

RECENT CASES

Arbitrator rules that DGA Basic Agreement prohibits Paramount Pictures from replacing Peter Hyams with Steve McQueen as director of forthcoming motion picture

In March of 1978, Paramount Pictures hired Steve McQueen as an actor in the motion picture “The Hunter” or “Bounty Hunter.” Later that year, Peter Hyams was hired to rewrite the screenplay for the picture and to be its director.

In late April of 1979, Paramount informed the Directors Guild that it wished to use McQueen as director rather than Hyams. The Directors Guild contended that Paramount was prohibited from doing so by Section 7-1401 of the Directors Guild Basic Agreement of 1978

which provides: “No person assigned to or performing in a particular motion picture before the Director is replaced can replace the Director.”

Paramount initially argued that the provision applies only during the actual course of filming, while the DGA initially contended that it applies to any motion picture for which a director has been hired. The dispute was submitted to Arnold D. Burk for binding arbitration under provisions of the DGA Basic Agreement.

In his decision, the arbitrator noted that the provision, which was added to the Basic Agreement in 1973, resulted from many directors having been replaced or threatened with replacement during the course of production, because of “creative differences with other individuals attached to the picture who had superior negotiating power to the individual director involved.” The provision was designed to recognize and protect the

director's contribution to a motion picture during preproduction.

During the course of the arbitration hearing, the DGA recognized that the provision might be inappropriate under certain circumstances, such as when a considerable passage of time or major changes in the project occur between the dismissal of a director and the hiring of a replacement. However, the arbitrator ruled that the burden of showing that the provision should not apply must be placed on the party seeking to avoid its applicability. And in this case, he found that Paramount had not met this burden.

Hyams had been engaged to render director's services and had performed as such by planning locations, and attending meetings regarding the budget, the hiring of production personnel, and the preparation of a rough shooting sequence. Principal photography was scheduled to begin shortly thereafter in the summer of 1979.

And no evidence had been presented showing that the motion picture to be directed by McQueen was not the same motion picture which Hyams had been hired to direct.

The arbitrator therefore ordered that Paramount could not hire McQueen to replace Hyams as the director of the motion picture.

In the Matter of the Arbitration Involving the Directors Guild of America, Inc, and Paramount Pictures Corporation, Before the Arbitration Tribunal of the Directors Guild of America, Inc. (May 8,1979) [ELR 1:3:1]

Actors residuals held to be property of the State of California if left unclaimed for seven years

Residuals payable to members of the Screen Actors Guild escheat to the State of California (that is, become property of the state), when they are left unclaimed for seven years, the California Court of Appeal has held.

SAG receives residual payments from producers which it forwards to its members. If a member does not claim his or her residuals for six years, SAG bylaws provide that the payments are assigned to SAG for the use of its membership. In practice, however, SAG has not done this. Instead, SAG deposited at least some of the unclaimed residuals in a trust account in a Canadian bank.

In a declaratory relief action against State Controller Kenneth Cory, SAG contended that California was not entitled to those funds, because California's Unclaimed Property Law (Code of Civil Procedure Sections 1500-1582) does not apply to "any funds held only in a foreign country." However, the Court of Appeal held that the foreign country exemption did not apply,

because SAG was in “constructive possession” of the funds in Canada.

SAG also contended that its fund for unclaimed residuals constituted an “employee benefit trust distribution” which was not subject to escheat. That contention too was rejected. The Court of Appeal held that the fund was not designed to provide the kind of employee benefits which are exempt from the Unclaimed Property Statute, because the distribution of unclaimed residuals to SAG members was “nothing more than a payment of deferred compensation to them.”

SAG also argued that because of its assignment bylaw, there were no unclaimed funds. The Court of Appeal disagreed with this contention also, because the bylaw was not enforced in practice, and because in any event, the bylaw was void as a private escheat law “obviously designed to frustrate operation of the (Unclaimed Property Law),” and thus contrary to public policy.

In a footnote, the court acknowledged that SAG may do a better job than the state in its search for those entitled to unclaimed property, and it acknowledged that SAG pays better interest than the state. Nevertheless, the court said, legislative action will be necessary to provide any exemption from the Unclaimed Property Law for unclaimed residuals held by SAG.

