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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO TAXATION - MOTION PICTURE STUDIO TAX CREDIT

Introduced By: Representatives Kennedy, Williams, Walsh, Shanley, and Lewiss

Date Introduced: February 13, 2008

Referred To: House 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 MOTION PICTURE STUDIO TAX CREDITS

5 **44-31.3-1. Findings and purpose.** -- (a) The general assembly finds and declares that the
6 natural beauty, historical and architectural heritage of the state, its majestic natural resources
7 including Narragansett Bay and the independence and diversity of its citizens and neighborhoods
8 provide a variety of excellent settings from which the motion picture industry might choose for
9 filming a motion picture, and together with those natural settings, the availability of labor,
10 materials, climate, and hospitality of its people make Rhode Island a successful place for the
11 filming of motion pictures.

12 (b) The success of Rhode Island as a location for filming motion pictures would be
13 enhanced by the state's having adequate first class studio, sound stage, and film production
14 facilities.

15 (c) It is recognized that the motion picture industry brings with it a much needed infusion
16 of capital into areas of the state which may be economically depressed and the multiplier effect of
17 the infusion of capital resulting from the filming of a motion picture or television program serves
18 to stimulate economic activity beyond that immediately apparent on the film set, studio, sound
19 stage, or production facility.

1 (d) Since a significant portion of the cost of a motion picture or television production will
2 not be eligible for existing tax incentives due to the fact that portions of the production are carried
3 out in another state, it is the purpose of this chapter to provide a financial incentive to the film
4 industry in order that the state might compete with other states for such studio, sound stage, and
5 production facilities.

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

10 (1) Immediate objectives are to:

11 (i) Attract private investment for the production of motion pictures in Rhode Island.

12 (ii) Develop a tax infrastructure which encourages private investment. This infrastructure
13 will provide for state participation for a limited period of time in the form of tax credits to
14 encourage investment in Rhode Island studio, sound stage, and film production facilities.

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 industry.

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

21 **44-31.3-2. 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 motion picture company to construct, furnish, and equip a motion picture studio in the
26 state.

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

32 (4) "Motion Picture Studio" means a studio or sound stage(s) and including related
33 motion picture production ancillary support structures, located in Rhode Island and consisting of
34 at least one hundred thousand (100,000) square feet where motion pictures, feature-length films,

1 digital media, video, video games, television series, or commercials are made, in whole or in part,
2 for games, theatrical or television viewing or as a television pilot and ancillary supporting
3 activities take place. The term "motion picture" shall not include a production for which records
4 are required under section 2257 of title 18, U.S.C., to be maintained with respect to any performer
5 in such production or reporting of books, films, etc. with respect to sexually explicit conduct.

6 (5) "Motion picture studio company" means a corporation, partnership, limited liability
7 company or other business entity engaged in the business of building, owning and operating a
8 motion picture studio as defined in this section. Motion picture studio company shall not mean or
9 include:

10 (a) any company owned, affiliated, or controlled, in whole or in part by any company or
11 person which is in default:

12 (i) on taxes owed to the state; or

13 (ii) on a loan made by the state; or

14 (iii) a loan guaranteed by the state; nor

15 (iv) any company or person who has ever declared bankruptcy under which an obligation
16 of the company or person to pay or repay Rhode Island public funds or monies was discharged as
17 a part of such bankruptcy.

18 (6) "Qualifying period investment" means any base investment cost incurred within the
19 three (3) year period beginning on the date this chapter is enacted.

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 and studios within the state of Rhode Island. The office is also
23 referred to within as the "film office".

24 (8) "State- certified motion picture studio" means a motion picture studio approved by the
25 Rhode Island film office and owned by a motion picture studio company domiciled in Rhode
26 Island, whether or not such company owns or controls the copyright and distribution rights in the
27 motion pictures to be shot in its studio. Such motion picture studio shall consist of at least one
28 hundred thousand (100,000) square feet of studio, sound stage(s), digital medial and ancillary
29 support structures located in the state of Rhode Island with a qualifying period investment of not
30 less than fifty million dollars (\$50,000,000).

