

LEGAL EYE

by Michael Bergman

Taxes, taxes

Winter may be coming to a close, but the winter of taxes is unending. With income-tax time rapidly approaching, it is prudent to remember that tax planning is a year-round concern.

Taxpayers are not obliged to submit themselves to the maximum imposable amount; they may take advantage of loopholes and other lawful handling of their affairs to avoid the extent of tax imposition. This means more than taking advantage of tax deductions. Proper tax-planning involves organizing one's legal affairs and relationships with a view to taxation consequences. This kind of foresight is not only for the high and mighty, but also the average individual as well.

The film business presents unique challenges in this regard to all of the industry's members. Working on several different shoots on a boom-and-bust basis is cause for special concern. One of the first questions to determine for many directors, crew members, actors, etc., is the selection of what status they adopt: employee or self-employed. The selection will set in motion a whole train of taxation consequences.

An employee will face deductions at source - automatic deduction from his paycheck - and will not be eligible to use the fuller gambit of business deductions in order to determine taxable income; for example, using a part of one's house as a so-called office. The up-side is the access to unemployment insurance benefits (or is this pessimism or merely realism?). Self-employed individuals have more extensive business deductions but have more to concern themselves with to preserve the status in an industry where status is often vague. Most film people try to have the benefits of unemployment insurance while desiring the broader range of business deductions. This best-of-both-worlds approach is exemplified by the common industry term "free-lancer." Unfortunately the tax department does not acknowledge a middle ground. The taxpayer is either an employee or self-employed, depending on the facts of his individual situation.

Film people wishing to enjoy self-employed status must act as self-employed individuals. Their contracts are drafted to reflect this and do not contain terms or phrases applicable to employees. They invoice for their services, even if the account is a formality. They operate using a trade-name or through a company as a symbol of their independent status.

The use of companies by self-employed film people entails a number of infrequently recognized consequences. Although the individual continues to perform the work, he does so now as an employee of his own company. When he is paid, he is paid by his company and not the producer. When his own company pays him his salary, he must suffer deductions at source like any other employee; of course, whether he takes a salary, and how much it is, is up to himself. However, as all shareholders have rights to receive dividends from their company, the use in whole or in part of dividend payments which are subject to different tax rules may reduce the taxation of dividend income.

It is the company that contracts and, on a legal basis, deals with producers. Fees are paid to the company and become income-taxable in the company's hands. Companies, though, may not necessarily be taxed at the same rate as individuals. Many Canadian companies may be entitled to the "Canadian Small Business Deduction" which lowers the rate of taxation applicable to them to a level that makes this tax-avoidance vehicle very interesting to higher-income individuals. This advantageous taxation rate is subject to special conditions that may require careful planning. Where you live may also affect your tax situation. An employee is subject to pay income-tax generally in the province where he has his residence. Consequently while federal income-tax rates apply coast-to-coast, provincial income-tax rates vary from province-to-province. An employee living in a province which enjoys a lower rate of income tax will have obvious benefits. Self-employed people, however, may be subject to paying provincial income-tax in the provinces where they carry on income-generating operations. All of this is naturally subject to special rules and exemptions, but it is interesting to note to what extent even the selection of a home may affect the amount of income-taxes to be paid.

The choice of residence has even graver consequences when the taxpayer lives outside of Canada. Canadians who are non-residents in Canada may or may not be subject to Canadian income-taxes. Those living in the United States, for example, may find their ultimate choice of taxation determined by tax treaties that take into account principal residence or the length of stay in Canada during any 12-month period. Furthermore, non-residents working in Canada would be subject to withholding

taxes. This is a scheme whereby the producer will be obliged to withhold a certain percentage of fees to be remitted to the government in payment of potential income-taxes. This amount will only be refunded upon the filing of an annual income-tax declaration which justifies the refund.

The few simple points outlined above are just the tip of the iceberg. Tax matters are constantly shifting affairs. To professionals, tax-planning is always somewhat out of date because there are new developments every day. All this points to the need for careful planning on an ongoing basis to reduce

the burden, where legally possible. Planning must take place in conjunction with competent professionals.

Michael N. Bergman in a Canadian entertainment lawyer. He is a member of the Bar of the Provinces of Quebec, Ontario and Alberta with offices in Montreal and Toronto.

Bruce G. Kyle, Personal Management, Inc.

One Shudell Avenue, Toronto, Ontario, Canada M4J 1C5
(416) 466-6549, -4541



GRANT COWAN

RECKLESS DISREGARD
SEEING THINGS, Defective Vision
THRILLKILL



KATHY MICHAEL MCGLYNN

CATS - Starring as GRIZABELLA



DENIS SIMPSON

THE PARK IS MINE
THE FRANKENSTEIN FACTOR
FLYING



KAY TREMBLAY

FOR THE RECORD, The Front Line
JUDGE, Final Cut
THE BEACHCOMBERS



GREGORY PETERSON DIRECTOR

GRAND THEATRE COMPANY
STRATFORD FESTIVAL



TONY MASON

BIG DEAL, RSL
JOHN KASTNER'S STREET COMEDY



TONY NARDI

TELEFRANCAIS, TVO
CAFE ITALIA, MONTREAL



LILIANE STILWELL

ONTARIO BICENTENNIAL SHOWCASE
THE CLUB



RUDY WEBB

CATS
SEEING THINGS

Donald Martin, Press Representative
416-921-3469