Screen Actors Guild v. Cory, 91 Cal.App.3d 111 (1979)
[ELR 1:3:2]

ABC television wins slander lawsuit filed by liquidators of famous department store, because liquidators held to be public figures who were unable to prove actual malice

The liquidators of San Francisco's "City of Paris" department store were "public figures" required to prove "actual malice" on the part of the ABC television network, station KGO-TV, and the Better Business Bureau in an action for slander, the California Court of Appeal has held. The trial court's judgment in favor of the defendants was thus affirmed, because the plaintiffs conceded their inability to show the required "actual malice" by clear and convincing evidence.

The close-out sale of "City of Paris," San Francisco's highly-regarded, landmark department store, was conducted by plaintiffs Vegod Corporation and Western Institute of Retailing, Inc., who advertised bargain sales of the store's merchandise inventory. However, the plaintiffs brought merchandise into the store from other stores and rented space to concessionaires who also brought in merchandise.

On a KGO-TV news broadcast, the Better Business Bureau was quoted as revealing that the plaintiffs, not “City of Paris,” were managing the closeout, and that the public was being deceived by promises of bargains that were not bargains at all. The plaintiffs sued for slander on the basis of this and other similar broadcasts.

The “actual malice” requirement applied to public officials by the U.S. Supreme Court in *New York Times v. Sullivan*, 376 U.S. 254 (1964), and extended to “public figures” in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), was extended further in the case of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), to private persons who become public figures by voluntarily injecting themselves into public controversies.

Although the demise of “City of Paris” and its closeout sale were not a “public controversy,” they were matters of public interest, the California Court of Appeal held. The court also held that although *Gertz v. Robert*

Welch involved a public controversy, a “controversy” is not required where there is a matter of “public interest.”

Thus, the plaintiffs became public figures within the rule of *Gertz v. Robert Welch* by voluntarily injecting themselves into a matter of public interest when they ran and widely advertised the “City of Paris” close-out sale.

Vegod Corporation v. American Broadcasting Companies, Inc., 88 Cal.App.3d 95 (1979) [ELR 1:3:2]

Book s account of escape by Israeli Olympic team member from terrorist attack in Munich was neither defamatory nor invasion of privacy

A federal District Court in New York City has held that references to a member of the 1972 Israeli Olympic

team in a book about the terrorists' attack on the team's living quarters during the 1972 games in Munich while "undoubtedly false and most probably offensive" — would not be understood by an ordinary reader of the entire book to depict the team member as a coward and were not, therefore, defamatory. Nor did the references constitute an invasion of privacy, the court held. Merely incidental and isolated when viewed in the context of the main purpose and subject of the book, they fell outside the protection of Sections 50 and 51 of the New York Civil Rights Law — New York's right of privacy statute. The team member's complaint against the book's publisher for damages and injunctive relief was therefore dismissed.

It was not disputed that in actual fact, the plaintiff and five others had become aware of the attack and had escaped together. The book's account, however, showed the plaintiff escaping alone, to the surprise of his

companions, who did not know why he had fled. The plaintiff claimed that the book thus depicted him as a coward who had deserted his teammates, had failed to warn them of the attack, and had acted so as to alert the terrorists and further endanger the other Israeli team members.

The plaintiff alleged neither innuendo (that is, an explanation of how or why the complained of words were libelous) nor special damages; and the District Court found that the words were not libelous per se. They did not refer to the plaintiff as a coward; and the description of the plaintiff's fleeing the apartment alone without warning his teammates did not support an inference of cowardice, when read in the context of the entire account. The plaintiff was not the only Israeli shown running away, and the book defended such action against others' criticism. More importantly, the book's account of the plaintiff's own mental processes, "of

greater significance than the perceptions by others of his acts,” showed he thought he was alone. Therefore, no inference of cowardice could be drawn from his flight.

The plaintiff's name was used on only 13 of the 458 pages of the book, and after his appearance in the early escape scene he vanishes from the book. These isolated references in a book which contained 101 characters and dealt with the entire tragedy fell outside the coverage of the New York right of privacy statute, the court held, because although the book had been fictionalized in part, the plaintiff was not the “subject” of a fictional report and was not, therefore, protected by the statute.

