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# STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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A N A C T

RELATING TO MOTION PICTURE PRODUCTION TAX CREDITS

Introduced By: Senator Leo R. Blais

Date Introduced: March 01, 2006

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 44-31.2-2, 44-31.2-3, 44-31.2-5, 44-31.2-6 and 44-31.2-9 of the  
2   General Laws in Chapter 44-31.2 entitled "Motion Picture Production Tax Credits" are hereby  
3   amended to read as follows:

4           **44-31.2-2. Definitions.** -- For the purposes of this chapter:

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

7           (2) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a  
8   partnership, limited liability company, or other business entity domiciled and headquartered in  
9   Rhode Island for the purpose of producing motion pictures as defined in this section, or an  
10   individual who ~~maintains a permanent place of abode within the state and spends in the aggregate~~  
11   ~~more than six (6) months of each year within the state~~ is a domiciled resident of Rhode Island as  
12   defined in chapter 30 of this title.

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

1 (4) "Motion picture production company" means a company engaged in the business of  
2 producing motion pictures as defined in this section. Motion picture production company shall  
3 not mean or include:

4 (a) any company owned, affiliated, or controlled, in whole or in part by any company or  
5 person which is in default:

6 (i) on taxes owed to the state; or

7 (ii) on a loan made by the state; or

8 (iii) a loan guaranteed by the state; ; nor

9 (iv) any company or person who has even declared bankruptcy under which an obligation  
10 of the company or person to pay or repay public funds or monies was discharged as a part of such  
11 bankruptcy.

12 (b) In order to qualify for final certification of the Rhode Island motion picture  
13 production pursuant to subdivision (4)(a)(i) of this subsection, the motion picture production  
14 company and each owner of the picture production company shall file a separate certificate of  
15 good standing from the tax administrator with the film office. In order to additionally qualify for  
16 final certification with subdivisions (4)(a)(ii) and (4)(a)(iii) of this subsection, the motion picture  
17 production company shall file an appropriate affidavit form as determined by the film office with  
18 the assistance of the tax administrator.

19 (c) For purposes of certification under this chapter, the motion picture company must be  
20 domiciled and headquartered in Rhode Island.

21 (5) "State-certified production" means a motion picture production approved by the  
22 Rhode Island Film Office and produced by a motion picture production company domiciled and  
23 headquartered in Rhode Island, which has signed a viable distribution plan with either a major  
24 theatrical exhibitor, television network or cable television program.

25 (6) "Investor" means a person who is an owner of the motion picture production  
26 company. A person holding a liability or secured or unsecured debt of the motion picture  
27 production company who is not an investor.

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

30 (8) "Rhode Island Film and Television Office" means an office within the Rhode Island  
31 State Council On The Arts that has been established in order to promote and encourage the  
32 locating of film and television productions within the state of Rhode Island. The office is also  
33 referred to within as the "Film Office".

34 **44-31.2-3. Investor tax credit --- Specific projects. --- Investor tax credit. --** There is

1 hereby authorized a tax credit against state ~~income~~ tax pursuant to chapters 11, 14, 17 and 30 of  
2 this title of the general laws for taxpayers domiciled in the state of Rhode Island, other than  
3 motion picture production companies. The tax credit shall be ~~earned by investors at the time of~~  
4 ~~such investment in such state certified productions and~~ calculated as a percentage of the  
5 investment according to the total base investment dollars ~~certified per project~~. The credit shall be  
6 nontransferable and earned in the taxable year in which the ~~investment~~ production is certified  
7 under this chapter.

8 (1) For state-certified productions approved by the Rhode Island Film and Television  
9 Office if total base investment is greater than three hundred thousand dollars (\$300,000) and less  
10 than or equal to five million dollars (\$5,000,000), each taxpayer shall be allowed a tax credit of  
11 fifteen percent (15%) of the actual investment made by that taxpayer.

12 (2) For state-certified productions approved by the Rhode Island Film and Television  
13 Office, if the total base investment is greater than five million dollars (\$5,000,000), each taxpayer  
14 shall be allowed a tax credit of twenty-five percent (25%) of the actual investment made by that  
15 taxpayer.

16 (3) Motion picture investor tax credits associated with a state-certified production shall  
17 never exceed the total base investment in that production.

18 (4) The credit shall be allowed against the ~~income~~ tax for the taxable period in which the  
19 credit is earned ~~or~~ and amounts of unused credit for the investor can be carried forward for not  
20 more than three (3) succeeding tax years. In the case of a corporation, pursuant to chapter 11 of  
21 this title, the credit allowed under this section is only allowed against the tax of that corporation,  
22 included in a consolidated return that qualifies for the credit, and not against the tax of other  
23 corporations that may join in the filing of a consolidated tax return. The credit is not refundable,  
24 and shall not reduce the tax below the minimum tax.

25 (5) In the event that the taxpayer has a credit under this section and also a credit under  
26 section 44-31.2-5, the taxpayer must elect to use either the credit under this section or the credit  
27 under section 44-31.2-5, but the taxpayer may not elect to claim both.