31 (9) "Ancillary support structures" means any additional structures which may be deemed
32 necessary and proper for carrying into execution the successful operation of the motion picture
33 studio including, but not limited to, digital media lab building(s), mill/construction building(s), or
34 back lot space as that term is commonly referred to in the motion picture industry.

1 (10) 'State-certified studio cost' means any capitalized cost as defined by generally
2 accepted accounting principles associated with the construction of a state-certified motion picture
3 studio and ancillary support structures.

4 **44-31.3-3. Motion picture studio company tax credit.** – (a) A motion picture studio
5 company shall be allowed a credit to be computed as provided in this chapter against a tax
6 imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty
7 percent (20%) of the company's state-certified studio costs. The credit shall be earned in the
8 taxable year in which construction in Rhode Island of a state-certified motion picture studio is
9 completed, as determined by the film office in final certification pursuant to subsection 44-31.3-
10 4(c).

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

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

19 (d) Any credit awarded under this chapter shall not be combined with any other federal or
20 state tax credit available, including, but not limited to the credits available under chapter 33.2 of
21 title 44.

22 **44-31.3-4. Certification and administration.** -- (a) Initial certification of a motion
23 picture studio. The applicant shall properly prepare, sign and submit to the film office an
24 application for initial certification of a motion picture studio. The application shall include such
25 information and data as the film office deems necessary for the proper evaluation and
26 administration of said application, including, but not limited to, any information about the motion
27 picture studio company, and a specific Rhode Island motion picture studio project. The film
28 office shall review the completed application and determine whether it meets the requisite criteria
29 and qualifications for the initial certification for the motion picture studio. If the initial
30 certification is granted, the film office shall issue a notice of initial certification of the motion
31 picture studio to the motion picture studio company and to the tax administrator. The notice shall
32 state that after appropriate review, the initial application meets the appropriate criteria for
33 conditional eligibility. The notice of initial certification will provide a unique identification
34 number for the motion picture studio company making application and is only a statement of

1 conditional eligibility for the motion picture studio and, as such, does not grant or convey any
2 Rhode Island tax benefits.

3 (b) Final certification of a motion picture studio. Upon completion of the Rhode Island
4 studio, the applicant shall request a certificate of good standing from the Rhode Island division of
5 taxation. The division shall expedite the process for reviewing the issuance of such certificates.
6 Such certificate shall verify to the film office the motion picture studio company's compliance
7 with the requirements of section 44-31.3-5. The applicant shall properly prepare, sign and submit
8 to the film office an application for final certification of the motion picture studio and which must
9 include the certificate of good standing from the division of taxation. In addition, the application
10 shall contain such information and data as the film office determines is necessary for the proper
11 evaluation and administration, including, but not limited to, any information about the motion
12 picture studio company, its investors and information about the studio previously granted initial
13 certification. The final application shall also contain a cost report and an "accountant's
14 certification". The film office and tax administrator may rely without independent investigation,
15 upon the accountant's certification, in the form of an opinion, confirming the accuracy of the
16 information included in the cost report. Upon review of a duly completed and filed application,
17 the film office will make a determination pertaining to the final certification of the motion picture
18 studio and the resultant credits for section 44-31.3-3.

19 (c) Final certification and credits. Upon determination that the motion picture studio
20 company qualifies for final certification and the resultant credits, the film office shall issue a
21 letter to the motion picture studio company indicating "certificate of completion of a state
22 certified studio" and shall provide specifically designed certificates for the motion picture studio
23 company credit under section 44-31.3-3. All documents that are issued by the film office pursuant
24 to this section shall reference the identification number that was issued to the motion picture
25 studio company as part of its initial certification. No final certification shall be awarded until the
26 state certified motion picture studio or ancillary support structure has been completed, either by a
27 certificate of occupancy being issued or the structure is depreciable under the Internal Revenue
28 Code, 26 U.S.C section 1 et seq.

29 (d) The director of the Rhode Island film and television office, in consultation as needed
30 with the tax administrator, shall promulgate such rules and regulations as are necessary to carry
31 out the intent and purposes of this chapter in accordance with the general guidelines provided
32 herein for the certification of a motion picture studio and the resultant motion picture studio
33 credit.

