MEETING DATE: 01/24/2011

AGENDA ITEM: **Discussion of Proposed Changes to Culver City Business Tax on Production Companies and Provide Direction to the City Manager**

ATTACHMENTS

City of Culver City, California

Agenda Item Report

Meeting Date: 10/11/10	Item Number: A-2
CITY COUNCIL AGENDA ITEM: Discussion of Proposed Changes to the Culver City Municipal Code Related to Business Tax on Production Companies and Creative Artists and Provide Direction to the City Manager Related Thereto.	
Contact Person/Dept.: Jeff S. Muir/Finance	Phone Number: 310/253-5865
Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [X]	Attachments: [X]
Commission Action Required: Yes [] No [X]	Date: ________________
Public Notification: (E-Mail) Meetings and Agendas – City Council (10/06/10), (E-Mail) Culver City Chamber of Commerce, (E-Mail) Sony Corporation, (E-Mail) Culver Studios, (E-Mail) GMT Studios, (E-Mail) Motion Picture Association of America (10/06/10)	
Department Approval: Jeff Muir (10/01/10)	City Attorney Approval: Carol Schwab (by H. Baker) (10/06/10)
Chief Financial Officer Approval: Jeff Muir (10/01/10)	City Manager Approval: John M. Nachbar (10/06/10)

RECOMMENDATION:

Staff recommends the City Council discuss proposed changes to the Culver City Municipal Code (CCMC) related to business tax on production companies and creative artists, and provide direction to the City Manager related thereto.

BACKGROUND:

Since its inception, Culver City has been associated with the filming industry, as evidenced by our motto "The Heart of Screenland." Culver City is fortunate to be home to several studios that provide needed infrastructure and services to production companies in creating movies, television shows, and commercials. These studios, and the production businesses they attract, contribute significantly to our local economy in several ways, such as: providing well-paying local craft and professional job opportunities, purchasing of goods and materials used in production from local businesses, and supporting local restaurants and other businesses by those employed by or using the studio facilities. There is also filming activity throughout Culver City that does not take place at studios, such as on City streets and at residential or commercial locations. Filming outside of the studios is normally for short durations, while filming at the studios can range from short-term (commercials, music videos, etc.), to medium-term (movies, television shows, etc.) to long-term (recurring television series, etc.).

During the discussion of the City Manager's Proposed Budget for Fiscal Year 2010/2011, staff was requested to look into the current business tax requirements for filming/production companies and whether there might exist some inequities as compared to how surrounding jurisdictions handle them. Currently, the CCMC requires all businesses or individuals engaged in a business to apply for a business tax certificate and pay a business tax. Specifically, the CCMC reads:

§ 11.01.010 REQUIREMENTS TO OPERATE BUSINESS.

A. No person as principal, agent, clerk, employee, corporate officer, partner, trustee or otherwise, for himself/herself or for any other person, shall commence or carry on any business specified in this Subchapter, without having first:

1. *Applied for and received a tax certificate specifying such business;*
2. *Paid the required application fee;*
3. *Paid the required business tax;*
4. *Obtained any permit required by the City;*
5. *Paid any permit fee required; and*
6. *Paid any investigation or inspection fee required, subject, however, to the exemptions provided for in this Chapter.*

Therefore, it is the City's current practice to require all filming or production companies to obtain a Business Tax Certificate as set forth above, as well as the Film Permit requirements set forth in Chapter 11.14 of the CCMC. A summary of how this is accomplished follows below:

- Some production companies come into Culver City on a short-term or intermittent basis to film on the streets, on City or Agency property, or at some other residential or commercial facility. Currently Film Permits are issued through the Police Department. Current practice is that in addition to the Film Permit Application Fee and any Daily Site Usage Permit or On-Street Parking fees, they will also pay the Business Tax Certificate Application Fee and business tax of $250 per day or a $1,500 maximum that would satisfy their business tax obligation for the year.

- Other production companies come to a Culver City studio on a short-term basis. Because of the intermittent and short-term character of this business, the City often is not aware of these companies, and unless they come to City Hall for some other reason and are directed to the Business Tax desk, we would not collect business tax from them. According to the CCMC, they are subject to the $250 per day, $1,500 per year schedule.

- Finally, there are production companies that come to a Culver City studio on a longer-term basis. The CCMC does not currently have a specific definition of short-term or long-term. We currently apply a definition of more than 30 days being long-term. Again, because these companies deal directly with the studios, the City does not generally have knowledge of them unless they come to City Hall for another reason and end up at the Business Tax desk. In the case of these companies, we apply the gross receipts tax (which is $1.00 per $1,000 of gross receipts or the cost or production, whichever is greater). Like other business categories, there is currently no maximum tax for these companies.

