

2012 -- S 2272

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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 -- MUSICAL AND THEATRICAL PRODUCTION AND
MOTION PICTURE PRODUCTION TAX CREDITS

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

Date Introduced: February 01, 2012

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

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

3 CHAPTER 31.3

4 MUSICAL AND THEATRICAL PRODUCTION TAX CREDITS

5 **44-31.3-1. Declaration of purpose. --** (a) The general assembly finds and declares that it
6 is Rhode Island's priority to reduce the state's unemployment rate by stimulating new industries
7 that have large employment growth potential by providing tax incentives and other means
8 necessary and therefore recognizes that such incentives should be created for the arts and
9 entertainment industry. The purpose of this chapter is to create economic incentives for the
10 purpose of stimulating the local economy and reducing unemployment in Rhode Island.

11 **44-31.3-2. Musical and Theatrical Production Tax Credits. --**

12 (a) Definitions - As used in this chapter:

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

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

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

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

7 (5) “Pre-Broadway Production” means a live stage production that, in its original or
8 adaptive version, is performed in a qualified production facility having a presentation scheduled
9 for Broadway’s theater district in New York City within (12) months after its Rhode Island
10 presentation.

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

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

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

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

31 (10) “Rhode Island film and television office” means the office within the Rhode Island
32 state council on the arts that has been established in order to promote and encourage the locating
33 of film and television productions within the state of Rhode Island. The office is also referred to
34 as the “film office”.

1 (11) (i) “Transportation expenditures” means expenditures for the packaging, crating, and
2 transportation both to the state for use in a qualified theater production of sets, costumes, or other
3 tangible property constructed or manufactured out of state, and/or from the state after use in a
4 qualified theater production of sets, costumes, or other tangible property constructed or
5 manufactured in this state and the transportation of the cast and crew to and from the state. Such
6 term shall include the packaging, crating, and transporting of property and equipment used for
7 special and visual effects, sound, lighting, and staging, costumes, wardrobes, make-up and related
8 accessories and materials, as well as any other performance or production-related property and
9 equipment.

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

15 (b) Tax Credit. (1) Any person, firm, partnership, trust, estate or other entity that receives
16 an accredited theater production certificate shall be allowed a tax credit equal to twenty-five
17 percent (25%) of the total production and performance expenditures and transportation
18 expenditures for the accredited theater production and to be computed as provided in this chapter
19 against a tax imposed by chapters 11, 12, 13, 14, 17 and 30 of this title.

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

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

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

30 (5) If the company has not claimed the tax credits in whole or part, taxpayers eligible for
31 the tax credits may assign, transfer or convey the tax credits, in whole or in part, by sale or
32 otherwise to any individual or entity and such assignee of the tax credits that have not claimed the
33 tax credits in whole or part may assign, transfer or convey the tax credits, in whole or in part, by
34 sale or otherwise to any individual or entity. The assignee of the tax credits may use acquired

1 credits to offset up to one hundred percent (100%) of the tax liabilities otherwise imposed
2 pursuant to chapter 11, 12, 13 (other than the tax imposed under section 44-13-13), 14, 17 or 30
3 of this title. The assignee may apply the tax credit against taxes imposed on the assignee until the
4 end of the tenth (10th) calendar year after the year in which the qualified expenditures are
5 incurred or until the full credit assigned is used, whichever occurs first. Fiscal year assignees may
6 claim the credit until the expiration of the fiscal year that ends within the third (3rd) year after the
7 year in which the production and performance expenditures are incurred. The assignor shall
8 perfect the transfer by notifying the state of Rhode Island division of taxation, in writing, within
9 thirty (30) calendar days following the effective date of the transfer and shall provide any
10 information as may be required by the division of taxation to administer and carry out the
11 provisions of this section.

