State of Rhode Island and Providence Plantations
Rhode Island Film & Television Office

Public Notice of Proposed Rule-Making

Pursuant to the provisions of section 42-35-3(a)(1) of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, The Rhode Island Film & Television Office hereby gives notice of its intent to issue a regulation on the Certification of Motion Picture Production Company Tax Credits.

The purpose of this regulation is to reflect the requirements the General Assembly enacted in House Bill 7390, Article 32 Sub A and implements Sections 44-31.2-5 of the Rhode Island General Laws, as amended, which provides that for any tax year beginning after December 31, 2007, no more than fifteen million dollars ($15,000,000) in Motion Picture Production Company Tax Credits may be issued in any calendar year.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at www.film.ri.gov, in person at The Rhode Island Film & Television Office, or requested by e-mail at steven@arts.ri.gov or by calling Steven Feinberg at (401) 222-3456.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by November 13, 2008 to Steven Feinberg, Rhode Island Film & Television Office, One Capitol Hill, Providence, RI – telephone number (401) 222-3456, Email at steven@arts.ri.gov. A public hearing to consider the proposed regulation shall be held on November 13at 2:00 P.M. at the Department of Administration Building, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling 401 222-3456.

Rhode Island Film & Television Office

Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1)

Rules and Regulation on the Motion Picture Production company Tax Credits

The purpose of this regulation is to implement Sections 44-31.2-5 of the Rhode Island General Laws, as amended, which provides that for any tax year beginning after December 31, 2007, no more than fifteen million dollars ($15,000,000) in Motion Picture Production Company Tax Credits may be issued in any calendar year.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RULES AND REGULATIONS FOR THE CERTIFICATION OF MOTION PICTURE PRODUCTION COMPANY TAX CREDITS

RHODE ISLAND FILM & TELEVISION OFFICE,

IN CONJUNCTION WITH THE

RHODE ISLAND DIVISION OF TAXATION, DEPARTMENT OF REVENUE

TABLE OF CONTENTS

RULE 1. PURPOSE

RULE 2. AUTHORITY

RULE 3. APPLICATION

RULE 4. SEVERABILITY

RULE 5. DEFINITIONS

RULE 6. APPLICATIONS

RULE 7. CERTIFICATION OF A PRODUCTION

RULE 7.1. PRIORITY AND ALLOCATION OF CREDIT

RULE 8. COMMENCEMENT OF PRODUCTION

RULE 9. COST REPORT

RULE 10. DETERMINATION OF TAX CREDIT

RULE 11. ISSUANCE OF TAX CREDIT

RULE 12. ASSIGNMENT OF MOTION PICTURE PRODUCTION TAX CREDIT

RULE 13. EFFECTIVE DATE

RULE 1. PURPOSE

These rules implement Chapter 44-31.2 of the Rhode Island General Laws. This Chapter, also referred to within as RIGL Chapter 44-31.2, provides for the issuance of Motion Picture Production Tax Credits. These rules govern the procedures for the application and certification of these tax credits.

RULE 2. AUTHORITY

These rules and regulations are promulgated pursuant to RIGL Chapter 44-31.2 as amended by Chapters 19 and 20 of the Public Laws of 2006. These rules have been prepared in accordance with the requirements of RIGL Chapter 42-35, the Rhode Island Administrative Procedures Act.

RULE 3. APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Division of Taxation and the Rhode Island Television and Film Office to effectuate the purposes of RIGL Chapter 44-31.2 and other applicable state laws and regulations.

RULE 4. SEVERABILITY

If any provision of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

RULE 5. DEFINITIONS

A. **"**Act" means Chapter 44-31.2 of the Rhode Island General Laws, as amended.

B. **"**Above-The-Line Person" means a motion picture director, writer, producer or featured actor. Motion picture directors, writers, producers, featured actors and their fees are grouped within the "pre-production" or "production" section of a typical motion picture budget, above a solid, bold line, separating these few "above-the-line" persons from the majority of the "below-the-line" crew, other production and post-production expenses.

C. "Accountant's Certification" means a certified audit by a Rhode Island certified public accountant licensed in accordance with Section 5-5- 3.1 of the Rhode Island General Laws, as amended.