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

1 the Rhode Island film and television office, shall promulgate such rules and regulations as are
2 necessary to carry out the intent and purposes of this chapter in accordance with the general
3 guidelines for the tax credit provided herein. No credit shall be awarded until such rules and
4 regulations are promulgated consistent with the Administrative Procedures Act under chapter 35
5 of title 42.

6 (f) Any motion picture studio company applying for the credit shall be required to
7 reimburse the division of taxation for any audits required in relation to granting the credit.

8 **44-31.3-5. Information requests.** -- (a) The director of the film office and his or her
9 agents, for the purpose of ascertaining the propriety or correctness of any materials pertaining to
10 the certification of any motion picture studio or to credits claimed under the provisions of this
11 chapter, may examine any books, papers, records, or memoranda bearing upon the matters
12 required to be included in the return, report, or other statement, and may require the attendance of
13 the person executing the return, report, or other statement, and may require the attendance of any
14 taxpayer, or the attendance of any other person, and may examine the person under oath
15 respecting any matter which the director or his or her agent deems pertinent or material in
16 administration and application of this chapter and, where not inconsistent with other legal
17 provisions, the director may request information from the tax administrator.

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

27 **44-31.3-6. Hearings and appeals.** -- (a) From an action of the film office. For matters
28 pertaining exclusively to application and certification of motion picture studio, any person
29 aggrieved by a denial action of the film office under this chapter shall notify the director of the
30 film office in writing, within thirty (30) days from the date of mailing of the notice of denial
31 action by the film office and request a hearing relative to the denial or action. The director of the
32 film office shall, as soon as is practicable, fix a time and place of hearing and shall render a final
33 decision. Appeals from a final decision of the director of the film office under this chapter are to
34 the sixth division district court pursuant to chapter 35 of title 42 of the general laws.

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

11 **44-31.3-7. Transferability of the credit.** -- (a) Any motion picture studio company tax
12 credit certificate issued in accordance with section 44-31.3-4, which has been issued to a state-
13 certified motion picture studio company or passed through in accordance with subsection 44-
14 31.3-3(c), and to the extent not previously claimed against the tax of the motion picture
15 production company or of the owner of the certificate if the certificate was issued in accordance
16 with subsection 44-31.3-3(c), may be transferred or sold by such company to another Rhode
17 Island taxpayer, subject to the following conditions:

18 (1) A single transfer or sale may involve one or more transferees, assignees, or
19 purchasers. A transfer or sale of the credits may involve multiple transfers to one or more
20 transferees, assignees, or purchasers.

21 (2) Transferors and sellers shall submit to the Rhode Island film office, and to the tax
22 administrator in writing, a notification of any transfer or sale of tax credits within thirty (30) days
23 after the transfer or sale of such tax credits. The notification shall include the transferor's tax
24 credit balance prior to transfer, the credit certificate number, the name of the state-certified
25 motion picture studio, the transferor's remaining tax credit balance after transfer, all tax
26 identification numbers for both transferor and transferee, the date of transfer, the amount
27 transferred, a copy of the credit certificate, and any other information required by the Rhode
28 Island office of film and television or the division of taxation.

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

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

34 (5) To the extent that the transferor did not have rights to claim or use the credit at the

1 time of the transfer, the division of taxation shall either disallow the credit claimed by the
2 transferee or recapture the credit from the transferee through any collection method authorized by
3 Rhode Island general law. The transferee's recourse is against the transferor.

4 (6) The transferee, assignee or purchaser shall apply such credits in the same manner as
5 the motion picture studio company originally awarded the credit.

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

9 **44-31.3-8. Severability. --** If any clause, section, paragraph, or other part of this chapter
10 or the application thereof to any person or circumstance shall for any reason be adjudged by a
11 court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate
12 the remainder of this chapter or its application to other persons or circumstances.

13 SECTION 2. 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 STUDIO TAX CREDIT

- 1 This act would provide tax credits for the creation of a motion picture studio in Rhode
- 2 Island.
- 3 This act would take effect upon passage.

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