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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO TAXATION -- ARTS AND ENTERTAINMENT--JOB STIMULUS
INCENTIVES

Introduced By: Senators Miller, Goodwin, Ruggerio, Jabour, and Pichardo

Date Introduced: February 01, 2012

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 44-31.2 of the General Laws entitled "Motion Picture Production
2 Tax Credits" is hereby repealed in its entirety.

3 ~~CHAPTER 44-31.2~~

4 ~~Motion Picture Production 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~~
13 ~~infusion of capital into areas of the state which may be economically depressed and the multiplier~~
14 ~~effect of the infusion of capital resulting from the filming of a motion picture or television~~
15 ~~program serves 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~~
17 ~~will not be eligible for existing tax incentives due to the fact that portions of the production are~~
18 ~~carried out in another state, it is the purpose of this chapter to provide a financial incentive to the~~

1 ~~film industry in order that the state might compete with other states for filming locations.~~

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

6 ~~(1) Immediate objectives are to:~~

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

10 ~~(ii) Develop a tax infrastructure which encourages private investment. This infrastructure~~
11 ~~will provide for state participation in the form of tax credits to encourage investment in state-~~
12 ~~certified productions.~~

13 ~~(iii) Develop a tax infrastructure utilizing tax credits which encourage investments in~~
14 ~~multiple state certified production projects.~~

15 ~~(2) Long term objectives are to:~~

16 ~~(i) Encourage increased employment opportunities within this sector and increased~~
17 ~~competition with other states in fully developing economic development options within the film~~
18 ~~and video industry.~~

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

21 **44-31.2-2. Definitions.** ~~For the purposes of this chapter:~~

22 ~~(1) "Accountant's certification" as provided in this chapter means a certified audit by a~~
23 ~~Rhode Island certified public accountant licensed in accordance with section 5-3-1.~~

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

26 ~~(3) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a~~
27 ~~partnership, limited liability company, or other business entity formed under the laws of the state~~
28 ~~of Rhode Island for the purpose of producing motion pictures as defined in this section, or an~~
29 ~~individual who is a domiciled resident of the state of Rhode Island as defined in chapter 30 of this~~
30 ~~title.~~

31 ~~(4) "Motion picture" means a feature length film, video, video games, television series,~~
32 ~~or commercial made in Rhode Island, in whole or in part, for theatrical or television viewing or as~~
33 ~~a television pilot. The term "motion picture" shall not include the production of television~~
34 ~~coverage of news or athletic events, nor shall it apply to any film, video, television series or~~

1 ~~commercial or a production for which records are required under section 2257 of title 18, U.S.C.,~~
2 ~~to be maintained with respect to any performer in such production or reporting of books, films,~~
3 ~~etc. with respect to sexually explicit conduct.~~

4 ~~(5) "Motion picture production company" means a corporation, partnership, limited~~
5 ~~liability company or other business entity engaged in the business of producing one or more~~
6 ~~motion pictures as defined in this section. Motion picture production company shall not mean or~~
7 ~~include: (a) any company owned, affiliated, or controlled, in whole or in part by any company or~~
8 ~~person which is in default: (i) on taxes owed to the state; or (ii) on a loan made by the state; or~~
9 ~~(iii) a loan guaranteed by the state; nor (iv) any company or person who has even declared~~
10 ~~bankruptcy under which an obligation of the company or person to pay or repay public funds or~~
11 ~~monies was discharged as a part of such bankruptcy.~~

12 ~~(6) "Primary locations" means the locations within which at least fifty one percent (51%)~~
13 ~~of the motion picture principal photography days are filmed.~~

14 ~~(7) "Rhode Island film and television office" means an office within the Rhode Island~~
15 ~~state council on the arts that has been established in order to promote and encourage the locating~~
16 ~~of film and television productions within the state of Rhode Island. The office is also referred to~~
17 ~~within as the "film office".~~

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

24 ~~(9) "State certified production cost" means any pre production, production and post~~
25 ~~production cost that a motion picture production company incurs and pays to the extent it occurs~~
26 ~~within the state of Rhode Island. Without limiting the generality of the foregoing, "state certified~~
27 ~~production costs" include: set construction and operation; wardrobes, make-up, accessories, and~~
28 ~~related services; costs associated with photography and sound synchronization, lighting, and~~
29 ~~related services and materials; editing and related services, including, but not limited to, film~~
30 ~~processing, transfers of film to tape or digital format, sound mixing, computer graphics services,~~
31 ~~special effects services, and animation services, salary, wages, and other compensation, including~~
32 ~~related benefits, of persons employed, either director or indirectly, in the production of a film~~
33 ~~including writer, motion picture director, producer (provided the work is performed in the state of~~
34 ~~Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of vehicles; costs~~

1 of food and lodging; music, if performed, composed, or recorded by a Rhode Island musician, or
2 released or published by a person domiciled in Rhode Island; travel expenses incurred to bring
3 persons employed, either directly or indirectly, in the production of the motion picture, to Rhode
4 Island (but not expenses of such persons departing from Rhode Island); and legal (but not the
5 expense of a completion bond or insurance and accounting fees and expenses related to the
6 production's activities in Rhode Island); provided such services are provided by Rhode Island
7 licensed attorneys or accountants.

8 ~~**44-31.2-3., 44-31.2-4. Repealed.**~~

9 ~~**44-31.2-5. Motion picture production company tax credit.**~~ (a) A motion picture
10 production company shall be allowed a credit to be computed as provided in this chapter against a
11 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-
12 five percent (25%) of the state certified production costs incurred directly attributable to activity
13 within the state, provided that the primary locations are within the state of Rhode Island and the
14 total production budget as defined herein is a minimum of three hundred thousand dollars
15 (\$300,000). The credit shall be earned in the taxable year in which production in Rhode Island is
16 completed, as determined by the film office in final certification pursuant to subsection 44-31.2-
17 6(c).

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

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

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

32 (e) No more than fifteen million dollars (\$15,000,000) may be issued for any tax year
33 beginning after December 31, 2007.

34 ~~**44-31.2-6. Certification and administration.**~~ (a) Initial certification of a production.