D. "Alternative Distribution Method" for the purposes of the Production Tax Credit means an executed agreement among all participants of a pass-through entity, or among all owners of a motion picture having multiple owners, setting forth the method for allocation of the Motion Picture Production Tax Credit agreed upon by and among the participants or co-owners. An alternative distribution method may include, without limitation, a partnership agreement, an operating agreement of a limited liability company, a shareholders agreement, or any other instrument executed by all participants or co-owners.

E. "Amended Production" means one additional separate and distinct application that is allowable for the same production for purposes such as "re-shoots", "retakes", added scenes or any additional production expenditures incurred and paid within the State of Rhode Island (but not previously included in the cost report) provided that the motion picture has already met the conditions required for, and has already been approved for final certification by the Film Office. The amended application must individually meet the statutory requirements for a state certified production. The additional production expenditures shall be included in a separate cost report and require a separate accountant's certification.

F. "Applicant" means a motion picture production company, which is a corporation, partnership, limited partnership, or other entity or individual, submitting an application to the Film Office for initial or final certification of a production.

G. "Certificate of Motion Picture Production Tax Credit" means a certificate issued by the Film Office, which states the amount of the Motion Picture Production Tax Credit for which the production has qualified. The certificate shall include, but not be limited to, the following information: specific and unique certificate number, name and address of the approved applicant, name of the state certified production, name of the qualified film to which the credit applies, date in which production completed, date of final certification by the Film Office, the name and taxpayer identification number of production company that incurred and paid state certified Rhode Island production expenditures, total amount of state certified Rhode Island production expenditures, name of initial holder of this certificate, taxpayer identification number of initial holder of this certificate, and amount of credit allocated to initial holder of this Certificate.

H. **"**Completion of a Production" means the date of completion of a motion picture's production in the State of Rhode Island as certified to the Film Office as part of the production's cost report.

I. (a) "Costs" include, but are not limited to, the following expenses which shall qualify when incurred and paid within the State of Rhode Island:

(1) set construction, set dressing and operation – labor and materials provided by a-qualified vendor where the labor and materials are actually and physically provided, supplied, consumed or used within Rhode Island;

(2) wardrobes, make-up, accessories, props, expendables, supplies and related services;

(3) costs associated with photography and sound synchronization, lighting, and related services and materials including animation costs - labor and materials provided by a-qualified vendor where the labor and materials are actually and physically provided, supplied, consumed or used within Rhode Island;

(4) editing and related services including, but not limited to, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects, and animation services – provided the work is performed or procured in the state of Rhode Island;

(5) salary, wages, and other compensation, including related benefits, of persons employed, either directly or indirectly, in the production of a film including, but not limited to, writer, actor, motion picture director, producer (provided the work is performed in the State of Rhode Island);

(6) rental of facilities, site locations and equipment located and procured in the State of Rhode Island;

(7) leasing of vehicles from a qualified vendor where the vehicles are actually and physically delivered, provided, supplied, consumed or used within Rhode Island;

(8) costs of food and lodging - procured or performed by a qualified vendor where the food and lodging are actually and physically provided, delivered, supplied, consumed or used within Rhode Island;

(9) music, if performed, composed, or recorded by a Rhode Island musician, or released or published by a person domicile in Rhode Island;

(10) travel expenses incurred to bring persons employed, either directly or indirectly, in the production of the film to Rhode Island (but not expenses of such persons departing from Rhode Island); and

(11) legal (but not expense of completion bond or insurance) and accounting fees and expenses related to the production's activities in Rhode Island provided such services are provided by Rhode Island licensed attorneys or accountants.

(b) Expenses that do not qualify as state certified production costs, include without limitation, the following:

(1) any salaries, wages, and other compensation, including related benefits to individuals who are located outside of the State of Rhode Island and performing services outside the State of Rhode Island;

(2) any travel expenses for persons departing from the State of Rhode Island;

(3) any expense attributable to a completion bond;

(4) insurance expenses;

(5) any cost associated with the promotion or marketing of the production including premier showings, special screenings and advertising;

(6) costs that were not incurred in Rhode Island; and

(7) costs that have not been paid at the time of the application for final certification or which have not been the subject of the accountant's certification.

(c) In the case where props and other production assets are purchased, created or acquired for a Rhode Island production and kept in inventory for future use, there must be deducted from the cost incurred in Rhode Island the fair market value of the assets remaining after initial use in Rhode Island. The fair market value shall be attested to by an independent appraiser in a manner prescribed by the Director of the Rhode Island Film Office.

