

2014 -- S 3130

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO TAXATION -- TAX CREDITS

Introduced By: Senator Roger Picard

Date Introduced: June 20, 2014

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

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

3 **44-31.3-2. Musical and Theatrical Production Tax Credits.** -- (a) Definitions. - As
4 used in this chapter:

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

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

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

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

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

1 presentation.

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

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

12 (8) "Qualified Production Facility" means a facility located in the State of Rhode Island
13 in which live theatrical productions are, or are intended to be, exclusively presented that contains
14 at least one stage, a seating capacity of ~~one thousand five hundred (1,500)~~ one thousand (1,000)
15 or more seats, and dressing rooms, storage areas, and other ancillary amenities necessary for the
16 accredited theater production.

17 (9) "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 (10) "Rhode Island film and television office" means the office within the department of
23 administration that has been established in order to promote and encourage the locating of film
24 and television productions within the state of Rhode Island. The office is also referred to as the
25 "film office".

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

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

6 (b) Tax Credit.

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

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

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

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

28 (5) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
29 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
30 otherwise to any individual or entity and such assignee of the tax credits that have not claimed the
31 tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part, by
32 sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
33 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
34 pursuant to chapter 11, 12, 13 (other than the tax imposed under section 44-13-13), 14, 17 or 30

1 of this title. The assignee may apply the tax credit against taxes imposed on the assignee for not
2 more than three (3) succeeding tax years. The assignor shall perfect the transfer by notifying the
3 state of Rhode Island division of taxation, in writing, within thirty (30) calendar days following
4 the effective date of the transfer and shall provide any information as may be required by the
5 division of taxation to administer and carry out the provisions of this section.

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

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

12 (c) Certification and administration.

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

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

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

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

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

19 (d) Information requests.

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

29 (ii) The tax administrator and his or her agents, for the purpose of ascertaining the
30 correctness of any credit claimed under the provisions of this chapter, may examine any books,
31 paper, records, or memoranda bearing upon the matters required to be included in the return,
32 report, or other statement, and may require the attendance of the person executing the return,
33 report, or other statement, or of any officer or employee of any taxpayer, or the attendance of any
34 other person, and may examine the person under oath respecting any matter which the tax

1 administrator or his or her agent deems pertinent or material in determining the eligibility for
2 credits claimed and may request information from the film office, and the film office shall
3 provide the information in all cases to the tax administrator.

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

6 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 -- TAX CREDITS

1 This act would lower the number of seats required for a theater to receive a musical and
2 theatrical production state tax credit from one thousand five hundred (1,500) to one thousand
3 (1,000).

4 This act would take effect upon passage.

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