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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO TAXATION

Introduced By: Representatives Regunberg, Palangio, Carson, Ajello, and Carnevale

Date Introduced: March 12, 2015

Referred To: House Finance

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 44-31.2-2, 44-31.2-3, 44-31.2-5, 44-31.2-6, 44-31.2-6.1, 44-31.2-  
2   7, 44-31.2-8, 44-31.2-9, 44-31.2-10 and 44-31.2-11 of the General Laws in Chapter 44-31.2  
3   entitled "Motion Picture Production Tax Credits" are hereby amended to read as follows:

4           **44-31.2-2. Definitions.** -- For the purposes of this chapter:

5           (1) "Accountant's certification" as provided in this chapter means a certified audit by a  
6   Rhode Island certified public accountant licensed in accordance with section 5-3.1.

7           (2) "Base investment" means the actual investment made and expended by a state-  
8   certified production in the state as production-related costs.

9           (3) "Documentary production" means a non-fiction production intended for educational  
10   or commercial distribution that may require out of state principal photography.

11          (4) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a  
12   partnership, limited liability company, or other business entity formed under the laws of the state  
13   of Rhode Island for the purpose of producing motion pictures as defined in this section, or an  
14   individual who is a domiciled resident of the state of Rhode Island as defined in chapter 30 of this  
15   title.

16          (5) "Final Production Budget" means and includes the total pre-production, production  
17   and post-production out-of-pocket costs incurred and paid in connection with the making of the  
18   motion picture. The final production budget excludes costs associated with the promotion or  
19   marketing of the motion picture

1 (6) "Motion picture" means a feature-length film, documentary production, video, video  
2 games, television series, or commercial made in Rhode Island, in whole or in part, for theatrical  
3 or television viewing or as a television pilot or for educational distribution. The term "motion  
4 picture" shall not include the production of television coverage of news or athletic events, nor  
5 shall it apply to any film, video, television series or commercial or a production for which records  
6 are required under section 2257 of title 18, U.S.C., to be maintained with respect to any performer  
7 in such production or reporting of books, films, etc. with respect to sexually explicit conduct.

8 (7) "Motion picture production company" means a corporation, partnership, limited  
9 liability company or other business entity engaged in the business of producing one or more  
10 motion pictures as defined in this section. Motion picture production company shall not mean or  
11 include: (a) any company owned, affiliated, or controlled, in whole or in part by any company or  
12 person which is in default: (i) on taxes owed to the state; or (ii) on a loan made by the state in the  
13 application year; or (iii) on a loan guaranteed by the state in the application year; or (b) any  
14 company or person who has discharged an obligation to pay or repay public funds or monies by:  
15 (i) filing a petition under any Federal or state bankruptcy or insolvency law; (ii) having a petition  
16 filed under any Federal or state bankruptcy or insolvency law against such company or person;  
17 (iii) consenting to, or acquiescing or joining in, a petition named in (i) or (ii); (iv) consenting to,  
18 or acquiescing or joining in, the appointment of a custodian, receiver, trustee, or examiner for  
19 such company's or person's property; or (v) making an assignment for the benefit of creditors or  
20 admitting in writing or in any legal proceeding its insolvency or inability to pay debts as they  
21 become due.

22 (8) "Primary locations" means the locations which (1) at least fifty-one percent (51%) of  
23 the motion picture principal photography days are filmed; or (2) at least fifty-one percent (51%)  
24 of the motion picture's final production budget is spent and employs at least five (5) individuals  
25 during the production in this state; or (3) for documentary productions, the location of at least  
26 fifty-one percent (51%) of the total productions days, which shall include pre- production and  
27 post-production locations.

28 (9) "Rhode Island film and television office" means an office within the department of  
29 administration that has been established in order to promote and encourage the locating of film  
30 and television productions within the state of Rhode Island. The office is also referred to within  
31 as the "film office".

32 (10) "State-certified production" means a motion picture production approved by the  
33 Rhode Island film office and produced by a motion picture production company domiciled in  
34 Rhode Island, whether or not such company owns or controls the copyright and distribution rights

1 in the motion picture; provided, that such company has either: (a) signed a viable distribution  
2 plan; or (b) is producing the motion picture for: (i) a major motion picture distributor; (ii) a major  
3 theatrical exhibitor; (iii) television network; or (iv) cable television programmer.

