

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

A N A C T

RELATING TO MOTION PICTURE PRODUCTION TAX CREDITS

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

Date Introduced: March 09, 2006

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 42-75 of the General Laws entitled "Council on the Arts" is hereby
2 amended by adding thereto the following section:

3 **42-75-12. Rhode Island film and television office.** – Within the commission there is
4 established a separate, discrete office entitled the "Rhode Island film and television office." This
5 office is established in order to promote and encourage film and television productions within the
6 state of Rhode Island. This office is also responsible for the review of applications of motion
7 picture productions pursuant to the requirements of chapter 44-31.2.

8 SECTION 2. Sections 44-31.2-2, 44-31.2-5, 44-31.2-6, 44-31.2-7, 44-31.2-8, 44-31.2-9
9 and 44-31.2-10 of the General Laws in Chapter 44-31.2 entitled "Motion Picture Production Tax
10 Credits" are hereby amended to read as follows:

11 **44-31.2-2. Definitions.** – For the purposes of this chapter:

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

14 ~~(1)~~ (2) "Base investment" means the actual investment made and expended by a state-
15 certified production in the state as ~~direct~~ production-related costs.

16 ~~(2)~~ (3) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island
17 or a partnership, limited liability company, or other business entity ~~domiciled and headquartered~~
18 ~~in~~ formed under the laws of the state of Rhode Island for the purpose of producing motion
19 pictures as defined in this section, or an individual who ~~maintains a permanent place of abode~~

1 ~~within the state and spends in the aggregate more than six (6) months of each year within the state~~
2 is a domiciled resident of the state of Rhode Island as defined in chapter 30 of this title.

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

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

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

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

24 ~~(5)~~ (8) "State-certified production" means a motion picture production approved by the
25 Rhode Island film office and produced by a motion picture production company domiciled ~~and~~
26 ~~headquartered~~ in Rhode Island, whether or not such company owns or controls the copyright and
27 distribution rights in the motion picture; provided, that such company has either: (a) ~~which has~~
28 signed a viable distribution plan ~~with either a;~~ or (b) is producing the motion picture for: (i) a
29 major motion picture distributor; (ii) a major theatrical exhibitor; (iii) television network; or (iv)
30 cable television ~~program~~ programmer.

31 (9) "State certified production cost" means any pre-production, production and post-
32 production cost that a motion picture production company incurs and pays to the extent it occurs
33 within the state of Rhode Island. Without limiting the generality of the foregoing, "state certified
34 production costs" include: set construction and operation; wardrobes, make-up, accessories, and

1 related services; costs associated with photography and sound synchronization, lighting, and
2 related services and materials; editing and related services, including, but not limited to, film
3 processing, transfers of film to tape or digital format, sound mixing, computer graphics services,
4 special effects services, and animation services, salary, wages, and other compensation, including
5 related benefits, of persons employed, either director or indirectly, in the production of a film
6 including writer, motion picture director, producer (provided the work is performed in the state of
7 Rhode Island); rental of facilities and equipment used in Rhode Island; leasing of vehicles; costs
8 of food and lodging; music, if performed, composed, or recorded by a Rhode Island musician, or
9 released or published by a person domiciled in Rhode Island; travel expenses incurred to bring
10 persons employed, either directly or indirectly, in the production of the motion picture, to Rhode
11 Island (but not expenses of such persons departing from Rhode Island); and legal (but not the
12 expense of a completion bond or insurance and accounting fees and expenses related to the
13 production's activities in Rhode Island; provided such services are provided by Rhode Island
14 licensed attorneys or accountants.

15 **44-31.2-5. Motion picture production company tax credit.** -- (a) A motion picture
16 production company shall be allowed a credit to be computed as provided in this chapter against a
17 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-
18 five percent (25%) of the state certified production costs incurred directly attributable to activity
19 within the state, provided that the primary locations are within the state of Rhode Island and the
20 total production budget as defined herein is a minimum of three hundred thousand dollars
21 (\$300,000). The credit shall be earned in the taxable year in which production in Rhode Island is
22 completed, as determined by the film office in final certification pursuant to subsection 44-31.2-
23 6(c).

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

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

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

7 **44-31.2-6. Certification and administration.** -- ~~(a) The director of the Rhode Island~~
8 ~~Film and Television Office shall determine through the promulgation of rules what projects~~
9 ~~qualify according to this chapter.~~

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

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

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

31 (b) Final certification of a production. Upon completion of the Rhode Island production
32 activities, the applicant shall request a certificate of good standing from the Rhode Island division
33 of taxation. The division shall expedite the process for reviewing the issuance of such certificates.
34 Such certificates shall verify to the film office the motion picture production company's

1 compliance with the requirements of subsection 44-31.2-2(5). The applicant shall properly
2 prepare, sign and submit to the film office an application for final certification of the production
3 and which must include the certificate of good standing from the division of taxation. In addition,
4 the application shall contain such information and data as the film office determines is necessary
5 for the proper evaluation and administration, including, but not limited to, any information about
6 the motion picture production company, its investors and information about the production
7 previously granted initial certification. The final application shall also contain a cost report and an
8 "accountant's certification". The film office and tax administrator may rely without independent
9 investigation, upon the accountant's certification, in the form of an opinion, confirming the
10 accuracy of the information included in the cost report. Upon review of a duly completed and
11 filed application, the film office will make a determination pertaining to the final certification of
12 the production and the resultant credits for section 44-31.2-5.