Example: A prop is purchased from a qualified vendor for use in a production in the State of Rhode Island at a cost of $5,000.00 and placed in storage at the end of production. The fair market value of the prop at the end of production is certified to be $4,000.00 by an independent appraiser. For purposes of the cost report, only the $1,000.00 value consumed during production will be allowed.

J. "Costs Incurred within the State" means, in the case of tangible property, which is acquired from or through a qualified vendor will constitute a cost incurred within the State of Rhode Island where goods and materials are actually and physically provided, supplied, consumed or used within Rhode Island and, in the case of services, shall mean services performed within the State of Rhode Island.

Example 1: Wardrobe purchased or rented from a qualified vendor will constitute a cost incurred within the State where the labor and materials are actually and physically provided, supplied, consumed or used within Rhode Island will constitute a cost incurred within the State. However, wardrobe purchased or rented from a non-qualified vendor and shipped to Rhode Island will not constitute a cost incurred within the State.

Example 2: Catering expenses and services provided by a qualified vendor will constitute a cost incurred within the State where the labor and materials are actually and physically provided, supplied, consumed or used within Rhode Island will constitute a cost incurred within the State. However, catering services rendered out of Rhode Island from by a non-qualified vendor will not constitute a cost incurred within the State.

Example 3: Props purchased or rented from a qualified vendor will constitute a cost incurred within the State where the labor and materials are actually and physically provided, supplied, consumed or used within Rhode Island. However, props acquired from non-qualified vendor or created outside of Rhode Island will not constitute a cost incurred within the State.

Example 4: Set construction materials, such as lumber and steel, purchased or rented from a qualified vendor where the labor and materials are actually and physically provided, supplied, consumed or used within Rhode Island will constitute a cost incurred within the State. However, materials acquired from a non-qualified vendor or constructed outside of Rhode Island will not constitute a cost incurred within the State.

Example 5: Shipping expenses incurred to send materials and supplies to Rhode Island will constitute a cost incurred within the State. However, shipping expenses for materials and supplies shipped from Rhode Island will not constitute a cost incurred within the State.

K. "Division of Taxation" means that office within the Department of Revenue that operates under the authority and direction of the Tax Administrator, pursuant to RIGL §§44-1-1 *et. seq*.

L. "Domiciled in Rhode Island" means a corporation incorporated in Rhode Island or a partnership, limited liability company, or other business entity formed under the laws of the State of Rhode Island for the purpose of producing motion pictures, or an individual who is a domiciled resident of Rhode Island as defined in the Rhode Island General Laws Section 44-30. Such individual, corporation, partnership, limited liability company, or other entity, is subject to the General Laws of the State of Rhode Island including, but not limited to, Chapters 44-11, 44-12 and 44-30.

M. "Feature-Length Film" means a production intended for commercial distribution to a motion picture theater or directly to the home video market that has a running time of at least seventy-five (75) minutes in length.

N. "Film Office" means the Rhode Island Film and Television Office, as defined in RIGL §42-75-12.

O. "Film Office Director" means the Director of the Rhode Island Film and Television Office.

P. "Inspection" means a visit by an authorized representative of the Film Office to a property, including a set, a soundstage, a location or production office.

Q. "Loan-Out Company" means and includes a corporation, partnership, limited liability company, S-corporation, association, nominee trust, or any other entity through which an artist is loaned out to perform services for the motion picture production company. Regardless of structure, employees of such "loan-out companies" shall be subject to all applicable provisions of the Rhode Island personal income tax and any applicable payroll or other tax provisions.

R. "Motion picture" means feature-length film, video, video game, television series, or commercial made in Rhode Island, in whole or in part, for theatrical or television viewing or as a television pilot. 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 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.

S. "Motion Picture Production Company" means a corporation, partnership, limited liability company, or other business entity, domiciled in Rhode Island, and engaged in the business of producing one or more motion pictures. Generally, the motion picture production company controls the state certified motion picture during production and is responsible for payment of the direct production expenses (including pre- and post-production), and is a signatory to the state certified motion picture's contracts with its payroll company and facility operators. Motion picture production company shall not mean or include:

(a) any company owned, affiliated, or controlled, in whole or in part by any company or person which is in default (i) on taxes owed to the state; or (ii) on a loan made by the state; or (iii) a loan guaranteed by the state; or,

(b) any company or person who has ever 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.

