

2023 -- H 5801 SUBSTITUTE A

LC001981/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO TAXATION -- MUSICAL AND THEATRICAL PRODUCTION TAX CREDITS

Introduced By: Representatives Carson, Edwards, Kazarian, O'Brien, Cortvriend, Baginski, Fogarty, McNamara, and Slater

Date Introduced: February 22, 2023

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-31.3-2 and 44-31.3-4 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 **44-31.3-2. Musical and theatrical production tax credits.**

4 (a) Definitions. As used in this chapter:

5 (1) "Accredited theater production" means a for-profit live stage presentation in a qualified
6 production facility, as defined in this chapter that is either: (i) A pre-Broadway production, ~~or~~ (ii)
7 A post-Broadway production, or (iii) A national touring production.

8 (2) "Accredited theater production certificate" means a certificate issued by the film office
9 certifying that the production is an accredited theater production that meets the guidelines of this
10 chapter.

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

15 (4) "National touring production" means a live stage production that, in its original or
16 adaptive version, is performed in a qualified production facility and opens its U.S. tour in Rhode
17 Island with a minimum of at least four (4) public performances and following the production's final
18 performance in Rhode Island, the national touring production must perform for at least four (4)

1 [weeks in at least four \(4\) cities outside of Rhode Island.](#)

2 ~~(4)~~[\(5\)](#) “Payroll” means all salaries, wages, fees, and other compensation including related
3 benefits for services performed and costs incurred within Rhode Island.

4 ~~(5)~~[\(6\)](#) “Pre-Broadway production” means a live stage production that, in its original or
5 adaptive version, is performed in a qualified production facility having a presentation scheduled
6 for Broadway’s theater district in New York City within thirty-six (36) months after its Rhode
7 Island presentation.

8 ~~(6)~~[\(7\)](#) “Post-Broadway production” means a live stage production that, in its original or
9 adaptive version, is performed in a qualified production facility and opens its U.S. tour in Rhode
10 Island after a presentation scheduled for Broadway’s theater district in New York City.

11 ~~(7)~~[\(8\)](#) “Production and performance expenditures” means a contemporaneous exchange of
12 cash or cash equivalent for goods or services related to development, production, performance, or
13 operating expenditures incurred in this state for a qualified theater production including, but not
14 limited to, expenditures for design, construction and operation, including sets, special and visual
15 effects, costumes, wardrobes, make-up, accessories; costs associated with sound, lighting, staging,
16 payroll, transportation expenditures, advertising and public relations expenditures, facility
17 expenses, rentals, per diems, accommodations and other related costs.

18 ~~(8)~~[\(9\)](#) “Qualified production facility” means a facility located in the state of Rhode Island
19 in which live theatrical productions are, or are intended to be, exclusively presented that contains
20 at least one stage, a seating capacity of one thousand (1,000) or more seats, and dressing rooms,
21 storage areas, and other ancillary amenities necessary for the accredited theater production.

22 ~~(9)~~[\(10\)](#) “Resident” or “Rhode Island resident” means, for the purpose of determination of
23 eligibility for the tax incentives provided by this chapter, an individual who is domiciled in the state
24 of Rhode Island or who is not domiciled in this state but maintains a permanent place of abode in
25 this state and is in this state for an aggregate of more than one hundred eighty-three (183) days of
26 the taxable year, unless the individual is in the armed forces of the United States.

27 ~~(10)~~[\(11\)](#) “Rhode Island film and television office” means the office within the department
28 of administration that has been established in order to promote and encourage the locating of film
29 and television productions within the state of Rhode Island. The office is also referred to as the
30 “film office.”

31 ~~(11)~~[\(12\)](#)(i) “Transportation expenditures” means expenditures for the packaging, crating,
32 and transportation both to the state for use in a qualified theater production of sets, costumes, or
33 other tangible property constructed or manufactured out of state, and/or from the state after use in
34 a qualified theater production of sets, costumes, or other tangible property constructed or

1 manufactured in this state and the transportation of the cast and crew to and from the state. Such
2 term shall include the packaging, crating, and transporting of property and equipment used for
3 special and visual effects, sound, lighting and staging, costumes, wardrobes, make-up, and related
4 accessories and materials, as well as any other performance or production-related property and
5 equipment.

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

10 (b) Tax credit.

11 (1) Any person, firm, partnership, trust, estate, or other entity that receives an accredited
12 theater production certificate shall be allowed a tax credit equal to thirty percent (30%) of the total
13 production and performance expenditures and transportation expenditures for the accredited theater
14 production and to be computed as provided in this chapter against a tax imposed by chapters 11,
15 12, 13, 14, 17, and 30 of this title. Said credit shall not exceed five million dollars (\$5,000,000) and
16 shall be limited to certified production costs directly attributable to activities in the state and
17 transportation expenditures defined above. The total production budget shall be a minimum of one
18 hundred thousand dollars (\$100,000).

