

2016 -- S 2745

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO TAXATION - MOTION PICTURE PRODUCTION TAX CREDITS

Introduced By: Senators Miller, Lynch Prata, Ruggerio, and Pearson

Date Introduced: March 10, 2016

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. The title of Chapter 44-31.2 of the General Laws entitled "Motion Picture
2 Production Tax Credits" is hereby amended to read as follows:

3 ~~CHAPTER 44-31.2~~

4 ~~Motion Picture Production Tax Credits~~

5 CHAPTER 44-31.2

6 MOTION PICTURE PRODUCTION INCENTIVE

7 SECTION 2. Sections 44-31.2-1, 44-31.2-2, 44-31.2-5, 44-31.2-6, 44-31.2-6.1, 44-31.2-7
8 and 44-31.2-8 of the General Laws in Chapter 44-31.2 entitled "Motion Picture Production Tax
9 Credits" are hereby amended to read as follows:

10 **44-31.2-1. Findings and purpose.** -- (a) The general assembly finds and declares that the
11 state of Rhode Island with its natural beauty, historical and architectural heritage of the state, its
12 majestic natural resources including Narragansett Bay and the independence and diversity of its
13 citizens and neighborhoods would provide a variety of excellent settings from which the motion
14 picture industry might choose a location for filming a motion picture or television program, and
15 together with those natural settings, the availability of labor, materials, climate, and hospitality of
16 its people have been instrumental in the filming of several successful motion pictures.

17 (b) It is recognized that the motion picture industry brings with it a much needed
18 infusion of capital into areas of the state which may be economically depressed and the multiplier
19 effect of the infusion of capital resulting from the filming of a motion picture or television

1 program serves to stimulate economic activity beyond that immediately apparent on the film set.

2 (c) Since a significant portion of the cost of a motion picture or television production
3 will not be eligible for existing tax incentives due to the fact that portions of the production are
4 carried out in another state, it is the purpose of this chapter to provide a financial incentive to the
5 film industry in order that the state might compete with other states for filming locations.

6 (d) The primary objective of this chapter is to encourage development in Rhode Island of
7 a strong capital base for motion picture film, videotape, and television program productions, in
8 order to achieve a more independent, self-supporting industry. This objective is divided into
9 immediate and long-term objectives as follows:

10 (1) Immediate objectives are to:

11 (i) Attract private investment for the production of motion pictures, videotape
12 productions, and television programs which contain substantial Rhode Island content as defined
13 herein.

14 (ii) Develop a tax infrastructure which encourages private investment. This infrastructure
15 will provide for state participation in the form of ~~tax credits~~ [rebates](#) to encourage investment in
16 state- certified productions.

17 (iii) Develop a tax infrastructure utilizing ~~tax credits~~ [rebates](#) which encourage
18 investments in multiple state-certified production projects.

19 (2) Long-term objectives are to:

20 (i) Encourage increased employment opportunities within this sector and increased
21 competition with other states in fully developing economic development options within the film
22 and video industry.

23 (ii) Encourage new education curricula in order to provide a labor force trained in all
24 aspects of film production.

25 **44-31.2-2. Definitions.** -- For the purposes of this chapter:

26 (1) "Accountant's certification" as provided in this chapter means a certified audit by a
27 Rhode Island certified public accountant licensed in accordance with section 5-3.1.

28 (2) "Base investment" means the actual investment made and expended by a state-
29 certified production in the state as production-related costs.

30 (3) "Documentary production" means a non-fiction production intended for educational
31 or commercial distribution that may require out of state principal photography.

32 (4) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a
33 partnership, limited liability company, or other business entity formed under the laws of the state
34 of Rhode Island for the purpose of producing motion pictures as defined in this section, or an

1 individual who is a domiciled resident of the state of Rhode Island as defined in chapter 30 of this
2 title.