4 (11) "State certified production cost" means any pre-production, production and post-  
5 production cost that a motion picture production company incurs and pays to the extent it occurs  
6 within the state of Rhode Island. Without limiting the generality of the foregoing, "state certified  
7 production costs" include: set construction and operation; wardrobes, make-up, accessories, and  
8 related services; costs associated with photography and sound synchronization, lighting, and  
9 related services and materials; editing and related services, including, but not limited to, film  
10 processing, transfers of film to tape or digital format, sound mixing, computer graphics services,  
11 special effects services, and animation services, salary, wages, and other compensation, including  
12 related benefits, of persons employed, either director or indirectly, in the production of a film  
13 including writer, motion picture director, producer (provided the work is performed in the state of  
14 Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of vehicles; costs  
15 of food and lodging; music, if performed, composed, or recorded by a Rhode Island musician, or  
16 released or published by a person domiciled in Rhode Island; travel expenses incurred to bring  
17 persons employed, either directly or indirectly, in the production of the motion picture, to Rhode  
18 Island (but not expenses of such persons departing from Rhode Island); and legal (but not the  
19 expense of a completion bond or insurance and accounting fees and expenses related to the  
20 production's activities in Rhode Island); provided such services are provided by Rhode Island  
21 licensed attorneys or accountants.

22 (12) "Application year" means within the calendar year the motion picture production  
23 company files an application for the [refund or](#) tax credit.

24 **44-31.2-5. ~~Motion picture production company tax credit~~ Motion picture production**  
25 **company tax credit or refund.** -- (a) A motion picture production company shall be allowed a  
26 [refund or a](#) credit to be computed as provided in this chapter against a tax imposed by chapters  
27 11, 14, 17 and 30 of this title. The amount of the credit shall be ~~twenty five percent (25%)~~  
28 [twenty-three percent \(23%\)](#) of the state certified production costs incurred directly attributable to  
29 activity within the state, provided that the primary locations are within the state of Rhode Island  
30 and the total production budget as defined herein is a minimum of one hundred thousand dollars  
31 (\$100,000). The [refund or](#) credit shall be earned in the taxable year in which production in Rhode  
32 Island is completed, as determined by the film office in final certification pursuant to subsection  
33 44-31.2-6(c).

34 (b) For the purposes of this section: "total production budget" means and includes the

1 motion picture production company's pre-production, production and post-production costs  
2 incurred for the production activities of the motion picture production company in Rhode Island  
3 in connection with the production of a state-certified production. The budget shall not include  
4 costs associated with the promotion or marketing of the film, video or television product.

5 (c) Notwithstanding subsection (a), the [refund or](#) credit shall not exceed five million  
6 dollars (\$5,000,000) and shall be allowed against the tax for the taxable period in which the  
7 [refund or](#) credit is earned and can be carried forward for not more than three (3) succeeding tax  
8 years. Pursuant to rules promulgated by the tax administrator, the administrator may issue a  
9 waiver of the five million dollar (\$5,000,000) tax credit cap for any feature-length film or  
10 television series up to the remaining funds available pursuant to section (e).

11 (d) ~~Credits~~ [Refunds or credits](#) allowed to a motion picture production company, which is  
12 a subchapter S corporation, partnership, or a limited liability company that is taxed as a  
13 partnership, shall be passed through respectively to persons designated as partners, members or  
14 owners on a pro rata basis or pursuant to an executed agreement among such persons designated  
15 as subchapter S corporation shareholders, partners, or members documenting an alternate  
16 distribution method without regard to their sharing of other tax or economic attributes of such  
17 entity.

18 (e) No more than fifteen million dollars (\$15,000,000) in total may be issued for any tax  
19 year beginning after December 31, 2007 for motion picture [refunds or](#) tax credits pursuant to this  
20 chapter and/or musical and theatrical production tax credits pursuant to chapter 31.3 of this title.  
21 Said [refunds or](#) credits shall be equally available to motion picture productions and musical and  
22 theatrical productions. No specific amount shall be set aside for either type of production.