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

14 ~~(b) Final certification of a production. Upon completion of the Rhode Island production~~
15 ~~activities, the applicant shall request a certificate of good standing from the Rhode Island division~~
16 ~~of taxation. The division shall expedite the process for reviewing the issuance of such certificates.~~
17 ~~Such certificates shall verify to the film office the motion picture production company's~~
18 ~~compliance with the requirements of subsection 44-31.2-2(5). The applicant shall properly~~
19 ~~prepare, sign and submit to the film office an application for final certification of the production~~
20 ~~and which must include the certificate of good standing from the division of taxation. In addition,~~
21 ~~the application shall contain such information and data as the film office determines is necessary~~
22 ~~for the proper evaluation and administration, including, but not limited to, any information about~~
23 ~~the motion picture production company, its investors and information about the production~~
24 ~~previously granted initial certification. The final application shall also contain a cost report and an~~
25 ~~"accountant's certification". The film office and tax administrator may rely without independent~~
26 ~~investigation, upon the accountant's certification, in the form of an opinion, confirming the~~
27 ~~accuracy of the information included in the cost report. Upon review of a duly completed and~~
28 ~~filed application, the film office will make a determination pertaining to the final certification of~~
29 ~~the production and the resultant credits for section 44-31.2-5.~~

30 ~~(c) Final certification and credits. Upon determination that the motion picture~~
31 ~~production company qualifies for final certification and the resultant credits, the film office shall~~
32 ~~issue a letter to the production company indicating "certificate of completion of a state certified~~
33 ~~production" and shall provide specifically designed certificates for the motion picture production~~
34 ~~company credit under section 44-31.2-5. All documents that are issued by the film office pursuant~~

1 ~~to this section shall reference the identification number that was issued to the production as part~~
2 ~~of its initial certification.~~

3 ~~(d) The director of the Rhode Island film and television office, in consultation as needed~~
4 ~~with the tax administrator, shall promulgate such rules and regulations as are necessary to carry~~
5 ~~out the intent and purposes of this chapter in accordance with the general guidelines provided~~
6 ~~herein for the certification of the production and the resultant production credit.~~

7 ~~(e) The tax administrator of the division of taxation, in consultation with the director of~~
8 ~~the Rhode Island film and television office, shall promulgate such rules and regulations as are~~
9 ~~necessary to carry out the intent and purposes of this chapter in accordance with the general~~
10 ~~guidelines for the tax credit provided herein.~~

11 ~~(f) Any motion picture production company applying for the credit shall be required to~~
12 ~~reimburse the division of taxation for any audits required in relation to granting the credit.~~

13 ~~**44-31.2-6.1. Impact analysis and periodic reporting.**~~ (a) ~~The film office shall not~~
14 ~~certify or approve any application under section 44-31.2-6 of this chapter until it has first~~
15 ~~prepared and publicly released an analysis of the impact the proposed investment will or may~~
16 ~~have on the state. The analysis shall be supported by appropriate data and documentation and~~
17 ~~shall consider, but not be limited to, the following factors:~~

18 ~~(i) The impact on the industry or industries in which the applicant will be involved;~~

19 ~~(ii) State fiscal matters, including the state budget (revenues and expenses);~~

20 ~~(iii) The financial exposure of the taxpayers of the state under the plans for the proposed~~
21 ~~investment and negative foreseeable contingencies that may arise therefrom;~~

22 ~~(iv) The approximate number of full time, part time, temporary, seasonal and/or~~
23 ~~permanent jobs projected to be created, construction and non-construction;~~

24 ~~(v) Identification of geographic sources of the staffing for identified jobs;~~

25 ~~(vi) The projected duration of the identified construction jobs;~~

26 ~~(vii) The approximate wage rates for each category of the identified jobs;~~

27 ~~(viii) The types of fringe benefits to be provided with the identified jobs, including~~
28 ~~healthcare insurance and any retirement benefits;~~

29 ~~(ix) The projected fiscal impact on increased personal income taxes to the state of Rhode~~
30 ~~Island; and~~

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

34 ~~(b) The film office shall monitor every impact analysis it completes through the duration~~

1 of any approved tax credit. Such monitoring shall include annual reports made available to the
2 public on the:

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

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

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

32 ~~(d) The film office, with the assistance of the motion picture production company, the~~
33 ~~department of labor and training, the department of human services and the division of taxation~~
34 ~~shall provide annually an analysis of whether any of the employees of the motion picture~~

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

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

14 ~~(f) By August 15th of each year the motion picture production company shall report the~~
15 ~~source and amount of any bonds, grants, loans, loan guarantees, matching funds or tax credits~~
16 ~~received from any state governmental entity, state agency or public agency as defined in section~~
17 ~~37-2-7 received during the previous state fiscal year. This annual report shall be sent to the~~
18 ~~division of taxation and be available to the public for inspection by any person and shall be~~
19 ~~published by the tax administrator on the tax division website.~~

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

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

32 ~~**44-31.2-7. Information requests.** -- (a) The director of the film office and his or her~~
33 ~~agents, for the purpose of ascertaining the propriety or correctness of any materials pertaining to~~
34 ~~the certification of any motion picture production or to credits claimed under the provisions of~~

1 ~~this chapter, may examine any books, papers, records, or memoranda bearing upon the matters~~
2 ~~required to be included in the return, report, or other statement, and may require the attendance of~~
3 ~~the person executing the return, report, or other statement, and may require the attendance of any~~
4 ~~taxpayer, or the attendance of any other person, and may examine the person under oath~~
5 ~~respecting any matter which the director or his or her agent deems pertinent or material in~~
6 ~~administration and application of this chapter and, where not inconsistent with other legal~~
7 ~~provisions, the director may request information from the tax administrator.~~

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

17 ~~**44-31.2-8. Hearings and appeals.** (a) From an action of the film office. For matters~~
18 ~~pertaining exclusively to application, production, and certification of motion picture productions,~~
19 ~~any person aggrieved by a denial action of the film office under this chapter shall notify the~~
20 ~~director of the film office in writing, within thirty (30) days from the date of mailing of the notice~~
21 ~~of denial action by the film office and request a hearing relative to the denial or action. The~~
22 ~~director of the film office shall, as soon as is practicable, fix a time and place of hearing, and shall~~
23 ~~render a final decision. Appeals from a final decision of the director of the film office under this~~
24 ~~chapter are to the sixth (6th) division district court pursuant to chapter 35 of title 42 of the general~~
25 ~~laws.~~

26 ~~(b) From denial of tax credit. Any person aggrieved by the tax administrator's denial of~~
27 ~~a tax credit or tax benefit in this section shall notify the tax administrator in writing within thirty~~
28 ~~(30) days from the date of mailing of the notice of denial of the tax credit and request a hearing~~
29 ~~relative to the denial of the tax credit. The tax administrator shall, as soon as is practicable, fix a~~
30 ~~time and place for a hearing, and shall render a final decision. Appeals from a final decision of~~
31 ~~the tax administrator under this chapter are to the sixth (6th) division district court pursuant to~~
32 ~~chapter 8 of title 8 of the general laws. The taxpayer's right to appeal is expressly made~~
33 ~~conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer files a timely~~
34 ~~motion for exemption from prepayment with the district court in accordance with the~~