28 **44-31.2-5. Motion picture production company tax credit.** -- (a) A motion picture  
29 production company shall be allowed a credit to be computed as provided in this chapter against a  
30 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-  
31 five percent (25%) of the costs of the state certified production ~~costs~~ incurred within the state,  
32 provided that the primary locations are within the state of Rhode Island and the total production  
33 budget as defined herein is a minimum of three hundred thousand dollars (\$300,000).

34 (b) For the purposes of this section: "total production budget" ~~is defined as a pre-~~

1 ~~production cost including, but not limited to, the purchase of the screenplay, salaries, equipment,~~  
2 ~~film processing, sound, editing, and other services related to a production filmed in Rhode Island.~~  
3 means and includes the motion picture production company's pre-production, production and  
4 post-production costs that said motion picture production company incurred within the state of  
5 Rhode Island. The budget shall not include costs associated with the promotion or marketing of  
6 the film, video or television product.

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

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

16 **44-31.2-6. Certification and administration.** -- (a) ~~The director of the Rhode Island~~  
17 ~~Film and Television Office shall determine through the promulgation of rules what projects~~  
18 ~~qualify according to this chapter.~~

19 ~~(b) (1) The Rhode Island Film and Television Office shall submit its initial certification~~  
20 ~~of a project as a state certified production to investors and to the administrator of the division of~~  
21 ~~taxation. The initial certification shall include a unique identifying number for each state certified~~  
22 ~~production.~~

23 ~~(2) Upon completion of the state certified production, the Rhode Island Film and~~  
24 ~~Television Office shall review the production expenses and will issue a credit certificate to the~~  
25 ~~investors. The certificate shall include the identifying number assigned to that state certified~~  
26 ~~production in the initial certification.~~

27 (1) Initial certification of a production. The applicant shall properly prepare, sign and  
28 submit to the film office an application for initial certification of the Rhode Island production.  
29 Upon completion, the application shall provide such information and data as the film office  
30 deems necessary for the proper evaluation and administration of said application, including, but  
31 not limited to, any information about the motion picture production company, and a specific  
32 Rhode Island motion picture. The film office shall review the completed application and  
33 determine whether to grant initial certification for the production. If the initial certification is  
34 granted, the film office shall issue a notice of initial certification of the motion picture production

1 to the production company and to the tax administrator. The notice shall state that, after  
2 appropriate review, the initial application meets the appropriate criteria for conditional eligibility.  
3 The notice of initial certification will provide a unique identification number for the production  
4 and is only a statement of conditional eligibility for the production and, as such, does not grant or  
5 convey any Rhode Island tax benefits.

6 (2) Final certification of a production. Upon completion of the Rhode Island production,  
7 the applicant shall properly prepare, sign and submit to the film office an application for final  
8 certification of the production. The application shall contain such information and data as the film  
9 office determines is necessary for the proper evaluation and administration, including, but not  
10 limited to, any information about the motion picture production company, its investors and  
11 information about the production previously granted initial certification. The final application  
12 shall also contain a cost report and an "accountant's certification". The film office and tax  
13 administrator may rely, without independent investigation, upon the accountant's certification  
14 confirming the accuracy of the information included in the cost report. Upon review of a duly  
15 completed and filed application, the film office will make a determination pertaining to the final  
16 certification of the production and the resultant credits for sections 44-31.2-3 and 44-31.2-5.

17 (3) Final certification and credits upon determination that the production company  
18 qualifies for final certification and the resultant credits, the film office shall issue a letter to the  
19 production company indicating "Certificate of Completion of a State Certified Production" and  
20 appropriate documents pertaining to the investor credit under section 44-31.2-3 and specifically  
21 designed certificates for the motion picture production company credit under section 44-31.2-5.  
22 All documents that are issued by the film office pursuant to this section shall reference the  
23 identification number that was issued to the production as part of its initial certification.

24 (b) The director of the Rhode Island Film and Television Office, in consultation as  
25 needed with the tax administrator, shall promulgate such rules and regulations as are necessary to  
26 carry out the intent and purposes of this chapter in accordance with the general guidelines  
27 provided herein for the certification of the production and resultant investor credit and production  
28 credit.

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

33 (d) Any taxpayer applying for the credit shall be required to reimburse the division of  
34 taxation for any audits required in relation to granting or usage of the credit.

1           **44-31.2-9. Transferability of the credit.** -- (a) Any motion picture production company  
2 tax credit ~~with respect to a state certified production allocated to a company and not previously~~  
3 ~~claimed by any taxpayer against its income tax~~ certificate issued in accordance with section 44-  
4 31.2.5 which:

5           (1) has been issued to motion picture production company or passed through in  
6 accordance with subsection 44-31-2.5(d); and

7           (2) not previously claimed against the tax of the motion picture production company or of  
8 the owner of the certificate if the certificate was issued in accordance with subsection 44-31-  
9 2.5(d) may be transferred or sold by such company to another Rhode Island taxpayer, subject to  
10 the following conditions:

11           ~~(1)(i)~~ (i) A single transfer or sale may involve one or more transferees. ~~The transferee of the~~  
12 ~~investor tax credits may transfer or sell such investor tax credits subject to the conditions of this~~  
13 ~~section.~~

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

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

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

30           ~~(5)(v)~~ (v) To the extent that the transferor did not have rights to claim or use the credit at the  
31 time of the transfer, the division of taxation shall either disallow the credit claimed by the  
32 transferee or recapture the credit from the transferee through any collection method authorized by  
33 Rhode Island general law. The transferee's recourse is against the transferor.

