

LC02775

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

RELATING TO FILM AND TELEVISION TAX CREDIT

Introduced By: Senators J Montalbano, Ruggerio, Algiere, Alves, and Tassoni

Date Introduced: March 10, 2005

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 44 of the General Laws entitled "Taxation" is hereby amended by
2 adding thereto the following chapters:

3 CHAPTER 31.2

4 FILM AND TELEVISION SALES AND USE TAX CREDITS

5 **44-31.2-1. Findings and purpose.** -- (a) The general assembly finds and declares that the
6 state of Rhode Island with its natural beauty, historical and architectural heritage of the state, its
7 majestic natural resources including Narragansett Bay and the independence and diversity of its
8 citizens and neighborhoods would provide a variety of excellent settings from which the motion
9 picture industry might choose a location for filming a motion picture or television program, and
10 together with those natural settings, the availability of labor, materials, climate, and hospitality of
11 its people have been instrumental in the filming of several successful motion pictures.

12 (b) It is recognized that the motion picture industry brings with it a much needed infusion
13 of capital into areas of the state which may be economically depressed and the multiplier effect of
14 the infusion of capital resulting from the filming of a motion picture or television program serves
15 to stimulate economic activity beyond that immediately apparent on the film set.

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

1 **44-31.2-2. Definitions.** -- The following words and phrases as used in this chapter shall
2 have the following meanings unless the context of use clearly indicates otherwise:

3 (1) "Company" means a corporation, partnership, limited liability company, or other
4 business entity.

5 (2) "Film office" means the Rhode Island film and television office.

6 (3) "Financial institution" or "institution" means any bank or savings and loan in the state
7 which is insured by the FDIC or FSLIC.

8 (4) "Motion picture" means a nationally distributed feature-length film, video, television
9 series, or commercial made in Rhode Island, in whole or in part, for theatrical or television
10 viewing or as a television pilot. The term "motion picture" shall not include the production of
11 television coverage of news and athletic events, nor shall it apply to any film, video, television
12 series or commercial which could receive a rating:

13 (a) of "NC-17: No One 17 And Under Admitted" by the Classification and Rating
14 Administration or an equivalent rating if this rating is changed by the Classification and Rating
15 Administration or any successor entity, as appropriate;

16 (b) of "TVMA: Mature Audience Only" by the TV Parental Guidelines Monitoring Board
17 or an equivalent rating if this rating is changed by the TV Parental Guidelines Monitoring Board
18 or any successor entity, as appropriate; or

19 (c) that is suitable for adult viewing only.

20 (5) "Motion picture production company" means a company engaged in the business of
21 producing nationally distributed motion pictures, videos, television series, or commercials
22 intended for a theatrical release or for television viewing. Motion picture production company
23 shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by
24 any company or person which is in default on taxes owed to the state or on a loan made by the
25 state or a loan guaranteed by the state, nor with any company or person who has ever declared
26 bankruptcy under which an obligation of the company or person to pay or repay public funds or
27 monies was discharged as part of such bankruptcy.

28 (6) "Payroll" means salary, wages, or other compensation including related benefits.

29 (7) "Resident" or "Resident of Rhode Island" means a natural person and, for the purpose
30 of determining eligibility for the tax incentives provided by this chapter, any person domiciled in
31 the state of Rhode Island and any other person who maintains a permanent place of abode within
32 the state and spends in the aggregate more than six (6) months of each year within the state.

33 (8) "Director" means the director of the Rhode Island Film and Television Office.

34 **44-31.2-3. Relief from payment of state sales and use tax.** – Any motion picture

1 production company that intends to expend in the aggregate three hundred thousand dollars
2 (\$300,000) or more in direct connection with the filming or production of one or more motion
3 pictures in the state of Rhode Island within any consecutive twelve-month period shall, upon
4 making application for and meeting the requirements as provided in this chapter, be relieved from
5 the payment of state sales and use taxes on funds so expended in Rhode Island in direct
6 connection with the filming or production of a motion picture or pictures or commercials. The
7 production of television coverage of news and athletic events is specifically excluded from the
8 provisions of this chapter. The provisions of this chapter shall not apply to any sales and use tax
9 levied pursuant to section 44-18-18.1 and disbursed to any local governmental subdivision.

10 **44-31.2-4. Application for relief from the payment of state sales and use taxes. -- (a)**

11 Any motion picture production company that intends to film all, or parts of, a motion picture or
12 television program in Rhode Island and desires to be relieved from the payment of state sales and
13 use tax as provided for in this chapter shall provide an estimate of total expenditures to be made
14 in Rhode Island in connection with the filming or production of such motion picture or television
15 program. The estimate of expenditures shall be filed with the Rhode Island Film and Television
16 Office prior to the commencement of filming in Rhode Island.