1 ~~requirements imposed pursuant to section 8-8-26 of the general laws.~~

2 ~~**44-31.2-9. Transferability of the credit.** (a) Any motion picture production company~~
3 ~~tax credit certificate issued in accordance with section 44-31.2-5, which has been issued to a~~
4 ~~motion picture production company or passed through in accordance with subsection 44-31.2-~~
5 ~~5(d), and to the extent not previously claimed against the tax of the motion picture production~~
6 ~~company or of the owner of the certificate if the certificate was issued in accordance with~~
7 ~~subsection 44-31.2-5(d), may be transferred or sold by such company to another Rhode Island~~
8 ~~taxpayer, subject to the following conditions:~~

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

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

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

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

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

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

34 ~~(b) The transferee, assignee or purchaser shall apply such credits in the same manner as~~

1 ~~the motion picture production company originally awarded the credit.~~

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

5 ~~**44-31.2-10. Disclaimer and severability.** -- (a) The state of Rhode Island reserves the~~
6 ~~right to refuse the use of Rhode Island's name in credits of any motion picture filmed or produced~~
7 ~~in the state.~~

8 ~~(b) If any clause, sentence, paragraph, or part of this chapter is for any reason judged~~
9 ~~invalid by any court of competent jurisdiction, the judgment does not affect, impair, or invalidate~~
10 ~~the remainder of this chapter but is confined in its operation to the clause, sentence, paragraph, or~~
11 ~~part of this chapter directly involved in the controversy in which the judgment has been rendered.~~

12 SECTION 2. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
13 adding thereto the following chapter:

14 CHAPTER 31.3

15 THE ARTS AND ENTERTAINMENT JOB STIMULUS INCENTIVES ACT OF 2012

16 **44-31.3-1. Declaration of purpose.** – The general assembly finds and declares that it is
17 Rhode Island’s priority to reduce the state unemployment rate by stimulating new industries that
18 have large employment growth potential by providing tax incentives and other means necessary
19 and therefore recognizes that such incentives should be created for the arts and entertainment
20 industry. The purpose of this chapter is to create economic incentives for the purpose of
21 stimulating the local economy and reducing unemployment in Rhode Island.

22 **44-31.3-2. Motion picture production tax credits.** – (a) Definitions. -- As used in this
23 chapter:

24 (1) “Accountant’s certification” as provided in this chapter means a certified audit by a
25 Rhode Island certified public accountant licensed in accordance with the provisions of chapter 5-
26 3.1 (“Public Accountancy”).

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

29 (3) “Domiciled in Rhode island means: (i) A corporation incorporated in Rhode Island or
30 a partnership, limited liability company, or other business entity formed under the laws of the
31 state of Rhode Island for the purpose of producing motion pictures as defined in this section; or
32 (ii) An individual who is a domiciled resident of the state of Rhode Island or who is not domiciled
33 in this state but maintains a permanent place of abode in this state and is in this state for an
34 aggregate of more than one hundred eighty-three (183) days of the taxable year, unless the

1 individual is in the armed forces of the United States.

2 (4) “EDC” means the Rhode Island Economic Development Corporation created pursuant
3 to chapter 42-64 (“Rhode Island Economic Development Corporation”).

4 (5) “Full-Time Equivalent Employee” means a person who works a minimum of thirty
5 (30) hours per week within the state of Rhode Island and earns no less than two hundred percent
6 (200%) of the hourly minimum wage prescribed by Rhode Island law.

7 (6) “Motion picture” means a feature-length film, video, television series, or commercial
8 made in Rhode Island, in whole or in part, for theatrical or television viewing or as a television
9 pilot. The term “motion picture” shall not include the production of television coverage of news
10 or athletic events, nor shall it apply to any film, video, television series or commercial or a
11 production for which records are required under section 2257 of title 18, U.S.C., to be maintained
12 with respect to any performer in such production or reporting of books, films, etc. with respect to
13 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 and domiciled in Rhode Island. Motion picture
17 production company shall not mean or include any company owned, affiliated, or controlled, in
18 whole or in part by any company or person which is in default: (i) On taxes owed to the state; or
19 (ii) On a loan made by the state; or (iii) On a loan guaranteed by the state; or (iv) Any company
20 or person who has even declared bankruptcy under which an obligation of the company or person
21 to pay or repay public funds or monies was discharged as a part of such bankruptcy.

22 (8) “Primary locations” means the locations within which at least fifty-one percent (51%)
23 of the motion picture principal photography days are filmed.

24 (9) “Qualified Film Production Facility” means a film production facility in the state,
25 which contains at least one sound stage having a minimum of seven thousand square feet (7,000
26 sq ft) of contiguous production space that is soundproof with a Noise Criteria (“NC”) of thirty
27 (30) or better, has sufficient heating and cooling and incorporates a permanent grid and sufficient
28 built-in electric service for shooting, and is column-free with a clear height of at least sixteen feet
29 under the permanent grid.

30 (10) “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 locating
32 of film and television productions within the state of Rhode Island. The office is also referred to
33 within as the “film office”.

34 (11) “Rhode Island Resident” means for the purpose of determination of eligibility for the

1 tax incentives provided by this chapter, an individual who is domiciled in the state of Rhode
2 Island or who is not domiciled in this state but maintains a permanent place of abode in this state
3 and is in this state for an aggregate of more than one hundred eighty-three (183) days of the
4 taxable year, unless the individual is in the armed forces of the United States.

5 (12) “State-certified production” means a motion picture production approved by the
6 Rhode Island film office and produced by a motion picture production company, whether or not
7 such company owns or controls the copyright and distribution rights in the motion picture;
8 provided, that such company is principally engaged in the production of the motion picture and
9 controls the production of the motion picture.

