The Rhode Island Film & Television Office

RESPONSE

to the Economic Development Tax Incentives Evaluation Act:

Evaluation of
"Motion Picture Production Tax Credits"
(R.I. Gen. Laws § 44-31.2-5)
Tax Years 2019 through 2021

Office of Revenue Analysis

June 14, 2024

FROM THE EXECUTIVE DIRECTOR, RHODE ISLAND FILM & TELEVISION OFFICE

Thank you for the opportunity to share impressions of the Department of Revenue ‘s most recent Office of Revenue Analysis (ORA) Economic Development Tax Incentive Evaluation Act report per R.I. Gen. Laws 44-48.2-4 of the Motion Picture Production Tax Credits R.I. Gen Laws 44-31.2-5.

IMPORTANT NOTE: The views and opinions expressed by the DOR & ORA are those of the authors alone, and do not necessarily reflect or represent the views or positions of the Rhode Island Film & TV Office (RIFTVO) nor the Rhode Island State Council on the Arts (RISCA). It should be further noted that RIFTVO only provided data as requested by ORA and assumes no responsibility for any errors, or omissions in this document. This evaluation was not conducted in collaboration with RIFTVO.

SUMMARY

RIFTVO has reviewed the ORA brief conducted by our friends at the DOR. In addition, RIFTVO has decades of hands-on experience in the motion picture and television industry and has previously reviewed more comprehensive studies of motion picture tax incentives across the globe. It must be noted that the DOR/ORA as stated in this document, focuses narrowly and solely on the state general revenue, while disregarding the direct positive economic revenue streams to local town and municipalities, regional tourism bureaus, the Rhode Island Commerce Corporation, Rhode Island Convention Center and does not attempt to calculate the indirect positive revenue impacts of additional visitors (related and unrelated to persons working on the production) to the State of Rhode Island during the production process, nor calculate the earned media and advertising value during the filming of a production from traditional local, regional and global media as well as social media coverage. This study does not account for workers forgoing unemployment benefits due to additional labor hours exclusively derived from film and television production. This can be clearly cited in the hospitality industry, when productions are highly active during “the shoulder season” and hotel workers and support vendors are typically “laid off”, if not for the arrival of a film/television production. Lastly, the DOR/ORA Study does not attempt to calculate the additional positive revenue impacts, during the distribution process of a production, for tourism, including popular “set jetting” or screen tourism, nor does it attempt to calculate the secondary earned media and advertising value of a Rhode Island made film or television series from traditional local, regional and global media as well as social media coverage during the network/studio heavy promotional stage.

In the opinion of RIFTVO, this ORA evaluation is narrow in scope and omits or misconstrues a number of points and is not at all comprehensive. A wider lens, enriched with additional data, would produce a different result, affirming the overall economic benefits of the Motion Picture Production Tax Credit to the state and local economy far outweighs its cost.

OMISSIONS (Income Taxes for In-State and Out-of-State High Wage Earners)

Here is one example where intentionally omitted material would provide a fair representation of the impact of the Motion Picture Tax Incentive. In the modeling for wages, ORA states "*an adjustment was made for wages paid to highly paid out-of-state employees. ORA excluded all 'above the line' compensation from the cost benefit analysis and included only 'below-the-line compensation.' As discussed in the 'Economic Development Tax Incentives Evaluation Act: Motion Picture Production Tax Credits' report previously published by OA, 65 percent of total compensation was paid to 'above-the-line personnel' . Therefore, only 35 percent of the total compensation was included in the current analysis.*"

RIFTVO challenges this deliberate omission of a significant portion of compensation. Of the productions specific to this study, several have “above the line” employees (ie. producers, directors, actors, and writers) who <u>are</u> actually Rhode Island residents. They pay Rhode Island income tax. ORA is not including the impact of their income taxes to the State of Rhode Island. Second, and more importantly, regardless of highly paid in-state residents or highly-paid out-of-state residents, each “above-the-line” employee must pay Rhode Island State income taxes for the work provided within the State of Rhode Island. Even though employee payroll is paid via a payroll company, most above-the-line talent use loan-out companies to direct payment for their services. According to Rhode Island regulation 280-RICR-20-20-5.5T, all employees of a loan out company and the loan out company itself are subject to R.I. income taxes and the loan out the company must also register with the Secretary of State and the Division of Taxation. The talent must pay Rhode Island state taxes for the work done in Rhode Island. If these public figures were delinquent on their Rhode Island taxes, they would be identified to the public via the Division of Taxation public report, which is clearly not the case. The above-the-line talent pays Rhode Island income taxes and that is a revenue stream to the State of Rhode Island’s General Fund which should not be omitted.

