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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

RELATING TO TAXATION - MUSICAL AND THEATRICAL PRODUCTION TAX
CREDITS

Introduced By: Representatives Almeida, Williams, Marshall, O'Brien, and Carnevale

Date Introduced: February 26, 2014

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-31.3-1 and 44-31.3-2 of the General Laws in Chapter 44-31.3
2 entitled "Musical and Theatrical Production Tax Credits" are hereby amended to read as follows:

3 **44-31.3-1. Declaration of purpose. --** The general assembly finds and declares that it is
4 Rhode Island's priority to reduce the state's unemployment rate by stimulating new industries that
5 have large employment growth potential by providing tax incentives and other means necessary
6 and therefore recognizes that such incentives should be created for the arts and entertainment
7 industry. The purpose of this chapter is to create economic incentives for the purpose of
8 stimulating the local economy and reducing unemployment in Rhode Island and to help develop
9 the performing arts in Rhode Island and the technical trades associated in the furtherance of the
10 arts and entertainment.

11 **44-31.3-2. Musical and Theatrical Production Tax Credits. --** (a) Definitions. - As
12 used in this chapter:

13 (1) "Accredited theater production" means a for-profit or nonprofit live stage
14 presentation in a qualified production facility, as defined in this chapter that is either: (i) A Pre-
15 Broadway production, ~~or~~ (ii) A Post-Broadway production, (iii) An off-Broadway production,
16 (iv) A new work production; or (v) A tour technical production.

17 (2) "Accredited theater production certificate" means a certificate issued by the film
18 office certifying that the production is an accredited theater production that meets the guidelines

1 of this chapter.

2 (3) "Advertising and public relations expenditure" means costs incurred within the state
3 by the accredited theater productions for goods or services related to the national marketing,
4 public relations, creation and placement of print, electronic, television, billboards and other forms
5 of advertising to promote the accredited theater production.

6 (4) "Payroll" means all salaries, wages, fees, and other compensation including related
7 benefits for services performed and costs incurred within Rhode Island.

8 (5) "Pre-Broadway Production" means a live stage production that, in its original or
9 adaptive version, is performed in a qualified production facility having a presentation scheduled
10 for Broadway's theater district in New York City within (12) months after its Rhode Island
11 presentation.

12 (6) "Post-Broadway production" means a live stage production that, in its original or
13 adaptive version, is performed in a qualified production facility and opens its US tour in Rhode
14 Island after a presentation scheduled for Broadway's theater district in New York City.

15 (7) "Production and Performance Expenditures" means a contemporaneous exchange of
16 cash or cash equivalent for goods or services related to development, production, performance or
17 operating expenditures incurred in this state for a qualified theater production including, but not
18 limited to, expenditures for design, construction and operation, including sets, special and visual
19 effects, costumes, wardrobes, make-up, accessories, costs associated with sound, lighting,
20 staging, payroll, transportation expenditures, advertising and public relations expenditures,
21 facility expenses, rentals, per diems, accommodations and other related costs.

22 (8) "Qualified Production Facility" means a facility located in the State of Rhode Island
23 in which live theatrical or musical productions are, or are intended to be, exclusively presented
24 that contains at least one stage, permanent or portable, a seating capacity of ~~one thousand five~~
25 ~~hundred (1,500)~~ five hundred (500) or more seats, and dressing rooms, storage areas, and other
26 ancillary amenities necessary for the accredited theater production; provided, further, facilities
27 may be a temporary or a repurposed facility for purposes of this definition.

28 (9) "Resident" or "Rhode Island resident" means for the purpose of determination of
29 eligibility for the tax incentives provided by this chapter, an individual who is domiciled in the
30 State of Rhode Island or who is not domiciled in this state but maintains a permanent place of
31 abode in this state and is in this state for an aggregate of more than one hundred eighty-three
32 (183) days of the taxable year, unless the individual is in the armed forces of the United States.

33 (10) "Rhode Island film and television office" means the office within the department of
34 ~~administration~~ culture and tourism that has been established in order to promote and encourage

1 the locating of film and television productions within the state of Rhode Island. The office is also
2 referred to as the "film office".

3 (11) (i) "Transportation expenditures" means expenditures for the packaging, crating,
4 and transportation both to the state for use in a qualified theater production of sets, costumes, or
5 other tangible property constructed or manufactured out of state, and/or from the state after use in
6 a qualified theater production of sets, costumes, or other tangible property constructed or
7 manufactured in this state and the transportation of the cast and crew to and from the state. Such
8 term shall include the packaging, crating, and transporting of property and equipment used for
9 special and visual effects, sound, lighting, and staging, costumes, wardrobes, make-up and related
10 accessories and materials, as well as any other performance or production-related property and
11 equipment.

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

17 (12) "Off-Broadway" means a non-touring live stage production presented for an
18 audience in a qualified production facility.

19 (13) "New work production" means an original, theatrical, musical, or reinterpreted work
20 developed and performed in a qualified production facility.

21 (14) "Tour technical production" means a theatrical or musical work constructed and/or
22 assembled, and rehearsed for a tour that utilizes a qualified production facility.

23 (b) Tax Credit.

24 (1) Any person, firm, partnership, trust, estate or other entity that receives an accredited
25 theater production certificate shall be allowed a tax credit equal to ~~twenty-five percent (25%)~~
26 thirty-five percent (35%) of the total production and performance expenditures and transportation
27 expenditures for the accredited theater production and to be computed as provided in this chapter
28 against a tax imposed by chapters 11, 12, 13, 14, 17 and 30 of this title. Said credit ~~shall not~~
29 ~~exceed five million dollars (\$5,000,000) and~~ shall be limited to certified production cost directly
30 attributable to activities in the state and transportation expenditures defined above. The total
31 production budget shall be a minimum of one hundred thousand dollars (\$100,000), and for a
32 theatrical or musical performance or construction, the total production budget shall be fifty
33 thousand dollars (\$50,000).

