

2018 -- S 2527

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO TAXATION -- MOTION PICTURE PRODUCTION TAX CREDITS

Introduced By: Senator Joshua Miller

Date Introduced: March 01, 2018

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

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

3 **44-31.2-2. Definitions.**

4 For the purposes of this chapter:

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

7 (2) "Application year" means within the calendar year the motion picture production
8 company files an application for the tax credit.

9 (3) "Base investment" means the actual investment made and expended by a state-
10 certified production in the state as production-related costs.

11 (4) "Documentary production" means a non-fiction production intended for educational
12 or commercial distribution that may require out-of-state principal photography.

13 (5) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a
14 partnership, limited liability company, or other business entity formed under the laws of the state
15 of Rhode Island for the purpose of producing motion pictures as defined in this section, or an
16 individual who is a domiciled resident of the state of Rhode Island as defined in chapter 30 of this
17 title.

18 (6) "Final production budget" means and includes the total pre-production, production,
19 and post-production out-of-pocket costs incurred and paid in connection with the making of the

1 motion picture. The final production budget excludes costs associated with the promotion or
2 marketing of the motion picture.

3 (7) "Motion picture" means a feature-length film, documentary production, video,
4 television series, or commercial made in Rhode Island, in whole or in part, for theatrical or
5 television viewing or as a television pilot or for educational distribution. The term "motion
6 picture" shall not include the production of television coverage of news or athletic events, [reality](#)
7 [television show\(s\)](#), nor shall it apply to any film, video, television series, or commercial or a
8 production for which records are required under 18 U.S.C. § 2257, to be maintained with respect
9 to any performer in such production or reporting of books, films, etc. with respect to sexually
10 explicit conduct.

11 (8) "Motion picture production company" means a corporation, partnership, limited
12 liability company, or other business entity engaged in the business of producing one or more
13 motion pictures as defined in this section. Motion picture production company shall not mean or
14 include:

15 (a) Any company owned, affiliated, or controlled, in whole or in part, by any company or
16 person who or that is in default:

17 (i) On taxes owed to the state; or

18 (ii) On a loan made by the state in the application year; or

19 (iii) On a loan guaranteed by the state in the application year; or

20 (b) Any company or person who or that has discharged an obligation to pay or repay
21 public funds or monies by:

22 (i) Filing a petition under any federal or state bankruptcy or insolvency law;

23 (ii) Having a petition filed under any federal or state bankruptcy or insolvency law
24 against such company or person;

25 (iii) Consenting to, or acquiescing or joining in, a petition named in (i) or (ii);

26 (iv) Consenting to, or acquiescing or joining in, the appointment of a custodian, receiver,
27 trustee, or examiner for such company's or person's property; or

28 (v) Making an assignment for the benefit of creditors or admitting in writing or in any
29 legal proceeding its insolvency or inability to pay debts as they become due.

30 (9) "Primary locations" means the locations that (1) At least fifty-one percent (51%) of
31 the motion picture principal photography days are filmed; or (2) At least fifty-one percent (51%)
32 of the motion picture's final production budget is spent and employs at least five (5) individuals
33 during the production in this state; or (3) For documentary productions, the location of at least
34 fifty-one percent (51%) of the total productions days, which shall include pre-production and

1 post-production locations.

2 (10) "Rhode Island film and television office" means an office within the department of
3 administration that has been established in order to promote and encourage the locating of film
4 and television productions within the state of Rhode Island. The office is also referred to within
5 as the "film office".

6 (11) "State-certified production" means a motion picture production approved by the
7 Rhode Island film office and produced by a motion picture production company domiciled in
8 Rhode Island, whether or not such company owns or controls the copyright and distribution rights
9 in the motion picture; provided, that such company has either:

10 (a) Signed a viable distribution plan; or

11 (b) Is producing the motion picture for:

12 (i) A major motion picture distributor;

13 (ii) A major theatrical exhibitor;

14 (iii) Television network; or

15 (iv) Cable television programmer.

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

34 **44-31.2-5. Motion picture production company tax credit.**

1 (a) A motion picture production company shall be allowed a credit to be computed as
2 provided in this chapter against a tax imposed by chapters 11, 14, 17 and 30 of this title. The
3 amount of the credit shall be ~~twenty five percent (25%)~~ thirty percent (30%) of the state certified
4 production costs incurred directly attributable to activity within the state, provided that the
5 primary locations are within the state of Rhode Island and the total production budget as defined
6 herein is a minimum of one hundred thousand dollars (\$100,000). The credit shall be earned in
7 the taxable year in which production in Rhode Island is completed, as determined by the film
8 office in final certification pursuant to subsection 44-31.2-6(c).

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

14 ~~(c) Notwithstanding subsection (a), the credit shall not exceed five million dollars~~
15 ~~(\$5,000,000) and shall be allowed against the tax for the taxable period in which the credit is~~
16 ~~earned and can be carried forward for not more than three (3) succeeding tax years. Pursuant to~~
17 ~~rules promulgated by the tax administrator, the administrator may issue a waiver of the five~~
18 ~~million dollar (\$5,000,000) tax credit cap for any feature length film or television series up to the~~
19 ~~remaining funds available pursuant to section (e).~~

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

26 (e) No more than fifteen million dollars (\$15,000,000) in total may be issued for any tax
27 year beginning after December 31, 2007 for motion picture tax credits pursuant to this chapter
28 and/or musical and theatrical production tax credits pursuant to chapter 31.3 of this title. Said
29 credits shall be equally available to motion picture productions and musical and theatrical
30 productions. No specific amount shall be set aside for either type of production.

31 SECTION 2. Section 44-31.2-11 of the General Laws in Chapter 44-31.2 entitled
32 "Motion Picture Production Tax Credits" is hereby repealed.

33 ~~44-31.2-11. Sunset.~~

34 ~~No credits shall be issued on or after July 1, 2024, unless the production has received~~

1 ~~initial certification under § 44-31.2-6(a) prior to July 1, 2024.~~

2 SECTION 3. Section 44-31.3-4 of the General Laws in Chapter 44-31.3 entitled "Musical
3 and Theatrical Production Tax Credits" is hereby repealed.

4 **44-31.3-4. Sunset.**

5 ~~No credits shall be issued on or after July 1, 2019 unless the production has received~~
6 ~~initial certification under subsection 44-31.3-2(c) prior to July 1, 2019.~~

7 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 -- MOTION PICTURE PRODUCTION TAX CREDITS

1 This act would exclude reality television show(s) from receiving tax credits, remove the
2 five million dollar (\$5,000,000) tax credit cap per motion picture, increase the credit from twenty-
3 five percent (25%) to thirty percent (30%) and repeal the sunset provisions for the motion picture
4 production and the musical and theatrical production tax credits.

5 This act would take effect upon passage.

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