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

31 (b) Tax Credit. -- (1) A motion picture production company shall be allowed a tax credit
32 to be computed as provided in this chapter against a tax imposed by chapters 11, 12, 13, 14, 17
33 and/or 30 of title 44 (“Taxation”) in the amount of thirty percent (30%) of the state certified
34 production costs, provided that: (i) The primary locations are within the state of Rhode Island; (ii)

1 The state certified production costs are a minimum of three hundred thousand dollars (\$300,000);
2 and (iii) At least fifteen percent (15%) of the total principal photography shooting days for the
3 motion picture are spent at a qualified film production facility. If a qualified film production
4 facility is not available, such company may petition the EDC for a waiver of such condition and
5 the EDC shall have five (5) days to grant or reject the petition. A stage will be deemed
6 unavailable if consideration has been paid for its use or such stage is currently under an
7 agreement with an option for use and, in either circumstance, such period of use includes the
8 petitioner's estimated start date of principal photography. The tax credit shall be earned in the
9 taxable year in which the motion picture production in Rhode Island is completed, as determined
10 by the film office in final certification pursuant to this chapter and can be carried forward for not
11 more than three (3) succeeding years. To the extent that the motion picture production company
12 incurs any costs on payroll for a Rhode Island resident employed for such motion picture, the
13 motion picture production company shall be allowed an additional tax credit of five percent (5%)
14 of such payroll.

15 (2) Tax credits allowed to a motion picture production company, which is a subchapter S
16 corporation, partnership, or a limited liability company that is taxed as a partnership, shall be
17 passed through respectively to persons designated as partners, members or owners on a pro rata
18 basis or pursuant to an executed agreement among such persons designated as subchapter S
19 corporation shareholders, partners, or members documenting an alternate distribution method
20 without regard to their sharing of other tax or economic attributes of such entity.

21 (3) If the motion picture production company has not claimed the tax credits in whole or
22 part, the motion picture production company eligible for the tax credits may assign, transfer or
23 convey the tax credits, in whole or in part, by sale or otherwise to any individual or entity and
24 such assignee of the tax credits that have not claimed the tax credits in whole or part may assign,
25 transfer or convey the tax credits, in whole or in part, by sale or otherwise to any individual or
26 entity. The assignee of the tax credits may use acquired credits to offset up to one hundred
27 percent (100%) of the tax liabilities otherwise imposed pursuant to chapter 11, 12, 13, (other than
28 the tax imposed under section 44-13-13), 14, 17 or 30 of title 44 ("Taxation"). The assignee may
29 apply the tax credit against taxes imposed on the assignee until the end of the third (3rd) calendar
30 year after the year in which the motion picture production is completed or until the full credit
31 assigned is used, whichever occurs first. The assignor shall perfect the transfer by notifying the
32 state of Rhode Island division of taxation, in writing, within thirty (30) calendar days following
33 the effective date of the transfer and shall provide any information as may be required by the
34 division of taxation to administer and carry out the provisions of this section.

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

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

7 (6) No more than fifteen million dollars (\$15,000,000) in tax credits in the aggregate may
8 be issued under this chapter for any tax year beginning after December 31, 2011.

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

23 (2) Final certification of a production. Upon completion of the Rhode Island production
24 activities, the applicant shall request a certificate of good standing from the Rhode Island division
25 of taxation. The division shall expedite the process for reviewing the issuance of such certificates.
26 The applicant shall properly prepare, sign and submit to the film office an application for final
27 certification of the production and which must include the certificate of good standing from the
28 division of taxation. The final application shall contain a cost report and an “accountant’s
29 certification”. The film office and tax administrator may rely without independent investigation,
30 upon the accountant’s certification, in the form of an opinion, confirming the accuracy of the
31 information included in the cost report. Within thirty (30) days of a duly completed and filed
32 application, the film office will make a determination pertaining to the final certification of the
33 production and the resultant tax credits.

34 (3) Final certification and credits. (i) Upon determination that the motion picture

1 production company qualifies for final certification and the resultant tax credits, the film office
2 shall issue a letter to the production company indicating “certificate of completion of a state
3 certified production” and shall provide specifically designed tax credit certificates to the motion
4 picture production company. All documents that are issued by the film office pursuant to this
5 section shall reference the identification number that was issued to the production as part of its
6 initial certification.

7 (ii) The director of the Rhode Island film and television office, in consultation as needed
8 with the tax administrator, shall promulgate such rules and regulations as are necessary to carry
9 out the intent and purposes of this chapter in accordance with the general guidelines provided
10 herein for the certification of the production and the resultant production credit.

11 (iii) Any motion picture production company applying for the credit shall be required to
12 reimburse the division of taxation for any audits required in relation to granting the credit.

13 (4) Notwithstanding any provisions of the general laws or regulations adopted thereunder
14 to the contrary, the film office and the division of taxation are hereby expressly authorized and
15 empowered to enter into contracts with motion picture production companies that incur state
16 certified production costs.

17 (5) The film office shall charge an administration fee in an amount equal to five-
18 thousandths (.005) multiplied by tax credits allowed, which fee is payable upon delivery of a fully
19 executed contract guarantying the tax credits as set forth herein.

20 (6) Simultaneously with payment of the fee, the film office shall, on behalf of the state of
21 Rhode Island, guaranty the deliver of one hundred percent (100%) of the tax credit and use of one
22 hundred percent of the tax credit in the tax year the state certified production costs are incurred by
23 the motion picture production company.

24 (7) Any contract executed pursuant to this chapter by a motion picture production
25 company that incurs state certified production costs shall be assignable to: (i) An affiliate thereof
26 without any consent from the division of taxation or the film office; or (ii) A person, firm,
27 partnership, trust, estate, limited liability company, corporation (whether for profit or non-profit)
28 or other business entity approved by the film office, which approval shall not be unreasonably
29 withheld. For purposes of this subsection, affiliate” shall be defined as any entity controlling,
30 controlled by or under common control with such person, firm, partnership, trust, estate, limited
31 liability company, corporation (whether for profit or non-profit) or other business entity.

32 (8) If information comes to the attention of the film office that is materially inconsistent
33 with representations made in an application, film office may deny the requested certification. In
34 the event that tax credits or a portion of tax credits are subject to recapture for ineligible costs and

1 such tax credits have been transferred, assigned and/or allocated, the state will pursue its
2 recapture remedies and rights against the motion picture production company. No redress shall be
3 sought against assignees, sellers, transferees or allocates of such credits.

4 (d) Information Requests. -- The tax administrator and his or her agents, for the purpose
5 of ascertaining the correctness of any credit claimed under the provisions of this chapter, may
6 examine any books, paper, records, or memoranda bearing upon the matters required to be
7 included in the return, report, or other statement, and may require the attendance of the person
8 executing the return, report, or other statement, or of any officer or employee of any taxpayer, or
9 the attendance of any other person, and may examine the person under oath respecting any matter
10 which the tax administrator or his or her agent deems pertinent or material in determining the
11 eligibility for credits claimed.