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

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

18 (c) Certification and administration. - (1) The applicant shall properly prepare, sign and
19 submit to the film office an application for initial certification of the theater production. The
20 application shall include such information and data as the film office deems reasonably necessary
21 for the proper evaluation and administration of said application, including, but not limited to, any
22 information about the theater production company and a specific Rhode Island live theater or
23 musical production. The film office shall review the completed application and determine
24 whether it meets the requisite criteria and qualifications for the initial certification for the
25 production. If the initial certification is granted, the film office shall issue a notice of initial
26 certification of the accredited theater production to the theater production company and to the tax
27 administrator. The notice shall state that, after appropriate review, the initial application meets the
28 appropriate criteria for conditional eligibility. The notice of initial certification will provide a
29 unique identification number for the production and is only a statement of conditional eligibility
30 for the production and, as such, does not grant or convey any Rhode Island tax benefits. (2) Upon
31 completion of an accredited theater production, the applicant shall properly prepare, sign and
32 submit to the film office an application for final certification of the accredited theater production.
33 The final application shall also contain a cost report and an "accountant's certification." The film
34 office and tax administrator may rely without independent investigation, upon the accountant's

1 certification, in the form of an opinion, confirming the accuracy of the information included in
2 the cost report. Upon review of a duly completed and filed application and upon no later than
3 thirty (30) days of submission thereof, the film office will make a determination pertaining to the
4 final certification of the accredited theater production and the resultant tax credits.

5 (3) Upon determination that the company qualifies for final certification and the resultant
6 tax credits, the film office shall issue to the company: (i) An Accredited Theater Production
7 Certificate; and (ii) A tax credit certificate in an amount in accordance with this section (b)
8 hereof. 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 (4) The director of the film office, in consultation as needed with the tax administrator,
11 shall promulgate such rules and regulations as are necessary to carry out the intent and purposes
12 of this chapter in accordance with the general guidelines provided herein for the certification of
13 the production and the resultant production credit.

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

19 (6) Simultaneously with payment of the fee, the film office shall, on behalf of the state of
20 Rhode Island, guaranty the deliver of one hundred percent (100%) of the tax credit and use of one
21 hundred percent (100%) of the tax credit in the tax year the last production and performance
22 expenditures and transportation expenditures for accredited theater productions.

23 (7) Any contract executed pursuant to this chapter by a company that incurs production
24 and performance expenditures and transportation expenditures for accredited theater productions
25 shall be assignable to: (i) An affiliate thereof without any consent from the division of taxation or
26 the film office; or (ii) Or a person, firm, partnership, trust, estate, limited liability company,
27 corporation (whether for profit or non-profit) or other business entity approved by the film office,
28 which approval shall not be unreasonably withheld. For purposes of this subsection, "affiliate"
29 shall be defined as any entity controlling, controlled by or under common control with such
30 person, firm, partnership, trust, estate, limited liability company, corporation (whether for profit
31 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, the film office may deny the requested certification.
34 In the event that tax credits or a portion of tax credits are subject to recapture for ineligible costs

1 and such tax credits have been transferred, assigned and/or allocated, the state will pursue its
2 recapture remedies and rights against the applicant of the theater production tax credits. No
3 redress shall be 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 of
5 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 SECTION 2. Section 44-31.2-2 of the General Laws in Chapter 44-31.2 entitled "Motion
13 Picture Production Tax Credits" is hereby amended to read as follows:

14 **44-31.2-2. Definitions.** -- For the purposes of this chapter:

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

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

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

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

31 (5) "Motion picture production company" means a corporation, partnership, limited
32 liability company or other business entity engaged in the business of producing one or more
33 motion pictures as defined in this section. Motion picture production company shall not mean or
34 include: (a) any company owned, affiliated, or controlled, in whole or in part by any company or

1 person which is in default: (i) on taxes owed to the state; or (ii) on a loan made by the state; or
2 (iii) a loan guaranteed by the state; nor (iv) any company or person who has even declared
3 bankruptcy under which an obligation of the company or person to pay or repay public funds or
4 monies was discharged as a part of such bankruptcy.