Ladany v. William Morrow & Co., Inc., 465 F.Supp. 870 (1978) [ELR 1:3:3]

Random House permitted to terminate multi-book contract with author Herbert Gold, but held liable for agreed upon advances for books already published

In 1970, Random House and Herbert Gold entered into a four-book contract which provided for \$150,000 in advances to be paid to Gold in ten equal installments. Gold agreed to deliver manuscripts which were “in content and form satisfactory to the publisher.” Random House accepted and published the first two books Gold wrote under the contract. However, after reading the original and a revision of the manuscript for Gold’s third book, “Swiftie the Magician,” Random House’s editor-in-chief, James Silberman, rejected the book and terminated the contract.

While reviewing the manuscript for Gold's third book, Silberman requested and received a financial report on the first and second books and thus learned that Random House had paid advances of \$60,000 and the books had earned only \$11,579.35.

When Random House sued to recover advances it had paid to Gold in excess of the royalties he had earned, Gold counterclaimed for bad faith breach of contract, claiming that Random House had given undue and improper weight to financial considerations. A federal District Court in New York City found that Random House was entitled to reject the third book manuscript, even if it considered the likelihood of the book's commercial success in deciding to reject it.

However, the court ruled that Random House's contention that its termination of Gold's contract required him to repay all advances he had received "does violence to the contract, common sense and industry

practice.” The agreement, a single book contract form, had been adapted by the publisher to cover four books, and must be viewed, the court found, as “four single book contracts.”

Silberman testified that it is common in the publishing industry for advances to be allocated to each of several works contracted for in a multi-book agreement. Thus, the court allocated Random House’s advances to Gold among the four books, and held that Gold was required to repay unearned advances only “as to any undelivered works.” Therefore, Gold was required to repay \$30,000, which was one-half of the \$60,000 advanced to him, on account of the third and fourth books. However, Random House was required to pay Gold \$45,000, which was the balance still due him on advances allocated to the first two books. Gold thus recovered the net amount of \$15,000.

Random House, Inc. v. Gold, 464 F.Supp. 1306
(S.D.N.Y. 1979) [ELR 1:3:3]

D.C. Comics obtains preliminary injunction against newspaper publisher s use of the name Daily Planet

In a trademark action commenced just before the release of the film “Superman” late last year, D.C. Comics obtained a preliminary injunction against a newspaper publisher and others prohibiting them from any use of the name “Daily Planet.” Although the defendants initially sought an injunction against D.C. Comics based on their earlier (but since cancelled) trademark registration of the name Daily Planet, the United States District Court for the Southern District of New York denied the

motion. The court held that although neither party held a registered trademark in the name, D.C. Comics had acquired a common law trademark and was thus entitled to injunctive relief, because the defendants had allowed their registration to lapse.

Although the Superman character was created in 1938, it was not until 1940 that the Daily Planet was introduced as part of the D.C. Comics story. Since that time, however, the Daily Planet, in the words of the court, has become “. . . inextricably woven into the fabric of the Superman story.” Accordingly, it was the “duration and consistency” of this association which led the court to find that D.C. Comics had acquired a common law trademark in the name.

By comparison, the defendants’ association with the name began in 1970 when, after a year of publication under several names, including “The Miami Free Press,” they created the Daily Planet, Inc., and registered the

name “Daily Planet” as the trademark for the paper. The Daily Planet, however, was published only until 1973 when it folded. Three years later the Office of Patent and Trademark Registration cancelled the defendants’ trademark. Despite the cancellation, the defendants showed no interest in the trademark until just prior to the release of the Superman film.

The court not only considered the facts surrounding the parties’ respective uses of the name Daily Planet but also applied traditional legal principles governing the issuance of injunctions. After noting that under these principles, D.C. Comics would have to show that the defendants’ use of the “Daily Planet” name would be likely to either confuse or deceive the public as to the source of Superman identified products, the court found that since the defendants’ actions were intended “... to cash in on the Superman story and notoriety the likelihood of confusion would be inferred.” In view of this,

and its finding that the defendants' continued use of the name "Daily Planet" was "likely to cause irreparable injury to . . . [D.C. Comics'] . . . business reputation, goodwill and to its common law trademark," the court granted the preliminary injunction.

