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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO TAXATION -- ARTS AND ENTERTAINMENT--JOB STIMULUS
INCENTIVES

Introduced By: Representatives Blazejewski, Ucci, Petrarca, Bennett, and Hull

Date Introduced: April 05, 2012

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 44-31.2 of the General Laws entitled "Motion Picture Production
2 Tax Credits" is hereby repealed in its entirety.

3 ~~CHAPTER 44-31.2~~

4 ~~Motion Picture Production Tax Credits~~

5 ~~**44-31.2-1. Findings and purpose.** --- (a) The general assembly finds and declares that the~~
6 ~~state of Rhode Island with its natural beauty, historical and architectural heritage of the state, its~~
7 ~~majestic natural resources including Narragansett Bay and the independence and diversity of its~~
8 ~~citizens and neighborhoods would provide a variety of excellent settings from which the motion~~
9 ~~picture industry might choose a location for filming a motion picture or television program, and~~
10 ~~together with those natural settings, the availability of labor, materials, climate, and hospitality of~~
11 ~~its people have been instrumental in the filming of several successful motion pictures.~~

12 ~~--- (b) It is recognized that the motion picture industry brings with it a much needed~~
13 ~~infusion of capital into areas of the state which may be economically depressed and the multiplier~~
14 ~~effect of the infusion of capital resulting from the filming of a motion picture or television~~
15 ~~program serves to stimulate economic activity beyond that immediately apparent on the film set.~~

16 ~~--- (c) Since a significant portion of the cost of a motion picture or television production~~
17 ~~will not be eligible for existing tax incentives due to the fact that portions of the production are~~
18 ~~carried out in another state, it is the purpose of this chapter to provide a financial incentive to the~~

1 ~~film industry in order that the state might compete with other states for filming locations.~~

2 ~~(d) The primary objective of this chapter is to encourage development in Rhode Island of~~
3 ~~a strong capital base for motion picture film, videotape, and television program productions, in~~
4 ~~order to achieve a more independent, self-supporting industry. This objective is divided into~~
5 ~~immediate and long-term objectives as follows:~~

6 ~~(1) Immediate objectives are to:~~

7 ~~(i) Attract private investment for the production of motion pictures, videotape~~
8 ~~productions, and television programs which contain substantial Rhode Island content as defined~~
9 ~~herein.~~

10 ~~(ii) Develop a tax infrastructure which encourages private investment. This infrastructure~~
11 ~~will provide for state participation in the form of tax credits to encourage investment in state-~~
12 ~~certified productions.~~

13 ~~(iii) Develop a tax infrastructure utilizing tax credits which encourage investments in~~
14 ~~multiple state-certified production projects.~~

15 ~~(2) Long-term objectives are to:~~

16 ~~(i) Encourage increased employment opportunities within this sector and increased~~
17 ~~competition with other states in fully-developing economic development options within the film~~
18 ~~and video industry.~~

19 ~~(ii) Encourage new education curricula in order to provide a labor force trained in all~~
20 ~~aspects of film production.~~

21 **44-31.2-2. Definitions.** ~~For the purposes of this chapter:~~

22 ~~(1) "Accountant's certification" as provided in this chapter means a certified audit by a~~
23 ~~Rhode Island-certified public accountant licensed in accordance with section 5-3-1.~~

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

26 ~~(3) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a~~
27 ~~partnership, limited liability company, or other business entity formed under the laws of the state~~
28 ~~of Rhode Island for the purpose of producing motion pictures as defined in this section, or an~~
29 ~~individual who is a domiciled resident of the state of Rhode Island as defined in chapter 30 of this~~
30 ~~title.~~

31 ~~(4) "Motion picture" means a feature-length film, video, video games, television series,~~
32 ~~or commercial made in Rhode Island, in whole or in part, for theatrical or television viewing or as~~
33 ~~a television pilot. The term "motion picture" shall not include the production of television~~
34 ~~coverage of news or athletic events, nor shall it apply to any film, video, television series or~~

1 ~~commercial or a production for which records are required under section 2257 of title 18, U.S.C.,~~
2 ~~to be maintained with respect to any performer in such production or reporting of books, films,~~
3 ~~etc. with respect to sexually explicit conduct.~~

4 ~~(5) "Motion picture production company" means a corporation, partnership, limited~~
5 ~~liability company or other business entity engaged in the business of producing one or more~~
6 ~~motion pictures as defined in this section. Motion picture production company shall not mean or~~
7 ~~include: (a) any company owned, affiliated, or controlled, in whole or in part by any company or~~
8 ~~person which is in default: (i) on taxes owed to the state; or (ii) on a loan made by the state; or~~
9 ~~(iii) a loan guaranteed by the state; nor (iv) any company or person who has even declared~~
10 ~~bankruptcy under which an obligation of the company or person to pay or repay public funds or~~
11 ~~monies was discharged as a part of such bankruptcy.~~

12 ~~(6) "Primary locations" means the locations within which at least fifty one percent (51%)~~
13 ~~of the motion picture principal photography days are filmed.~~

14 ~~(7) "Rhode Island film and television office" means an office within the Rhode Island~~
15 ~~state council on the arts that has been established in order to promote and encourage the locating~~
16 ~~of film and television productions within the state of Rhode Island. The office is also referred to~~
17 ~~within as the "film office".~~

18 ~~(8) "State certified production" means a motion picture production approved by the~~
19 ~~Rhode Island film office and produced by a motion picture production company domiciled in~~
20 ~~Rhode Island, whether or not such company owns or controls the copyright and distribution rights~~
21 ~~in the motion picture; provided, that such company has either: (a) signed a viable distribution~~
22 ~~plan; or (b) is producing the motion picture for: (i) a major motion picture distributor; (ii) a major~~
23 ~~theatrical exhibitor; (iii) television network; or (iv) cable television programmer.~~

24 ~~(9) "State certified production cost" means any pre production, production and post~~
25 ~~production cost that a motion picture production company incurs and pays to the extent it occurs~~
26 ~~within the state of Rhode Island. Without limiting the generality of the foregoing, "state certified~~
27 ~~production costs" include: set construction and operation; wardrobes, make-up, accessories, and~~
28 ~~related services; costs associated with photography and sound synchronization, lighting, and~~
29 ~~related services and materials; editing and related services, including, but not limited to, film~~
30 ~~processing, transfers of film to tape or digital format, sound mixing, computer graphics services,~~
31 ~~special effects services, and animation services, salary, wages, and other compensation, including~~
32 ~~related benefits, of persons employed, either director or indirectly, in the production of a film~~
33 ~~including writer, motion picture director, producer (provided the work is performed in the state of~~
34 ~~Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of vehicles; costs~~

1 of food and lodging; music, if performed, composed, or recorded by a Rhode Island musician, or
2 released or published by a person domiciled in Rhode Island; travel expenses incurred to bring
3 persons employed, either directly or indirectly, in the production of the motion picture, to Rhode
4 Island (but not expenses of such persons departing from Rhode Island); and legal (but not the
5 expense of a completion bond or insurance and accounting fees and expenses related to the
6 production's activities in Rhode Island); provided such services are provided by Rhode Island
7 licensed attorneys or accountants.