13 (c) Final certification and credits. Upon determination that the motion picture production
14 company qualifies for final certification and the resultant credits, the film office shall issue a
15 letter to the production company indicating "certificate of completion of a state certified
16 production" and shall provide specifically designed certificates for the motion picture production
17 company credit under section 44-31.2-5. All documents that are issued by the film office pursuant
18 to this section shall reference the identification number that was issued to the production as part
19 of its initial certification.

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

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

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

31 ~~**44-31.2-7. Recapture of credits. – Information requests. -- If the Rhode Island Film**~~
32 ~~**and Television Office finds that funds for which an investor received credits according to this**~~
33 ~~**section are not invested in and expended with respect to a state certified production within**~~
34 ~~**twenty-four (24) months of the date that such credits are earned, then the investor's state income**~~

1 ~~tax for such taxable period shall be increased by such amount necessary for the recapture of credit~~
2 ~~provided by this section.~~

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

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

22 ~~**44-31.2-8. Recovery of credits by division of taxation. – Hearings and appeals. -- (a)**~~
23 ~~Credits previously granted to a taxpayer, but later disallowed, may be recovered by the tax~~
24 ~~administrator of the division of taxation through any collection remedy authorized and initiated~~
25 ~~within three (3) years from December thirty first (31st) of the year in which the twenty four (24)~~
26 ~~month investment period specified in this chapter ends.~~

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

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

33 (a) From an action of the film office. – For matters pertaining exclusively to application,
34 production, and certification of motion picture productions, any person aggrieved by a denial

1 action of the film office under this chapter shall notify the director of the film office in writing,
2 within thirty (30) days from the date of mailing of the notice of denial action by the film office
3 and request a hearing relative to the denial or action. The director of the film office shall, as soon
4 as is practicable, fix a time and place of hearing, and shall render a final decision. Appeals from a
5 final decision of the director of the film office under this chapter are to the sixth (6th) division
6 district court pursuant to chapter 35 of title 42 of the general laws.

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

17 **44-31.2-9. Transferability of the credit.** -- (a) Any motion picture production company
18 tax credit ~~with respect to a state certified production allocated to a company and not previously~~
19 ~~claimed by any taxpayer against its income tax~~ certificate issued in accordance with section 44-
20 31.2-5, which has been issued to a motion picture production company or passed through in
21 accordance with subsection 44-31.2-5(d), and to the extent not previously claimed against the tax
22 of the motion picture production company or of the owner of the certificate if the certificate was
23 issued in accordance with subsection 44-31.2-5(d), may be transferred or sold by such company
24 to another Rhode Island taxpayer, subject to the following conditions:

25 (1) A single transfer or sale may involve one or more transferees, assignees or
26 purchasers. ~~The transferee of the investor tax credits may transfer or sell such investor tax credits~~
27 ~~subject to the conditions of this section.~~ A transfer or sale of the credits may involve multiple
28 transfers to one or more transferees, assignees or purchasers.

29 (2) Transferors and ~~transferees~~ sellers shall submit to the Rhode Island film office, and to
30 the tax administrator in writing, a notification of any transfer or sale of tax credits within thirty
31 (30) days after the transfer or sale of such tax credits. The notification shall include the
32 transferor's tax credit balance prior to transfer, the credit certificate number, the name of the state-
33 certified production, the transferor's remaining tax credit balance after transfer, all tax
34 identification numbers for both transferor and transferee, the date of transfer, the amount

1 transferred, a copy of the credit certificate, ~~a certification and opinion by a certified public~~
2 ~~accountant as to the validity of the credit~~, and any other information required by the Rhode Island
3 office of film and television or the division of taxation. The notification submitted to the division
4 of taxation shall include a processing fee of up to two hundred dollars (\$200) per transferee which
5 shall be deposited as general revenues.

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

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

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

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

18 (b) The transferee, assignee or purchaser shall apply such credits in the same manner ~~and~~
19 ~~against the same taxes~~ as the ~~taxpayer~~ motion picture production company originally awarded the
20 credit.

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

24 **44-31.2-10. Disclaimer. – Disclaimer and severability. –** (a) The state of Rhode Island
25 reserves the right to refuse the use of Rhode Island's name in credits of any motion picture filmed
26 or produced in the state.

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

31 SECTION 3. Sections 44-31.2-3 and 44-31.2-4 of the General Laws in Chapter 44-31.2
32 entitled "Motion Picture Production Tax Credits" are hereby repealed.

33 ~~44-31.2-3. Investor tax credit -- Specific projects. -- There is hereby authorized a tax~~
34 ~~credit against state income tax pursuant to chapters 11, 14, 17 and 30 of this title of the general~~

1 ~~laws for taxpayers domiciled in the state of Rhode Island, other than motion picture production~~
2 ~~companies. The tax credit shall be earned by investors at the time of such investment in such~~
3 ~~state certified productions and calculated as a percentage of the investment according to the total~~
4 ~~base investment dollars certified per project. The credit shall be nontransferable and earned in the~~
5 ~~taxable year in which the investment is certified.~~

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

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

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

16 ~~(4) The credit shall be allowed against the income tax for the taxable period in which the~~
17 ~~credit is earned or can be carried forward for not more than three (3) succeeding tax years.~~

18 ~~**44-31.2-4. Application of the credit.** (a) All entities taxed as corporations for Rhode~~
19 ~~Island income tax purposes shall claim any credit allowed under this chapter on their corporation~~
20 ~~income tax return.~~

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

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

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

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

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

31 SECTION 4. This act shall take effect upon passage and shall apply to any production
32 that filed written notice with the Rhode Island film office as of or subsequent to January 1, 2005.

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

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

3 This act would take effect upon passage and would apply to any production that filed
4 written notice with the Rhode Island film office as of or subsequent to January 1, 2005.

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