

Chapter 118
2005 -- S 0932 SUBSTITUTE A
Enacted 07/01/05

A N A C T
RELATING TO FILM AND TELEVISION TAX CREDIT

Introduced By: Senators J Montalbano, Ruggerio, Algieri, Alves, and Tassoni

Date Introduced: March 10, 2005

It is enacted by the General Assembly as follows:

SECTION 1. Title 44 of the General Laws entitled "Taxation" is hereby amended by adding thereto the following chapters:

CHAPTER 31.2

MOTION PICTURE PRODUCTION TAX CREDITS

44-31.2-1. Findings and purpose. -- (a) The general assembly finds and declares that the state of Rhode Island with its natural beauty, historical and architectural heritage of the state, its majestic natural resources including Narragansett Bay and the independence and diversity of its citizens and neighborhoods would provide a variety of excellent settings from which the motion picture industry might choose a location for filming a motion picture or television program, and together with those natural settings, the availability of labor, materials, climate, and hospitality of its people have been instrumental in the filming of several successful motion pictures.

(b) It is recognized that the motion picture industry brings with it a much needed infusion of capital into areas of the state which may be economically depressed and the multiplier effect of the infusion of capital resulting from the filming of a motion picture or television program serves to stimulate economic activity beyond that immediately apparent on the film set.

(c) Since a significant portion of the cost of a motion picture or television production will not be eligible for existing tax incentives due to the fact that portions of the production are carried out in another state, it is the purpose of this chapter to provide a financial incentive to the film industry in order that the state might compete with other states for filming locations.

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

(1) Immediate objectives are to:

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

herein.

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

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

(2) Long-term objectives are to:

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

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

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

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

(2) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a partnership, limited liability company, or other business entity domiciled and headquartered in Rhode Island for the purpose of producing motion pictures as defined in this section, or an individual who maintains a permanent place of abode within the state and spends in the aggregate more than six (6) months of each year within the state.

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

(4) "Motion picture production company" means a company engaged in the business of producing motion pictures as defined in this section. Motion picture production company shall not mean or include any company owned, affiliated, or controlled, in whole or in part by any company or person which is in default on taxes owed to the state or on a loan made by the state or a loan guaranteed by the state, nor any company or person who has even declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

(5) "State-certified production" means a motion picture production approved by the Rhode Island Film Office and produced by a motion picture production company domiciled and headquartered in Rhode Island, which has signed a viable distribution plan with either a major theatrical exhibitor, television network or cable television program.

44-31.2-3. Investor tax credit – Specific projects. -- (a) There is hereby authorized a tax credit against state income tax pursuant to chapters 11, 14, 17 and 30 of this title of the general laws for taxpayers domiciled in the state of Rhode Island, other than motion picture production companies. The tax credit shall be earned by investors at the time of such investment in such state-certified productions and calculated as a percentage of the investment according to the total base investment dollars certified per project. The credit shall be nontransferable and earned in the taxable year in which the investment is certified.

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

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

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

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

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

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

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

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

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

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

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

(b) For the purposes of this section: "total production budget" is defined as a pre-production cost including, but not limited to, the purchase of the screenplay, salaries, equipment, film processing, sound, editing, and other services related to a production filmed in Rhode Island. The budget shall not include costs associated with the promotion or marketing of the film, video or television product.

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

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

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

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

(c) The tax administrator of the division of taxation, in consultation with the director of

the Rhode Island Film and Television Office shall promulgate such rules and regulations as are necessary to carry out the intent and purposes of this chapter in accordance with the general guidelines provided herein.

(d) Any taxpayer applying for the credit shall be required to reimburse the division of taxation for any audits required in relation to granting the credit.

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

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

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

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

44-31.2-9. Transferability of the credit. -- (a) Any motion picture production company tax credit with respect to a state-certified production allocated to a company and not previously claimed by any taxpayer against its income tax may be transferred or sold by such company to another Rhode Island taxpayer, subject to the following conditions:

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

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

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

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

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

(b) The transferee shall apply such credits in the same manner and against the same taxes

as the taxpayer originally awarded the credit.

44-31.2-10. Disclaimer. -- The state of Rhode Island reserves the right to refuse the use of Rhode Island's name in credits of any motion picture filmed or produced in the state.

SECTION 2. Chapter 44-31.1 of the General Laws entitled "Film Production Tax Credit" is hereby repealed in its entirety.

CHAPTER 44-31.1

FILM PRODUCTION TAX CREDIT

~~**44-31.1-1. Film production tax credit.** -- (a) A taxpayer shall be allowed a credit, to be computed as provided in this chapter, against the tax imposed by chapters 11, 14, 17, and 30 of this title. The amount of the credit shall be twenty five percent (25%) of the total production budget for investments qualifying under this chapter for a film production business meeting the following criteria: (1) located within the state of Rhode Island; (2) whose primary locations for the film production are within the state of Rhode Island; and (3) whose total production budget is a minimum of three hundred thousand dollars (\$300,000) but does not exceed five million dollars (\$5,000,000). "Film production" is defined as the creation of a film, documentary, direct to video or independent television production sold for commercial distribution. For the purposes of this section, "total production budget" is defined as a pre-production cost including, but not limited to, the purchase of the screenplay, salaries, equipment, film processing, sound, editing, and other services related to production. The budget shall not include costs associated with the promotion or marketing of the film, video or television product. Any cost overruns on the project shall also not be included in the total production budget.~~

~~(b) The Providence Film Commission, in conjunction with the Rhode Island Film Office and the Rhode Island State Council on the Arts, shall establish specific guidelines together with a certification process that shall guide the selection and evaluation of film projects that are eligible for investment tax credits. This credit shall be in lieu of any tax credit in chapter 31 of this title.~~

SECTION 3. This act shall take effect upon passage and shall apply to any production certified by the Rhode Island Film Office to be in existence on or after January 1, 2005.

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