

# MOTION PICTURE PRODUCTION TAX CREDIT

## 2012 CHANGES

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

29 44-31.2-2. Definitions. — For the purposes of this chapter:

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

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

34 (3) "Documentary Production" means a non-fiction production intended for educational

1 or commercial distribution that may require out of state principal photography.

2 ~~(3)~~(4) "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or  
3 a partnership, limited liability company, or other business entity formed under the laws of the  
4 state of Rhode Island for the purpose of producing motion pictures as defined in this section, or  
5 an individual who is a domiciled resident of the state of Rhode Island as defined in chapter 30 of  
6 this title.

7 ~~(5)~~ "Final Production Budget" means and includes the total pre-production, production  
8 and post-production out-of-pocket costs incurred and paid in connection with the making of the  
9 motion picture. The final production budget excludes costs associated with the promotion or  
10 marketing of the motion picture

11 ~~(4)~~(6) "Motion picture" means a feature-length film, documentary production, video,  
12 video games, television series, or commercial made in Rhode Island, in whole or in part, for  
13 theatrical or television viewing or as a television pilot or for educational distribution. The term  
14 "motion picture" shall not include the production of television coverage of news or athletic  
15 events, nor shall it apply to any film, video, television series or commercial or a production for  
16 which records are required under section 2257 of title 18, U.S.C., to be maintained with respect to  
17 any performer in such production or reporting of books, films, etc. with respect to sexually  
18 explicit conduct.

19 ~~(5)~~(7) "Motion picture production company" means a corporation, partnership, limited  
20 liability company or other business entity engaged in the business of producing one or more  
21 motion pictures as defined in this section. Motion picture production company shall not mean or  
22 include: (a) any company owned, affiliated, or controlled, in whole or in part by any company or  
23 person which is in default: (i) on taxes owed to the state; or (ii) on a loan made by the state in the  
24 application year; or (iii) on a loan guaranteed by the state in the application year; ~~or (iv) any~~  
25 company or person who has even declared bankruptcy under which an obligation of the company  
26 or person to pay or repay public funds or monies was discharged as a part of such bankruptcy; or  
27 (b) any company or person who has discharged an obligation to pay or repay public funds or  
28 monies by: (i) filing a petition under any Federal or state bankruptcy or insolvency law; (ii)  
29 having a petition filed under any Federal or state bankruptcy or insolvency law against such  
30 company or person; (iii) consenting to, or acquiescing or joining in, a petition named in (i) or (ii);  
31 (iv) consenting to, or acquiescing or joining in, the appointment of a custodian, receiver, trustee,  
32 or examiner for such company's or person's property; or (v) making an assignment for the benefit  
33 of creditors or admitting in writing or in any legal proceeding its insolvency or inability to pay  
34 debts as they become due.

1           ~~(6)~~(8) "Primary locations" means the locations within which (1) at least fifty-one percent  
2 (51%) of the motion picture principal photography days are filmed; or (2) at least fifty-one  
3 percent (51%) of the motion picture's final production budget is spent and employs at least five  
4 (5) individuals during the production in this state; or (3) for documentary productions, the  
5 location of at least fifty-one percent (51%) of the total productions days, which shall include pre-  
6 production and post-production locations.

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

11           ~~(8)~~(10) "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)~~(11) "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           (12) "Application year" means within the calendar year the motion picture production  
2 company files an application for the tax credit.

3           44-31.2-5. Motion picture production company tax credit. — (a) A motion picture  
4 production company shall be allowed a credit to be computed as provided in this chapter against a  
5 tax imposed by chapters 11, 14, 17 and 30 of this title. The amount of the credit shall be twenty-  
6 five percent (25%) of the state certified production costs incurred directly attributable to activity  
7 within the state, provided that the primary locations are within the state of Rhode Island and the  
8 total production budget as defined herein is a minimum of ~~three~~ one hundred thousand dollars  
9 ~~(\$300,000)~~ (\$100,000). The credit shall be earned in the taxable year in which production in  
10 Rhode Island is completed, as determined by the film office in final certification pursuant to  
11 subsection 44-31.2-6(c).