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

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

14 (7) "Motion picture production company" means a corporation, partnership, limited
15 liability company or other business entity engaged in the business of producing one or more
16 motion pictures as defined in this section. Motion picture production company shall not mean or
17 include: (a) any company owned, affiliated, or controlled, in whole or in part by any company or
18 person which is in default: (i) on taxes owed to the state; or (ii) on a loan made by the state in the
19 application year; or (iii) on a loan guaranteed by the state in the application year; or (b) any
20 company or person who has discharged an obligation to pay or repay public funds or monies by:
21 (i) filing a petition under any Federal or state bankruptcy or insolvency law; (ii) having a petition
22 filed under any Federal or state bankruptcy or insolvency law against such company or person;
23 (iii) consenting to, or acquiescing or joining in, a petition named in (i) or (ii); (iv) consenting to,
24 or acquiescing or joining in, the appointment of a custodian, receiver, trustee, or examiner for
25 such company's or person's property; or (v) making an assignment for the benefit of creditors or
26 admitting in writing or in any legal proceeding its insolvency or inability to pay debts as they
27 become due.

28 (8) "Primary locations" means the locations which (1) at least fifty-one percent (51%) of
29 the motion picture principal photography days are filmed; or (2) at least fifty-one percent (51%)
30 of the motion picture's final production budget is spent and employs at least five (5) individuals
31 during the production in this state; or (3) for documentary productions, the location of at least
32 fifty-one percent (51%) of the total productions days, which shall include pre- production and
33 post-production locations.

34 (9) "Rhode Island film and television office" means an office within the department of

1 administration that has been established in order to promote and encourage the locating of film
2 and television productions within the state of Rhode Island. The office is also referred to within
3 as the "film office".

4 (10) "Rhode Island resident production payroll" means salary, wages and other
5 compensation, including related benefits, of persons employed either directly or indirectly and
6 paid to a Rhode Island resident who has established residency for at least one hundred-twenty
7 (120) days prior to the date of a production company's initial application.

8 ~~(10)~~(11) "State-certified production" means a motion picture production approved by the
9 Rhode Island film office and produced by a motion picture production company domiciled in
10 Rhode Island, whether or not such company owns or controls the copyright and distribution rights
11 in the motion picture; provided, that such company has either: (a) signed a viable distribution
12 plan; or (b) is producing the motion picture for: (i) a major motion picture distributor; (ii) a major
13 theatrical exhibitor; (iii) television network; or (iv) cable television programmer.

14 ~~(11)~~(12) "State certified production cost" means any pre-production, production and
15 post-production cost that a motion picture production company incurs and pays to the extent it
16 occurs within the state of Rhode Island. Without limiting the generality of the foregoing, "state
17 certified production costs" include: set construction and operation; wardrobes, make-up,
18 accessories, and related services; costs associated with photography and sound synchronization,
19 lighting, and related services and materials; editing and related services, including, but not limited
20 to, film processing, transfers of film to tape or digital format, sound mixing, computer graphics
21 services, special effects services, and animation services, salary, wages, and other compensation,
22 including related benefits, of persons employed, either director or indirectly, in the production of
23 a film including writer, motion picture director, producer (provided the work is performed in the
24 state of Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of
25 vehicles; costs of food and lodging; music, if performed, composed, or recorded by a Rhode
26 Island musician, or released or published by a person domiciled in Rhode Island; travel expenses
27 incurred to bring persons employed, either directly or indirectly, in the production of the motion
28 picture, to Rhode Island (but not expenses of such persons departing from Rhode Island); and
29 legal (but not the expense of a completion bond or insurance and accounting fees and expenses
30 related to the production's activities in Rhode Island); provided such services are provided by
31 Rhode Island licensed attorneys or accountants.

32 ~~(12)~~(13) "Application year" means within the calendar year the motion picture
33 production company files an application for the ~~tax credit~~ rebate.