17 (b) At the time that the motion picture production company provides the estimate of
18 expenditures to the film office, it shall also designate a member, or representative, of the motion
19 picture production company to work with the film office and the division of taxation on the
20 reporting of expenditures and other information necessary to take advantage of the tax relief
21 afforded by this chapter.

22 (c)(1) Applications for the tax relief provided by this chapter shall be accepted only from
23 those motion picture production companies which report anticipated expenditures in the state
24 which in the aggregate equal or exceed three hundred thousand dollars (\$300,000) in connection
25 with the filming or production of one or more motion pictures in the state within a consecutive
26 twelve-month period.

27 (2) In order to be eligible for the tax relief provided for by this chapter, expenditures shall
28 be made from a checking account at any financial institution in Rhode Island.

29 (3) Applications for relief from the payment of sales and use taxes provided for by this
30 chapter shall be approved after the application has been reviewed by the director of the film
31 office, and the tax administrator in the division of taxation.

32 (d)(1) Any motion picture production company that has been approved for relief from the
33 payment of sales and use taxes as provided for by this chapter and which fails to expend three
34 hundred thousand dollars (\$300,000) within a consecutive twelve-month period shall be liable for

1 the sales and use taxes that would have been paid had the approval not been granted. The sales
2 and use taxes shall be considered due as of the date that taxable expenditures were made.

3 (2) Any motion picture company that has been approved for relief from the payment of
4 sales and use taxes as provided by this chapter shall file with the division of taxation an annual
5 financial statement of expenditures for the previous twelve (12) month period.

6 (3) The tax administrator of the division of taxation shall promulgate rules and
7 regulations for the implementation of this section.

8 **44-31.2-5. Disclaimer.** -- The state of Rhode Island reserves the right to refuse the use of
9 Rhode Island's name in the credits of any motion picture filmed or produced in the state.

10 CHAPTER 31.3

11 MOTION PICTURE PRODUCTION TAX CREDITS

12 **44-31.3-1. Legislative findings.** -- The primary objective of this chapter is to encourage
13 development in Rhode Island of a strong capital base for motion picture film, videotape, and
14 television program productions, in order to achieve a more independent, self-supporting industry.
15 This objective is divided into immediate and long-term objectives as follows:

16 (a) Immediate objectives are to:

17 (1) Attract private investment for the production of motion pictures, videotape
18 productions, and television programs which contain substantial Rhode Island content as defined
19 herein.

20 (2) Develop a tax infrastructure which encourages private investment. This infrastructure
21 will provide for state participation in the form of tax credits to encourage investment in state-
22 certified productions.

23 (3) Develop a tax infrastructure utilizing tax credits which encourage investments in
24 multiple state-certified production projects.

25 (b) Long-term objectives are to:

26 (1) Encourage increased employment opportunities within this sector and increased
27 competition with other states in fully developing economic development options within the film
28 and video industry.

29 (2) Encourage new education curricula in order to provide a labor force trained in all
30 aspects of film production.

31 **44-31.3-2. Definitions.** -- For the purposes of this chapter:

32 (1) "Base investment" means the actual investment made and expended by a state-
33 certified production in the state as direct production-related costs.

34 (2) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a

1 partnership, limited liability company, or other business entity domiciled and headquartered in
2 Rhode Island for the purpose of producing nationally distributed motion pictures as defined in
3 this section.

4 (3) "Motion picture" means a nationally distributed feature-length film, video, television
5 series, or commercial made in Rhode Island, in whole or in part, for theatrical or television
6 viewing or as a television pilot. The term "motion picture" shall not include the production of
7 television coverage of news and athletic events.

8 (4) "Motion picture production company" means a company engaged in the business of
9 producing nationally distributed motion pictures as defined in this section. Motion picture
10 production company shall not mean or include any company owned, affiliated, or controlled, in
11 whole or in part by any company or person which is in default on taxes owed to the state or on a
12 loan made by the state or a loan guaranteed by the state, not with any company or person who has
13 even declared bankruptcy under which an obligation of the company or person to pay or repay
14 public funds or monies was discharged as a part of such bankruptcy.

15 (5) "State-certified production" means a motion picture production approved by the
16 Rhode Island Film Office and produced by a motion picture production company domiciled and
17 headquartered in Rhode Island which has signed a distribution agreement with either a major
18 theatrical exhibitor, television network, or cable television programmer.