8 ~~**44-31.2-3., 44-31.2-4. Repealed.--**~~

9 ~~**44-31.2-5. Motion picture production company tax credit.--**~~ (a) A motion picture
10 production company shall be allowed a credit to be computed as provided in this chapter against a
11 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-
12 five percent (25%) of the state certified production costs incurred directly attributable to activity
13 within the state, provided that the primary locations are within the state of Rhode Island and the
14 total production budget as defined herein is a minimum of three hundred thousand dollars
15 (\$300,000). The credit shall be earned in the taxable year in which production in Rhode Island is
16 completed, as determined by the film office in final certification pursuant to subsection 44-31.2-
17 6(c).

18 (b) For the purposes of this section: "total production budget" means and includes the
19 motion picture production company's pre-production, production and post-production costs
20 incurred for the production activities of the motion picture production company in Rhode Island
21 in connection with the production of a state certified production. The budget shall not include
22 costs associated with the promotion or marketing of the film, video or television product.

23 (c) The credit shall not exceed the total production budget and shall be allowed against
24 the tax for the taxable period in which the credit is earned and can be carried forward for not
25 more than three (3) succeeding tax years.

26 (d) Credits allowed to a motion picture production company, which is a subchapter S
27 corporation, partnership, or a limited liability company that is taxed as a partnership, shall be
28 passed through respectively to persons designated as partners, members or owners on a pro-rata
29 basis or pursuant to an executed agreement among such persons designated as subchapter S
30 corporation shareholders, partners, or members documenting an alternate distribution method
31 without regard to their sharing of other tax or economic attributes of such entity.

32 (e) No more than fifteen million dollars (\$15,000,000) may be issued for any tax year
33 beginning after December 31, 2007.

34 ~~**44-31.2-6. Certification and administration.--**~~ (a) Initial certification of a production.--

1 ~~The applicant shall properly prepare, sign and submit to the film office an application for initial~~
2 ~~certification of the Rhode Island production. The application shall include such information and~~
3 ~~data as the film office deems necessary for the proper evaluation and administration of said~~
4 ~~application, including, but not limited to, any information about the motion picture production~~
5 ~~company, and a specific Rhode Island motion picture. The film office shall review the completed~~
6 ~~application and determine whether it meets the requisite criteria and qualifications for the initial~~
7 ~~certification for the production. If the initial certification is granted, the film office shall issue a~~
8 ~~notice of initial certification of the motion picture production to the motion picture production~~
9 ~~company and to the tax administrator. The notice shall state that, after appropriate review, the~~
10 ~~initial application meets the appropriate criteria for conditional eligibility. The notice of initial~~
11 ~~certification will provide a unique identification number for the production and is only a~~
12 ~~statement of conditional eligibility for the production and, as such, does not grant or convey any~~
13 ~~Rhode Island tax benefits.~~

14 ~~(b) Final certification of a production. Upon completion of the Rhode Island production~~
15 ~~activities, the applicant shall request a certificate of good standing from the Rhode Island division~~
16 ~~of taxation. The division shall expedite the process for reviewing the issuance of such certificates.~~
17 ~~Such certificates shall verify to the film office the motion picture production company's~~
18 ~~compliance with the requirements of subsection 44-31.2-2(5). The applicant shall properly~~
19 ~~prepare, sign and submit to the film office an application for final certification of the production~~
20 ~~and which must include the certificate of good standing from the division of taxation. In addition,~~
21 ~~the application shall contain such information and data as the film office determines is necessary~~
22 ~~for the proper evaluation and administration, including, but not limited to, any information about~~
23 ~~the motion picture production company, its investors and information about the production~~
24 ~~previously granted initial certification. The final application shall also contain a cost report and an~~
25 ~~"accountant's certification". The film office and tax administrator may rely without independent~~
26 ~~investigation, upon the accountant's certification, in the form of an opinion, confirming the~~
27 ~~accuracy of the information included in the cost report. Upon review of a duly completed and~~
28 ~~filed application, the film office will make a determination pertaining to the final certification of~~
29 ~~the production and the resultant credits for section 44-31.2-5.~~

30 ~~(c) Final certification and credits. Upon determination that the motion picture~~
31 ~~production company qualifies for final certification and the resultant credits, the film office shall~~
32 ~~issue a letter to the production company indicating "certificate of completion of a state certified~~
33 ~~production" and shall provide specifically designed certificates for the motion picture production~~
34 ~~company credit under section 44-31.2-5. All documents that are issued by the film office pursuant~~

1 ~~to this section shall reference the identification number that was issued to the production as part~~
2 ~~of its initial certification.~~

3 ~~(d) The director of the Rhode Island film and television office, in consultation as needed~~
4 ~~with the tax administrator, shall promulgate such rules and regulations as are necessary to carry~~
5 ~~out the intent and purposes of this chapter in accordance with the general guidelines provided~~
6 ~~herein for the certification of the production and the resultant production credit.~~

7 ~~(e) The tax administrator of the division of taxation, in consultation with the director of~~
8 ~~the Rhode Island film and television office, shall promulgate such rules and regulations as are~~
9 ~~necessary to carry out the intent and purposes of this chapter in accordance with the general~~
10 ~~guidelines for the tax credit provided herein.~~

11 ~~(f) Any motion picture production company applying for the credit shall be required to~~
12 ~~reimburse the division of taxation for any audits required in relation to granting the credit.~~

13 ~~**44-31.2-6.1. Impact analysis and periodic reporting.**~~ (a) ~~The film office shall not~~
14 ~~certify or approve any application under section 44-31.2-6 of this chapter until it has first~~
15 ~~prepared and publicly released an analysis of the impact the proposed investment will or may~~
16 ~~have on the state. The analysis shall be supported by appropriate data and documentation and~~
17 ~~shall consider, but not be limited to, the following factors:~~

18 ~~(i) The impact on the industry or industries in which the applicant will be involved;~~

19 ~~(ii) State fiscal matters, including the state budget (revenues and expenses);~~

20 ~~(iii) The financial exposure of the taxpayers of the state under the plans for the proposed~~
21 ~~investment and negative foreseeable contingencies that may arise therefrom;~~

22 ~~(iv) The approximate number of full-time, part-time, temporary, seasonal and/or~~
23 ~~permanent jobs projected to be created, construction and non-construction;~~