T. "Qualified Vendor" means any individual, partnership, corporation, limited liability company or other business entity, that (1) provides goods and services to a state certified motion picture during production; (2) who maintains a place of business in Rhode Island; (3) is subject to Rhode Island taxation; and (4) is qualified to do business in Rhode Island

U. "Participant" means a partner in a partnership, member of a limited liability company, or shareholder of an S-corporation, a beneficial owner of a trust, or any other person having an interest in a pass-through entity.

V. "Pass Through Entity" means a partnership, limited liability company, S-corporation, association, nominee trust, or any other entity, the tax attributes of which are passed through to the participants in such entity.

W. "Post-Production" means the final stage in a state certified motion picture's production after principal and ongoing photography is completed, including, but not limited to, editing, Foley Recording, Automatic Dialogue Replacement, sound editing, special effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, the addition of sound/visual effects, dubbing, and subtitling. Advertising and marketing activities and expenses are not included in post-production.

X. "Pre-Production" means costs directly related to the production, which are incurred prior to the first day of principal photography for a state certified motion picture. For example, the establishment of a dedicated production office, the hiring of key crew members such as a Unit Production Manager, Line Producer and Location Manager, and includes, but is not limited to, activities such as location scouting, hiring of crew, and execution of contracts with vendors of equipment and stage space.

Y. "Primary Locations" means the locations within which at least fifty-one percent (51%) of the motion picture's total principal photography days are filmed.

Z. "Principal Photography and/or Animation" means the filming and/or animation of major and significant portions of a state certified motion picture that involves the lead actors and/or animators..

AA. "State Certified Production" means a motion picture production approved by the Rhode Island Film & Television Office and produced by a motion picture production company domiciled in Rhode Island, whether or not such company owns or controls the copyright and distribution rights in the motion picture; provided that such company has either: (a) signed a

viable distribution plan; or (b) is producing the motion picture for: (i) a major motion picture distributor; (ii) a major theatrical exhibitor; (iii) a television network; or (iv) a cable television programmer. Additionally, the production must be produced with the motion picture's "primary locations" being filmed within the State of Rhode Island and with a "total production budget" of a minimum of three hundred thousand dollars ($300,000).

BB. "State Certified Production Costs" means any pre-production, production, and post-production cost directly attributable to activity within this state that a motion picture company incurs and pays to the extent that it occurs within the State of Rhode Island. The term refers to a production certified by the State of Rhode Island under the Act and should not be taken to infer that the State of Rhode Island is certifying the production costs.

CC. "Television Pilot" means the initial episode produced for a proposed episodic television series. This category will include shorter formats which are known as "television presentation", a production of at least fifteen (15) minutes in length, produced for the purposes of selling a proposed television series, but not intended for broadcast.

DD. "Television Series" which may also be known as "episodic television series" means a regularly occurring production, live action, animation or a combination of the two, intended in its initial run for broadcast on television, whether free or via subscription-based service, that has a running time of at least thirty (30) minutes in length (inclusive of commercial advertisement and interstitial programming).

EE. "Total Production Budget" means and includes the motion picture production company's pre-production, production and post-production costs incurred for the production activities of the production company in Rhode Island in connection with the making of the state certified production. The budget shall not include costs associated with the promotion or marketing of the film, video, or television product.

.RULE 6. APPLICATIONS

A. Applications for designation of a motion picture production as a state certified production shall be made on State Certification Application forms. These forms are available from the Film Office at One Capitol Hill, Third Floor, Providence, Rhode Island 02908 or from the Film Office's website at www.film.ri.gov. The Initial Application is used to request initial certification of a motion picture production and must be filed with the Film Office before the commencement of Rhode Island production activities. The Final Application is used after the completion of Rhode Island production activities to request final certification of the production and the issuance by the Film Office of any credit documents relating to the completion of a state certified production.

B. Application for Initial Certification of a Production. The applicant shall properly prepare, sign and submit the Initial Certification Application form to the Film Office. This part of the application, when completed, contains information regarding both the motion picture production company and a specific Rhode Island motion picture such that the Film Office may make a determination pertaining to the initial certification of the production. The

information shall include the following and any other data the Film Office determines necessary for the proper evaluation and administration of the application:

(a) identification information: name and address of applicant, name of contact person, telephone numbers and email addresses; Federal Employer Identification number[s]; the production company's Rhode Island address (including Federal Employer Identification number, contact person, telephone numbers and email addresses); brief background and structure of the company, and information about other companies which are related, affiliated, or controlled by the motion picture production company and which are expected to be involved in the production.