34 ~~44-31.2-5. Motion picture production company tax credit.~~ Motion picture

1 **production company rebate.** -- (a) A motion picture production company shall be allowed a
2 credit rebate to be computed as provided in this chapter ~~against a tax imposed by chapters 11, 14,~~
3 ~~17 and 30 of this title.~~ The amount of the ~~credit~~ rebate shall be twenty-five percent (25%) of the
4 state certified production costs incurred directly attributable to activity within the state, with an
5 additional five percent (5%) for Rhode Island resident production payroll; provided, that the
6 primary locations are within the state of Rhode Island and the total production budget as defined
7 herein is a minimum of one hundred thousand dollars (\$100,000). The ~~credit~~ rebate shall be
8 earned in the taxable year in which production in Rhode Island is completed, as determined by
9 the film office in final certification pursuant to subsection 44-31.2-6(c).

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

15 (c) ~~Notwithstanding subsection (a), the credit shall not exceed five million dollars~~
16 ~~(\$5,000,000) and shall be allowed against the tax for the taxable period in which the credit is~~
17 ~~earned and can be carried forward for not more than three (3) succeeding tax years. Pursuant to~~
18 ~~rules promulgated by the tax administrator, the administrator may issue a waiver of the five~~
19 ~~million dollar (\$5,000,000) tax credit cap for any feature length film or television series up to the~~
20 ~~remaining funds available pursuant to section (e).~~

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

27 (e) No more than ~~fifteen million dollars (\$15,000,000)~~ twenty-five million dollars
28 (\$25,000,000) in total may be issued for any tax year beginning after December 31, ~~2007~~ 2015
29 for motion picture ~~tax credits~~ rebates pursuant to this chapter and/or musical and theatrical
30 production ~~tax credits~~ rebates pursuant to chapter 31.3 of this title. Said ~~credits~~ rebates shall be
31 equally available to motion picture productions and musical and theatrical productions. No
32 specific amount shall be set aside for either type of production.

33 **44-31.2-6. Certification and administration.** -- (a) Initial certification of a production. -
34 The applicant shall properly prepare, sign and submit to the film office an application for initial

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

13 (b) Final certification of a production. - Upon completion of the Rhode Island production
14 activities, the applicant shall request a certificate of good standing from the Rhode Island division
15 of taxation. Such certificates shall verify to the film office the motion picture production
16 company's compliance with the requirements of subsection 44-31.2-2(5). The applicant shall
17 properly prepare, sign and submit to the film office an application for final certification of the
18 production and which must include the certificate of good standing from the division of taxation.
19 In addition, the application shall contain such information and data as the film office determines
20 is necessary for the proper evaluation and administration, including, but not limited to, any
21 information about the motion picture production company, its investors and information about the
22 production previously granted initial certification. The final application shall also contain a cost
23 report and an "accountant's certification". The film office and tax administrator may rely without
24 independent investigation, upon the accountant's certification, in the form of an opinion,
25 confirming the accuracy of the information included in the cost report. Upon review of a duly
26 completed and filed application, the film office will make a determination pertaining to the final
27 certification of the production. Within ninety (90) days after the division of taxation's receipt of
28 the motion picture production company final certification and cost report, the division of taxation
29 shall issue a certification of the amount of ~~credit~~ rebate for which the motion picture production
30 company qualifies under § 44-31.2-5. ~~To claim the tax credit, the division of taxation's~~
31 ~~certification as to the amount of the tax credit shall be attached to all state tax returns on which~~
32 ~~the credit is claimed.~~

33 (c) Final certification and ~~credits~~ rebates. - Upon determination that the motion picture
34 production company qualifies for final certification, the film office shall issue a letter to the

1 production company indicating "certificate of completion of a state certified production". A
2 motion picture production company is prohibited from using state funds, state loans or state
3 guaranteed loans to qualify for the motion picture ~~tax credit~~ [rebate](#). All documents that are issued
4 by the film office pursuant to this section shall reference the identification number that was issued
5 to the production as part of its initial certification.

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

10 (e) The tax administrator of the division of taxation, in consultation with the director of
11 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~~ [rebate](#) provided herein.