The court rejected the defendants' allegation that D.C. Comics was precluded from obtaining the injunction because of its failure to ". . . diligently police its mark during the period defendants were publishing and distributing their version of the Daily Planet" The court noted that, even if this were true, it would not be grounds for denying the injunction in this case, because if an injunction were denied, the defendants would prosper from their own wrongdoing.

A Federal District Court in New York City denied a motion for reconsideration of the preliminary injunction. After DC Comics withdrew its claim for damages, it made a motion for summary judgment which the

defendants did not oppose. Accordingly, the court granted the motion, without analysis, and thus the preliminary injunction previously issued has become permanent.

D.C. Comics v. Powers, 465 F.Supp. 843 (S.D.N.Y. 1978); D.C. Comics v. Powers, 482 F.Supp. 494 (S.D.N.Y. 1979) [ELR 1:3:4]

Reader s Digest liable for violating FTC consent order prohibiting use of simulated checks in connection with sweepstakes promotion

The Federal Trade Commission has obtained a partial summary judgment against Reader's Digest holding it liable for violating a consent order in effect since 1972. The ruling, which concerned only the issue of liability, is

still subject to the magazine's arguments of good faith, laches, estoppel and lack of harm to the public in connection with the penalty phase of litigation. Should such arguments be rejected by the court, however, Reader's Digest could be subject to fines of up to \$10,000 for each violation.

In January of 1972, following almost two years of FTC investigation and the threat of legal proceedings, Reader's Digest entered into a consent cease and desist order prohibiting it from engaging in certain allegedly unfair and deceptive practices in connection with various promotional sweepstakes campaigns. Among the practices prohibited by the order were the use or distribution of "simulated checks" or "confusingly simulated items of value." Despite the consent order's provisions, Reader's Digest distributed as part of its 1973 and 1974 promotional campaigns a "TRAVEL CHECK" purporting to

be for “100 Dollars a Month for Life” and an item labelled a “CASH-CONVERTIBLE BOND.”

Reader’s Digest argued that the distribution of these items did not violate the terms of the 1972 consent order, because, among other things, there were several differences between the items distributed at the time of the consent order and those distributed thereafter. The United States District Court in Delaware held otherwise, however. In addition to noting that the differences between the items distributed prior to the consent order and those distributed thereafter were “insignificant,” the court also rejected two other arguments advanced by Reader’s Digest. Both of these rested on the premise that the consent order required proof of actual confusion or deception of the public.

The magazine first argued that the terms of the consent order should be construed to encompass only items which could be “shown to have confused consumers.”

In rejecting this requirement, the court noted that had the government chosen to enforce the Federal Trade Commission Act's provisions in an original administrative proceeding, ". . . it would be required to prove only that the challenged material has a tendency or capacity to deceive" In addition, the court also noted that such a requirement did ". . . not reflect the parties' original intention . . ." at the time they entered into the consent order.

The second basis for Reader's Digest contention that proof of actual confusion or deception is required rested on First Amendment grounds' Arguing first that it had not waived any First Amendment rights when it entered into the consent order because "purely commercial . . . advertising did not enjoy constitutional protection until five years after the consent order was issued . . ." Reader's Digest then argued that the First Amendment itself requires proof of actual confusion or deception.

Although the court agreed that Reader's Digest did not waive its "previously unrecognized" constitutional argument, the court did not agree that the First Amendment required such proof. The court noted that even constitutionally protected speech may be subject to time, place and manner restrictions, and that "the 'common sense differences' between commercial and other speech . . . justify granting commercial speech a limited measure of protection commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of non-commercial expression . . ."

The court concluded that the FTC's interest in preventing the use of deceptive advertising outweighed First Amendment interests. Furthermore, the court noted that FTC regulation affected only the "form of the . . . (speech and) . . . not its content . . ." Hence, there was ". . . little likelihood of a chilling effect on Reader's

Digest efforts to market its products by way of promotional sweepstakes.”