(b) timing information: anticipated start date; anticipated completion date; proposed schedule; and estimated number of principal photography days to be filmed in Rhode Island and outside of Rhode Island.

(c) financial information: proposed total production budget, estimated disclosed motion picture budget (expenditures within the State of Rhode Island), and information for each of the "above the line" individuals as to whether they will be employees of the motion picture production company or, if not, the name of the entity by which they will be employed. Additionally, the applicant will estimate the anticipated amount of Rhode Island motion picture production tax credit from this production.

(d) operational information: brief description of the motion picture production, including:

(1) story synopsis and screenplay for proposed motion picture production;

(2) a statement as to whether the company owns or controls the copyright and distribution rights in the motion picture; and,

(3) a copy of the signed viable distribution plan or evidence that the production company is producing the motion picture for a major motion picture distributor, a major theatrical exhibitor, a television network or a cable television programmer.

(e) other information: the anticipated days each "above the line" person (i.e., producers, motion picture director, writers and featured actors) is scheduled to perform work in Rhode Island; copies of documents evidencing that the motion picture production company is formed under the laws of the State of Rhode Island; and one paragraph each regarding production plans for internship, diversity and training programs in Rhode Island.

C. Application for Final Certification of a Production. When production is completed, the applicant shall submit a completed application for final certification to the Film Office. This application contains information regarding both the motion picture production company and the specific Rhode Island motion picture (which has previously been granted initial certification from the Film Office) and provides documentation that the completed state

certified motion picture production is consistent with the work described in the initial certification. Such final application shall be filed within three (3) years after the date Rhode Island production activities have finished. The final application must also contain a cost report and an "accountant's certification" to evidence the motion picture production company's compliance with all provisions of RIGL Section 44-31.2-2(5). The Film Office and the Division of Taxation may rely, without independent investigation, upon the accountant's certification confirming the accuracy of the information included in the cost report.

The application for final certification information shall, in addition to the items above, include all the following information, and any other information that the Film Office determines necessary for proper evaluation and administration of the application:

(a) identification data: name and address of applicant (including contact person, telephone numbers and email addresses); Federal Employer Identification number[s]; the production company's Rhode Island address, (including Federal Employer Identification number, contact person, telephone numbers and email addresses); and, for compliance purposes the name, address and Federal Employer Identification number or Social Security number of each company related, affiliated or controlled by the motion picture production company as of the production's completion date, a description and amount of the relationship, affiliation or control and a copy of the initial certification letter showing the unique identifying number assigned by the Film Office.

(b) timing information: actual start date; actual completion date; the daily schedule of the entire production; and actual number of principal photography days filmed in Rhode Island and outside of Rhode Island.

(c) financial information: actual data for the total production budget, the disclosed motion picture budget (combined expenditures within the State of Rhode Island and outside the State of Rhode Island);

(d) operational information: final script for the motion picture production; all travel schedules and data for "above-the-line" persons arriving and departing the State of Rhode Island including the actual number of days each performed work in Rhode Island; location of soundstage and one paragraph each regarding how the production applied internship, diversity and training programs.

(e) maximum credit calculation: based on the production costs incurred and paid and other information in the application for final certification, the applicant will calculate an estimate of the total amount of production credits associated with the production and show a comparison between the estimated total credits and the total production budget.

(f) miscellaneous information: a list of the loan out companies, temporary agencies, employee leasing companies, professional employee organizations that have provided services to the motion picture production company within the State of Rhode Island, and a list of qualified vendors that have sold and/or rented goods to the motion picture company for use

within the State of Rhode Island. This information shall be filed directly with the Division of Taxation who, in turn, shall advise the Film Office, in writing, of its receipt.

(g) signature of applicant including title and date.

D. Confidentiality of Application Information. Application information submitted to the Division of Taxation is confidential by statute. Application information submitted to the Film Office may be subject to scrutiny under the Access to Public Records Act, Chapter 38-2 of the Rhode Island General Laws, as amended, unless it comes within one of the exemptions set forth in RIGL §38-2-2. If the Applicant believes that certain information being submitted as part of its applications should not be available for public inspection, such information shall be marked or labeled "CONFIDENTIAL" or “PROPRIETARY” in capital letters. The Applicant shall also submit a statement briefly setting forth the grounds why the information should be treated as confidential and how long it should be maintained as confidential. The Film Office shall not disclose the materials to the public unless ordered to do so by a court of competent jurisdiction.