12 **44-31.3-3. Digital media tax credit.** – (a) Definitions. -- As used in this chapter:

13 (1) “Contrary to Public Policy” means products that in the opinion of the EDC capable of
14 inciting hatred against an identifiable group, including a section of the public distinguished by
15 color, race, religion, sex, sexual orientation or ethnic origin and products whose dominate
16 characteristic is the undue exploitation of sex and one or more of crime, horror or cruelty.

17 (2) “Development” means in the arts and entertainment industry the stages of production
18 up to product launch including without limitation, concept development, product design,
19 planning, and production.

20 (3) “EDC” means the Rhode Island Economic Development Corporation created pursuant
21 to chapter 42-64 (“Rhode Island Economic Development Corporation”).

22 (4) “Eligible Product” means a combination of one or more application files and one or
23 more data files, all in a digital media format, that are integrated and are intended to be operated
24 together and that have the following characteristics when they are being operated:

25 (i) The primary purpose is to educate, inform or entertain the user;

26 (ii) They achieve their primary purpose by presenting information in at least two (2) of
27 the following forms:

28 (A) Text;

29 (B) Sound; or

30 (C) Images;

31 (iii) They are intended to be used by individuals;

32 (iv) By interacting with them, the user can choose what information is to be presented
33 and the form and sequence in which it is to be presented;

34 (v) The product was developed for sale or licensing by the qualifying company to one or

1 more arm's length parties;

2 (vi) The product is not used primarily for interpersonal communication; and

3 (vii) The product is not used primarily to present, promote or sell the products or services
4 of the qualifying company or used primarily to present or promote the qualifying company.

5 (5) "Full Time Equivalent Active Employees" means a person who: (i) Works a
6 minimum of thirty (30) hours per week within the state of Rhode Island; (ii) Earns healthcare
7 insurance benefits, and retirement benefits; and (iii) Earns no less than two hundred percent
8 (200%) of the hourly minimum wage prescribed by Rhode Island law.

9 (6) "Primarily" means more than fifty percent (50%).

10 (7) "Qualified Company" means any person, firm, partnership, trust, estate, limited
11 liability company, corporation or other business entity that incurs qualified expenditures for the
12 development of an eligible product that is domiciled in the state of Rhode Island, qualified to do
13 business in the state of Rhode Island and which has at least eighty (80) full-time equivalent active
14 employees within one hundred fifty-two (152) days after receipt of the EDC's written
15 determination of the eligibility of the product and as further described herein.

16 (8) "Qualified expenditures" means any amounts incurred in the state of Rhode Island in
17 the direct development of the eligible product, including without limitation, one hundred percent
18 (100%) of all salaries and wages of its employees fee or service arrangements paid to business
19 entities or persons who performed in Rhode Island in an arm's length transaction and marketing
20 and distribution expenditures of the eligible product incurred by the qualified company no more
21 than twenty-four (24) months before completion of the eligible product and no more than twelve
22 (12) months alter completion of the eligible product.

23 (b) Tax Credit. -- (1) A qualified company that incurs qualified expenditures for the
24 development of an eligible product that is not contrary to public policy shall be entitled to a credit
25 against the taxes imposed on such person or entity Pursuant to chapter 11, 12, 13, 14, 17 or 30 of
26 title 44 ("Taxation") in an amount equal to twenty-five percent (25%) of the qualified
27 expenditures.

28 (2) Tax credits allowed pursuant to this chapter shall be allowed in each tax year that the
29 qualified expenditures are incurred; provided, however, if the person, firm, partnership, trust,
30 estate, limited liability company, corporation or other, business entity is not yet a qualified
31 company then such tax credits will be issued when the taxpayer becomes a qualified company
32 and for the tax year that the qualified expenditures were incurred.

33 (3) If the amount of the tax credit exceeds the taxpayer's total tax liability for the year in
34 which the qualified expenditures are incurred, the amount that exceeds the taxpayer's tax liability

1 may be carried forward for credit against the taxes imposed for the succeeding ten (10) years, or
2 until the full credit is used, whichever occurs first for the tax credits. Tax credits allowed to a
3 partnership, a limited liability company taxed as a partnership or multiple owners of property
4 shall be passed through to the persons designated as partners, members or owners respectively
5 pro rata or pursuant to an executed agreement among such persons designated as partners,
6 members or owners documenting an alternate distribution method without regard to their sharing
7 of other tax or economic attributes of such entity.

8 (4) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for
9 the tax credits may assign, transferor convey the tax credits, in whole or in part, by sale or
10 otherwise to any individual or entity and such assignee of the tax credits that have not claimed the
11 tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part, by
12 sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
13 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
14 pursuant to chapter 11, 12, 13, (other than the tax imposed under 44-13-13), 14, 17 or 30 of title
15 44 (“Taxation”). The assignee may apply the tax credit against taxes imposed on the assignee
16 until the end of the tenth (10th) calendar year after the year in which the qualified expenditures are
17 incurred or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may
18 claim the credit until the expiration of the fiscal year that ends within the tenth (10th) year after
19 the year in which the qualified expenditures are incurred. The assignor shall perfect the transfer
20 by notifying the state of Rhode Island division of taxation, in writing, within thirty (30) calendar
21 days following the effective date of the transfer and shall provide any information as may be
22 required by the division of taxation to administer and carry out the provisions of this section.

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

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

29 (c) Tax credit administration. -- (1) Prior to completion of the eligible product, the
30 qualified company shall apply to the EDC for a written certification of its product eligibility,
31 certification of its projected qualified expenditures and certification that the product is not
32 contrary to public policy. Within fifteen (15) days of receipt of the information required by the
33 EDC for the written certification. The EDC shall issue a denial or written certification of its
34 eligible product and of its projected qualified expenditures. The qualified company shall file with

1 the EDC for each tax year of development of the eligible product a cost certification by a certified
2 public accountant licensed in the state of Rhode Island certifying the qualified expenditures, the
3 amount of the tax credits for the particular tax year to be claimed and of number of full-time
4 equivalent active employees.

5 (2) Within thirty (30) days after the EDC's receipt of the qualified company's application
6 requesting certification for the qualified expenditures for the applicable tax year, the EDC shall
7 issue the qualified company a written determination either denying or certifying the expenditures,
8 in whole or in part, and the division of taxation shall issue a certification of the amount of credit
9 for the qualified expenditures and the tax credit certificates in any such denomination as
10 requested by the taxpayer or assignee. To claim the tax credit, the certification as to the amount of
11 the tax credit shall be attached to all state tax returns on which the credit is claimed.

12 (3) The EDC shall charge an administration fee in an amount equal to five-hundredths
13 (.005) multiplied by tax credits allowed, which fee is payable upon delivery of a fully executed
14 contract guarantying the tax credits as set forth herein.