23 **44-31.2-6. Certification and administration.** -- (a) Initial certification of a production. -  
24 The applicant shall properly prepare, sign and submit to the film office an application for initial  
25 certification of the Rhode Island production. The application shall include such information and  
26 data as the film office deems necessary for the proper evaluation and administration of said  
27 application, including, but not limited to, any information about the motion picture production  
28 company, and a specific Rhode Island motion picture. The film office shall review the completed  
29 application and determine whether it meets the requisite criteria and qualifications for the initial  
30 certification for the production. If the initial certification is granted, the film office shall issue a  
31 notice of initial certification of the motion picture production to the motion picture production  
32 company and to the tax administrator. The notice shall state that, after appropriate review, the  
33 initial application meets the appropriate criteria for conditional eligibility. The notice of initial  
34 certification will provide a unique identification number for the production and is only a

1 statement of conditional eligibility for the production and, as such, does not grant or convey any  
2 Rhode Island tax benefits.

3 (b) Final certification of a production. - Upon completion of the Rhode Island production  
4 activities, the applicant shall request a certificate of good standing from the Rhode Island division  
5 of taxation. Such certificates shall verify to the film office the motion picture production  
6 company's compliance with the requirements of subsection 44-31.2-2(5). The applicant shall  
7 properly prepare, sign and submit to the film office an application for final certification of the  
8 production and which must include the certificate of good standing from the division of taxation.  
9 In addition, the application shall contain such information and data as the film office determines  
10 is necessary for the proper evaluation and administration, including, but not limited to, any  
11 information about the motion picture production company, its investors and information about the  
12 production previously granted initial certification. The final application shall also contain a cost  
13 report and an "accountant's certification". The film office and tax administrator may rely without  
14 independent investigation, upon the accountant's certification, in the form of an opinion,  
15 confirming the accuracy of the information included in the cost report. Upon review of a duly  
16 completed and filed application, the film office will make a determination pertaining to the final  
17 certification of the production. Within ninety (90) days after the division of taxation's receipt of  
18 the motion picture production company final certification and cost report, the division of taxation  
19 shall issue a certification of the amount of credit for which the motion picture production  
20 company qualifies under § 44-31.2-5. To claim the [refund or](#) tax credit, the division of taxation's  
21 certification as to the amount of the [refund or](#) tax credit shall be attached to all state tax returns on  
22 which the [refund or](#) credit is claimed.

23 (c) Final certification and credits. - Upon determination that the motion picture  
24 production company qualifies for final certification, the film office shall issue a letter to the  
25 production company indicating "certificate of completion of a state certified production". A  
26 motion picture production company is prohibited from using state funds, state loans or state  
27 guaranteed loans to qualify for the motion picture [refund or](#) tax credit. All documents that are  
28 issued by the film office pursuant to this section shall reference the identification number that was  
29 issued to the production as part of its initial certification.

30 (d) The director of the department of administration, in consultation as needed with the  
31 tax administrator, shall promulgate such rules and regulations as are necessary to carry out the  
32 intent and purposes of this chapter in accordance with the general guidelines provided herein for  
33 the certification of the production and the resultant production [refund or](#) credit.

34 (e) The tax administrator of the division of taxation, in consultation with the director of

1 the Rhode Island film and television office, shall promulgate such rules and regulations as are  
2 necessary to carry out the intent and purposes of this chapter in accordance with the general  
3 guidelines for the [refund or](#) tax credit provided herein.

4 (f) Any motion picture production company applying for the [refund or](#) credit shall be  
5 required to reimburse the division of taxation for any audits required in relation to granting the  
6 [refund or](#) credit.