19 (2) No more than fifteen million dollars (\$15,000,000) in total may be issued for any tax
20 year for motion picture tax credits pursuant to chapter 31.2 of this title and/or musical and theatrical
21 production tax credits pursuant to this chapter. Said credits shall be equally available to motion
22 picture productions and musical and theatrical productions. No specific amount shall be set aside
23 for either type of production.

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

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

32 (5) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
33 the tax credits may assign, transfer, or convey the tax credits, in whole or in part, by sale or
34 otherwise, to any individual or entity and the assignee of the tax credits that has not claimed the tax

1 credits in whole or part may assign, transfer, or convey the tax credits, in whole or in part, by sale
2 or otherwise, to any individual or entity. The assignee of the tax credits may use acquired credits
3 to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed pursuant to
4 chapter 11, 12, 13 (other than the tax imposed under § 44-13-13), 14, 17, or 30 of this title. The
5 assignee may apply the tax credit against taxes imposed on the assignee for not more than three (3)
6 succeeding tax years. The assignor shall perfect the transfer by notifying the state of Rhode Island
7 division of taxation, in writing, within thirty (30) calendar days following the effective date of the
8 transfer and shall provide any information as may be required by the division of taxation to
9 administer and carry out the provisions of this section.

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

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

16 (c) Certification and administration.

17 (1) The applicant shall properly prepare, sign, and submit to the film office an application
18 for initial certification of the theater production. The application shall include the information and
19 data as the film office deems reasonably necessary for the proper evaluation and administration of
20 the application, including, but not limited to, any information about the theater production company
21 and a specific Rhode Island live theater or musical production. The film office shall review the
22 completed application and determine whether it meets the requisite criteria and qualifications for
23 the initial certification for the production. If the initial certification is granted, the film office shall
24 issue a notice of initial certification of the accredited theater production to the theater production
25 company and to the tax administrator. The notice shall state that, after appropriate review, the initial
26 application meets the appropriate criteria for conditional eligibility. The notice of initial
27 certification will provide a unique identification number for the production and is only a statement
28 of conditional eligibility for the production and, as such, does not grant or convey any Rhode Island
29 tax benefits.

30 (2) Upon completion of an accredited theater production, the applicant shall properly
31 prepare, sign, and submit to the film office an application for final certification of the accredited
32 theater production. The final application shall also contain a cost report and an "accountant's
33 certification." The film office and tax administrator may rely without independent investigation,
34 upon the accountant's certification, in the form of an opinion, confirming the accuracy of the

1 information included in the cost report. Upon review of a duly completed and filed application and
2 upon no later than thirty (30) days of submission thereof, the division of taxation will make a
3 determination pertaining to the final certification of the accredited theater production and the
4 resultant tax credits.

5 (3) Upon determination that the company qualifies for final certification and the resultant
6 tax credits, the tax administrator of the division of taxation shall issue to the company: (i) An
7 accredited theater production certificate; and (ii) A tax credit certificate in an amount in accordance
8 with subsection (b) of this section. A musical and theatrical production company is prohibited from
9 using state funds, state loans, or state guaranteed loans to qualify for the motion picture tax credit.
10 All documents that are issued by the film office pursuant to this section shall reference the
11 identification number that was issued to the production as part of its initial certification.

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

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

22 (d) Information requests.

23 (1) The director of the film office, and his or her agents, for the purpose of ascertaining the
24 correctness of any credit claimed under the provisions of this chapter, may examine any books,
25 paper, records, or memoranda bearing upon the matters required to be included in the return, report,
26 or other statement, and may require the attendance of the person executing the return, report, or
27 other statement, or of any officer or employee of any taxpayer, or the attendance of any other
28 person, and may examine the person under oath respecting any matter that the director, or his or
29 her agent, deems pertinent or material in administration and application of this chapter and where
30 not inconsistent with other legal provisions, the director may request information from the tax
31 administrator.

32 (2) The tax administrator, and his or her agents, for the purpose of ascertaining the
33 correctness of any credit claimed under the provisions of this chapter, may examine any books,
34 paper, records, or memoranda bearing upon the matters required to be included in the return, report,

1 or other statement, and may require the attendance of the person executing the return, report, or
2 other statement, or of any officer or employee of any taxpayer, or the attendance of any other
3 person, and may examine the person under oath respecting any matter the tax administrator or his
4 or her agent deems pertinent or material in determining the eligibility for credits claimed and may
5 request information from the film office, and the film office shall provide the information in all
6 cases to the tax administrator.

7 (e) The film office shall comply with the impact analysis and periodic reporting provisions
8 of § 44-31.2-6.1.

9 **44-31.3-4. Sunset.**

10 No credits shall be issued on or after July 1, ~~2024~~ 2027, unless the production has received
11 initial certification under § 44-31.3-2(c) prior to July 1, ~~2024~~ 2027.

12 SECTION 2. 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 -- MUSICAL AND THEATRICAL PRODUCTION TAX
CREDITS

1 This act would add a "national touring production" to the productions that are considered
2 an "accredited theater production" for purposes of musical and theatrical production tax credits and
3 would extend the sunset of the credits to July 1, 2027.

4 This act would take effect upon passage.

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