- It should be noted, there are certain exemptions from the filming regulations of Chapter 11.14, including the requirement to obtain a Film Permit. One such exemption, per CCMC Sec. 11.14.040.D, is for "[a]ll activities conducted at places of business, zoned S-1, or otherwise, where the principal function is producing, making, taking, developing, trading or dealing in motion pictures or photoplays, television or commercial productions, sound film or animated cartoons." However, this exemption does not apply to the requirement to obtain a Business Tax Certificate.

A situation arose several months ago when two production companies (under the umbrella of the same larger company) were referred to the Business Tax desk. These companies had been filming different television series episodes at a studio and had a presence in Culver City for a number of months. Under dispute, they paid business tax based on their total cost of operations (The CCMC requires that gross receipts tax be based on the higher of gross receipts or the cost of operations). Their letter of dispute, among other things, included information that the City of Los Angeles has a $12,495 business tax cap for production companies working within that city. Staff has been informed that these productions elected not to return to Culver City based on the business tax structure. It has also been communicated to staff that the word has spread throughout the production community, and this has further hampered business for some of the studios. It is important to note that it appears the business tax cap in the City of Los Angeles has existed since the mid-1980's, and is not something that was recently instituted.

There are a variety of studies that have been developed over the years addressing the impact of the filming and production industries in California, as well as the United States. Filming and production business is valued because of the high-paying jobs and positive economic impact they can have on a region. A number of other states, as well as other countries, have instituted tax and other incentives to lure more and more of this market away from California, particularly the greater Los Angeles area. In response, the State of California has developed incentives, and as already mentioned, the City of Los Angeles has also instituted certain measures.

The City of Los Angeles also uses a separate non-profit agency called FilmLA to handle the issuance of film permits. While they coordinate with city departments, they handle most of the logistics. FilmLA also handles film permitting for other public agencies such as the cities of Diamond Bar, Industry, Lancaster, Palmdale and South Gate, the County of Los Angeles and several school districts. While this staff report will not make any recommendations regarding the issuance of street or location film permits, this may be an option the City could further research in the future.

The decision of whether to incentivize, what types of business to incentivize, and how much incentive or tax relief to provide is a difficult policy question. There will always be someone that is willing to provide more incentive than their neighbor. Large incentive programs can be unsustainable over time. As the City works to develop a comprehensive economic development policy, consideration of these issues will be important. This staff report seeks only to have City Council discussion and direction around making certain updates to the CCMC related to production companies and the creative arts, and is not meant for the broader discussion of our economic development policy and the role of business tax in that policy.

DISCUSSION:

During the summer, staff met with representatives from the three largest studios in the City (Sony, Culver Studios, and GMT Studios). Discussions included their viewpoint on whether Culver City's existing business tax structure for production companies created a competitive disadvantage, as well as any other thoughts they wanted to share on the filming industry and its role in Culver City. It became clear through the discussions that the size of each studio and its target customer base were different and, therefore, created unique perspectives from each. There was general agreement that with more production companies leaving California altogether, the competition between studios has increased, and any competitive advantage is helpful. The City's current business tax requirements for production companies appear to most impact those studios geared towards longer-term productions. Staff also met with a representative of the Motion Picture Association of America. One thing they particularly emphasized was recommending that, at a minimum, the City consider a cap on business tax for production companies similar to the City of Los Angeles.

Staff is making three recommendations for City Council consideration. Two of them are directly related to actions the City of Los Angeles has taken, and another is a 'clean up' item that would help resolve a long-standing issue. As it relates to business tax for production companies, staff proposes the following for the City Council consideration or alternate direction:

- Production companies filming on City streets, at City facilities, or at other non-studio facilities for up to thirty days in a calendar year will not be required to acquire a business tax certificate or pay business tax. They shall continue to pay all applicable Film Permit Fees charged by the Police Department.

- Production companies filming on City streets, at City facilities, or at other non-studio facilities for more than thirty days in a calendar year will pay, in addition to all applicable Film Permit Fees, the appropriate (application or renewal) business tax certificate fee and pay a flat $2,000 business tax for the year.

- Production companies filming at a studio for up to thirty days in a calendar year are not required to acquire a business tax certificate or pay business tax.

