

## Debbie Longman

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**From:** French Brown <FBrown@deanmead.com>  
**Sent:** Monday, November 19, 2018 4:46 PM  
**To:** CITReview  
**Cc:** Debbie Longman; Mark Hamilton; McKinley, Will; Vans Stevenson; Angela Miele  
**Subject:** Corporate Income Tax Review  
**Attachments:** Florida-MPAA Letter to DOR-168k Nov 19.pdf

Dear Debbie,

The Motion Picture Association of America, Inc. respectfully submits the following comments regarding the Department's review of the 2017 Tax Cuts and Jobs Act.

Please let us know if you have questions.

French Brown  
850-459-0992 (Mobile)

**DEAN  
MEAD**

ATTORNEYS AT LAW  
[www.deanmead.com](http://www.deanmead.com)

**French Brown**  
Attorney at Law  
[FBrown@deanmead.com](mailto:FBrown@deanmead.com)  
850-999-4100 F: 850-577-0095 D: 850-270-5525  
Dean, Mead & Dunbar  
215 S. Monroe Street  
Suite 815, Tallahassee, Florida 32301  
Orlando | Fort Pierce | Tallahassee | Tampa | Viera/Melbourne



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**MOTION PICTURE ASSOCIATION**  
OF AMERICA, INC.  
1600 EYE STREET, NORTHWEST  
WASHINGTON, D.C. 20006

Vans Stevenson  
Senior Vice President  
State Government Affairs

202-378-9140 direct  
202-744-4009 mobile

November 19, 2018

**VIA EMAIL**

Corporate Income Tax Review  
c/o Debra Longman, Director of Legislative and Cabinet Services  
Department of Revenue  
P.O. Box 5906  
Tallahassee, Florida 32314-5906

Dear Ms. Longman:

The Motion Picture Association of America, Inc. (MPAA)<sup>1</sup> respectfully submits the following comments requesting that the State address an unintended consequence of Florida's decoupling from §168(k), as amended by the Tax Cuts and Jobs Act (2017). MPAA represents the leading distributors and producers of motion pictures and television programs worldwide. The MPAA represents seven member companies. If Florida decouples from bonus depreciation under Internal Revenue Code (IRC) §168(k) for film and television producers and does not allow those taxpayers to recover the cost of films and television programs under the income forecast method of §167(g), it will have a significant adverse impact on the industry of the MPAA members.

As background, MPAA members historically used an amortization/depreciation method to recover the cost of film and television productions known as "income forecast" for Federal income tax, Florida, and most states' tax purposes. This method closely corresponded to the productive life of the film or television program and has been the historic common practice for both tax purposes and financial statement purposes for many years. When the Tax Cuts and Jobs Act was enacted in late 2017, the following sequence of events occurred:

1. At the Federal level, bonus depreciation was enacted under §168(k) for most assets, including, for the first time, qualified film and television productions.

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<sup>1</sup>*Walt Disney Studios Motion Pictures; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Twentieth Century Fox Film Corporation; Universal City Studios LLC; Warner Bros. Entertainment Inc., and CBS Corporation as an associate member.*

2. Florida then de-coupled in early 2018 from §168(k) across-the-board and replaced it with a 7 year straight line depreciation for all assets covered by §168(k) without regard to whether the assets were previously subject to Florida's historic practice of de-coupling from bonus depreciation and without regard to their actual economic lives.
3. As a result, Florida's 7 year asset life now sweeps in qualified film and television productions, which had not previously been subject to Florida's de-coupling from bonus depreciation. This 7 year straight line depreciation now forces film and television producers to amortize their creative content under a method that bears no relation to the historic tax method used for both Federal and Florida purposes (i.e., income forecast).

Accordingly, as discussed herein, we respectfully request that Florida consider retaining its historic allowance of the income forecast method of depreciation for qualified film and television productions now eligible at the Federal level for bonus depreciation under §168(k). The income forecast method is not an accelerated method like bonus depreciation and it does more accurately correspond to the economic life of the underlying asset. This historic method for qualified film and television productions has the further advantage of having no adverse impact on Florida's tax revenues because, like other assets under §168(k), bonus depreciation will not be allowed.

These adverse tax consequences occur based on the form, not the substance, of the specific changes in the Tax Cuts and Jobs Act. Congress's decision to include film and television in IRC §168(k) instead of §181 or some other full expensing provision had no substantive federal effect. However, Florida's action to decouple from §168(k) will substantively effect film and television producers with respect to the costs incurred to produce and acquire films.