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

17 **44-31.2-6.1. Impact analysis and periodic reporting.** -- (a) The film office shall not
18 certify or approve any application under § 44-31.2-6 of this chapter until it has first prepared and
19 publicly released an analysis of the impact the proposed investment will or may have on the state.
20 The analysis shall be supported by appropriate data and documentation and shall consider, but not
21 be limited to, the following factors:

- 22 (i) The impact on the industry or industries in which the applicant will be involved;
- 23 (ii) State fiscal matters, including the state budget (revenues and expenses);
- 24 (iii) The financial exposure of the taxpayers of the state under the plans for the proposed
25 investment and negative foreseeable contingencies that may arise therefrom;
- 26 (iv) The approximate number of full-time, part-time, temporary, seasonal and/or
27 permanent jobs projected to be created, construction and non-construction;
- 28 (v) Identification of geographic sources of the staffing for identified jobs;
- 29 (vi) The projected duration of the identified construction jobs;
- 30 (vii) The approximate wage rates for each category of the identified jobs;
- 31 (viii) The types of fringe benefits to be provided with the identified jobs, including
32 healthcare insurance and any retirement benefits;
- 33 (ix) The projected fiscal impact on increased personal income taxes to the state of Rhode
34 Island; and

1 (x) The description of any plan or process intended to stimulate hiring from the host
2 community, training of employees or potential employees, and outreach to minority job
3 applicants and minority businesses.

4 (b) The film office shall monitor every impact analysis it completes through the duration
5 of any approved ~~tax credit~~ [incentive](#). Such monitoring shall include annual reports made available
6 to the public on the:

7 (1) Actual versus projected impact for all considered factors; and

8 (2) Verification of all commitments made in consideration of state incentives or aid.

9 (c) Upon its preparation and release of the analysis required by subsection (b) of this
10 section, the film office shall provide copies of that analysis to the chairpersons of the house and
11 senate finance committees, the house and senate fiscal advisors, the department of labor and
12 training and the division of taxation. Any such analysis shall be available to the public for
13 inspection by any person and shall be published by the tax administrator on the tax division
14 website. Annually thereafter, through and including the second tax year after any taxpayer has
15 applied for and received a tax credit pursuant to this chapter, the department of labor and training
16 shall certify to the chairpersons of the house and senate finance committees, the house and senate
17 fiscal advisors, the corporation and the division of taxation that: (i) the actual number of new full-
18 time jobs with benefits created by the state-certified production, not including construction jobs,
19 is on target to meet or exceed the estimated number of new jobs identified in the analysis above,
20 and (ii) the actual number of existing full-time jobs with benefits has not declined. For purposes
21 of this section, "full-time jobs with benefits" means jobs that require working a minimum of thirty
22 (30) hours per week within the state, with a median wage that exceeds by five percent (5%) the
23 median annual wage for full-time jobs in Rhode Island and within the taxpayer's industry, with a
24 benefit package that includes healthcare insurance plus other benefits typical of companies within
25 the motion picture industry. The department of labor and training shall also certify annually to the
26 house and senate fiscal committee chairs, the house and senate fiscal advisors, and the division of
27 taxation that jobs created by the state-certified production are "new jobs" in the state of Rhode
28 Island, meaning that the employees of the motion picture production company are in addition to,
29 and without a reduction of, those employees of the motion picture production company currently
30 employed in Rhode Island, are not relocated from another facility of the motion picture
31 production company in Rhode Island or are employees assumed by the motion picture production
32 company as the result of a merger or acquisition of a company already located in Rhode Island.
33 The certifications made by the department of labor and training shall be available to the public for
34 inspection by any person and shall be published by the tax administrator on the tax division

1 website.