34           (vi) The Film Office shall assess and collect an administrative fee of two hundred dollars

1 [\(\\$200\) per transfer for issuing multiple motion picture production company tax credit certificates](#)  
2 [or for reissuing certificates.](#)

3 (b) The transferee shall apply such credits in the same manner and against the same taxes  
4 as the taxpayer originally awarded the credit.

5 SECTION 2. Sections 44-31.2-4, 44-31.2-7 and 44-31.2-8 of the General Laws in  
6 Chapter 44-31.2 entitled "Motion Picture Production Tax Credits" are hereby repealed.

7 ~~**44-31.2-4. Application of the credit.** -- (a) All entities taxed as corporations for Rhode  
8 Island income tax purposes shall claim any credit allowed under this chapter on their corporation  
9 income tax return.~~

10 ~~-(b) Individuals shall claim any credit allowed under this chapter on their individual  
11 income tax return.~~

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

14 ~~-(1) Corporate partners or members shall claim their share of the credit on their  
15 corporation income tax returns.~~

16 ~~-(2) Individual partners or members shall claim their share of the credit on their  
17 individual income tax returns.~~

18 ~~-(3) Partners or members that are estates or trusts shall claim their share of the credit on  
19 their fiduciary income tax returns.~~

20 ~~**44-31.2-7. Recapture of credits.** -- If the Rhode Island Film and Television Office finds  
21 that funds for which an investor received credits according to this section are not invested in and  
22 expended with respect to a state certified production within twenty four (24) months of the date  
23 that such credits are earned, then the investor's state income tax for such taxable period shall be  
24 increased by such amount necessary for the recapture of credit provided by this section.~~

25 ~~**44-31.2-8. Recovery of credits by division of taxation.** -- (a) Credits previously granted  
26 to a taxpayer, but later disallowed, may be recovered by the tax administrator of the division of  
27 taxation through any collection remedy authorized and initiated within three (3) years from  
28 December thirty first (31st) of the year in which the twenty four (24) month investment period  
29 specified in this chapter ends.~~

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

33 ~~-(c) The provisions of this section are in addition to and shall not limit the authority of the  
34 tax administrator of the division of taxation to assess or to collect under any other provision of~~

1 ~~law.~~

2 SECTION 3. Chapter 44-31.2 of the General Laws entitled "Motion Picture Production  
3 Tax Credits" is hereby amended by adding thereto the following sections:

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

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

23 **44-31.2-12. Hearings and appeals: (a) From an action of the film office.** -- For  
24 matters pertaining exclusively to application, production and certification of motion picture  
25 productions, any person aggrieved by a denial action of the film office under this chapter shall  
26 notify the director of the film office in writing, within thirty (30) days from the date of mailing of  
27 the notice of denial action by the film office and request a hearing relative to the denial or action.  
28 The director of the film office shall, as soon as practicable, fix a time and place for a hearing.  
29 Appeals from a final decision of the director of the film office under this chapter are to the sixth  
30 (6<sup>th</sup>) division district court pursuant to chapter 35 of title 42 of the Rhode Island general laws.

31 (b) **From denial of tax credit.** - Any person aggrieved by the tax administrator's denial  
32 of a tax credit or tax benefit in this section, shall notify the tax administrator in writing, within  
33 thirty (30) days from the date of mailing by the tax administrator of the notice of denial of the tax  
34 credit and request a hearing relative to the denial of the tax credit; and the tax administrator shall,



1 as soon as practicable, fix a time and place for a hearing. Appeals from a final decision of the tax  
2 administrator under this chapter are to the sixth (6<sup>th</sup>) division district court pursuant to chapter 8  
3 of title 8. 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  
6 section 8-8-26.

7       SECTION 4. Chapter 42-75 of the General Laws entitled "Council on the Arts" is hereby  
8 amended by adding thereto the following section:

9           **42-75-12. Rhode Island film and television office.** -- Within the commission there has  
10 been established in a separate, discrete office entitled the "Rhode Island Film and Television  
11 Office." This office has been established in order to promote and encourage film and television  
12 productions within the state of Rhode Island. The office is also responsible to review the  
13 applications of motion picture productions pursuant to the requirements of chapter 44-31.2.

14       SECTION 5. This act shall take effect upon passage. Furthermore, the act shall apply to  
15 any production certified by the Rhode Island Film Office have been in existence as of January 1,  
16 2005.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO MOTION PICTURE PRODUCTION TAX CREDITS

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1           This act would clarify the statutory procedures for the issuance of motion picture  
2 production company tax credits.

3           This act would take effect upon passage and would apply to any production certified by  
4 the Rhode Island Film Office have been in existence as of January 1, 2005.

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