OMISSIONS (Additional Income Taxes of High Wage Earners)

In addition to the direct income taxes of wages for the highly paid “above-the-line talent” for their services provided on the actual production, ORA does not appear to calculate the secondary revenue stream of income taxes from the highly-paid above-the-line talent that is paid to the State of Rhode Island General Fund for residual checks. Residual checks are paid to “above-the-line” talent, based on the work provided in the State of Rhode Island. For years, and in perpetuity, via collective bargaining agreements with the Director’s Guild of America, the Writer’s Guild of America, and the Screen Actors Guild, production companies and studios are extensively monitored for the distribution, purchases and rentals of motion pictures and television series. The result of these financial formulas for domestic and foreign pay television, domestic and foreign on-demand rentals and purchases, digital streaming, and physical purchases such as blu-rays and dvds, are often lucrative residual checks. The additional revenue derived by these secondary markets are also subject to income tax in the state in which the services were originally provided. In other words, if the production was made in Rhode Island, then the residual check is also derived from the work within the State of Rhode Island and therefore subject to Rhode Island income tax.

This vital fiscal information regarding "above-the-line" salaries, income tax and residual checks and the additional streams of income taxes, has not been calculated and has been omitted from the ORA study.

OMISSIONS (Revenue returned to Quasi-State agencies, etc via taxes)

To demonstrate what we believe is the narrow scope of the ORA brief, returns on investment for the Motion Picture Production Tax Credits, including tax revenues to quasi-state or state supported agencies appear to be <u>excluded</u> while only very select revenues sent directly into the General Fund are included in the equation. Even though these entities are financially supported by Rhode Island state government, the revenue generated from motion picture productions does not appear to be included in the return-on-investment equation according to this ORA study. Specifically, motion picture productions generate a variety of revenue streams locally and statewide. Monies from hotel rentals, as an example, not only directly and positively impact the hotel site, its employees, its vendors, but, in addition, a large stream of taxes flow to the host city or town, as well as to the Commerce Corporation, the Providence-Warwick Convention & Visitors Bureau and the Rhode Island Convention Center. The remaining funds return to the General Fund. Rather than comprehensively calculate the revenue streams from the Motion Picture productions to all state and local entities, including Rhode Island quasi-state agencies such as the Commerce Corporation, the Rhode Island Convention Center Authority, the Quonset Development Corporation, the Rhode Island Turnpike and Bridge Authority, the Rhode Island Airport Corporation as well as Rhode Island tourism boards including Discover Newport, Providence-Warwick Convention & Visitors Bureau, South County Tourism Council, Warwick Department of Tourism, Culture and Development, Blackstone Valley Rhode Island Tourism Council and state financially supported partners such as the cities and towns, the ORA study merely calculates the revenue returned directly to the General Fund. The ORA study omits and does not calculate revenues returned to Rhode Island's quasi-state agencies, state partners and local stakeholders. This narrow approach further skews the true return on investment and benefits to the local and state economy.

OMISSIONS (Tourism)

There is no or little examination of the impact on tourism in the ORA study. In its less significant omission, the ORA study fails to mention that each film or television show receiving a Motion Picture Tax Credit is required to list The State Of Rhode Island as a film location along with displaying the Rhode Island Film and Television logo during end credits. This enables the audience to know the destination where a favorable production has been filmed, whether a fictional location like Wes Anderson's "Moonrise Kingdom" or the real city by the sea, Newport, for HBO's "The Gilded Age".

The ORA study recommends that only productions with stories set in Rhode Island should receive a tax credit. Frankly, that recommendation denotes a lack of understanding of the film and television industry, how stories are written and told, and more importantly -- the impact of that story-telling on the global tourism market. When a movie or series depicts Rhode Island as Rhode Island, that is certainly one positive way to lift up tourism. However, it would be wrong to exclude the influence of cinematic destinations, real or imagined, on the minds, hearts and tourism dollars of the modern traveler. This ORA study neglects to mention the dramatic boost in tourism for destinations such as New Zealand with the epic fantasy series of the shire, "The Hobbit" and "Lord of the Rings" or the fictional town of Amity in the 1975 blockbuster "Jaws" and its positive annual tourism impact on Edgartown, Martha's Vineyard, or HBO's medieval fantasy “Game of Thrones” and the robust impact on the Northern Ireland Tourism and the power of the fictional Yorkshire country estate for "Downton Abbey" which had 100 million viewers watching the last episode of the series and then financially resurrected a destination preparing to close its doors—Highclere Castle in Hampshire. Tourism for cinema and television experiences can be successfully exploited regardless of whether the story location is fiction or non-fiction.