24 ~~(v) Identification of geographic sources of the staffing for identified jobs;~~

25 ~~(vi) The projected duration of the identified construction jobs;~~

26 ~~(vii) The approximate wage rates for each category of the identified jobs;~~

27 ~~(viii) The types of fringe benefits to be provided with the identified jobs, including~~
28 ~~healthcare insurance and any retirement benefits;~~

29 ~~(ix) The projected fiscal impact on increased personal income taxes to the state of Rhode~~
30 ~~Island; and~~

31 ~~(x) The description of any plan or process intended to stimulate hiring from the host~~
32 ~~community, training of employees or potential employees, and outreach to minority job~~
33 ~~applicants and minority businesses.~~

34 ~~(b) The film office shall monitor every impact analysis it completes through the duration~~

1 of any approved tax credit. Such monitoring shall include annual reports made available to the
2 public on the:

3 ~~(1) Actual versus projected impact for all considered factors; and~~

4 ~~(2) Verification of all commitments made in consideration of state incentives or aid.~~

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

32 ~~(d) The film office, with the assistance of the motion picture production company, the~~
33 ~~department of labor and training, the department of human services and the division of taxation~~
34 ~~shall provide annually an analysis of whether any of the employees of the motion picture~~

1 ~~production company has received RItc Care or RItc Share benefits and the impact such benefits~~
2 ~~or assistance may have on the state budget. This 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. Notwithstanding any other provision of law or rule or regulation, the division of~~
5 ~~taxation, the department of labor and training and the department of human services are~~
6 ~~authorized to present, review and discuss project specific tax or employment information or data~~
7 ~~with the film office, the chairpersons of the house and senate finance committees, and/or the~~
8 ~~house and senate fiscal advisors for the purpose of verification and compliance with this tax~~
9 ~~credit reporting requirement.~~

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

14 ~~(f) By August 15th of each year the motion picture production company shall report the~~
15 ~~source and amount of any bonds, grants, loans, loan guarantees, matching funds or tax credits~~
16 ~~received from any state governmental entity, state agency or public agency as defined in section~~
17 ~~37-2-7 received during the previous state fiscal year. This annual report shall be sent to the~~
18 ~~division of taxation and be available to the public for inspection by any person and shall be~~
19 ~~published by the tax administrator on the tax division website.~~

20 ~~(g) By August 15th of each year the division of taxation shall report the name, address,~~
21 ~~and amount of tax credit received for each motion picture production company during the~~
22 ~~previous state fiscal year to the film office, the chairpersons of the house and senate finance~~
23 ~~committees, the house and senate fiscal advisors, the department of labor and training and the~~
24 ~~division of taxation. This report shall be available to the public for inspection by any person and~~
25 ~~shall be published by the tax administrator on the tax division website.~~

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

32 ~~**44-31.2-7. Information requests.** (a) The director of the film office and his or her~~
33 ~~agents, for the purpose of ascertaining the propriety or correctness of any materials pertaining to~~
34 ~~the certification of any motion picture production or to credits claimed under the provisions of~~

1 ~~this chapter, may examine any books, papers, records, or memoranda bearing upon the matters~~
2 ~~required to be included in the return, report, or other statement, and may require the attendance of~~
3 ~~the person executing the return, report, or other statement, and may require the attendance of any~~
4 ~~taxpayer, or the attendance of any other person, and may examine the person under oath~~
5 ~~respecting any matter which the director or his or her agent deems pertinent or material in~~
6 ~~administration and application of this chapter and, where not inconsistent with other legal~~
7 ~~provisions, the director may request information from the tax administrator.~~

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

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

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

1 ~~requirements imposed pursuant to section 8-8-26 of the general laws.~~

2 ~~**44-31.2-9. Transferability of the credit.** (a) Any motion picture production company~~
3 ~~tax credit certificate issued in accordance with section 44-31.2-5, which has been issued to a~~
4 ~~motion picture production company or passed through in accordance with subsection 44-31.2-~~
5 ~~5(d), and to the extent not previously claimed against the tax of the motion picture production~~
6 ~~company or of the owner of the certificate if the certificate was issued in accordance with~~
7 ~~subsection 44-31.2-5(d), may be transferred or sold by such company to another Rhode Island~~
8 ~~taxpayer, subject to the following conditions:~~

9 ~~(1) A single transfer or sale may involve one or more transferees, assignees or~~
10 ~~purchasers. A transfer or sale of the credits may involve multiple transfers to one or more~~
11 ~~transferees, assignees or purchasers.~~

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

22 ~~(3) Failure to comply with this section will result in the disallowance of the tax credit~~
23 ~~until the taxpayers are in full compliance.~~

24 ~~(4) The transfer or sale of this credit does not extend the time in which the credit can be~~
25 ~~used. The carry forward period for credit that is transferred or sold begins on the date on which~~
26 ~~the credit was originally granted by the film office.~~

27 ~~(5) To the extent that the transferor did not have rights to claim or use the credit at the~~
28 ~~time of the transfer, the division of taxation shall either disallow the credit claimed by the~~
29 ~~transferee or recapture the credit from the transferee through any collection method authorized by~~
30 ~~Rhode Island general law. The transferee's recourse is against the transferor.~~

31 ~~(6) The film office shall assess and collect an administrative fee of two hundred dollars~~
32 ~~(\$200) per transfer, assignment or sale for issuing multiple motion picture production company~~
33 ~~tax credit certificates or for reissuing certificates.~~

34 ~~(b) The transferee, assignee or purchaser shall apply such credits in the same manner as~~

1 ~~the motion picture production company originally awarded the credit.~~

2 ~~(c) For purposes of this chapter, any assignment or sales proceeds received by the motion~~
3 ~~picture production company for its assignment or sale of the tax credits allowed pursuant to this~~
4 ~~section shall be exempt from this title.~~

5 ~~**44-31.2-10. Disclaimer and severability.** -- (a) The state of Rhode Island reserves the~~
6 ~~right to refuse the use of Rhode Island's name in credits of any motion picture filmed or produced~~
7 ~~in the state.~~

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

12 SECTION 2. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
13 adding thereto the following chapter:

14 CHAPTER 31.3

15 THE ARTS AND ENTERTAINMENT JOB STIMULUS INCENTIVES ACT OF 2012

16 ~~**44-31.3-1. Declaration of purpose.** -- The general assembly finds and declares that it is~~
17 ~~Rhode Island's priority to reduce the state unemployment rate by stimulating new industries that~~
18 ~~have large employment growth potential by providing tax incentives and other means necessary~~
19 ~~and therefore recognizes that such incentives should be created for the arts and entertainment~~
20 ~~industry. The purpose of this chapter is to create economic incentives for the purpose of~~
21 ~~stimulating the local economy and reducing unemployment in Rhode Island.~~