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

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

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

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

1 (9) "State certified production costs" means any pre-production, production and post-
2 production cost that a motion picture production company incurs and pays to the extent it occurs
3 within the State of Rhode of Island and specifically excluding costs associated with the promotion
4 or marketing of the motion picture. Without limiting the generality of the foregoing, "state
5 certified production costs" include: set construction and operation; wardrobes, make-up,
6 accessories, and related services; costs associated with photography and sound synchronization,
7 lighting, and related services and materials; editing and related services, including, but not limited
8 to, film processing, transfers of film to tape or digital format, sound mixing, computer graphics
9 services, special effects services, and animation services, salary, wages, and other compensation,
10 including related benefits, of persons employed, either directly or indirectly, in the production of
11 a film including writer, motion picture director, producer (provided the work is performed in the
12 state of Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of
13 vehicles; costs of food and lodging; music, if performed, composed, or recorded by a Rhode
14 Island musician, or released or published by a person domiciled in Rhode Island; travel expenses
15 incurred to bring persons employed, either directly or indirectly, in the production of the motion
16 picture, to Rhode Island; legal fees, accounting fees and expenses; and completion bond and
17 insurance costs related to the production's activities in Rhode Island; provide such services are
18 provided by Rhode Island licensed attorneys, accountants or insurance companies and such
19 insurance companies maintain an office domiciled in Rhode Island; and finance fees, provided
20 that the finance company is domiciled in Rhode Island and has at least one full-time equivalent
21 employee which means a person who works a minimum of thirty (30) hours per week within the
22 State of Rhode Island and earns no less than two hundred percent (200%) of the hourly minimum
23 wage prescribed by Rhode Island law and such finance company is not an equity investor in the
24 motion picture.

25 SECTION 3. Section 44-31.2-5 of the General Laws in Chapter 44-31.2 entitled "Motion
26 Picture Production Tax Credits" is hereby amended to read as follows:

27 **44-31.2-5. Motion picture production company tax credit. -- (a) A motion picture**
28 production company shall be allowed a credit to be computed as provided in this chapter against a
29 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-
30 five percent (25%) of the state certified production costs incurred directly attributable to activity
31 within the state, provided that the primary locations are within the state of Rhode Island and the
32 total production budget as defined herein is a minimum of three hundred thousand dollars
33 (\$300,000). The credit shall be earned in the taxable year in which production in Rhode Island is
34 completed, as determined by the film office in final certification pursuant to subsection 44-31.2-

1 ~~6(e).~~

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

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

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

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

18 (a) A motion picture production company shall be allowed a credit to be computed as
19 provided in this chapter against tax imposed by chapters 11, 14, 17 and 30 of this title. The
20 amount of the credit shall be twenty-five percent (25%) of the state certified production costs
21 incurred directly attributable to activity within the state, provided that the primary locations are
22 within the state of Rhode Island and the total production budget as defined herein is a minimum
23 of three hundred thousand dollars (\$300,000). The credit shall be earned in the taxable year in
24 which production in Rhode Island is completed, as determined by the film office in final
25 certification pursuant to subsection 44-31.2-6(c). To the extent that motion picture production
26 company incurs any costs on payroll for a Rhode Island resident employed for such accredited
27 theater production, such person, firm, partnership, trust, estate or other entity shall be allowed an
28 additional tax credit of five percent (5%) of such payroll.

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

34 (c) The credit shall not exceed the total production budget and shall be allowed against

1 the tax for the taxable period in which the credit is earned and can be carried forward for not
2 more than three (3) succeeding tax years.

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

9 (e) No more than fifteen million dollars (\$15,000,000) may be issued for any tax year
10 beginning after December 31, 2007; provided, however that two million five hundred thousand
11 dollars (\$2,500,000) of such amount shall be set aside and dedicated for the musical and theatrical
12 production tax credits pursuant to section 44-31.3.

13 SECTION 4. 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 -- MUSICAL AND THEATRICAL PRODUCTION AND
MOTION PICTURE PRODUCTION TAX CREDITS

- 1 This act would establish a tax credit for qualified musical and theatrical productions, and
- 2 makes certain changes to existing law governing motion picture production tax credits.
- 3 This act would take effect upon passage.

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