- Production companies filming at a studio for more than thirty days in a calendar year will pay the appropriate (application or renewal) business tax certificate fee and pay a business tax of $1.00 per $1,000 of the cost of operations up to $12,000,000 (with an annual tax ceiling of $12,000).

The City Council may wish to further consider the amount of the tax ceiling, the number of days operating within the City before registration and taxes are required, or whether a lesser flat tax amount might apply to some minimum portion of the cost of operations before the $1.00 per $1,000 applies.

The City of Los Angeles also provides an exemption for creative artists engaging in creative activities with gross receipts less than $300,000 annually. This provides qualifying individuals that file and pay their renewal fees in a timely manner with a waiver on the business taxes for gross receipts up to $300,000. The waiver is lost for those that file their renewal late. They are still required to file annually and pay the renewal fee. Los Angeles defines Creative Activities/Creative Artists as follows:

Creative Activities shall mean activities performed by Creative Artists primarily for entertainment and/or aesthetic purposes, including assistants or professional trainees performing those same Creative Activities, in the following professions:

1. *The following professions to the extent they are directly involved with motion picture, radio or television productions, commercials, multi-media or recorded or live music or theater:*
   a. *Actor or announcer; or*
   b. *Art director, costume designer, production designer, scenery or set designer; or*
   c. *Choreographer; or*
   d. *Cinematographer; or*
   e. *Conductor of bands, chorales, orchestras, and other musical groups; or*
   f. *Director; or*
   g. *Motion picture editor, sound dubbing, special effects, or titling artist; or*
   h. *Writer (where the writing is the writer's own creative work, but not writing that is compilation, documentation or description of a non-artistic nature, such as technical writing, the writing of technical or scientific reports, etc.); or*
   i. *Music or lyrics arranger, composer or writer; or*
2. *Author of books, essays, poems or short stories; or*

3. *Cartoon artist, including animated media; or*
4. *Creator of visual fine arts, using artist's materials (i.e., lithographer, painter, sculptor, or the equivalent); or*
5. *Drawing, graphic, illustration or sketch artist; or*
6. *Performing artist, including comedian, dancer, impersonator, juggler, magician, mime, musician, or singer; or*
7. *Photographer, to the extent the photography is primarily artistic in nature and not primarily journalistic or commercial.*

The specific language from the City of Los Angeles Code related to Creative Artists is included as an attachment to this report.

The final recommendation staff is presenting for the City Council's consideration is for cases where an individual works solely for one company throughout the year, but is treated as a 'contractor' and provided a 1099 instead of a W-2. While companies have legitimate business and financial reasons to consider certain individuals as independent contractors, when someone works and takes direction solely from one employer they can by all other accounts be considered employees. Because these individuals are paid as 'contractors', the CCMC requires they file and pay business taxes on their 1099 reported income. This has been a matter of contention that staff has had to deal with for many years. It is recommended that City Council consider an exemption for 'dependent' contractors, where all income is derived from one employer and a single 1099 statement is received, versus an 'independent' contractor where services are provided to more than one employer and more than one 1099 statement is received for the year.

Based on direction received from City Council on these or other ideas, staff will return with the necessary items for codification/execution within a few weeks. It is recommended this be completed before annual renewals begin in December.

FISCAL ANALYSIS:

For Fiscal Year 2009/2010, the City received approximately $9 million in business tax. Of this amount, approximately $2.5 million was collected from companies under the broad category of 'entertainment,' which includes production companies, studios, and others. It is estimated that at least 95% of the business taxes paid by entertainment-type businesses is generated from the studios and other related businesses located in Culver City.

Thus, it is likely that current business tax collections from production companies that only come to Culver City for filming purposes is well under $125,000 per year. Potential changes in policy regarding non-permanent production companies will not have a significant effect on total business tax collection. With increased cooperation and compliance with the studios, as well as greater studio occupancy, there could possibly be an increase. Also as mentioned previously, an increase in the filming activity in Culver City will cause some increases to sales tax as well.

The total business tax paid by creative artists with $300,000 or less in gross receipts for Fiscal Year 2009/2010 was less than $10,000. Many of these companies and individuals still appear to be ‘for profit’ enterprises that would not qualify for the exemption. It is estimated the maximum fiscal impact for an exemption to creative artists would be less than $5,000 per year.

It is estimated the exemption for ‘dependent’ contractors could result in a maximum of a few thousand dollars in decreased business tax revenues per year.

ATTACHMENTS:

1. City of Los Angeles Municipal Code Section 21.29(b)

MOTION:

That the City Council:

Discuss this matter and direct the City Manager as deemed appropriate.