7 **44-31.2-6.1. Impact analysis and periodic reporting.** -- (a) The film office shall not  
8 certify or approve any application under § 44-31.2-6 of this chapter until it has first prepared and  
9 publicly released an analysis of the impact the proposed investment will or may have on the state.  
10 The analysis shall be supported by appropriate data and documentation and shall consider, but not  
11 be limited to, the following factors:

- 12 (i) The impact on the industry or industries in which the applicant will be involved;
- 13 (ii) State fiscal matters, including the state budget (revenues and expenses);
- 14 (iii) The financial exposure of the taxpayers of the state under the plans for the proposed  
15 investment and negative foreseeable contingencies that may arise therefrom;
- 16 (iv) The approximate number of full-time, part-time, temporary, seasonal and/or  
17 permanent jobs projected to be created, construction and non-construction;
- 18 (v) Identification of geographic sources of the staffing for identified jobs;
- 19 (vi) The projected duration of the identified construction jobs;
- 20 (vii) The approximate wage rates for each category of the identified jobs;
- 21 (viii) The types of fringe benefits to be provided with the identified jobs, including  
22 healthcare insurance and any retirement benefits;
- 23 (ix) The projected fiscal impact on increased personal income taxes to the state of Rhode  
24 Island; and
- 25 (x) The description of any plan or process intended to stimulate hiring from the host  
26 community, training of employees or potential employees, and outreach to minority job  
27 applicants and minority businesses.

28 (b) The film office shall monitor every impact analysis it completes through the duration  
29 of any approved tax credit. Such monitoring shall include annual reports made available to the  
30 public on the:

- 31 (1) Actual versus projected impact for all considered factors; and
  - 32 (2) Verification of all commitments made in consideration of state incentives or aid.
- 33 (c) Upon its preparation and release of the analysis required by subsection (b) of this  
34 section, the film office shall provide copies of that analysis to the chairpersons of the house and

1 senate finance committees, the house and senate fiscal advisors, the department of labor and  
2 training and the division of taxation. Any such analysis shall be available to the public for  
3 inspection by any person and shall be published by the tax administrator on the tax division  
4 website. Annually thereafter, through and including the second tax year after any taxpayer has  
5 applied for and received a [refund or](#) tax credit pursuant to this chapter, the department of labor  
6 and training shall certify to the chairpersons of the house and senate finance committees, the  
7 house and senate fiscal advisors, the corporation and the division of taxation that: (i) the actual  
8 number of new full-time jobs with benefits created by the state-certified production, not including  
9 construction jobs, is on target to meet or exceed the estimated number of new jobs identified in  
10 the analysis above, and (ii) the actual number of existing full-time jobs with benefits has not  
11 declined. For purposes of this section, "full-time jobs with benefits" means jobs that require  
12 working a minimum of thirty (30) hours per week within the state, with a median wage that  
13 exceeds by five percent (5%) the median annual wage for full-time jobs in Rhode Island and  
14 within the taxpayer's industry, with a benefit package that includes healthcare insurance plus  
15 other benefits typical of companies within the motion picture industry. The department of labor  
16 and training shall also certify annually to the house and senate fiscal committee chairs, the house  
17 and senate fiscal advisors, and the division of taxation that jobs created by the state-certified  
18 production are "new jobs" in the state of Rhode Island, meaning that the employees of the motion  
19 picture production company are in addition to, and without a reduction of, those employees of the  
20 motion picture production company currently employed in Rhode Island, are not relocated from  
21 another facility of the motion picture production company in Rhode Island or are employees  
22 assumed by the motion picture production company as the result of a merger or acquisition of a  
23 company already located in Rhode Island. The certifications made by the department of labor and  
24 training shall be available to the public for inspection by any person and shall be published by the  
25 tax administrator on the tax division website.

26 (d) The film office, with the assistance of the motion picture production company, the  
27 department of labor and training, the department of human services and the division of taxation  
28 shall provide annually an analysis of whether any of the employees of the motion picture  
29 production company has received RIte Care or RIte Share benefits and the impact such benefits  
30 or assistance may have on the state budget. This analysis shall be available to the public for  
31 inspection by any person and shall be published by the tax administrator on the tax division  
32 website. Notwithstanding any other provision of law or rule or regulation, the division of  
33 taxation, the department of labor and training and the department of human services are  
34 authorized to present, review and discuss project-specific tax or employment information or data

1 with the film office, the chairpersons of the house and senate finance committees, and/or the  
2 house and senate fiscal advisors for the purpose of verification and compliance with this tax  
3 [refund or](#) credit reporting requirement.

4 (e) Any agreements or contracts entered into by the film office and the motion picture  
5 production company shall be sent to the division of taxation and be available to the public for  
6 inspection by any person and shall be published by the tax administrator on the tax division  
7 website.