RULE 7. CERTIFICATION OF A PRODUCTION

A. Initial Certification of a Production: Where necessary documentation is not provided, review and evaluation will be delayed and initial certification may be denied on the basis of lack of information. Because the circumstances of each production are unique, initial certifications that have been granted to one production shall not be used nor relied upon by applicants for other productions.

The Film Office will complete its review for initial certification requests within 30 business days of receiving a complete, adequately documented application. Where adequate information is not provided, the Film Office will notify the applicant of the additional information needed to complete the review. The Film Office will adhere to this time period as closely as possible, but failure to complete a review within the designated period does not waive or alter any certification requirement nor does it imply approval.

B. Initial Certification Letter: Once completed, the Film Office will issue initial certification of the motion picture production in the form of a letter issued to the motion picture production company and to the Tax Administrator. The letter states that, after appropriate review, the initial application meets the appropriate criteria for conditional eligibility. The letter of initial certification is only a statement of conditional eligibility for the production and, as such, does not grant or convey any Rhode Island tax benefits. If the Film Office denies initial certification, the applicant may appeal that decision under the provisions of RIGL §44-31.2-8.

The letter of initial certification includes, but is not limited to, the following information: name and address of the applicant, the name of the motion picture production, the effective date for the production, taxpayer identification number of the motion picture production company, and a unique identifying number assigned by the Film Office and required for each production. The letter also gives notice that, upon completion of the production, the application for final

certification must be completed including the receipt of a Rhode Island Certificate of Good Standing for the production company to verify the production company's compliance with all provisions of RIGL §44-31.2-2(5).

C. Final Certification of a Production: Where necessary documentation is not provided, review and evaluation will be delayed and final certification may be denied on the basis of lack of information. Because the circumstances of each production are unique, final certifications that have been granted to one production shall not be used nor relied upon by applicants for other productions.

The Film Office will complete its review for final certification requests within ninety (90) business days of receiving a complete application. When adequate information is not provided, the Film Office will notify the applicant of the additional information needed to complete the review. The Film Office will adhere to this time period as closely as possible, but failure to complete a review within the designated period does not waive or alter any certification requirement nor does it imply approval.

The Film Office will determine the final certification of the production and issue a written determination to the applicant either denying or granting certification. Depending upon the determination, the Film Office will determine the amount of Rhode Island Motion Picture Production Tax Credit and issue the Certificate[s] pursuant thereto. If the Film Office denies final certification, the applicant may appeal the Film Office's decision under the provisions of RIGL §44-31.2-8.

D. Film Office Decisions, Reliance on Application: Certifications are only issued in writing by the Film Office Director or other duly authorized representative of the Film Office. Decisions with respect to initial and final certifications are made on the basis of the information contained in the application form and other available information. The applicant's signature on any application form is a representation to the Film Office that the facts contained therein are true and correct, and the Film Office is entitled to rely thereon. If, at any time, it comes to the attention of the Film Office that information is/was misstated, misrepresented or omitted or is materially inconsistent with representations made in an application, the Film Office may deny the requested certification or revoke a certification previously given. Upon revocation of any certification, the production company must surrender any and all issued certificates or remit payment equal to the face value of any previously transferred certificates. In such cases, the applicant may appeal the Film Office's decision under the provisions of RIGL §44-31.2-8.

Because the circumstances of each production are unique, certifications that may have been granted to other productions that are not specifically applicable may not be relied on by applicants as applicable to other projects.

RULE 7.1 PRIORITY AND ALLOCATION OF CREDITS

(1) Section 44-31.2-5 of the Rhode Island General Laws, as amended, provides that for any tax year beginning after December 31, 2007, no more than fifteen million dollars

($15,000,000) in motion picture production company tax credits may be issued, in any calendar year. Prior to this amendment, no such limitation was in effect.

(2) Because the amended section does not set forth how this limitation would be implemented and because the Applications for Credit Certification could exceed the total amount of $15,000,000 during any calendar year, it is necessary for the Film Office and the Tax Division to promulgate a rule and regulation pursuant to the authority contained in Section 44-31.2-6.

