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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

Introduced By: Senator Daniel DaPonte

Date Introduced: May 24, 2012

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-31.2-2, 44-31.2-5 and 44-31.2-6 of the General Laws in
2 Chapter 44-31.2 entitled "Motion Picture Production Tax Credits" are hereby amended to read as
3 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) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a
10 partnership, limited liability company, or other business entity formed under the laws of the state
11 of Rhode Island for the purpose of producing motion pictures as defined in this section, or an
12 individual who is a domiciled resident of the state of Rhode Island as defined in chapter 30 of this
13 title.

14 (4) "Motion picture" means a feature-length film, video, video games, television series,
15 or commercial made in Rhode Island, in whole or in part, for theatrical or television viewing or as
16 a television pilot. The term "motion picture" shall not include the production of television
17 coverage of news or athletic events, nor shall it apply to any film, video, television series or
18 commercial or a production for which records are required under section 2257 of title 18, U.S.C.,
19 to be maintained with respect to any performer in such production or reporting of books, films,

1 etc. with respect to sexually explicit conduct.

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

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

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

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

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

1 persons employed, either directly or indirectly, in the production of the motion picture, to Rhode
2 Island (but not expenses of such persons departing from Rhode Island); and legal (but not the
3 expense of a completion bond or insurance and accounting fees and expenses related to the
4 production's activities in Rhode Island); provided such services are provided by Rhode Island
5 licensed attorneys or accountants.

6 (10) "Application year" shall mean within the calendar year the motion picture
7 production company files an application for the film tax credit.

8 **44-31.2-5. Motion picture production company tax credit.** -- (a) A motion picture
9 production company shall be allowed a credit to be computed as provided in this chapter against a
10 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-
11 five percent (25%) of the state certified production costs incurred directly attributable to activity
12 within the state, provided that the primary locations are within the state of Rhode Island and the
13 total production budget as defined herein is a minimum of three hundred thousand dollars
14 (\$300,000). The credit shall be earned in the taxable year in which production in Rhode Island is
15 completed, as determined by the film office in final certification pursuant to subsection 44-31.2-
16 6(c).

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

22 (c) ~~The Notwithstanding subsection (a), the~~ credit shall not exceed ~~the total production~~
23 ~~budget~~ five million dollars (\$5,000,000) and shall be allowed against the tax for the taxable
24 period in which the credit is earned and can be carried forward for not more than three (3)
25 succeeding tax years. Pursuant to rules promulgated by the tax administrator, the administrator
26 may issue a waiver of the five million dollar (\$5,000,000) tax credit cap for any feature-length
27 film or television series up to the remaining funds available pursuant to subsection (e).

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

34 (e) No more than fifteen million dollars (\$15,000,000) may be issued for any tax year

1 beginning after December 31, 2007.

2 **44-31.2-6. Certification and administration.** -- (a) Initial certification of a production. -

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

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

32 (c) Final certification and credits. - Upon determination that the motion picture
33 production company qualifies for final certification and the resultant credits, the film office shall
34 issue a letter to the production company indicating "certificate of completion of a state certified

1 production" and shall provide specifically designed certificates for the motion picture production
2 company credit under section 44-31.2-5. A motion picture production company is prohibited from
3 using state funds, state loans or state guaranteed loans to qualify for the motion picture production
4 tax credit. All documents that are issued by the film office pursuant to this section shall reference
5 the identification number that was issued to the production as part of its initial certification.

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

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

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

16 SECTION 2. Section 42-75-12 of the General Laws in Chapter 42-75 entitled "Council
17 on the Arts" is hereby amended to read as follows:

18 **42-75-12. Rhode Island film and television office. --** Within the ~~commission~~ division of
19 taxation there is established a separate, distinct office entitled the "Rhode Island film and
20 television office." This office is established in order to promote and encourage film and television
21 productions within the state of Rhode Island. This office is also responsible for the review of
22 applications of motion picture productions pursuant to the requirements of chapter 31.2 of title
23 44.

24 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

- 1 This act would amend certain provisions relative to motion picture production tax credits
- 2 and funds which may be used to qualify for the credit.
- 3 This act would take effect upon passage.

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