8 (f) By August 15th of each year the motion picture production company shall report the  
9 source and amount of any bonds, grants, loans, loan guarantees, matching funds or tax credits  
10 received from any state governmental entity, state agency or public agency as defined in § 37-2-7  
11 received during the previous state fiscal year. This annual report shall be sent to the division of  
12 taxation and be available to the public for inspection by any person and shall be published by the  
13 tax administrator on the tax division website.

14 (g) By August 15th of each year the division of taxation shall report the name, address,  
15 and amount of [refund or](#) tax credit received for each motion picture production company during  
16 the previous state fiscal year to the film office, the chairpersons of the house and senate finance  
17 committees, the house and senate fiscal advisors, the department of labor and training and the  
18 division of taxation. This report shall be available to the public for inspection by any person and  
19 shall be published by the tax administrator on the tax division website.

20 (h) On or before September 1, 2011, and every September 1 thereafter, the project lessee  
21 shall file an annual report with the tax administrator. Said report shall contain each full-time  
22 equivalent, part-time or seasonal employee's name, social security number, date of hire, and  
23 hourly wage as of the immediately preceding July 1 and such other information deemed necessary  
24 by the tax administrator. The report shall be filed on a form and in a manner prescribed by the tax  
25 administrator.

26 **44-31.2-7. Information requests.** -- (a) The director of the film office and his or her  
27 agents, for the purpose of ascertaining the propriety or correctness of any materials pertaining to  
28 the certification of any motion picture production or to [refunds or](#) credits claimed under the  
29 provisions of this chapter, may examine any books, papers, records, or memoranda bearing upon  
30 the matters required to be included in the return, report, or other statement, and may require the  
31 attendance of the person executing the return, report, or other statement, and may require the  
32 attendance of any taxpayer, or the attendance of any other person, and may examine the person  
33 under oath respecting any matter which the director or his or her agent deems pertinent or  
34 material in administration and application of this chapter and, where not inconsistent with other

1 legal provisions, the director may request information from the tax administrator.

2 (b) The tax administrator and his or her agents, for the purpose of ascertaining the  
3 correctness of any [refund or](#) credit claimed under the provisions of this chapter, may examine any  
4 books, papers, records, or memoranda bearing upon matters required to be included in the return,  
5 report, or other statement, and may require the attendance of the person executing the return,  
6 report, or other statement, or of any officer or employee of any taxpayer, or the attendance of any  
7 other person, and may examine the person under oath respecting any matter which the tax  
8 administrator or his or her agent deems pertinent or material in determining the eligibility for  
9 [refunds or](#) credits claimed and may request information from the film office, and the film office  
10 shall provide the information in all cases to the tax administrator.

11 **44-31.2-8. Hearings and appeals.** -- (a) From an action of the film office. - For matters  
12 pertaining exclusively to application, production, and certification of motion picture productions,  
13 any person aggrieved by a denial action of the film office under this chapter shall notify the  
14 director of the film office in writing, within thirty (30) days from the date of mailing of the notice  
15 of denial action by the film office and request a hearing relative to the denial or action. The  
16 director of the film office shall, as soon as is practicable, fix a time and place of hearing, and shall  
17 render a final decision. Appeals from a final decision of the director of the film office under this  
18 chapter are to the sixth (6th) division district court pursuant to chapter 35 of title 42 of the general  
19 laws.

20 (b) From denial of [refund or](#) tax credit. - Any person aggrieved by the tax administrator's  
21 denial of a [refund or](#) tax credit or tax benefit in this section shall notify the tax administrator in  
22 writing within thirty (30) days from the date of mailing of the notice of denial of the [refund or](#) tax  
23 credit and request a hearing relative to the denial of the [refund or](#) tax credit. The tax administrator  
24 shall, as soon as is practicable, fix a time and place for a hearing, and shall render a final decision.  
25 Appeals from a final decision of the tax administrator under this chapter are to the sixth (6th)  
26 division district court pursuant to chapter 8 of title 8 of the general laws. The taxpayer's right to  
27 appeal is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless  
28 the taxpayer files a timely motion for exemption from prepayment with the district court in  
29 accordance with the requirements imposed pursuant to § 8-8-26 of the general laws.