(3) In order to comply with the above described amendment, the Film Office has developed a "queuing" process, which is an equitable process that will provide applicants some degree of certainty as to what credit amounts will be available to them at the conclusion of a production. This queuing process shall consist of the following:

(a) Once a production has been initially certified, the Film Office will assign a number to that production. Initial numbers are assigned chronologically and are based on the date and time that a production has been initially certified. These productions will be placed in sequence on a "first come, first served" basis. This sequence is also referred to within as the "queue";

(b) Based upon the applicant's information and availability of credit remaining for the calendar year for which application is made, the Film Office shall allocate the estimated credit amount to that production;

(c) This estimated amount will not be allocated to any other production, except as set forth below under "loss of place or priority in the queue";

(d) If a production (1) falls out of "good standing status" with the Secretary of State, or (2) halts production, or (3)declares in writing to the Film Office that the estimated State Certified Production Costs will not be expended in Rhode Island, or (4) fails to meet the deadlines as indicated in sub-paragraph (e), the production will lose its place in the queue, and shall be moved to the end of the queue.

(e) In order to maintain place in the queue, filming in Rhode Island shall commence before the elapse of sixty (60) days from the intended start date indicated on the Initial Certification Letter. Upon written request to the Film Office, the Film Office Director is allowed to extend that time for an additional thirty (30) days, for good cause shown. Furthermore, in order to continue to be certified, the production's filming shall begin no more than one-hundred and eighty (180) days from the start date indicated on the Initial Certification Letter;

(f) Upon loss of place in the queue, the estimated tax credit, which originally had been assigned to the production shall be released and made available to other productions in sequence in the queue;

(g) If, at the time of initial certification, all available tax credits for the calendar year have been claimed or otherwise assigned, a production shall be put at the end of the queue for that calendar year's credit, in the order of the date of initial certification.

(h) Remaining productions in the queue which do not qualify for available tax credit in the calendar year in which applied, must indicate in writing to the Film Office their interest in renewing their applications for the next calendar year's available tax credit. Any renewal request for the succeeding calendar year's available tax credit must be made to the Film Office on or before December 1st of the calendar year of the original application.

RULE 8. COMMENCEMENT OF PRODUCTION

A. Once production has begun, the Film Office should be notified in writing by the applicant/production company that, on a specific date, the actual production, including the principal photography, has commenced. In the event that applicant's principal photography on a State certified motion picture does not actually begin within one hundred eighty (180) days of the start date indicated on ~~issuance of~~ the Initial Certification Letter, the applicant shall be required to resubmit the application for initial certification.

B. Recurrent Productions: If a motion picture production company produces a television series, then production work on any given "season" of such series completed in any one calendar year shall be considered a separate and distinct state certified production for the purposes of certification. In the case that a motion picture production company produces a television "pilot" or "movies of the week", then such "pilot" or "movie of the week" shall be considered a separate and distinct state certified production for the purpose of the issuance of credit certificates. Any additional "season", "pilot" or "movie of the week" will be treated as a separate production and the applicant must repeat the application process and the production must meet all appropriate criteria.

C. Amended Productions: In the event that the production company requests the Film Office to approve an amended production for a motion picture that has already obtained final certification, applicant must repeat the application process and the amended production must meet all appropriate criteria.

D. Film Office's Inspection Rights: The Film Office shall have the right at reasonable times to enter upon any set, soundstage, location or production office that is the subject of an application for certification, whether the motion picture production is proposed, ongoing, or completed, to verify that the motion picture production is as represented

RULE 9. COST REPORT

A. As a part of the completed application for final certification of the production and the basis on which the credits are calculated, the production costs and Cost Report are crucial to the Film Office's deliberations concerning the certification of the production. As part of the final certification, the Cost Report must be accompanied by an "accountant's certification" of the items to which it pertains. The Film Office and the Division of Taxation may rely, without

independent investigation, upon the accountant's certification confirming the accuracy of the information included in the Cost Report as well as the motion picture production company's compliance with RIGL §44-31-2.2(5).

B. The Cost Report is a crucial part of and attachment to the application for final certification of a motion picture production. It contains (a) the date of completion of the motion picture's production in the State of Rhode Island, (b) the amount and listing of production costs incurred and actually paid within the State of Rhode Island with respect to the motion picture as set forth in the rules herein, (c) that the motion picture's total production budget is at least $300,000, and (d) the cost report shall be in a format as prescribed by the Director of the Film Office.