Having concluded that actual harm need not be shown to establish a violation of the original consent order, the court finally considered whether either or both of the challenged items actually fell within the order’s proscription, and found that they did. Finding the differences between the items which gave rise to the order and the two items at issue “insignificant,” the court concluded that the “FTC . . . is not limited to prohibiting the illegal practice in the precise form in which it was found to have existed in the past The principal purpose of the consent order was to prevent the distribution of any confusingly simulated item of value That purpose would be frustrated if Reader’s Digest were able to avoid the order’s proscription by using such slight changes in wording and minor variations in format”

United States v. Reader's Digest Association, 464 F.Supp. 1037 (D. Del. 1979) [ELR 1:3:4]

Obscenity conviction upheld by California Court of Appeal despite constitutional and procedural challenges

The conviction of a bookstore owner for possession of obscene magazines and movies with the intent to distribute them to others has been affirmed by the California Court of Appeal, despite a series of constitutional and procedural challenges.

The defendant was found guilty of seven counts of possessing obscene matter in violation of California Penal Code Section 311.2. On appeal, he contended that the California Constitution provides “ more definitive and inclusive protection” than the First Amendment to

the United States Constitution, and that the California Penal Code section he was convicted of violating was unconstitutional under the California Constitution. (Article 1, Section 2 of the California Constitution provides, “Every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.”)

However, the California Supreme Court has “squarely held” that Penal Code Section 311.2 does not violate the California Constitution, and thus, in this case, the Court of Appeal rejected this argument without extensive analysis.

The defendant also contended that because the materials appealed, if at all, to the prurient interest of a deviant sexual group — they dealt with pedophilia and bestiality — expert testimony by the prosecution was necessary, not merely the showing of the materials themselves. The

Court of Appeal held, however, that where such materials were distributed in a bookstore open to the public, they were not as a matter of law designed for such a bizarre deviant group that an average person would be unable to determine whether the material would appeal to a prurient interest. (Furthermore, the defendant's lawyer had said in his opening statement that no experts would be required in the case, and thus he had waived the contention that experts were necessary.)

The Court of Appeal also rejected contentions that the defendant had been denied equal protection on procedural grounds, that his sentence constituted cruel and unusual punishment, and that he had been deprived of a fair trial because of statements made by the prosecutor during trial and because of an incident involving service of an Internal Revenue subpoena in the hallway during a recess in the trial.

People v. Wiener, 91 Cal.App.3d 238 (1979) [ELR 1:3:6]

Suit challenging validity of Copyright Royalty Tribunal and its jukebox regulations is dismissed

The Copyright Act of 1976 contains a compulsory license in favor of jukebox operators permitting them to publicly play records of copyrighted musical works. In exchange, the Act requires juke box operators to pay an \$8 per jukebox royalty fee to the Copyright Office, which fees are to be distributed to the copyright owners of the works played in jukeboxes. (17 U.S.C. Section 116)

The Copyright Royalty Tribunal was created by the Copyright Act of 1976 as an independent body within the legislative branch of the federal government. It shall

have the job of determining the amount of royalties to be paid to each copyright owner, and it shall do so from claims to be filed by copyright owners of songs played in jukeboxes.

In order to permit copyright owners to file their claims, the Copyright Royalty Tribunal adopted regulations permitting copyright owners to have access to jukeboxes so that they may obtain information concerning the records played in them. The regulations also require jukebox operators to file lists with the Tribunal specifying the addresses where jukeboxes are located and the number of jukeboxes at each location. (37 C.F.R. Section 303)

Jukebox operators consider the location and number of their jukeboxes to be a trade secret. Therefore, the Tribunal also adopted a policy not to disclose the actual location lists or the names of the operators of particular jukeboxes. (43 Federal Register 53795, Nov. 17, 1978; CCH Copyright Law Reports, Para. 20,017)

Nevertheless, the jukebox operators' association filed suit against the Copyright Royalty Tribunal, contending that its regulations invade privacy and violate the Federal Reports Act, and that the Copyright Royalty Tribunal is itself unconstitutional. That suit has been dismissed, without an opinion, by a federal District Court in Washington, D.C. Tribunal Chairman Douglas Coulter has advised a House of Representatives subcommittee that an appeal is expected. (CCH Copyright Law Reports, Para. 20,028)