19 **44-31.3-3. Investor tax credit – Specific projects. -- (a) There is hereby authorized a tax**
20 **credit against state income tax pursuant to chapters 11, 14, 17 and 30 of this title of the general**
21 **laws for taxpayers domiciled in the state of Rhode Island, other than motion picture production**
22 **companies. The tax credit shall be earned by investors at the time of such investment in such**
23 **state-certified productions and calculated as a percentage of the investment according to the total**
24 **base investment dollars certified per project. The credit shall be earned in the taxable year in**
25 **which the investment is certified.**

26 (1) For state-certified productions approved by the Rhode Island Film and Television
27 Office if total base investment is greater than three hundred thousand dollars (\$300,000) and less
28 than or equal to ten million dollars (\$10,000,000), each taxpayer shall be allowed a tax credit of
29 fifteen percent (15%) of the actual investment made by that taxpayer.

30 (2) For state-certified productions approved by the Rhode Island Film and Television
31 Office, if the total base investment is greater than ten million dollars (\$10,000,000), each taxpayer
32 shall be allowed a tax credit of twenty-five percent (25%) of the investment made by that
33 taxpayer.

34 (3) Motion picture investor tax credits associated with a state-certified production shall

1 never exceed the total base investment in that production.

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

4 **44-31.3-4. Application of the credit. --** (a) All entities taxed as corporations for Rhode
5 Island income tax purposes shall claim any credit allowed under this chapter on their corporation
6 income tax return.

7 (b) Individuals shall claim any credit allowed under this chapter on their individual
8 income tax return.

9 (c) Entities not taxed as corporations shall claim any credit allowed under this chapter on
10 the returns of the partners or members as follows:

11 (1) Corporate partners or members shall claim their share of the credit on their
12 corporation income tax returns.

13 (2) Individual partners or members shall claim their share of the credit on their individual
14 income tax returns.

15 (3) Partners or members that are estates or trusts shall claim their share of the credit on
16 their fiduciary income tax returns.

17 **44-31.3-5. Motion picture production company tax credit. –** (a) A motion picture
18 production company shall be allowed a credit to be computed as provided in this chapter against a
19 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-
20 five percent (25%) of the state certified production which is produced within the state, whose
21 primary locations are within the state of Rhode Island and whose total production budget as
22 defined herein is a minimum of three hundred thousand dollars (\$300,000) but does not exceed
23 ten million dollars (\$10,000,000).

24 (b) For the purposes of this section: "total production budget" is defined as a pre-
25 production cost including, but not limited to, the purchase of the screenplay, salaries, equipment,
26 film processing, sound, editing, and other services related to production. The budget shall not
27 include costs associated with the promotion or marketing of the film, video or television product.
28 Any cost overruns on the project shall also not be included in the total production budget.

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

32 **44-31.3-6. Certification and administration. --** (a) The director of the Rhode Island
33 Film and Television Office shall determine through the promulgation of rules what projects
34 qualify according to this chapter.

1 (b)(1) The Rhode Island Film and Television Office shall submit its initial certification of
2 a project as a state-certified production to investors and to the secretary of the division of
3 taxation. The initial certification shall include a unique identifying number for each state-certified
4 production.

5 (2) Upon completion of the state-certified production, the Rhode Island Film and
6 Television Office shall review the production expenses and will issue a credit certificate to the
7 investors. The certificate shall include the identifying number assigned to that state-certified
8 production in the initial certification.

9 (c) The tax administrator of the division of taxation, in consultation with the director of
10 the Rhode Island Film and Television Office shall promulgate such rules and regulations as are
11 necessary to carry out the intent and purposes of this chapter in accordance with the general
12 guidelines provided herein.

13 (d) Any taxpayer applying for the credit shall be required to reimburse the division of
14 taxation for any audits required in relation to granting the credit.

15 **44-31.3-7. Recapture of credits.** -- If the Rhode Island Film and Television Office finds
16 that funds for which an investor received credits according to this section are not invested in and
17 expended with respect to a state-certified production within twenty-four (24) months of the date
18 that such credits are earned, then the investor's state income tax for such taxable period shall be
19 increased by such amount necessary for the recapture of credit provided by this section.

20 **44-31.3-8. Recovery of credits by division of taxation.** -- (a) Credits previously granted
21 to a taxpayer, but later disallowed, may be recovered by the tax administrator of the division of
22 taxation through any collection remedy authorized and initiated within three (3) years from
23 December thirty-first (31st) of the year in which the twenty-four (24) month investment period
24 specified in this chapter ends.