2 (d) The film office, with the assistance of the motion picture production company, the
3 department of labor and training, the department of human services and the division of taxation
4 shall provide annually an analysis of whether any of the employees of the motion picture
5 production company has received RIte Care or RIte Share benefits and the impact such benefits
6 or assistance may have on the state budget. This analysis shall be available to the public for
7 inspection by any person and shall be published by the tax administrator on the tax division
8 website. Notwithstanding any other provision of law or rule or regulation, the division of
9 taxation, the department of labor and training and the department of human services are
10 authorized to present, review and discuss project-specific tax or employment information or data
11 with the film office, the chairpersons of the house and senate finance committees, and/or the
12 house and senate fiscal advisors for the purpose of verification and compliance with this tax
13 credit reporting requirement.

14 (e) Any agreements or contracts entered into by the film office and the motion picture
15 production company shall be sent to the division of taxation and be available to the public for
16 inspection by any person and shall be published by the tax administrator on the tax division
17 website.

18 (f) By August 15th of each year the motion picture production company shall report the
19 source and amount of any bonds, grants, loans, loan guarantees, matching funds or tax credits
20 received from any state governmental entity, state agency or public agency as defined in § 37-2-7
21 received during the previous state fiscal year. This annual report shall be sent to the division of
22 taxation and be available to the public for inspection by any person and shall be published by the
23 tax administrator on the tax division website.

24 (g) By August 15th of each year the division of taxation shall report the name, address,
25 and amount of tax credit received for each motion picture production company during the
26 previous state fiscal year to the film office, the chairpersons of the house and senate finance
27 committees, the house and senate fiscal advisors, the department of labor and training and the
28 division of taxation. This report shall be available to the public for inspection by any person and
29 shall be published by the tax administrator on the tax division website.

30 (h) On or before September 1, 2011, and every September 1 thereafter, the project lessee
31 shall file an annual report with the tax administrator. Said report shall contain each full-time
32 equivalent, part-time or seasonal employee's name, social security number, date of hire, and
33 hourly wage as of the immediately preceding July 1 and such other information deemed necessary
34 by the tax administrator. The report shall be filed on a form and in a manner prescribed by the tax

1 administrator.

2 **44-31.2-7. Information requests.** -- (a) The director of the film office and his or her
3 agents, for the purpose of ascertaining the propriety or correctness of any materials pertaining to
4 the certification of any motion picture production or to ~~credits~~ rebates claimed under the
5 provisions of this chapter, may examine any books, papers, records, or memoranda bearing upon
6 the matters required to be included in the return, report, or other statement, and may require the
7 attendance of the person executing the return, report, or other statement, and may require the
8 attendance of any taxpayer, or the attendance of any other person, and may examine the person
9 under oath respecting any matter which the director or his or her agent deems pertinent or
10 material in administration and application of this chapter and, where not inconsistent with other
11 legal provisions, the director may request information from the tax administrator.

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

21 **44-31.2-8. Hearings and appeals.** -- (a) From an action of the film office. - For matters
22 pertaining exclusively to application, production, and certification of motion picture productions,
23 any person aggrieved by a denial action of the film office under this chapter shall notify the
24 director of the film office in writing, within thirty (30) days from the date of mailing of the notice
25 of denial action by the film office and request a hearing relative to the denial or action. The
26 director of the film office shall, as soon as is practicable, fix a time and place of hearing, and shall
27 render a final decision. Appeals from a final decision of the director of the film office under this
28 chapter are to the sixth (6th) division district court pursuant to chapter 35 of title 42 of the general
29 laws.

30 (b) From denial of ~~tax-credit~~ rebate incentive. - Any person aggrieved by the tax
31 administrator's denial of a ~~tax-credit~~ rebate incentive or ~~tax-benefit~~ in this section shall notify the
32 tax administrator in writing within thirty (30) days from the date of mailing of the notice of denial
33 of the ~~tax-credit~~ rebate incentive and request a hearing relative to the denial of the ~~tax-credit~~
34 rebate incentive. The tax administrator shall, as soon as is practicable, fix a time and place for a

1 hearing, and shall render a final decision. Appeals from a final decision of the tax administrator
2 under this chapter are to the sixth (6th) division district court pursuant to chapter 8 of title 8 of the
3 general laws. The taxpayer's right to appeal is expressly made conditional upon prepayment of all
4 taxes, interest, and penalties, unless the taxpayer files a timely motion for exemption from
5 prepayment with the district court in accordance with the requirements imposed pursuant to § 8-
6 8-26 of the general laws.