22 ~~**44-31.3-2. Motion picture production tax credits.** -- Definitions.-- As used in this~~
23 ~~chapter:~~

24 ~~(1) "Accountant's certification" means a certified audit by a Rhode Island certified public~~
25 ~~accountant licensed in accordance with the provisions of chapter 5-3.1 ("Public Accountancy").~~

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

28 ~~(3) "Domiciled in Rhode Island" means: (i) A corporation incorporated in Rhode Island~~
29 ~~or a partnership, limited liability company, or other business entity formed under the laws of the~~
30 ~~state of Rhode Island for the purpose of producing motion pictures as defined in this section; or~~
31 ~~(ii) An individual who is a domiciled resident of the state of Rhode Island or who is not domiciled~~
32 ~~in this state but maintains a permanent place of abode in this state and is in this state for an~~
33 ~~aggregate of more than one hundred eighty-three (183) days of the taxable year, unless the~~
34 ~~individual is in the armed forces of the United States.~~

1 (4) “Documentary” means a non-fiction production intended for educational or
2 commercial distribution that may require out-of-state principal photography.

3 (5) “Full-time equivalent employee” means a person who works a minimum of thirty (30)
4 hours per week within the state of Rhode Island and earns no less than two hundred percent
5 (200%) of the hourly minimum wage prescribed by Rhode Island law.

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

13 (7) “Motion picture production company” means a corporation, partnership, limited
14 liability company or other business entity engaged in the business of producing one or more
15 motion pictures as defined in this section and domiciled in Rhode Island. Motion picture
16 production company shall not mean or include: (i) Any company owned, affiliated, or controlled,
17 in whole or in part by any company or person which is in default; (ii) On taxes owed to the state;
18 or (iii) On a loan made by the state; or (iv) On a loan guaranteed by the state; or (v) Any
19 company or person who has ever declared bankruptcy under which an obligation of the company
20 or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

21 (8) “Primary locations” means the locations within which at least fifty-one percent (51%)
22 of the motion picture principal photography days are filmed.

23 (9) “Rhode Island film and television office” means the office within the Rhode Island
24 state council on the arts that has been established in order to promote and encourage the locating
25 of film and television productions within the state of Rhode Island. The office is also referred to
26 within as the “film office.”

27 (10) “Rhode Island resident” means for the purpose of determination of eligibility for the
28 tax incentives provided by this chapter, an individual who is domiciled in the state of Rhode
29 Island or who is not domiciled in this state but maintains a permanent place of abode in this state
30 and is in this state for an aggregate of more than one hundred eighty-three (183) days of the
31 taxable year, unless the individual is in the armed forces of the United States, and has been a
32 Rhode Island resident for one hundred eighty-three (183) days of taxable year prior to initial
33 certification by the film office.

34 (11) “State-certified production” means a motion picture production approved by the film

1 office and produced by a motion picture production company domiciled in Rhode Island, whether
2 or not such company owns or controls the copyright and distribution rights in the motion picture;
3 provided, that such company has either: (i) Signed a viable distribution plan; or (ii) Is producing
4 the motion picture for: (A) A major motion picture distributor; (B) A major theatrical exhibitor;
5 (C) Television network; or (D) Cable television programmer.

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

27 (b)(1) Tax Credit. -- A motion picture production company shall be allowed a tax credit
28 to be computed as provided in this chapter against a tax imposed by chapters 11, 12, 13, 14, 17
29 and 30 of this title in the amount of thirty percent (30%) of the state certified production costs,
30 provided that: (i) The primary locations are within the state of Rhode Island; and (ii) The state
31 certified production costs are a minimum of one hundred thousand dollars (\$100,000).
32 Notwithstanding the foregoing, in the event that the motion picture production company is
33 producing a documentary, such motion picture production company shall be allowed a tax credit
34 to be computed as provided in this chapter against a tax imposed by chapters 11, 12, 13, 14, 17

1 and 30 of this title in the amount of twenty-five percent (25%) of the state certified production
2 costs, provided that: (A) The primary locations are within the state of Rhode Island or at least
3 fifty-one percent (51%) of the final production budget, which includes without limitation,
4 preproduction and post-production that is incurred and paid in Rhode Island; (B) The state
5 certified production costs are a minimum of one hundred thousand dollars (\$100,000); and (C)
6 The motion picture production company has at least four (4) full-time equivalent employees in
7 Rhode Island during the duration of the production.

8 The tax credit shall be earned in the taxable year in which the motion picture production
9 in Rhode Island is completed, as determined by the film office in final certification pursuant this
10 chapter and can be carried forward for not more than three (3) succeeding years. To the extent
11 that the motion picture production company incurs any costs and pays for payroll for a Rhode
12 Island resident employed for such motion picture, the motion picture production company shall
13 be allowed an additional tax credit of five percent (5%) of such payroll.

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

20 (3) If the motion picture production company has not claimed the tax credits in whole or
21 in part, the motion picture production company eligible for the tax credits may assign, transfer or
22 convey the tax credits, in whole or in part, by sale or otherwise to any individual or entity and
23 such assignee of the tax credits that have not claimed the tax credits in whole or in part may
24 assign, transfer or convey the tax credits, in whole or in part, by sale or otherwise to any
25 individual or entity. The assignee of the tax credits may use acquired credits to offset up to one
26 hundred percent (100%) of the tax liabilities otherwise imposed pursuant to chapter 11, 12, 13,
27 (other than the tax imposed under section 44-13-13), 14, 17 or 30 of this title. The assignee may
28 apply the tax credit against taxes imposed on the assignee until the end of the third (3rd) calendar
29 year after the year in which the motion picture production is completed or until the full credit
30 assigned is used, whichever occurs first. The assignor shall perfect the transfer by notifying the
31 state of Rhode Island division of taxation, in writing, within thirty (30) calendar days following
32 the effective date of the transfer and shall provide any information as may be required by the
33 division of taxation to administer and carry out the provisions of this section.

34 (4) For purposes of this chapter, any assignment or sales proceeds received by the

1 assignor for its assignment or sale of the tax credits allowed pursuant to this section shall be
2 exempt from this title.

3 (5) In the case of a corporation, this credit is only allowed against the tax of a corporation
4 included in a consolidated return that qualifies for the credit and not against the tax of other
5 corporations that may join in the filing of a consolidated tax return.

6 (6) No more than forty million dollars (\$40,000,000.) in tax credits in the aggregate may
7 be issued under this chapters, for any tax year beginning after December 31, 2011.