OMISSIONS (Mainstream media and social media impressions and ad value)

There are many additional positive financial impacts to the State of Rhode Island not calculated and omitted in this study. There is no mention of publicity during the actual production and distribution of the film or television series. There is no mention of advertising value in dollars and impressions via mainstream media such as newspapers, magazines, commercials, television spots, newscasts, entertainment shows as well as the many platforms on social media.

Most recently, for example, a movie such as "Hocus Pocus 2", which filmed throughout Rhode Island, has garnered global publicity for the Ocean State. An avalanche of publicity occurred before and during production and there was an abundance of ad value. Even though the story takes place in Salem, mass media positively promoted on different platforms that "Hocus Pocus 2" was filming throughout the State of Rhode Island. Where is the data in the ORA study regarding marketing, advertising value derived in dollars and impressions during production and via distribution outlets when the completed film or television production is marketed?

OMISSIONS (Neighboring States and Expanded Global Programs)

The ORA study fails to mention that many states and countries across the globe have actually expanded their motion picture incentive programs, including our neighboring states of Massachusetts and Connecticut, which not only have no cap on their programs, but last year, Massachusetts also removed their sunset date completely to ensure more investment, growth and infrastructure into their state. Most recently, in January 2022, New Jersey expanded their motion picture tax credit with credits up to 35%.

OMISSIONS (R.I. Division of Taxation Receives All Financial/Personal Data)

Let this be clear. The Rhode Island Film & TV Office administers the Motion Picture Tax Credit Program in cooperation with the Division of Taxation. The Division of Taxation, and therefore the State of Rhode Island, does receive ALL confidential, personal, financial information required by law, and that information is thoroughly audited within the Audits Department of Division of Taxation and then, upon completion of that exhaustive process, the tax credit is awarded by the Director of the Division of Taxation to the production company. The production company must be compliance with the Rhode Island Film & TV Office and Division of Taxation in order to receive the Motion Picture Tax Credit. More specifically, each production is not only audited by a Rhode Island State certified accountant, but more importantly, for this report, the motion picture production company is fully audited by the Division of Taxation and must send to Donna Dube, Principal Revenue Agent, Rhode Island Division of Taxation, One Capitol Hill, 1st Floor, Providence, Rhode Island 02908 not only the Final Application, a Cost Report as prescribed by the tax administrator and an "accountant's certification confirming the accuracy of the information included in the cost report, but also the following:

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 notice 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 of all employees and personnel, above the line and below the line; 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, including final 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 schedule 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.

In addition to the above, the following information must also be provided to the Division of Taxation in order to verify the credit amount (all lists shall include the name, address, federal employer identification number or social security number, amount paid and dates paid, and be in a manner prescribed by the tax administrator

a. A list of loan out companies, temporary agencies, employee leasing companies, and professional employee organizations that have provided services to the motion picture
production company within the State of Rhode Island;

b. A list of qualified vendors that have sold and/or rented goods to the motion picture production company for use within the State of Rhode Island,

c. A list of all personnel involved in the production;

d. A complete ledger as certified by a Rhode Island certified public accountant;

e. Payroll records for all cast and crew working on the production;

f. Copies of all invoices and receipts broken down by expense categories as prescribed by the tax administrator;

g. The production “bible” and

h. Any other information the tax administrator considers necessary.

Even though the Department of Revenue Analysis is not allowed full access to this information from the Division of Taxation due to confidentiality issues, the public needs to be aware the Rhode Island Division of Taxation has secured this vital financial and personal information in order to legally obtain the Motion Picture Tax Incentive Program's credit.

RI FORM 8201A was recently created for companies to sign annual employee reports, months and sometimes years, after the tax credit program process has been thoroughly processed and administered. Unlike other incentive post-reports, there is no distinction for production companies which typically close or go dormant after the production is long concluded. We would recommend that this form, as it currently exists, should be revised, or eliminated for film and television productions which do not continue to carry forward annual employees upon completion of a production and certainly not years after the production has completed and been distributed.

RECOMMENDATIONS

In order to provide lawmakers and the Rhode Island public with a more comprehensive evaluation of the Motion Picture Production Tax Credit program, we urge lawmakers to amend the Office of Revenue Analysis (ORA) Economic Development Tax Incentive Evaluation Act report per R.I. Gen. Laws 44-48.2-4 to require collaboration with the Executive Director of the Rhode Island Film & Television Office. At minimum, it should be established by law that the Executive Director of RIFTVO is provided an opportunity, within the body of the ORA written analysis, to provide an accompanying review or response to the ORA evaluation of the Motion Picture Tax Credit program. It should be noted RIFTVO has more extensive level of institutional knowledge of the motion picture and television industry, its actual financial practices, and past and current trends, which are all essential to the proper evaluation of a program of this kind.

Thank you for the opportunity to review the ORA brief.

Warmly,

Steven Feinberg
Executive Director,
Rhode Island Film & TV Office