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

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

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

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

34           44-31.2-6. Certification and administration. — (a) Initial certification of a production.

1 The applicant shall properly prepare, sign and submit to the film office an application for initial  
2 certification of the Rhode Island production. The application shall include such information and  
3 data as the film office deems necessary for the proper evaluation and administration of said  
4 application, including, but not limited to, any information about the motion picture production  
5 company, and a specific Rhode Island motion picture. The film office shall review the completed  
6 application and determine whether it meets the requisite criteria and qualifications for the initial  
7 certification for the production. If the initial certification is granted, the film office shall issue a  
8 notice of initial certification of the motion picture production to the motion picture production  
9 company and to the tax administrator. The notice shall state that, after appropriate review, the  
10 initial application meets the appropriate criteria for conditional eligibility. The notice of initial  
11 certification will provide a unique identification number for the production and is only a  
12 statement of conditional eligibility for the production and, as such, does not grant or convey any  
13 Rhode Island tax benefits.

14 *(b) Final certification of a production.* Upon completion of the Rhode Island production  
15 activities, the applicant shall request a certificate of good standing from the Rhode Island division  
16 of taxation. ~~The division shall expedite the process for reviewing the issuance of such certificates.~~  
17 Such certificates shall verify to the film office the motion picture production company's  
18 compliance with the requirements of subsection 44-31.2-2(5). The applicant shall properly  
19 prepare, sign and submit to the film office an application for final certification of the production  
20 and which must include the certificate of good standing from the division of taxation. In addition,  
21 the application shall contain such information and data as the film office determines is necessary  
22 for the proper evaluation and administration, including, but not limited to, any information about  
23 the motion picture production company, its investors and information about the production  
24 previously granted initial certification. The final application shall also contain a cost report and an  
25 "accountant's certification". The film office and tax administrator may rely without independent  
26 investigation, upon the accountant's certification, in the form of an opinion, confirming the  
27 accuracy of the information included in the cost report. Upon review of a duly completed and  
28 filed application, the film office will make a determination pertaining to the final certification of  
29 the production and the resultant credits for § 44-31.2-5. Within ninety (90) days after the division  
30 of taxation's receipt of the motion picture production company final certification and cost report,  
31 the division of taxation shall issue a certification of the amount of credit for which the motion  
32 picture production company qualifies under section 44-31.2-5. To claim the tax credit, the  
33 division of taxation's certification as to the amount of the tax credit shall be attached to all state  
34 tax returns on which the credit is claimed.

1           (c) *Final certification and credits.* Upon determination that the motion picture production  
2 company qualifies for final certification ~~and the resultant credits~~, the film office shall issue a  
3 letter to the production company indicating "certificate of completion of a state certified  
4 production" ~~and shall provide specifically designed certificates for the motion picture production~~  
5 ~~company credit under § 44-31.2-5. A motion picture production company is prohibited from~~  
6 using state funds, state loans or state guaranteed loans to qualify for the motion picture tax credit.  
7 All documents that are issued by the film office pursuant to this section shall reference the  
8 identification number that was issued to the production as part of its initial certification.

9           (d) The director of the ~~Rhode Island film and television office~~ department of  
10 administration, in consultation as needed with the tax administrator, shall promulgate such rules  
11 and regulations as are necessary to carry out the intent and purposes of this chapter in accordance  
12 with the general guidelines provided herein for the certification of the production and the  
13 resultant production credit.

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

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

20           SECTION 11. Chapter 44-31.2 of the General Laws entitled "Motion Picture Production  
21 Tax Credit" is hereby amended by adding thereto the following section:

22           44-31.2-11. Sunset. -- No credits shall be issued on or after July 1, 2019 unless the  
23 production has received initial certification under subsection 44-31.2-6(a) prior to July 1, 2019.