15 (4) Notwithstanding any provisions of the general laws or regulations adopted thereunder
16 to the contrary, the EDC and the division of taxation are hereby expressly authorized and
17 empowered to enter into contracts with persons, firms, partnerships, trusts, estates, limited
18 liability companies, corporations or other business entities that incur qualified expenditures for
19 development of eligible products.

20 (5) Simultaneously with payment of the fee, the EDC shall, on behalf of the state of
21 Rhode Island, guaranty the delivery of one hundred percent (100%) of the tax credit and use of
22 one hundred percent (100%) of the tax credit in the tax year the qualified expenditures are
23 incurred by the qualified company for development of the eligible product.

24 (6) Any contract executed pursuant to this chapter by a qualified company that incurs
25 qualified expenditures for the development of an eligible product shall be assignable to: (i) An
26 affiliate thereof without any consent from the division of taxation or the EDC; (ii) A banking or
27 other financial institution as defined by title 19 ("Financial Institutions") or credit union as
28 defined in chapter 19-1 ("Definitions and Establishment of Financial Situations") a person, firm,
29 partnership, trust, estate, limited liability company, corporation (whether for profit or nonprofit)
30 or other business entity approved by the EDC, which approval shall not be unreasonably
31 withheld. For purposes of this subsection, affiliate shall be defined as any entity controlling,
32 controlled by or under common control with such person, firm, partnership, trust, estate, limited
33 liability company, corporation (whether for profit or nonprofit) or other business entity.

34 (7) If information comes to the attention of the EDC that is materially inconsistent with

1 representations made in an application, the EDC may deny the requested certification. In the
2 event that tax credits or a portion of tax credits are subject to recapture for ineligible costs and
3 such tax credits have been transferred, assigned and/or allocated, the state will pursue its
4 recapture remedies and rights against the qualified company of the tax credits. No redress shall be
5 sought against assignees, sellers, transferees or allocates of such credits.

6 (d) Information Requests. The tax administrator and his or her agents, for the purpose of
7 ascertaining the correctness of any credit claimed under the provisions of this chapter, may
8 examine any books, papers, records, or memoranda bearing upon the matters required to be
9 included in the return, report, or other statement, and may require the attendance of the person
10 executing the return, report, or other statement, or of any officer or employee of any taxpayer, or
11 the attendance of any other person, and may examine the person under oath respecting any matter
12 which the tax administrator or his or her agent deems pertinent or material in determining the
13 eligibility for credits claimed.

14 **44-31.3-4. Musical and theatrical production tax credits. --** (a) Definitions as used in
15 this chapter: (1) “Accredited theater production” means a for-profit live-stage presentation in a
16 qualified production facility, as defined in this chapter, that is either: (i) A pre-Broadway
17 production; or (ii) A post-Broadway production.

18 (2) “Accredited theater production certificate” means a certificate issued by the EDC
19 certifying that the production is an accredited theater production that meets the guidelines of this
20 chapter.

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

25 (4) “EDC” means the Rhode Island economic development corporation.

26 (5) “Payroll” means all salaries, wages, fees, and other compensation including related
27 benefits for services performed and costs incurred within Rhode Island.

28 (6) “Pre-Broadway Production” means a live-stage production that, in its original or
29 adaptive version, is performed in a qualified production facility having a presentation scheduled
30 for Broadway’s theater district in New York City with in twelve (12) months after its Rhode
31 Island presentation.

32 (7) “Post-Broadway production” means a live-stage production that, in its original or
33 adaptive version, is performed in a qualified production facility and opens its US tour in Rhode
34 Island after a presentation scheduled for Broadway’s theater district in New York City.

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

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

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

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

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

32 (b) Tax Credit. -- (1) Any person, firm, partnership, trust, estate or other entity that
33 receives an accredited theater production certificate shall be allowed a tax credit equal to twenty
34 percent (20%) of the total production and performance expenditures and transportation

1 expenditures for the accredited theater production and to be computed as provided in this chapter
2 against a tax imposed by chapters 11, 12, 13, 14, 17 and/or 30 of title 44 (“Taxation”). To the
3 extent that such person, firm, partnership, trust, estate or other entity incurs any costs on payroll
4 for a Rhode Island resident employed for such accredited theater production. such person, firm,
5 partnership, trust, estate or other entity shall be allowed an additional tax credit of five percent
6 (5%) of such payroll.

7 (2) In no event shall the EDC allow the collective total tax credit award(s) in any calendar
8 year to exceed a maximum of two million five hundred thousand dollars (\$2,500,000).

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

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

17 (5) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
18 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
19 otherwise to any individual or entity and such assignee of the tax credits that have not claimed the
20 tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part, by
21 sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired
22 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
23 pursuant to chapter 11, 12, 13, (other than the tax imposed under section 44-13-13), 14, 17 or 30
24 of title 44 (“Taxation”). The assignee may apply the tax credit against taxes imposed on the
25 assignee until the end of the tenth (10th) calendar year after the year in which the qualified
26 expenditures are incurred or until the full credit assigned is used, whichever occurs first. Fiscal
27 year assignees may claim the credit until the expiration of the fiscal year that ends within the third
28 (3rd) year after the year in which the production and performance expenditures are incurred. The
29 assignor shall perfect the transfer by notifying the state of Rhode Island division of taxation, in
30 writing, within thirty (30) calendar days following the effective date of the transfer and shall
31 provide any information as may be required by the division of taxation to administer and carry
32 out the provisions of this section.

33 (6) For purposes of this chapter, any assignment or sales proceeds received by the
34 assignor for its assignment or sale of the tax credits allowed pursuant to this section shall be

1 exempt from title 44 (“Taxation”).

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

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

18 (2) Upon completion of an accredited theater production, the applicant shall properly
19 prepare, sign and submit to the EDC an application for final certification of the accredited theater
20 production. The final application shall also contain a cost report and an “accountant’s
21 certification.” The EDC and tax administrator may rely without independent investigation, upon
22 the accountant’s certification, in the form of an opinion, confirming the accuracy of the
23 information included in the cost report. Upon review of a duly completed and filed application
24 and upon no later than thirty (30) days of submission thereof, EDC will make a determination
25 pertaining to the final certification of the accredited theater production and the resultant tax
26 credits.

27 (3) Upon determination that the company qualifies for final certification and the resultant
28 tax credits, the EDC shall issue to the company: (i) An accredited theater production certificate;
29 and (ii) A tax credit certificate in an amount in accordance with this subsection (b) hereof. All
30 documents that are issued by the EDC pursuant to this section shall reference the identification
31 number that was issued to the production as part of its initial certification.

