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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: Senators J Montalbano, Ruggerio, Paiva-Weed, Badeau, and Ciccone

Date Introduced: March 09, 2006

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 44-31.2-2, 44-31.2-5, 44-31.2-6 and 44-31.2-9 of the General  
2   Laws in Chapter 44-31.2 entitled "Motion Picture Production Tax Credits" are hereby amended to  
3   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   formed under the laws of Rhode Island for the purpose of producing motion pictures as defined in  
10   this section, or an individual who ~~maintains a permanent place of abode within the state and~~  
11   ~~spends in the aggregate more than six (6) months of each year within the state~~ is a domiciled  
12   resident of Rhode Island as 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~~ corporation, partnership,  
2 limited liability company or other business entity engaged in the business of producing motion  
3 pictures as defined in this section. Motion picture production company shall 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 (5) "State-certified production" means a motion picture production approved by the  
13 Rhode Island Film Office and produced by a motion picture production company domiciled ~~and~~  
14 ~~headquartered~~ in Rhode Island, whether or not such company owns or controls the copyright and  
15 distribution rights in the motion picture; provided that such company has either: (a) ~~which has~~  
16 signed a viable distribution plan with; or (b) is producing the motion picture for a: (i) major  
17 motion picture distributor; (ii) ~~with either a~~ major theatrical exhibitor; ;(iii) television network or  
18 (iv) cable television programmer.

19 (6) "Primary locations" means at least fifty-one percent (51%) of the motion picture's  
20 total principal photography days are filmed within the state of Rhode Island.

21 (7) "State certified production cost" means any pre-production, production and post-  
22 production cost that a motion picture company incurs and pays for activity that is completed  
23 within the state of Rhode Island. Without limiting the generality of the foregoing, "state certified  
24 production costs" include: set construction and operation; wardrobes, make-up, accessories, and  
25 related services; costs associated with photography and sound synchronization, lighting, and  
26 related services and materials; editing and related services, including, but not limited to, film  
27 processing, transfers of film to tape or digital format, sound-mixing, computer graphics services,  
28 special effects services, and animation services, salary, wages, and other compensation, including  
29 related benefits, of persons employed, either directly or indirectly, in the production of a film  
30 including writer, motion picture director, producer (provided the work is performed in the state of  
31 Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of vehicles; costs  
32 of food and lodging; music, if performed, composed, or recorded by a Rhode Island musician, or  
33 released or published by a person domiciled and headquartered in Rhode Island; travel expenses  
34 incurred to bring persons employed, either directly or indirectly, in the production of the film, to

1 Rhode Island (but not expenses of such persons departing from Rhode Island); and legal (but not  
2 expenses of completion bond or insurance) and accounting fees and expenses related to the  
3 production's activities in Rhode Island provided such services are provided by Rhode Island  
4 licensed attorneys or accountants.

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

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

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

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

20 (b) For the purposes of this section: "total production budget" ~~is defined as a pre-~~  
21 ~~production cost including, but not limited to, the purchase of the screenplay, salaries, equipment,~~  
22 ~~film processing, sound, editing, and other services related to a production filmed in Rhode Island.~~  
23 means and includes the motion picture production company's pre-production, production and  
24 post-production costs that said motion picture production company incurred within the state of  
25 Rhode Island. The budget shall not include costs associated with the promotion or marketing of  
26 the film, video or television product.

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

30 (d) Credits allowed to a motion picture production company, or its assignee, which is a  
31 subchapter S corporation, partnership, or a limited liability company that is taxed as a partnership,  
32 shall be passed through respectively to persons designated as partners, members or owners on a  
33 pro rata basis or pursuant to an executed agreement among such persons designated as subchapter  
34 S corporation shareholders, partners, or members documenting an alternate distribution method

1 without regard to their sharing of other tax or economic attributes of such entity.

2 **44-31.2-6. Certification and administration.** -- (a) ~~The director of the Rhode Island~~  
3 ~~Film and Television Office shall determine through the promulgation of rules what projects~~  
4 ~~qualify according to this chapter.~~

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

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

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

26 (2) Final certification of a production. Upon completion of the Rhode Island production  
27 activities, the applicant shall properly prepare, sign and submit to the film office an application  
28 for final certification of the production. The application shall contain such information and data  
29 as the film office determines is necessary for the proper evaluation and administration, including,  
30 but not limited to, any information about the motion picture production company, its investors  
31 and information about the production previously granted initial certification. The final application  
32 shall also contain a cost report and an "accountant's certification". The film office and tax  
33 administrator may rely, without independent investigation, upon the accountant's certification  
34 confirming the accuracy of the information included in the cost report. Upon review of a duly

1 completed and filed application, the film office will make a determination pertaining to the final  
2 certification of the production and the resultant credits for sections 44-31.2-3 and 44-31.2-5.

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

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

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

19 (d) Any ~~taxpayer~~ motion picture production company applying for the credit shall be  
20 required to reimburse the division of taxation for any audits required in relation to granting the  
21 credit.