30 **44-31.2-9. ~~Transferability of the credit~~ Transferability of the refund or credit.** -- (a)  
31 Any motion picture production company [refund or](#) tax credit certificate issued in accordance with  
32 § 44-31.2-5, which has been issued to a motion picture production company or passed through in  
33 accordance with subsection 44-31.2-5(d), and to the extent not previously claimed against the tax  
34 of the motion picture production company or of the owner of the certificate if the certificate was

1 issued in accordance with subsection 44-31.2-5(d), may be transferred or sold by such company  
2 to another Rhode Island taxpayer, subject to the following conditions:

3 (1) A single transfer or sale may involve one or more transferees, assignees or  
4 purchasers. A transfer or sale of the [refunds or](#) credits may involve multiple transfers to one or  
5 more transferees, assignees or purchasers.

6 (2) Transferors and sellers shall submit to the Rhode Island Film Office, and to the tax  
7 administrator in writing, a notification of any transfer or sale of [refunds or](#) tax credits within  
8 thirty (30) days after the transfer or sale of such [refunds or](#) tax credits. The notification shall  
9 include the transferor's [refund or](#) tax credit balance prior to transfer, the [refund or](#) credit  
10 certificate number, the name of the state-certified production, the transferor's remaining [refund or](#)  
11 tax credit balance after transfer, all tax identification numbers for both transferor and transferee,  
12 the date of transfer, the amount transferred, a copy of the [refund or](#) credit certificate, and any  
13 other information required by the Rhode Island office of film and television or the division of  
14 taxation. The notification submitted to the division of taxation shall include a processing fee of up  
15 to two hundred dollars (\$200) per transferee which shall be deposited as general revenues.

16 (3) Failure to comply with this section will result in the disallowance of the [refund or](#) tax  
17 credit until the taxpayers are in full compliance.

18 (4) The transfer or sale of ~~this~~ [the refund or](#) credit does not extend the time in which the  
19 [refund or](#) credit can be used. The carry forward period for [the refund or](#) credit that is transferred  
20 or sold begins on the date on which the [refund or](#) credit was originally granted by the film office.

21 (5) To the extent that the transferor did not have rights to claim or use the [refund or](#)  
22 credit at the time of the transfer, the division of taxation shall either disallow the [refund or](#) credit  
23 claimed by the transferee or recapture the [refund or](#) credit from the transferee through any  
24 collection method authorized by Rhode Island general law. The transferee's recourse is against  
25 the transferor.

26 (6) The film office shall assess and collect an administrative fee of two hundred dollars  
27 (\$200) per transfer, assignment or sale for issuing multiple motion picture production company  
28 tax [refund or](#) credit certificates or for reissuing certificates.

29 (b) The transferee, assignee or purchaser shall apply such [refunds or](#) credits in the same  
30 manner as the motion picture production company originally awarded the [refund or](#) credit.

31 (c) For purposes of this chapter, any assignment or sales proceeds received by the motion  
32 picture production company for its assignment or sale of the tax [refunds or](#) credits allowed  
33 pursuant to this section shall be exempt from this title.

34 **44-31.2-10. Disclaimer and severability.** -- (a) The state of Rhode Island reserves the

1 right to refuse the use of Rhode Island's name in [refunds or](#) credits of any motion picture filmed  
2 or produced in the state.

3 (b) If any clause, sentence, paragraph, or part of this chapter is for any reason judged  
4 invalid by any court of competent jurisdiction, the judgment does not affect, impair, or invalidate  
5 the remainder of this chapter but is confined in its operation to the clause, sentence, paragraph, or  
6 part of this chapter directly involved in the controversy in which the judgment has been rendered.

7 **44-31.2-11. Sunset.** -- No [refunds or](#) credits shall be issued on or after July 1, ~~2019~~ [2025](#)  
8 unless the production has received initial certification under subsection 44-31.2-6(a) prior to July  
9 1, ~~2019~~ [2025](#).

10 SECTION 2. This act shall take effect upon passage.

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LC002028  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TAXATION

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- 1           This act would allow for tax refunds in connection with motion picture production tax
- 2 credits, and would extend the program from July 1, 2019 to July 1, 2025.
- 3           This act would take effect upon passage.

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