8 (c)(1) Certification and administration. -- Initial certification of a production. The
9 applicant shall properly prepare, sign and submit to the film office an application for initial
10 certification of the Rhode Island production. The application shall include such information and
11 data as the film office deems reasonably necessary for the proper evaluation and administration of
12 said application, including, but not limited to, any information about the motion picture
13 production company, and a specific Rhode Island motion picture. The film office shall review the
14 completed application and determine whether it meets the requisite criteria and qualifications for
15 the initial certification for the production. If the initial certification is granted, the film office shall
16 issue a notice of initial certification of the motion picture production to the motion picture
17 production company and to the tax administrator. The notice shall state that, after appropriate
18 review, the initial application meets the appropriate criteria for conditional eligibility. The notice
19 of initial certification will provide a unique identification number for the production and is only a
20 statement of conditional eligibility for the production and, as such, does not grant or convey any
21 Rhode Island tax benefits.

22 (2) Final certification of a production. Upon completion of the Rhode Island production
23 activities, the applicant shall request a certificate of good standing from the Rhode Island division
24 of taxation. The division shall expedite the process for reviewing the issuance of such certificates.
25 The applicant shall properly prepare, sign and submit to the film office and division of taxation an
26 application for final certification of the production and which must include the certificate of good
27 standing from the division of taxation. The final application shall contain a cost report and an
28 “accountant’s certification.” The film office and tax administrator may rely without independent
29 investigation, upon the accountant’s certification, in the form of an opinion, confirming the
30 accuracy of the information included in the cost report. Within sixty (60) days of a duly
31 completed and filed application, the film office, in consultation with the tax administrator, will
32 make a determination pertaining to the final certification of the production and the resultant tax
33 credits.

34 (3)(i) Final certification and credits. -- Upon determination that the motion picture

1 production company qualifies for final certification and the resultant tax credits, the film office
2 shall issue a letter to the production company indicating “certificate of completion of a state
3 certified production” and shall provide specifically designed tax credit certificates to the motion
4 picture production company. All documents that are issued by the film office pursuant to this
5 section shall reference the identification number that was issued to the production as part of its
6 initial certification.

7 (ii) The Rhode Island film and television office, in consultation as needed with the tax
8 administrator, shall promulgate such rules and regulations as are necessary to carry out the intent
9 and purposes of this chapter in accordance with the general guidelines provided herein for the
10 certification of the production and the resultant production credit.

11 (iii) Any motion picture production company applying for the credit shall be required to
12 reimburse the division of taxation for any audits required in relation to granting the credit.

13 (4) Notwithstanding any provisions of the general laws or regulations adopted thereunder
14 to the contrary, the film office and the division of taxation are hereby expressly authorized and
15 empowered to enter into contracts with motion picture production companies that incur and pay
16 state certified production costs.

17 (5) The film office shall charge an administration fee in an amount equal to seven
18 hundred fifty dollars (\$750), which fee is non-refundable and payable upon delivery of the initial
19 application. Upon approval of initial certification a fully executed contract guarantying the
20 availability tax credits pursuant to this chapter shall be entered into with the film office and the
21 motion picture production company.

22 (6) Simultaneously with payment of the fee and approval of the initial application, the
23 film office shall, on behalf of the state of Rhode Island guaranty the delivery of one hundred
24 percent (100%) of the tax credit and use of one hundred percent of the tax credit in the tax year
25 the state certified production costs are incurred and paid by the motion picture production
26 company.

27 (7) Any contract executed pursuant to this chapter by a motion picture production
28 company that incurs and pays state certified production costs shall be assignable to: (i) An
29 affiliate thereof without any consent from the division of taxation or the film office; or (ii) A
30 person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit
31 or non-profit) or other business entity approved by the film office, which approval shall not be
32 unreasonably withheld. For purposes of this subsection, “affiliate” shall be defined as any entity
33 controlling, controlled by or under common control with such person, firm, partnership, trust,
34 estate, limited liability company, corporation (whether for profit or nonprofit) or other business

1 entity.

2 (8) If information comes to the attention of the film office that is materially inconsistent
3 with representations made in an application, the film office may deny the requested certification.
4 In the event that tax credits or a portion of tax credits are subject to recapture for ineligible costs
5 and such tax credits have been transferred, assigned and/or allocated, the state will pursue its
6 recapture remedies and rights against the motion picture production company. No redress shall be
7 sought against assignees, sellers, transferees or allocates of such credits.

8 (d) Information Requests. -- The tax administrator and his or her agents, for the purpose
9 of ascertaining the correctness of any credit claimed under the provisions of this chapter, may
10 examine any books, papers, records, or memoranda bearing upon the matters required to be
11 included in the return, report, or other statement, and may require the attendance of the person
12 executing the return, report, or other statement, or of any officer or employee of any taxpayer, or
13 the attendance of any other person, and may examine the person under oath respecting any matter
14 which the tax administrator or his or her agent deems pertinent or material in determining the
15 eligibility for credits claimed.

16 **44-31.3-3. Digital media tax credit.** – (a) Definitions. -- As used in this chapter:

17 (1) “Contrary to Public Policy” means titles of products that receive or would receive a
18 rating symbol from the Entertainment Software Rating Board of AO (adult only).

19 (2) “Development” means in the arts and entertainment industry all the stages of
20 development up to product launch including without limitation, concept development, product
21 design, planning, and production; provided, however, development shall also include any ongoing
22 customer service and game operations following production launch, any development of any
23 content after product launch of an eligible product.

24 (3) “Eligible Product” means a combination of one or more application files and one or
25 more data files, all in a digital media format, that is not contrary to public policy and are
26 integrated and are intended to be operated together and that have the following characteristics
27 when they are being operated:

28 (i) The primary purpose is to educate, inform or entertain the user;

29 (ii) They achieve their primary purpose by presenting information in at least two (2) of
30 the following forms:

31 (A) Text;

32 (B) Sound; or

33 (C) Images;

34 (iii) They are intended to be used by individuals;

1 (iv) By interacting with them, the user can choose what information is to be presented
2 and the form and sequence in which it is to be presented;

3 (v) The product was developed for sale or licensing by the qualifying company to one or
4 more arm's length parties;

5 (vi) The product is not used primarily for interpersonal communication; and

6 (vii) The product is not used primarily to present, promote or sell the products or services
7 of the qualifying company or used primarily to present or promote the qualifying company.

8 (4) "Full-time Equivalent Active Employees" means a person who: (i) Works a minimum
9 of thirty (30) hours per week within the state of Rhode Island; and (ii) Earns no less than two
10 hundred percent (200%) of the hourly minimum wage prescribed by Rhode Island law.

11 (5) "Primarily" means more than fifty percent (50%).

12 (6) "Qualified Company" means any person, firm, partnership, trust, estate, limited
13 liability company, corporation or other business entity that incurs and pays qualified expenditures
14 for the development of an eligible product that is domiciled in the state of Rhode Island, qualified
15 to do business in the state of Rhode Island and which has at least twenty-five (25) full-time
16 equivalent active employees.