#### *Understanding the Federal Provisions*

The federal concept of "bonus depreciation" started in 2002 when Congress allowed additional depreciation deductions for qualified property placed in service under IRC 168(k). The level of bonus depreciation was increased to 50% of the adjusted basis of the qualifying property in the Economic Stimulus Act of 2008. Thereafter, Florida decoupled from the federal bonus depreciation by requiring corporations to add back the full amount deducted in a year for federal purposes and then deducting a fraction of that amount over seven years on a straight-line basis. Delaying the federal deduction mitigated the negative impact on Florida's corporate income tax revenues.

From year-to-year, Congress continued allowing bonus depreciation, sometimes increasing the percentage allowed. Florida usually followed each Congressional change and decoupled from the bonus depreciation. In no case were film and television productions treated as qualified property under §168(k) prior to the Tax Cuts and Jobs Act. However, the amendments to IRC §168(k) made in the Tax Cuts and Jobs Act modified and extended bonus depreciation for previously-qualified assets, eliminated the limited bonus depreciation available to certain film and television productions under §181 and extended bonus depreciation under §168(k) to certain film and television productions. The MPAA requests that Florida consider the adverse impact of requiring films and television productions to be amortized straight line over seven years and

modifying Florida law to permit this limited class of property to be amortized under the income forecast method. The State would still achieve the same benefit of precluding film and television producers from writing off qualified productions in the first year.

Unlike all other tangible personal property subject to full expensing under 168(k) that was previously depreciated under the modified accelerated cost recovery system, films and television productions were amortized under a method that reflected the useful economic life of this intangible property. Long before the Tax Cuts and Jobs Act, Congress recognized the unique income earning characteristics in films and television programs by allowing cost recovery using an income forecast method. This method is based on the income earning potential of a film which may vary as a direct result of its popularity. IRC §167(g) allows a film or television program to forecast total income by including all anticipated income from any source through the end of the 10th taxable year following the year in which the property is placed in service. Therefore, in the case of a film, such income includes income from foreign and domestic theatrical, television, and other releases and syndications; income from video tape releases, sales, rentals, and syndications; and incidental income associated with the property. Use of the income forecast method is elected on a property-by-property basis. Once elected, the income forecast method is a method of accounting that may not be changed without the consent IRS Commissioner. Depreciation under the income forecast method pursuant to IRC §167(g) was not altered by the Tax Cuts and Jobs Act except that producers may now elect to fully expense qualified films and television productions under §168(k).

In 2004, §181 was enacted as part of the American Jobs Creation Act. It provided a more accelerated method of depreciating qualified films and television productions than §167(g). IRC §181 authorized an immediate deduction for costs incurred for such productions that satisfy certain criteria including the requirement that at least 75% of compensation costs be incurred in the United States. Historically, this provision has **never** been altered by the Florida's corporate income tax laws. In other words, in prior years when Florida taxpayers were required to add back bonus depreciation and recover the costs over seven years straight line, the same treatment was never required for qualified films and television programs to the extent their costs were recovered under §181. Any deduction under §181 on a producer's federal return would flow to the Florida return.

However, the Tax Cut and Jobs Act recently expanded the term "qualified property" for bonus depreciation in IRC §168(k) to include qualified film and television programs to the extent they otherwise satisfy the requirements of §181. While §181 still exists in the Internal Revenue Code, the actual expensing provision is now incorporated in the bonus depreciation provisions of §168(k). Full bonus depreciation will now apply under §168(k) for qualified productions that are placed in service after September 27, 2017.

If Florida does not modify its decoupling from §168(k) for qualified productions to permit these productions to be depreciated under §167(g), significant adverse consequences will follow for MPAA members. The MPAA is not requesting special treatment to allow for full expensing in Florida but only request that in lieu of seven year straight line depreciation, they be allowed to use the income forecast method to reflect the unique characteristics of films and television productions as compared to tangible personal property.

*The Proposed Solution*

The MPAA believes and respectfully requests that Florida modify its bonus depreciation adjustments to exclude qualified property under §168(k)(2)(A)(IV) and §168(k)(2)(A)(V) of the Internal Revenue Code of 1986, as amended, and to require such property to be depreciated instead under §167(g). These subparagraphs apply to qualified film or television productions and qualified live theatrical productions, respectively. This proposed modification would ensure that Florida's adoption of the Tax Cuts and Jobs Act and Florida's decoupling from historical bonus depreciation provisions would not inadvertently and negatively impact MPAA's members.

Please contact me at 202-378-9140 if you have any questions or would like to discuss any of our comments in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Vane Swanson". The signature is fluid and cursive, with a large, sweeping initial "V" and a long, horizontal stroke extending to the right.