32 (4) The director of the EDC, in consultation as needed with the tax administrator, shall
33 promulgate such rules and regulations as are necessary to carry out the intent and purposes of this
34 chapter in accordance with the general guidelines provided herein for the certification of the

1 production and the resultant production credit.

2 (5) The EDC shall charge an administration fee in an amount equal to five-thousandths
3 (.005) multiplied by the tax credits allowed, which fee shall be payable upon delivery of a fully
4 executed contract guarantying the tax credits as set forth herein.

5 (6) Notwithstanding any provisions of the general laws or regulations adopted thereunder
6 to the contrary, the EDC and the division of taxation are hereby expressly authorized and
7 empowered to enter into contracts with persons, firms, partnerships, trusts, estates, limited
8 liability companies, corporations or other business entities that incur production and performance
9 expenditures and transportation expenditures for accredited theater productions.

10 (7) Simultaneously with payment of the fee, the EDC shall, on behalf of the state of
11 Rhode Island, guaranty the deliver of one hundred percent (100%) of the tax credit and use of one
12 hundred percent (100%) of the tax credit in the tax year the last production and performance
13 expenditures and transportation expenditures for accredited theater productions.

14 (8) Any contract executed pursuant to this chapter by a company that incurs production
15 and performance expenditures and transportation expenditures for accredited theater productions
16 small be assignable to: (i) An affiliate thereof without any consent from the division of taxation or
17 the EDC; or (ii) A person, firm, partnership, trust, estate, limited liability company, corporation
18 (whether for profit or nonprofit) or other business entity approved by the EDC, which approval
19 shall not be unreasonably withheld. For purposes of this subsection, "affiliate" shall be defined as
20 any entity controlling, controlled by or under common control with such person, firm,
21 partnership, trust, estate, limited liability company, corporation (whether for profit or nonprofit)
22 or other business entity.

23 (9) If information comes to the attention of the EDC that is materially inconsistent with
24 representations made in an application, the EDC may deny the requested certification. In the
25 event that tax credits or a portion of tax credits are subject to recapture for ineligible costs and
26 such tax credits have been transferred, assigned and/or allocated, the state will pursue its
27 recapture remedies and rights against the applicant of the theater production tax credits. No
28 redress shall be sought against assignees, sellers, transferees or allocates of such credits.

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

1 which the tax administrator or his or her agent deems pertinent or material in determining the
2 eligibility for credits claimed.

3 **44-31.3-5. Infrastructure tax credits.** – (a) Definitions as used in this section:

4 (1) “EDC” means the Rhode Island economic development corporation created pursuant
5 to chapter 42-64 (“Rhode Island Economic Development Corporation”).

6 (2) “Placed in service” means that substantial work has been completed which would
7 allow for occupancy of the entire structure or some identifiable portion of the structure.

8 (3) “Qualified infrastructure costs” means the cost incurred for the development of a state
9 certified infrastructure project paid or accrued in the taxable year of tangible assets of a type that
10 are, or under the internal revenue code will become, eligible for depreciation, amortization, or
11 accelerated capital cost recovery for federal income tax purposes, provided that the assets are
12 physically located in this state for use in a state certified infrastructure project.

13 (4) “State-certified infrastructure project” or “project” means a film, video, television, or
14 digital production and post production facility located in this state, movable and immovable
15 property and equipment related to the facility, and any other facility that is a necessary
16 component of such state certified infrastructure project, as determined by the EDC. A state
17 certified infrastructure project does not include a movie theater or other commercial exhibition
18 facility, a facility used to produce obscene matter or an obscene performance, or a facility used
19 for a production for which records are required to be maintained with respect to any performer in
20 the production under 18 USC 2257.

21 (b) Tax Credit. (1) Any person, firm, partnership, trust, estate, limited liability company,
22 corporation (whether for profit or nonprofit) or other business entity that incurs qualified
23 infrastructure costs for a state certified infrastructure project shall be allowed a tax credit in an
24 amount equal to thirty percent (30%) of the qualified infrastructure costs against the taxes
25 imposed on such person or entity pursuant to Chapter 11, 12, 13, 14, 17 or 30 of title 44
26 (“Taxation”). Said credit shall be allowed for qualified infrastructure projects placed in service
27 after December 31, 2011. Notwithstanding any provisions of the general laws or regulations
28 adopted thereunder to the contrary, including, but not limited to, the provisions of chapter 2 of
29 title 37, the division of taxation is hereby expressly authorized and empowered to enter into
30 contracts with persons, firms, partnerships, trusts, estates, limited liability companies,
31 corporations (whether for profit or nonprofit) or other business entities that incur qualified
32 infrastructure costs for the following purposes, all of which shall be set forth in more particular
33 detail as follows:

34 (i) Upon payment of the fees as set forth in this section, the division of taxation shall, on

1 behalf of the state of Rhode Island, guaranty through a contract with persons, firms, partnerships,
2 trusts, estates, limited liability companies, corporations (whether for profit or nonprofit) or other
3 business entities that will incur qualified infrastructure costs, the delivery of one hundred percent
4 (100%) of the tax credit in an amount which is the lesser of: (A) The amount of the tax credit
5 identified in the contract with the division of taxation in consideration of any processing fees; or
6 (B) The actual qualified infrastructure costs multiplied by thirty percent (30%).

7 (ii) Any contract executed pursuant to this chapter by a person, firm, partnership, trust,
8 estate, limited liability company, corporation (whether for profit or nonprofit) or other business
9 entity that incurs qualified infrastructure costs shall be assignable to: (A) An affiliate thereof
10 without any consent from the division of taxation; or (B) A person, firm, partnership, trust, estate,
11 limited liability company, corporation (whether for profit or nonprofit) approved by the division
12 of taxation, which approval shall not be unreasonably withheld. For purposes of this subsection,
13 “affiliate” shall be defined as any entity controlling, controlled by or under common control with
14 such person, firm, partnership, trust, estate, limited liability company, corporation (whether for
15 profit or nonprofit) or other business entity.

16 (c) Tax credits allowed pursuant to this chapter shall be allowed for the taxable year in
17 which such state certified infrastructure project or an identifiable portion of the structure is placed
18 in service.

19 (d) If the amount of the tax credit exceeds the taxpayer’s total tax liability for the year in
20 which the state certified infrastructure project is placed in service, the amount that exceeds the
21 taxpayer’s tax liability may be carried forward for credit against the taxes imposed for the
22 succeeding ten (10) years, or until the full credit is used, whichever occurs first for the tax credits.
23 Credits allowed to a partnership, a limited liability company taxed as a partnership or multiple
24 owners of property shall be passed through to the persons designated as partners, members or
25 owners respectively pro rata or pursuant to an executed agreement among such persons
26 designated as partners, members or owners documenting an alternate distribution method without
27 regard to their sharing of other tax or economic attributes of such entity.