7 SECTION 3. Sections 44-31.2-9 and 44-31.2-11 of the General Laws in Chapter 44-31.2
8 entitled "Motion Picture Production Tax Credits" are hereby repealed.

9 ~~**44-31.2-9. Transferability of the credit.** (a) Any motion picture production company~~
10 ~~tax credit certificate issued in accordance with § 44-31.2-5, which has been issued to a motion~~
11 ~~picture production company or passed through in accordance with subsection 44-31.2-5(d), and to~~
12 ~~the extent not previously claimed against the tax of the motion picture production company or of~~
13 ~~the owner of the certificate if the certificate was issued in accordance with subsection 44-31.2-~~
14 ~~5(d), may be transferred or sold by such company to another Rhode Island taxpayer, subject to the~~
15 ~~following conditions:~~

16 ~~(1) A single transfer or sale may involve one or more transferees, assignees or~~
17 ~~purchasers. A transfer or sale of the credits may involve multiple transfers to one or more~~
18 ~~transferees, assignees or purchasers.~~

19 ~~(2) Transferors and sellers shall submit to the Rhode Island Film Office, and to the tax~~
20 ~~administrator in writing, a notification of any transfer or sale of tax credits within thirty (30) days~~
21 ~~after the transfer or sale of such tax credits. The notification shall include the transferor's tax~~
22 ~~credit balance prior to transfer, the credit certificate number, the name of the state certified~~
23 ~~production, the transferor's remaining tax credit balance after transfer, all tax identification~~
24 ~~numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of~~
25 ~~the credit certificate, and any other information required by the Rhode Island office of film and~~
26 ~~television or the division of taxation. The notification submitted to the division of taxation shall~~
27 ~~include a processing fee of up to two hundred dollars (\$200) per transferee which shall be~~
28 ~~deposited as general revenues.~~

29 ~~(3) Failure to comply with this section will result in the disallowance of the tax credit~~
30 ~~until the taxpayers are in full compliance.~~

31 ~~(4) The transfer or sale of this credit does not extend the time in which the credit can be~~
32 ~~used. The carry forward period for credit that is transferred or sold begins on the date on which~~
33 ~~the credit was originally granted by the film office.~~

34 ~~(5) To the extent that the transferor did not have rights to claim or use the credit at the~~

1 ~~time of the transfer, the division of taxation shall either disallow the credit claimed by the~~
2 ~~transferee or recapture the credit from the transferee through any collection method authorized by~~
3 ~~Rhode Island general law. The transferee's recourse is against the transferor.~~

4 ~~(6) The film office shall assess and collect an administrative fee of two hundred dollars~~
5 ~~(\$200) per transfer, assignment or sale for issuing multiple motion picture production company~~
6 ~~tax credit certificates or for reissuing certificates.~~

7 ~~(b) The transferee, assignee or purchaser shall apply such credits in the same manner as~~
8 ~~the motion picture production company originally awarded the credit.~~

9 ~~(c) For purposes of this chapter, any assignment or sales proceeds received by the motion~~
10 ~~picture production company for its assignment or sale of the tax credits allowed pursuant to this~~
11 ~~section shall be exempt from this title.~~

12 ~~**44-31.2-11. Sunset.** -- No credits shall be issued on or after July 1, 2019 unless the~~
13 ~~production has received initial certification under subsection 44-31.2-6(a) prior to July 1, 2019.~~

14 SECTION 4. Section 44-31.3-2 of the General Laws in Chapter 44-31.3 entitled "Musical
15 and Theatrical Production Tax Credits" is hereby amended to read as follows:

16 **44-31.3-2. Musical and Theatrical Production Tax Credits.** -- (a) Definitions. - As
17 used in this chapter:

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

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

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

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

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

34 (6) "Post-broadway production" means a live stage production that, in its original or

1 adaptive version, is performed in a qualified production facility and opens its US tour in Rhode
2 Island after a presentation scheduled for Broadway's theater district in New York City.

