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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 - MOTION PICTURE PRODUCTION TAX CREDITS

Introduced By: Senators Miller, Goodwin, Jabour, Perry, and Pichardo

Date Introduced: February 01, 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) "Documentary Production" means a non-fiction production intended for educational  
10 or commercial distribution that may require out of state principal photography.

11           ~~(3)~~(4) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or  
12 a partnership, limited liability company, or other business entity formed under the laws of the  
13 state of Rhode Island for the purpose of producing motion pictures as defined in this section, or  
14 an individual who is a domiciled resident of the state of Rhode Island as defined in chapter 30 of  
15 this title.

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

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

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

16           ~~(6)~~(8)(i) "Primary locations" means the locations within which at least fifty-one percent  
17 (51%) of the motion picture principal photography days are filmed; ~~or~~

18           (ii) At least fifty-one percent (51%) of the motion picture's final production budget is  
19 spent; or

20           (iii) For documentary productions, the location of at least fifty-one percent (51%) of the  
21 total productions days, which shall include pre-production and post-production locations.

22           ~~(7)~~(9) "Rhode Island film and television office" means an office within the Rhode Island  
23 state council on the arts that has been established in order to promote and encourage the locating  
24 of film and television productions within the state of Rhode Island. The office is also referred to  
25 within as the "film office".

26           ~~(8)~~(10) "State-certified production" means a motion picture production approved by the  
27 Rhode Island film office and produced by a motion picture production company domiciled in  
28 Rhode Island, whether or not such company owns or controls the copyright and distribution rights  
29 in the motion picture; provided, that such company has either: (a) signed a viable distribution  
30 plan; or (b) is producing the motion picture for: (i) a major motion picture distributor; (ii) a major  
31 theatrical exhibitor; (iii) television network; or (iv) cable television programmer.

32           ~~(9)~~(11) "State certified production cost" means any pre-production, production and post-  
33 production cost that a motion picture production company incurs and pays to the extent it occurs  
34 within the state of Rhode Island. Without limiting the generality of the foregoing, "state certified

1 production costs" include: set construction and operation; wardrobes, make-up, accessories, and  
2 related services; costs associated with photography and sound synchronization, lighting, and  
3 related services and materials; editing and related services, including, but not limited to, film  
4 processing, transfers of film to tape or digital format, sound mixing, computer graphics services,  
5 special effects services, and animation services, salary, wages, and other compensation, including  
6 related benefits, of persons employed, either director or indirectly, in the production of a film  
7 including writer, motion picture director, producer (provided the work is performed in the state of  
8 Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of vehicles; costs  
9 of food and lodging; music, if performed, composed, or recorded by a Rhode Island musician, or  
10 released or published by a person domiciled in Rhode Island; travel expenses incurred to bring  
11 persons employed, either directly or indirectly, in the production of the motion picture, to Rhode  
12 Island (but not expenses of such persons departing from Rhode Island); and legal (but not the  
13 expense of a completion bond or insurance and accounting fees and expenses related to the  
14 production's activities in Rhode Island); provided such services are provided by Rhode Island  
15 licensed attorneys or accountants.

16 **44-31.2-5. Motion picture production company tax credit.** -- (a) A motion picture  
17 production company shall be allowed a credit to be computed as provided in this chapter against a  
18 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-  
19 five percent (25%) of the state certified production costs incurred directly attributable to activity  
20 within the state, provided that the primary locations are within the state of Rhode Island and the  
21 total production budget as defined herein is a minimum of ~~three hundred thousand dollars~~  
22 ~~(\$300,000)~~ one hundred thousand dollars (\$100,000). The credit shall be earned in the taxable  
23 year in which production in Rhode Island is completed, as determined by the film office in final  
24 certification pursuant to subsection 44-31.2-6(c).

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

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

33 (d) Credits allowed to a motion picture production company, which is a subchapter S  
34 corporation, partnership, or a limited liability company that is taxed as a partnership, shall be

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

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

7 **44-31.2-6. Certification and administration.** -- (a) Initial certification of a production. -

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

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

1 filed application, the film office will make a determination pertaining to the final certification of  
2 the production ~~and the resultant credits for section 44-31.2-5~~. Within ninety (90) days after the  
3 division of taxation's receipt of the motion picture production company's final certification and  
4 cost report, the division of taxation shall issue a certification of the amount of credit for which the  
5 motion picture production company qualifies under section 44-31.5-5. To claim the tax credit, the  
6 division of taxation's certification as to the amount of the tax credit shall be attached to all state  
7 tax returns on which the credit is claimed.

8 (c) Final certification and credits. - Upon determination that the motion picture  
9 production company qualifies for final certification ~~and the resultant credits~~, the film office shall  
10 issue a letter to the production company indicating "certificate of completion of a state certified  
11 production" ~~and shall provide specifically designed certificates for the motion picture production~~  
12 ~~company credit under section 44-31.2-5~~. All documents that are issued by the film office pursuant  
13 to this section shall reference the identification number that was issued to the production as part  
14 of its initial certification.

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

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

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

25 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 - MOTION PICTURE PRODUCTION TAX CREDITS

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- 1           This act would allow lower budget motion picture productions to qualify for Rhode
- 2   Island tax credits.
- 3           This act would take effect upon passage.

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