17 (7) "Qualified expenditures" means any amounts incurred by a qualified company for the
18 development, as defined in section 44.31.3-3(a)(2) of this chapter, of an eligible product, to the
19 extent it is paid and incurred within the state of Rhode Island, but specifically excluding any
20 expenses of a completion bond or insurance and costs associated with the promotion or marketing
21 of the eligible product.

22 (b)(1) Tax Credit. -- A qualified company that incurs and pays qualified expenditures for
23 the development of an eligible product shall be entitled to a credit against the taxes imposed on
24 such person or entity pursuant to chapters 11, 12, 13, 14, 17 or 30 of this title in an amount equal
25 to thirty percent (30%) of the qualified expenditures incurred in each calendar year, which tax
26 credit may be issued, at the qualified company's option, either on an annual or semi-annual basis.

27 (2) If the amount of the tax credit exceeds the taxpayer's total tax liability for the year in
28 which the qualified expenditures are incurred and paid, the amount that exceeds the taxpayer's
29 tax liability may be carried forward for credit against the taxes imposed for the succeeding three
30 (3) years, or until the full credit is used, whichever occurs first for the tax credits. Tax credits
31 allowed to a partnership, a limited liability company taxed as a partnership or multiple owners of
32 property shall be passed through to the persons designated as partners, members or owners
33 respectively pro rata or pursuant to an executed agreement among such persons designated as
34 partners, members or owners documenting an alternate distribution method without regard to

1 their sharing of other tax or economic attributes of such entity.

2 (3) If the taxpayer has not claimed the tax credits in whole or in part, taxpayers eligible
3 for the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
4 otherwise to any individual or entity and such assignee of the tax credits that have not claimed the
5 tax credits in whole or in part may assign, transfer or convey the tax credits, in whole or in part,
6 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
7 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
8 pursuant to chapters 11, 12, 13, (other than the tax imposed under section 44-13-13), 14, 17 or 30
9 of this title. The assignee may apply the tax credit against taxes imposed on the assignee until the
10 end of the third (3rd) calendar year after the year in which the qualified expenditures are incurred
11 or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may claim
12 the credit until the expiration of the fiscal year that ends within the third (3rd) year after the year
13 in which the qualified expenditures are incurred and paid. The assignor shall perfect the transfer
14 by notifying the state of Rhode Island division of taxation, in writing, within thirty (30) calendar
15 days following the effective date of the transfer and shall provide any information as may be
16 required by the division of taxation to administer and carry out the provisions of this section.

17 (4) For purposes of this chapter, any assignment or sales proceeds received by the
18 assignor for its assignment or sale of the tax credits allowed pursuant to this section shall be
19 exempt from this title.

20 (5) In the case of a corporation, this credit is only allowed against the tax of a corporation
21 included in a consolidated return that qualifies for the credit and not against the tax of other
22 corporations that may join in the filing of a consolidated tax return.

23 (c)(1) Tax credit administration. -- As set forth in this paragraph, the qualified company
24 shall apply to the film office for a written certification of its product eligibility, certification of its
25 projected qualified expenditures and certification that the product is not contrary to public policy.
26 Within thirty (30) days of receipt of the information required by the film office for the written
27 certification, the film office shall issue a denial or written certification of its eligible product and
28 of its projected qualified expenditures. The qualified company shall file with the film office and
29 division of taxation, at the qualified company's option, either on a semi-annual or annual basis for
30 each year of development of the eligible product a cost certification by a certified public
31 accountant licensed in the state of Rhode Island certifying the qualified expenditures, the amount
32 of the tax credits for the particular tax year to be claimed and of number of full-time equivalent
33 active employees.

34 (2) Within sixty (60) days after the film office's receipt of the qualified company's

1 application requesting certification for the qualified expenditures for the applicable tax year, the
2 film office in consultation with the tax administrator shall issue the qualified company a written
3 determination either denying or certifying the expenditures, in whole or in part, and shall issue a
4 certification of the amount of credit for the qualified expenditures and the tax credit certificates in
5 any such denomination as requested by the taxpayer or assignee. To claim the tax credit, the
6 certification as to the amount of the tax credit shall be attached to all state tax returns on which
7 the credit is claimed.

8 (3) The film office shall charge an administration fee in an amount equal to seven
9 hundred fifty dollars (\$750), which fee is non-refundable and payable upon delivery of the initial
10 application. Upon approval of initial certification a fully executed contract guarantying the
11 availability of the tax credits pursuant to this chapter shall be entered into with the film office and
12 the qualified company.

13 (4) Notwithstanding any provisions of the general laws or regulations adopted thereunder
14 to the contrary, the film office and the division of taxation are hereby expressly authorized and
15 empowered to enter into contracts with persons, firms, partnerships, trusts, estates, limited
16 liability companies, corporations or other business entities that incur and pay qualified
17 expenditures for the development of eligible products.

18 (5) Simultaneously with payment of the fee and upon initial certification, the film office
19 shall, on behalf of the state of Rhode Island, guaranty the delivery of one hundred percent (100%)
20 of the tax credit and use of one hundred percent (100%) of the tax credit in the tax year the
21 qualified expenditures are incurred by the qualified company for development of the eligible
22 product.

23 (6) Any contract executed pursuant to this chapter by a qualified company that incurs and
24 pays qualified expenditures for the development of an eligible product shall be assignable to: (i)
25 An affiliate thereof without any consent from the division of taxation or film office; (ii) A
26 banking institution or credit union as defined in title 19; (iii) A person, firm, partnership, trust,
27 estate, limited liability company, corporation (whether for profit or nonprofit) or other business
28 entity approved by film office, which approval shall not be unreasonably withheld. For purposes
29 of this subsection, "affiliate" shall be defined as any entity controlling, controlled by or under
30 common control with such person, firm, partnership, trust, estate, limited liability company,
31 corporation (whether for profit or nonprofit) or other business entity.

32 (7) If information comes to the attention of the film office that is materially inconsistent
33 with representations made in an application, the film office may deny the requested certification.
34 In the event that tax credits or a portion of tax credits are subject to recapture for ineligible costs

1 and such tax credits have been transferred, assigned and/or allocated, the state will pursue its
2 recapture remedies and rights against the qualified company of the tax credits. No redress shall be
3 sought against assignees, sellers, transferees or allocates of such credits.

4 (d) Information Requests. -- The tax administrator and his or her agents, for the purpose
5 of ascertaining the correctness of any credit claimed under the provisions of this chapter, may
6 examine any books, papers, records, or memoranda bearing upon the matters required to be
7 included in the return, report, or other statement, and may require the attendance of the person
8 executing the return, report, or other statement, or of any officer or employee of any taxpayer, or
9 the attendance of any other person, and may examine the person under oath respecting any matter
10 which the tax administrator or his or her agent deems pertinent or material in determining the
11 eligibility for credits claimed.