28 (e) If the taxpayer has not claimed the tax credits in whole or part, taxpayers eligible for
29 the tax credits may assign, transfer or convey the credits, in whole or in part, by sale or otherwise
30 to any individual or entity, including, but not limited to, condominium owners in the event the
31 certified historic structure is converted into condominiums. The assignee of the tax credits may
32 use acquired credits to offset up to one hundred percent (100%) of the tax liabilities otherwise
33 imposed pursuant to chapter 11, 12, 13, (other than the tax imposed under section 44- 13-13), 14,
34 17 or 30 of title 44 (“Taxation”). The assignee may apply the tax credit against taxes imposed on

1 the assignee until the end of the tenth (10th) calendar year after the year in which the substantially
2 rehabilitated property is placed in service or until the full credit assigned is used, whichever
3 occurs first. The assignor shall perfect the transfer by notifying the state of Rhode Island division
4 of taxation, in writing, within thirty (30) calendar days following the effective date of the transfer
5 and shall provide any information as may be required by the division of taxation to administer
6 and carry out the provisions of this section.

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

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

13 (6) No more than fifteen million dollars (\$15,000,000) in tax credits in the aggregate may
14 be issued under this chapter for any tax year beginning after December 31, 2011.

15 (c) Certification and administration. (1) Initial certification of a qualified infrastructure
16 cost on a state-certified infrastructure project. The applicant shall properly prepare, sign and
17 submit to the EDC an application for initial certification of the qualified infrastructure costs for a
18 state-certified infrastructure project. The application shall include such information and data as
19 the EDC deems reasonably necessary for the proper evaluation and administration of said
20 application. The EDC shall review the completed application and determine whether it meets the
21 requisite criteria and qualifications for the initial certification for the project. If the initial
22 certification is granted, the EDC shall issue a notice of initial certification of the project to the
23 applicant and to the tax administrator. The notice shall state that, after appropriate review, the
24 initial application meets the appropriate criteria for conditional eligibility. The notice of initial
25 certification will provide a unique identification number for the project and is only a statement of
26 conditional eligibility for the project and, as such, does not grant or convey any Rhode Island tax
27 benefits.

28 (2) Final certification of a project. Upon completion of the project activities, the applicant
29 shall request a certificate of good standing from the Rhode Island division of taxation. The
30 division shall expedite the process for reviewing the issuance of such certificates. The applicant
31 shall properly prepare, sign and submit to the EDC an application for final certification of the
32 project and which must include the certificate of good standing from the division of taxation. The
33 final application shall contain a cost report and an "accountant's certification". The EDC may
34 rely without independent investigation, upon the accountant's certification, in the form of an

1 opinion, confirming the accuracy of the information included in the cost report. Within thirty (30)
2 days of a duly completed and filed application, the EDC will make a determination pertaining to
3 the final certification of the project and the resultant tax credits.

4 (3) Final certification and credits. (i) Upon determination that the project qualifies for
5 final certification and the resultant tax credits, the film office shall issue a letter to the applicant
6 indicating “certificate of completion of a state certified project” and shall provide specifically
7 designed tax credit certificates to the applicant. All documents that are issued by the EDC
8 pursuant to this section shall reference the identification number that was issued to the project as
9 part of its initial certification.

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

14 (iii) Any applicant applying for the credit shall be required to reimburse the division of
15 taxation for any audits required in relation to granting the credit.

16 (4) Notwithstanding any provisions of the general laws or regulations adopted thereunder
17 to the contrary, the EDC and the division of taxation are hereby expressly authorized and
18 empowered to enter into contracts with companies that incur qualified infrastructure costs on
19 state-certified infrastructure projects.

20 (5) The EDC shall charge an administration fee in an amount equal to five-thousandths
21 (.005) multiplied by tax credits allowed, which fee is payable upon delivery of a fully executed
22 contract guarantying the tax credits as set forth herein.

23 (6) Simultaneously with payment of the fee, the EDC shall, on behalf of the state of
24 Rhode Island, guaranty the deliver of one hundred percent (100%) of the tax credit and use of one
25 hundred percent (100%) of the tax credit in the tax year the qualified infrastructure costs are
26 incurred by the applicant.

27 (7) Any contract executed pursuant to this chapter by an applicant that incurs qualified
28 infrastructure costs on a state-certified infrastructure project shall be assignable to: (i) An affiliate
29 thereof without any consent from the division of taxation or the EDC; or (ii) A person, firm,
30 partnership, trust, estate, limited liability company, corporation (whether for profit or nonprofit)
31 or other business entity approved by the EDC, which approval shall not be unreasonably
32 withheld. For purposes of this subsection, “affiliate” shall be defined as any entity controlling,
33 controlled by or under common control with such person, firm, partnership, trust, estate, limited
34 liability company, corporation (whether for profit or nonprofit) or other business entity.

1 (8) If information comes to the attention of the EDC that is materially inconsistent with
2 representations made in an application, the EDC may deny the requested certification. In the
3 event that tax credits or a portion of tax credits are subject to recapture for ineligible costs and
4 such tax credits have been transferred, assigned and/or allocated, the state will pursue its
5 recapture remedies and rights against the motion picture production company. No redress shall be
6 sought against assignees, sellers, transferees or allocates of such credits.

7 (d) Information Requests. The tax administrator and his or her agents, for the purpose of
8 ascertaining the correctness of any credit claimed under the provisions of this chapter, may
9 examine any books, papers, records, or memoranda bearing upon the matters required to be
10 included in the return, report, or other statement, and may require the attendance of the person
11 executing the return, report, or other statement, or of any officer or employee of any taxpayer, or
12 the attendance of any other person, and may examine the person under oath respecting any matter
13 which the tax administrator or his or her agent deems pertinent or material in determining the
14 eligibility for credits claimed.

15 SECTION 3. 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 -- ARTS AND ENTERTAINMENT--JOB STIMULUS
INCENTIVES

1 This act would repeal the provisions of chapter 44-31.2, entitled "Motion Picture
2 Production Tax Credits," and establish a new chapter 44-31.3, entitled "The Arts and
3 Entertainment Job Stimulus Incentives Act of 2012." The new chapter would provide new tax
4 credits for motion picture production in Rhode Island.

5 This act would take effect upon passage.

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