. Illinois offers this type of tax credit.

A tax credit trade works in the following way: a film production spends \$1 million in a state that offers a 30% credit. First, receipts and financials are processed—proving that the money was spent in the state and is a qualified expenditure. Then, the state issues a tax credit certificate to the production company for \$300,000 (30% of the \$1 million). This credit can then be used to lower the taxes that the production has accumulated—or, the credit can be sold. If it is sold, the dollar value is negotiated between the buyer and the production company; for example, 90 cents on the dollar. After the sale, the buyer has gained a \$300,000 tax credit—which can be used toward taxes owed in the state—but which cost only \$270,000 (a \$30,000 savings). The production company now has \$270,000 in cash—which they are free to spend as they wish—though, as in the case of a rebate, it is often used to pay back investors.

### "Crowdfunding"

Over the last few years, crowdfunding websites such as [Kickstarter.com](http://Kickstarter.com) have emerged to help artists finance their projects. These sites provide a venue for filmmakers to post information about their projects, which include not only detailed descriptions, but also trailers and posters.

Money raised is treated as a donation; filmmakers may use it any way they wish in exchange for a fee, which is usually approximately 5% of the total collected. The two main advantages of crowdfunding sites are that: 1) filmmakers do not have to return any money, since it is considered a donation; and 2) websites have worldwide reach, so any individual in any country may donate money to a project. However, most sites specify a time frame—for example, 90 days—during which money may be raised.

### Private Money

Friends, family, neighbors, or any other interested individual or corporate investor may also be a source of funding for your film through a securities offering, usually a private placement memorandum. In order to be sure you are in compliance with both the laws in your state as well as Federal regulations, you must consult a securities attorney **before** attempting to attract any investors to your project.

### Angel Investors

“Angel” investors (also called business angels) are individual investors. The term was originally used to describe investors in Broadway shows. Often an “angel’s” interest in your project is usually more than a financial return. These are individuals, organizations, or associations that have a strong interest in the topic, issue, or message delivered in the film. For example, if your film is about the first amendment, consider contacting an organization that supports free speech rights. But always be sure to consult a securities attorney **before** talking to anyone about financing.

### It’s Out There

Your film *can* be funded and produced. First-time filmmakers will undoubtedly face challenges, but success is very possible. One inspiring example is that of the director Quentin Tarantino, who cited his experience working in a video store as a catalyst to begin his career. His debut film, *Reservoir Dogs*—a favorite at the Sundance Film Festival—launched his career and was named to several “best of” lists by the American Film Institute.



#### Ethan Bordman: Bio

Ethan Bordman represents authors, screenwriters, producers, directors, and actors, guiding them through the legal and business matters they face in bringing their dreams to the screen. He holds a Master’s in Entertainment Law from the University of Westminster in London, England and is the former chair of the Arts, Communications, Entertainment, and Sports section of the Michigan State Bar. He practices entertainment law in Michigan, New York, and Illinois.