12 **44-31.3-4. Musical and theatrical production tax credits. – (a) Definitions--As used in**
13 **this chapter:**

14 (1) “Accredited theater production” means a live stage presentation in a qualified
15 production facility, as defined in this chapter, that is either: (i) A pre-Broadway production; or (ii)
16 A post-Broadway production; or (iii) A national tour to be produced and performed with its first
17 public appearance in Rhode Island before a paying audience.

18 (2) “Accredited theater production certificate” means a certificate issued by the film
19 office certifying that the production is an accredited theater production that meets the guidelines
20 of this chapter.

21 (3) “Advertising and public relations expenditure” means costs incurred and paid within
22 the state by the accredited theater productions for goods or services related to the national
23 marketing, public relations, creation and placement of print, electronic, television, billboards and
24 other forms of advertising to promote the accredited theater production.

25 (4) “Payroll” means all salaries, wages, fees, and other compensation including related
26 benefits for services performed and costs incurred and paid within Rhode Island.

27 (5) “Pre-Broadway Production” means a live stage production that, in its original or
28 adaptive version, is performed in a qualified production facility having a presentation scheduled
29 for Broadway’s theater district in New York City within twelve (12) months after its Rhode
30 Island presentation.

31 (6) “Post-Broadway production” means a live stage production that, in its original or
32 adaptive version, is performed in a qualified production facility and opens its US tour in Rhode
33 Island after a presentation scheduled for Broadway’s theater district in New York City.

34 (7) “Production and Performance Expenditures” means a contemporaneous exchange of

1 cash or cash equivalent for goods or services related to the development, production, performance
2 or operating expenditures incurred and paid in this state for a qualified theater production,
3 including, but not limited to, expenditures for design, construction and operation, including sets,
4 special and visual effects, costumes, wardrobes, make-up, accessories, costs associated with
5 sound, lighting, staging, payroll, transportation expenditures, advertising and public relations
6 expenditures, facility expenses, rentals, per diems, accommodations and other related costs.

7 (8) “Qualified production facility” means a facility owned by a not-for-profit entity or
8 state-owned facility located in the state of Rhode Island in which live theatrical or music
9 productions are, or are intended to be, exclusively presented that contains at least one stage, a
10 seating capacity of five hundred (500) or more seats, and dressing rooms, storage areas, and other
11 ancillary amenities necessary for the accredited theater production.

12 (9) “National Tour” means a performer or group of performers with a scheduled tour of a
13 minimum of twenty (20) concerts and/or performances in other cities throughout the United
14 States following its first appearance in Rhode Island, which performance relates to a particular
15 album, theme, or product and which Rhode Island production and performance expenditures
16 exceed one hundred thousand dollars (\$100,000) .

17 (10) “Resident” or “Rhode Island resident” means for the purpose of determination of
18 eligibility for the tax incentives provided by this chapter, an individual who is domiciled in the
19 state of Rhode Island or who is not domiciled in this state but maintains a permanent place of
20 abode in this state and is in this state for an aggregate of more than one hundred eighty-three
21 (183) days of the taxable year, unless the individual is in the armed forces of the United States
22 and has been a Rhode Island resident for one hundred eighty-three (183) days of taxable year
23 prior to initial certification by the film office.

24 (11) “Rhode Island film and television office” means the office within the Rhode Island
25 state council on the arts that has been established in order to promote and encourage the locating
26 of film and television productions within the state of Rhode Island. The office is also referred to
27 within as the “film office.”

28 (12)(i) “Transportation expenditures” means expenditures for the packaging, crating, and
29 transportation both to the state for use in a qualified theater production of sets, costumes, or other
30 tangible property constructed or manufactured out-of-state, and/or from the state after use in a
31 qualified theater production of sets, costumes, or other tangible property constructed or
32 manufactured in this state and the transportation of the cast and crew to and from the state. Such
33 term shall include the packaging, crating, and transporting of property and equipment used for
34 special and visual effects, sound, lighting, and staging, costumes, wardrobes, make-up and related

1 accessories and materials, as well as any other performance or production-related property and
2 equipment.

3 (ii) Transportation expenditures shall not include any costs to transport property and
4 equipment to be used only for filming and not in a qualified theater production, any indirect costs,
5 and expenditures that are later reimbursed by a third party, or any amounts that are paid to
6 persons or entities as a result of their participation in profits from the exploitation of the
7 production.

8 (b)(1) Tax Credit. -- Any person, firm, partnership, trust, estate or other entity that
9 receives an accredited theater production certificate shall be allowed a tax credit equal to thirty
10 percent (30%) of the total production and performance expenditures and transportation
11 expenditures for the accredited theater production and to be computed as provided in this chapter
12 against a tax imposed by chapters 11, 12, 13, 14, 17 and 30 of this title, provided that the total
13 production and performance expenditure and transportation expenditure exceeds one hundred
14 thousand dollars (\$100,000). To the extent that such person, firm, partnership, trust, estate or
15 other entity incurs and pays any costs on payroll for a Rhode Island resident employed for such
16 accredited theater production, such person, firm, partnership, trust, estate or other entity shall be
17 allowed an additional tax credit of five percent (5%) of such payroll.

18 (2) The film office shall set aside a maximum of two million five hundred thousand
19 dollars (\$2,500,000) in tax credits under this chapter in each calendar year for accredited theater
20 productions producing pre-Broadway productions and post-Broadway productions; a maximum
21 of one million dollars (\$1,000,000) in tax credits under this chapter in each calendar year for
22 accredited theater productions producing national tours produced and performed with its first
23 public appearance in Rhode Island before a paying audience; and a maximum of five hundred
24 thousand dollars (\$500,000) in tax credits under this chapter in each calendar year for accredited
25 theater productions that are a collaboration between a nonprofit professional theater company
26 with under five hundred (500) seats operating under agreement with Actor's Equity that is
27 organized, produced and debuted in Rhode Island. In the event that the film office determines
28 after reasonable due diligence that the entire three million five hundred dollars (\$3,500,000) will
29 not be used for accredited theater productions in a calendar year, the film office shall be permitted
30 to use the remaining balance for other tax credit awards under this chapter.

31 (3) The tax credit shall be allowed against the tax for the taxable period in which the
32 credit is earned and can be carried forward for not more than three (3) succeeding tax years.

33 (4) Credits allowed to a company, which is a subchapter S corporation, partnership, or a
34 limited liability company that is taxed as a partnership, shall be passed through respectively to

1 persons designated as partners, members or owners on a pro rata basis or pursuant to an executed
2 agreement among such persons designated as subchapter S corporation shareholders, partners, or
3 members documenting an alternate distribution method without regard to their sharing of other
4 tax or economic attributes of such entity.