22 **44-31.2-9. Transferability of the credit.** -- (a) Any motion picture production company  
23 tax credit ~~with respect to a state certified production allocated to a company and not previously~~  
24 ~~claimed by any taxpayer against its income tax~~ certificate issued in accordance with section 44-  
25 31.2.5 which:

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

28 (2) was not previously claimed against the tax of the motion picture production company  
29 or of the owner of the certificate if the certificate was issued in accordance with subsection 44-31-  
30 2.5(d) may be transferred or sold by such company to another Rhode Island taxpayer, subject to  
31 the following conditions:

32 ~~(1)(i)~~ (i) A single transfer or sale may involve one or more transferees. A transfer or sale of  
33 the credits may involve multiple transfers to multiple transferees ~~The transferee of the investor~~  
34 ~~tax credits may transfer or sell such investor tax credits subject to the conditions of this section.~~

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

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

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

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

21           (vi) The Film Office shall assess and collect an administrative fee of two hundred dollars  
22 (\$200) per transfer for issuing multiple motion picture production company tax credit certificates  
23 or for reissuing certificates.

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

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

28           ~~**44-31.2-4. Application of the credit.** -- (a) All entities taxed as corporations for Rhode~~  
29 ~~Island income tax purposes shall claim any credit allowed under this chapter on their corporation~~  
30 ~~income tax return.~~

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

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

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

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

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

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

12 ~~**44-31.2-8. Recovery of credits by division of taxation.** -- (a) Credits previously granted~~  
13 ~~to a taxpayer, but later disallowed, may be recovered by the tax administrator of the division of~~  
14 ~~taxation through any collection remedy authorized and initiated within three (3) years from~~  
15 ~~December thirty-first (31st) of the year in which the twenty-four (24) month investment period~~  
16 ~~specified in this chapter ends.~~

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

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

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

25 **44-31.2-11. Information requests.** -- (a) The director of the film office and his or her  
26 agents, for the purpose of ascertaining the propriety or correctness of any materials pertaining to  
27 the certification of any motion picture production or to credits claimed under the provisions of  
28 this chapter, may examine any books, papers, records, or memoranda bearing upon the matters  
29 required to be included in the return, report, or other statement, and may require the attendance of  
30 the person executing the return, report, or other statement, or of any officer, or employee of any  
31 taxpayer, or the attendance of any other person, and may examine the person under oath  
32 respecting any matter which the director or his or her agent deems pertinent or material in  
33 administration and application of this chapter and, where not inconsistent with other legal  
34 provisions, the director may request information from the tax administrator.

1           (b) The tax administrator and his or her agents, for the purpose of ascertaining the  
2 correctness of any credit claimed under the provisions of this chapter, may examine any books,  
3 papers, records, or memoranda bearing upon the matters required to be included in the return,  
4 report, or other statement, and may require the attendance of the person executing the return,  
5 report, or other statement, or of any officer, or employee of any taxpayer, or the attendance of any  
6 other person, and may examine the person under oath respecting any matter which the tax  
7 administrator or his or her agent deems pertinent or material in determining the eligibility for  
8 credits claimed and may request information from the film office, and the film office shall  
9 provide the information in all cases to the tax administrator.

10           **44-31.2-12. Hearings and appeals: (a) From an action of the film office. -- For matters**  
11 pertaining exclusively to application, production and certification of motion picture productions,  
12 any person aggrieved by a denial action of the film office under this chapter shall notify the  
13 director of the film office in writing, within thirty (30) days from the date of mailing of the notice  
14 of denial action by the film office and request a hearing relative to the denial or action. The  
15 director of the film office shall, as soon as practicable, fix a time and place for a hearing. Appeals  
16 from a final decision of the director of the film office under this chapter are to the sixth (6<sup>th</sup>)  
17 division district court pursuant to chapter 35 of title 42 of the Rhode Island general laws.

18           **(b) From denial of tax credit. - Any person aggrieved by the tax administrator's denial**  
19 of a tax credit or tax benefit in this section, shall notify the tax administrator in writing, within  
20 thirty (30) days from the date of mailing by the tax administrator of the notice of denial of the tax  
21 credit and request a hearing relative to the denial of the tax credit; and the tax administrator shall,  
22 as soon as practicable, fix a time and place for a hearing. Appeals from a final decision of the tax  
23 administrator under this chapter are to the sixth (6<sup>th</sup>) division district court pursuant to chapter 8  
24 of title 8. The taxpayer's right to appeal is expressly made conditional upon prepayment of all  
25 taxes, interest, and penalties, unless the taxpayer files a timely motion for exemption from  
26 prepayment with the district court in accordance with the requirements imposed pursuant to  
27 section 8-8-26.

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

30           **42-75-12. Rhode Island film and television office. -- Within the commission there has**  
31 been established in a separate, discrete office entitled the "Rhode Island Film and Television  
32 Office." This office has been established in order to promote and encourage film and television  
33 productions within the state of Rhode Island. The office is also responsible to review the  
34 applications of motion picture productions pursuant to the requirements of chapter 44-31.2.



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

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