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

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

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

19 (10) "Rhode Island film and television office" means the office within the department of
20 administration that has been established in order to promote and encourage the locating of film
21 and television productions within the state of Rhode Island. The office is also referred to as the
22 "film office".

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

32 (ii) Transportation expenditures shall not include any costs to transport property and
33 equipment to be used only for filming and not in a qualified theater production, any indirect costs,
34 and expenditures that are later reimbursed by a third party, or any amounts that are paid to

1 persons or entities as a result of their participation in profits from the exploitation of the
2 production.

3 (b) Tax Credit.

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

12 (2) No more than ~~fifteen million dollars (\$15,000,000)~~ twenty-five million dollars
13 (\$25,000,000) in total may be issued for any tax year for motion picture tax credits pursuant to
14 chapter 31.2 of this title and/or musical and theatrical production tax credits pursuant to this
15 chapter. Said credits shall be equally available to motion picture productions and musical and
16 theatrical productions. No specific amount shall be set aside for either type of production.

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

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

25 (5) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
26 the tax credits may assign, transfer, or convey the tax credits, in whole or in part, by sale or
27 otherwise, to any individual or entity and such assignee of the tax credits that have not claimed
28 the tax credits in whole or part may assign, transfer, or convey the tax credits, in whole or in part,
29 by sale or otherwise, to any individual or entity. The assignee of the tax credits may use acquired
30 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
31 pursuant to chapter 11, 12, 13 (other than the tax imposed under § 44-13-13), 14, 17, or 30 of this
32 title. The assignee may apply the tax credit against taxes imposed on the assignee for not more
33 than three (3) succeeding tax years. The assignor shall perfect the transfer by notifying the state
34 of Rhode Island division of taxation, in writing, within thirty (30) calendar days following the

1 effective date of the transfer and shall provide any information as may be required by the division
2 of taxation to administer and carry out the provisions of this section.

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

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

9 (c) Certification and administration.

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

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

32 (3) Upon determination that the company qualifies for final certification and the resultant
33 tax credits, the tax administrator of the division of taxation shall issue to the company: (i) An
34 Accredited Theater Production Certificate; and (ii) A tax credit certificate in an amount in

1 accordance with this section (b) hereof. A musical and theatrical production company is
2 prohibited from using state funds, state loans, or state guaranteed loans to qualify for the motion
3 picture tax credit. All documents that are issued by the film office pursuant to this section shall
4 reference the identification number that was issued to the production as part of its initial
5 certification.

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

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

16 (d) Information requests.

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

26 (ii) The tax administrator, and his or her agents, for the purpose of ascertaining the
27 correctness of any credit claimed under the provisions of this chapter, may examine any books,
28 paper, records, or memoranda bearing upon the matters required to be included in the return,
29 report, or other statement, and may require the attendance of the person executing the return,
30 report, or other statement, or of any officer or employee of any taxpayer, or the attendance of any
31 other person, and may examine the person under oath respecting any matter which the tax
32 administrator or his or her agent deems pertinent or material in determining the eligibility for
33 credits claimed and may request information from the film office, and the film office shall
34 provide the information in all cases to the tax administrator.

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

3 SECTION 5. 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

1 This act would revise the financial incentives and tax infrastructure in connection with
2 motion picture productions by utilizing rebates instead of tax credits. The act would also increase
3 the amount available for the rebates from the sum of \$15,000,000 to the sum of \$25,000,000, and
4 provide that any rebate would include 5% for Rhode Island resident production payroll. The act
5 would also remove video games from the definition of "motion picture".

6 This act would take effect upon passage.

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