5 (5) If the company has not claimed the tax credits in whole or in part, taxpayers eligible
6 for the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
7 otherwise to any individual or entity and such assignee of the tax credits that have not claimed the
8 tax credits in whole or in part may assign, transfer or convey the tax credits, in whole or in part,
9 by sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
10 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
11 pursuant to chapter 11, 12, 13, (other than the tax imposed under section 44-13-13), 14, 17 or 30
12 of this title. The assignee may apply the tax credit against taxes imposed on the assignee until the
13 end of the third (3rd) calendar year after the year in which the qualified expenditures are incurred
14 or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may claim
15 the credit until the expiration of the fiscal year that ends within the third (3rd) year after the year
16 in which the production and performance expenditures are incurred. The assignor shall perfect the
17 transfer by notifying the state of Rhode Island division of taxation, in writing, within thirty (30)
18 calendar days following the effective date of the transfer and shall provide any information as
19 may be required by the division of taxation to administer and carry out the provisions of this
20 section.

21 (6) For purposes of this chapter, any assignment or sales proceeds received by the
22 assignor for its assignment or sale of the tax credits allowed pursuant to this section shall be
23 exempt from this title.

24 (7) In the case of a corporation, this credit is only allowed against the tax of a corporation
25 included in a consolidated return that qualifies for the credit and not against the tax of other
26 corporations that may join in the filing of a consolidated tax return.

27 (c)(1) Certification and administration. -- The applicant shall properly prepare, sign and
28 submit to the film office and the division of taxation an application for initial certification of the
29 theater production. The application shall include such information and data as the film office
30 deems reasonably necessary for the proper evaluation and administration of said application,
31 including, but not limited to, any information about the theater production company and a specific
32 Rhode Island live theater or musical production. The film office shall review the completed
33 application and determine whether it meets the requisite criteria and qualifications for the initial
34 certification for the production. If the initial certification is granted, the film office shall issue a

1 notice of initial certification of the accredited theater production to the theater production
2 company and to the tax administrator. The notice shall state that, after appropriate review, the
3 initial application meets the appropriate criteria for conditional eligibility. The notice of initial
4 certification will provide a unique identification number for the production and is only a
5 statement of conditional eligibility for the production and, as such, does not grant or convey any
6 Rhode Island tax benefits.

7 (2) Upon completion of an accredited theater production, the applicant shall properly
8 prepare, sign and submit to the film office an application for final certification of the accredited
9 theater production. The final application shall also contain a cost report and an “accountant’s
10 certification.” The film office and tax administrator may rely without independent investigation,
11 upon the accountant’s certification, in the form of an opinion, confirming the accuracy of the
12 information included in the cost report. Upon review of a duly completed and filed application
13 and upon no later than sixty (60) days of submission thereof, the film office in consultation with
14 the tax administrator will make a determination pertaining to the final certification of the
15 accredited theater production and the resultant tax credits.

16 (3) Upon determination that the company qualifies for final certification and the resultant
17 tax credits, the film office shall issue to the company: (i) An accredited theater production
18 certificate; and (ii) A tax credit certificate in an amount in accordance with this subsection (b)
19 hereof. All documents that are issued by the film office pursuant to this section shall reference the
20 identification number that was issued to the production as part of its initial certification.

21 (4) The film office, in consultation as needed with the tax administrator, shall promulgate
22 such rules and regulations as are necessary to carry out the intent and purposes of this chapter in
23 accordance with the general guidelines provided herein for the certification of the production and
24 the resultant production credit.

25 (5) The film office shall charge an administration fee in an amount equal to seven
26 hundred fifty dollars (\$750), which fee is non-refundable and payable upon delivery of the initial
27 application. Upon approval of initial certification a fully executed contract guarantying the
28 availability of the tax credits pursuant to this chapter shall be entered into with the film office and
29 the company.

30 (6) Notwithstanding any provisions of the general laws or regulations adopted thereunder
31 to the contrary, the film office and the division of taxation are hereby expressly authorized and
32 empowered to enter into contracts with persons, firms, partnerships, trusts, estates, limited
33 liability companies, corporations or other business entities that incur and pay production and
34 performance expenditures and transportation expenditures for accredited theater productions.

1 (7) Simultaneously with approval of the initial application, the film office shall, on behalf
2 of the state of Rhode Island, guaranty the delivery of one hundred percent (100%) of the tax
3 credit and use of one hundred percent (100%) of the tax credit in the tax year the last production
4 and performance expenditures and transportation expenditures for accredited theater productions.

5 (8) Any contract executed pursuant to this chapter by a company that incurs and pays
6 production and performance expenditures and transportation expenditures for accredited theater
7 productions shall be assignable to: (i) An affiliate thereof without any consent from the division
8 of taxation or the film office; or (ii) A person, firm, partnership, trust, estate, limited liability
9 company, corporation (whether for profit or nonprofit) or other business entity approved by the
10 film office, which approval shall not be unreasonably withheld. For purposes of this subsection,
11 “affiliate” shall be defined as any entity controlling, controlled by or under common control with
12 such person, firm, partnership, trust, estate, limited liability company, corporation (whether for
13 profit or non-profit) or other business entity.

14 (9) If information comes to the attention of the film office that is materially inconsistent
15 with representations made in an application, the film office may deny the requested certification.
16 In the event that tax credits or a portion of tax credits are subject to recapture for ineligible costs
17 and such tax credits have been transferred, assigned and/or allocated, the state will pursue its
18 recapture remedies and rights against the applicant of the theater production tax credits. No
19 redress shall be sought against assignees, sellers, transferees or allocates of such credits.

20 (d) Information Requests. -- The tax administrator and his or her agents, for the purpose
21 of ascertaining the correctness of any credit claimed under the provisions of this chapter, may
22 examine any books, papers, records, or memoranda bearing upon the matters required to be
23 included in the return, report, or other statement, and may require the attendance of the person
24 executing the return, report, or other statement, or of any officer or employee of any taxpayer, or
25 the attendance of any other person, and may examine the person under oath respecting any matter
26 which the tax administrator or his or her agent deems pertinent or material in determining the
27 eligibility for credits claimed.

28 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO TAXATION -- ARTS AND ENTERTAINMENT--JOB STIMULUS
INCENTIVES

1 This act would repeal the provisions of chapter 44-31.2, entitled "Motion Picture
2 Production Tax Credits," and establish a new chapter 44-31.3, entitled "The Arts and
3 Entertainment Job Stimulus Incentives Act of 2012." The new chapter would provide new tax
4 credits for motion picture and theater productions in Rhode Island.

5 This act would take effect upon passage.

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