RULE 10. DETERMINATION OF CREDIT

The amount of the Motion Picture Production Company Tax Credit shall be determined by the Film Office to equal twenty-five percent (25%) of the state certified production costs of a completed state certified production, as shown in the application for final certification and as verified by the accountant's certification.

RULE 11. ISSUANCE OF TAX CREDITS

A. Concurrent with the final certification of the production, the Film Office, based upon the Certification shall also issue written, individual Motion Picture Production Tax Credit Certificate[s] to the motion picture production company, as allocated under its organizational documents, or to one or more transferees. The motion picture production company must provide the names, addresses and taxpayer identification numbers of such Participants or transferees. Credits allowed to a motion picture production company which is a subchapter S-corporation, partnership, or limited liability company that is taxed as a partnership, shall be passed through respectively to the Participants a pro rata basis or pursuant to an executed agreement among such persons designated as subchapter S-corporation shareholders, partners, or members. This writing documents an alternate distribution method without regard to their sharing of other tax or economic attributes of such entity. Each certificate will bear the unique identification number that was issued to the production as part of its initial certification.

B. Film Office's Right to Deny or Revoke Credit. If, at any time, it comes to the attention of the Film Office or the Division of Taxation that information is/was misstated, misrepresented or omitted or is materially inconsistent with representations made in an application, the Film Office may deny the requested certification or revoke a certification previously given. In such cases, the applicant may appeal the Film Office's decision under the provisions of RIGL §44-31.2-8.

RULE 12. ASSIGNMENT OF MOTION PICTURE PRODUCTION TAX CREDIT

A. Each Certificate of Motion Picture Production Tax Credit may be assigned, with or without consideration, transferred, or sold if it has not been previously claimed, in whole or in part, against the taxes of the motion picture production company or the taxes of the owner of

the certificate. A single transfer or sale may involve one or more transferees, assignees or purchasers. The transferees and sellers must submit notice of the assignment, transfer or sale within thirty (30) days to the Film Office and to the Tax Administrator. The Film Office shall assess and collect an administrative fee of two hundred dollars ($200) for issuing multiple tax credit certificates or for reissuing certificates. In addition, the Film Office will also collect an administrative fee of two hundred dollars ($200) on behalf of the Division of Taxation.

B. Assignment of Certificate - A Motion Picture Production Tax Credit Certificate may be assigned, transferred or sold to any person, whether or not such person has an ownership interest in the state certified production, provided that no credit has been claimed based on the certificate being assigned, transferred or sold. The certificate shall be assigned by endorsing the assignment clause on the certificate and delivery of the original certificate to the assignee, transferee or purchaser.

C. Notification of Assignment - It shall be required that written notification is filed with the Division of Taxation and the Film Office of the assignment, transfer or sale, of all or a portion the Motion Picture Production Tax Credit. Notification submitted to the Tax Division and the Film Office shall be done in accordance with the rules herein. Failure to comply will result in the disallowance of the credit until the taxpayer is in full compliance. Notice to the Tax Division shall include:

(a) a copy of the Credit Certificate, endorsed to the assignee. The original Certificate shall not be included with the notification since it must be retained by the assignee, transferee or purchaser and attached to his/her/their/its tax return for the year for which credit is claimed;

(b) the name, address and telephone number of the assignor, transferor or seller and those of the assignee, transferee or purchaser;

(c) the taxpayer identification number or social security number of the parties; in addition, for non-resident corporations, partnerships, limited liability companies, or other entities the name and address of such entity's registered agent in Rhode Island and evidence of qualification to do business in Rhode Island.

D. Multiple Assignees; Re-issuance of Certificate - If the holder or assignee of a credit certificate has not used the credit certificate, in whole or in part, against its taxes and desires to assign, transfer or sell its interest in the credit to more than one party, the holder must request the Film Office to reissue the original certificate in such number of certificates as the holder requires. The request must be in writing, must specify the number of new certificates required and the amount to be specified on each certificate, and must attach the original certificate for cancellation by the Film Office.

RULE 13. EFFECTIVE DATE

These Rules and Regulations shall take effect 20 days after filing with the Secretary of State's Office.

STEVEN A. FEINBERG, EXECUTIVE DIRECTOR

OCTOBER 14, 2008

THIS REGULATION SUPERCEDES RULES AND REGULATIONS PROMULGATED ON MAY 8, 2008