Amusement & Music Operators Association v. Copyright Royalty Tribunal, CCH Copyright Law Reports, Para. 25,062 (D.D.C. 1979) [ELR 1:3:7]

NEW LEGISLATION AND REGULATIONS

FCC proposes elimination of cable television rules concerning distant signal carriage and syndicated program exclusivity

The Federal Communications Commission has proposed to eliminate its cable television rules concerning distant signal carriage and syndicated programming exclusivity. The distant signal carriage rule limits the number of distant city television stations whose signals may be carried by cable systems. The syndicated programming exclusivity rule requires deletion of syndicated programs from signals that are carried by cable systems, if those programs have been sold to local television stations.

The proposed deregulation is based on the results of an FCC review of the cable industry commenced more than two years ago. These results are to be published by the

FCC in reports entitled Syndicated Exclusivity Report and Economic Inquiry Report. From these Reports, the FCC has determined that the imposition of regulatory restraints on cable television may no longer be in the public interest and that the restraints may have been “little more than an historical curiosity.”

The Reports indicate that cable deregulation would have a negligible effect on television service provided to the public and that any additional competition from cable, possibly affecting broadcast station revenues, would not cause a decrease in local programming. On the basis of the Reports, the FCC also has concluded that cable deregulation would have no negative near-term effects upon the supply of television programming.

The FCC has proposed a “grandfathering” provision so that existing rules shall cover program exhibition licenses currently in effect for three years or until expiration of the contract, whichever occurs sooner. No

changes have been proposed in the network non-duplication, mandatory carriage or sports blackout rules.

At the same time the FCC proposed elimination of its distant signal and syndicated programming rules, it denied a petition for rulemaking filed by the National Telecommunications and Information Administration (NTIA) of the United States Department of Commerce urging that new or expanded cable television operations be permitted to carry distant signals of non-network programs only with the consent of the originating station. According to the NTIA, such retransmission consent would enable the FCC to end its supervision of cable carriage in this area, because the copyright owner would control distribution of its work and receive full compensation for it.

Broadcasting and sports interests supported the retransmission consent proposal. They contended that such a system would bring cable into the broadcast

programming marketplace and prevent an oversaturation of sports programming. However, cable interests argued that retransmission consent would intrude on Congressional control of copyright and the compulsory license system of the Copyright Act of 1976. Under the Copyright Act of 1976, cable operators are subject to copyright liability for their carriage of television broadcast signals and must make payments of royalty fees for retransmitting the signals they do carry. However, cable systems are given a compulsory license under that Act, and need not negotiate individual licenses for each of the programs they carry.

Although the FCC denied the petition for retransmission consent, it announced that it would study the proposal, and invited comments on it. (The retransmission consent issue is also before Congress at this time in connection with its consideration of bills to revise the Communications Act.)

The FCC also denied a petition filed by the National Association of Broadcasters requesting that the FCC consider rulemaking for the development of “superstations.” The FCC denied this petition because it found no evidence of a regulatory problem — a conclusion hotly debated within the entertainment industry in recent months.

Initial comments on elimination of the cable rules or on the retransmission consent issue must be received by the FCC, 1919 M Street, N.W., Washington, D.C. 20554, on or before July 17, 1979 and reply comments on or before August 16, 1979. Further information may be obtained from Bill Johnson or Steve Bailey of the FCC’s Television Bureau at (202) 632-6468.

Notice of Proposed Rulemaking in Dockets 21284 and 20988, 44 Federal Register 28347 (1979) [ELR 1:3:5]

IRS issues proposed regulations concerning tax exemption for certain amateur athletic organizations

The Tax Reform Act of 1976 provided a tax exemption for organizations that “foster national or international sports competition.” In addition, contributions to organizations that qualify for the exemption are deductible by those who make them. However, the Tax Reform Act did not describe the kinds of activities that such organizations would have to engage in to qualify. Thus, the Internal Revenue Service has proposed regulations doing so.