25 (b) The only interest that may be assessed and collected on recovered credits is interest at
26 a rate three (3) percentage points above the rate provided in section 44-1-7, which shall be
27 computed from the original due date of the return on which the credit was taken.

28 (c) The provisions of this section are in addition to and shall not limit the authority of the
29 tax administrator of the division of taxation to assess or to collect under any other provision of
30 law.

31 **44-31.3-9. Employment tax credit.** -- (a) A motion picture production company shall be
32 entitled to a tax credit for the employment of residents of Rhode Island in connection with
33 production of a motion picture. The credit shall be equal to ten percent (10%) of the total
34 aggregate payroll for residents employed in connection with such production when total

1 production costs in Rhode Island equal or exceed three hundred thousand dollars (\$300,000) but
2 total less than one million dollars (\$1,000,000) during the taxable year. The credit shall be equal
3 to twenty percent (20%) of the total aggregate payroll for residents employed in connection with
4 such production when total production costs in Rhode Island equal or exceed one million dollars
5 (\$1,000,000) during the taxable year. For purposes of this section, the term "total aggregate
6 payroll" shall not include the salary of any employee whose salary is equal to or greater than one
7 million dollars (\$1,000,000).

8 (b) The credit may be applied to any income tax or corporation franchise tax liability
9 applicable to the motion picture production company or to which items of expense or income
10 flow from a corporation, partnership, limited liability company, or other entity. The credit may
11 be applied to any corporation income or franchise tax liability of any entity taxed as a corporation
12 for federal income tax purposes. The credit shall be limited to the tax liability of the motion
13 picture production company for the taxable year in which such company applies for the credit.

14 (c) The tax administrator for the division of taxation shall promulgate such rules and
15 regulations as may be necessary to administer this section.

16 **44-31.3-10. Hotel tax exemption.** – (a) Any motion picture production company who
17 produces a state certified production and whose employees occupy any space furnished by any
18 hotel in this state for at least thirty (30) consecutive days, shall be exempt from any tax imposed
19 under section 44-18-36.1(a).

20 (b) The Rhode Island Film Office shall be responsible for the implementation of this
21 section.

22 SECTION 2. Chapter 44-31.1 of the General Laws entitled "Film Production Tax
23 Credit" is hereby repealed in its entirety.

24 ~~CHAPTER 44-31.1~~

25 ~~Film Production Tax Credit~~

26 ~~**44-31.1-1. Film production tax credit.** – (a) A taxpayer shall be allowed a credit, to be~~
27 ~~computed as provided in this chapter, against the tax imposed by chapters 11, 14, 17, and 30 of~~
28 ~~this title. The amount of the credit shall be twenty five percent (25%) of the total production~~
29 ~~budget for investments qualifying under this chapter for a film production business meeting the~~
30 ~~following criteria: (1) located within the state of Rhode Island; (2) whose primary locations for~~
31 ~~the film production are within the state of Rhode Island; and (3) whose total production budget is~~
32 ~~a minimum of three hundred thousand dollars (\$300,000) but does not exceed five million dollars~~
33 ~~(\$5,000,000). "Film production" is defined as the creation of a film, documentary, direct to video~~
34 ~~or independent television production sold for commercial distribution. For the purposes of this~~

1 ~~section, "total production budget" is defined as a pre-production cost including, but not limited to,~~
2 ~~the purchase of the screenplay, salaries, equipment, film processing, sound, editing, and other~~
3 ~~services related to production. The budget shall not include costs associated with the promotion~~
4 ~~or marketing of the film, video or television product. Any cost overruns on the project shall also~~
5 ~~not be included in the total production budget.~~

6 ~~(b) The Providence Film Commission, in conjunction with the Rhode Island Film Office~~
7 ~~and the Rhode Island State Council on the Arts, shall establish specific guidelines together with a~~
8 ~~certification process that shall guide the selection and evaluation of film projects that are eligible~~
9 ~~for investment tax credits. This credit shall be in lieu of any tax credit in chapter 31 of this title.~~

10 SECTION 3. This act shall take effect upon passage and shall apply to any production
11 certified by the Rhode Island Film Office to be in existence on or after January 1, 2005.

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LC02775
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FILM AND TELEVISION TAX CREDIT

1 This act would establish a motion picture investment tax credit and a film and television
2 tax credit.

3 This act would take effect on upon passage and shall apply to any production certified by
4 the Rhode Island Film Office to be in existence on or after January 1, 2005.

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