34 (2) No more than ~~fifteen million dollars (\$15,000,000)~~ thirty million dollars

1 (\$30,000,000) in total may be issued for any tax year for motion picture tax credits pursuant to
2 chapter 31.2 of this title and/or musical and theatrical production tax credits pursuant to this
3 chapter. Said credits shall be equally available to motion picture productions and musical and
4 theatrical productions. No specific amount shall be set aside for either type of production.

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

7 (4) Credits allowed to a company, which is a subchapter S corporation, partnership, or a
8 limited liability company that is taxed as a partnership, shall be passed through respectively to
9 persons designated as partners, members or owners on a pro rata basis or pursuant to an executed
10 agreement among such persons designated as subchapter S corporation shareholders, partners, or
11 members documenting an alternate distribution method without regard to their sharing of other
12 tax or economic attributes of such entity.

13 (5) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
14 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
15 otherwise to any individual or entity and such assignee of the tax credits that have not claimed the
16 tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part, by
17 sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
18 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
19 pursuant to chapter 11, 12, 13 (other than the tax imposed under section 44-13-13), 14, 17 or 30
20 of this title. The assignee may apply the tax credit against taxes imposed on the assignee for not
21 more than three (3) succeeding tax years. The assignor shall perfect the transfer by notifying the
22 state of Rhode Island division of taxation, in writing, within thirty (30) calendar days following
23 the effective date of the transfer and shall provide any information as may be required by the
24 division of taxation to administer and carry out the provisions of this section.

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

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

31 (c) Certification and administration.

32 (1) The applicant shall properly prepare, sign and submit to the film office an application
33 for initial certification of the theater production. The application shall include such information
34 and data as the film office deems reasonably necessary for the proper evaluation and

1 administration of said application, including, but not limited to, any information about the theater
2 production company and a specific Rhode Island live theater or musical production. The film
3 office shall review the completed application and determine whether it meets the requisite criteria
4 and qualifications for the initial certification for the production. If the initial certification is
5 granted, the film office shall issue a notice of initial certification of the accredited theater
6 production to the theater production company and to the tax administrator. The notice shall state
7 that, after appropriate review, the initial application meets the appropriate criteria for conditional
8 eligibility. The notice of initial certification will provide a unique identification number for the
9 production and is only a statement of conditional eligibility for the production and, as such, does
10 not grant or convey any Rhode Island tax benefits.

11 (2) Upon completion of an accredited theater production, the applicant shall properly
12 prepare, sign and submit to the film office an application for final certification of the accredited
13 theater production. The final application shall also contain a cost report and an "accountant's
14 certification." The film office and tax administrator may rely without independent investigation,
15 upon the accountant's certification, in the form of an opinion, confirming the accuracy of the
16 information included in the cost report. Upon review of a duly completed and filed application
17 and upon no later than thirty (30) days of submission thereof, the division of taxation will make a
18 determination pertaining to the final certification of the accredited theater production and the
19 resultant tax credits.

20 (3) Upon determination that the company qualifies for final certification and the resultant
21 tax credits, the tax administrator of the division of taxation shall issue to the company: (i) An
22 Accredited Theater Production Certificate; and (ii) A tax credit certificate in an amount in
23 accordance with this section (b) hereof. A musical and theatrical production company is
24 prohibited from using state funds, state loans or state guaranteed loans to qualify for the motion
25 picture tax credit. All documents that are issued by the film office pursuant to this section shall
26 reference the identification number that was issued to the production as part of its initial
27 certification.

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

32 (5) 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 applicant of the theater production tax credits. No
3 redress shall be sought against assignees, sellers, transferees or allocates of such credits.

4 (d) Information requests.

5 (i) The director of the film office and his or her agents, for the purpose of ascertaining
6 the correctness of any credit claimed under the provisions of this chapter, may examine any
7 books, paper, records, or memoranda bearing upon the matters required to be included in the
8 return, report, or other statement, and may require the attendance of the person executing the
9 return, report, or other statement, or of any officer or employee of any taxpayer, or the attendance
10 of any other person, and may examine the person under oath respecting any matter which the
11 director or his or her agent deems pertinent or material in administration and application of this
12 chapter and where not inconsistent with other legal provisions, the director may request
13 information from the tax administrator.

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

23 (e) The film office shall comply with the impact analysis and periodic reporting
24 provisions of section 44-31.2-6.1.

25 SECTION 2. Section 44-31.3-4 of the General Laws in Chapter 44-31.3 entitled "Musical
26 and Theatrical Production Tax Credits" is hereby repealed.

27 ~~44-31.3-4. Sunset. -- No credits shall be issued on or after July 1, 2019 unless the~~
28 ~~production has received initial certification under subsection 44-31.3-2(c) prior to July 1, 2019.~~

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO TAXATION - MUSICAL AND THEATRICAL PRODUCTION TAX
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1 This act would add "the development of the performing arts and associated trades" to the
2 state musical and theatrical production tax credits and would define and add off-Broadway
3 production, new work productions and tour technical productions to the definition of an
4 "accredited theater production", and would further raise the amounts of the tax credits allowed,
5 and would amend the necessary minimum budget size for qualified productions, and lastly would
6 repeal the sunset provision.

7 This act would take effect upon passage.

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