The proposed regulations provide that an organization will be considered to “foster national or international amateur sports competition ” if it:

1. prescribes rules and standards for competition in an amateur sport, or represents the United States in an international body that does so;
 2. sponsors national championships or international competition in an amateur sport;
 3. sponsors local, regional, and national competition to select participants in national championships or international competition;
 4. provides security, ticket sales, or similar administrative services at amateur sports competitions;
 5. provides administrative, coaching and training services to amateur athletes;
 6. provides medical care and insurance to amateur athletes;
 7. conducts equipment research to benefit amateur athletes;
 8. disseminates information to amateur athletes;
- or

9. provides financial assistance to amateur athletes (so long as such assistance does not affect the amateur status of those to whom it is provided).

The proposed regulations also provide that an organization that provides athletic facilities or equipment will not be exempt, unless it has an exempt purpose other than fostering national or international amateur sports competition. For example, a university could qualify for exemption even if it provides athletic facilities and equipment.

Comments on the proposed regulations may be delivered or mailed to the IRS on or before July 9, 1979, addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T (LR-1386), Washington, D.C. 20224. Further information may be obtained from Charles M. Whedbee at (202) 566-3487.

Notice of Proposed Rulemaking re Exempt Amateur Athletic Organizations, CCH Standard Federal Tax Reports, Para. 8996Z (1979) [ELR 1:3:6]

DEPARTMENTS

Book Note:

Taxation of the Motion Picture Industry by Robert C. Kopple and Bruce M. Stiglitz

In an interview published in the July 1979 issue of Playboy magazine, Joseph Wambaugh complains about producers and studio executives who are Harvard lawyers “or worse.” The complaint was made while he was discussing what he described as studio interference with the content of motion picture scripts. Wambaugh did not

say what, if anything, he thought about lawyers being involved in the business end of production. But it is likely that he would not and certainly he should not object. The average cost of producing and distributing a single feature motion picture these days is as much as the annual gross receipts of a good sized manufacturing business. And, as in all businesses, the United States Treasury is always there as a silent, non-risk-taking partner.

The Internal Revenue Code, Regulations, Revenue Rulings and tax decisions run thousands and thousands of pages. Some of their provisions are clearly labeled as applicable to the movie business in particular, but most are not. Most are provisions of general applicability which happen to have an impact on movie producers as well as others. In either event, the extent of their impact should never be underestimated.

Robert C. Kopple, of the Beverly Hills law firm of Brawerman and Kopple, and Bruce M. Stiglitz of the Los Angeles law firm of Loeb and Loeb (LL.M. Harvard!) have culled these thousands of pages for what appears to be every provision of concern to the independent movie producer, and they have organized their material in a logical format that enables readers to answer particular questions or to mull over broad factors that should be considered in the overall planning of a project.

Among the particular questions that are answered are those concerning payroll withholding requirements for foreign talent working in the United States and U.S. talent working abroad, and tax accounting problems of film owners and distributors. Among the broad areas analyzed are those involving the selection of entities for the production and distribution of movies, both in the U.S. and abroad.

Although most of the book is devoted to federal income tax, Kopple and Stiglitz also devote one chapter to state and local taxes of all kinds (sales, personal property, income and license taxes) and another chapter to foreign taxes and incentives.

Ironically, at about the same time the Canadian government acted to foster motion picture production in that country, the U.S. Congress eliminated — in the Tax Reform Act of 1976 — many incentives which previously existed for production in the United States. Taxation of the Motion Picture Industry discusses the changes caused by the Tax Reform Act in connection with each of the subjects it covers. But in addition, it contains a separate chapter providing an overview of the effect the Act has had on motion pictures as tax shelters. Throughout the book, the authors point out such opportunities as may still remain for the careful planner.

Though *Taxation of the Motion Picture Industry* is first and foremost a tax book, it is also an excellent guide to business practices in the movie industry. In fact, the book concludes with several Appendices which are copies of agreements and other documents concerning such things as the “Step Deal” development of a movie, actors and screenwriters loanouts, the sale of a completed film to a distribution company, and the private placement of investment securities.

While the format of the book is perfectly useable type-written pages bound by a metal spiral and covered with plastic-coated cardboard the format fails to do dignity to the quality of the content within.

Taxation of the Motion Picture industry is available from the publisher, Tax Management Inc., 1231 25th Street, N.W., Washington, D.C. 20037, at \$35.00 per copy. [ELR 1:3:7]