

# Rules and Regulations for the Certification of Motion Picture Production Tax Credits (280-RICR-20-20-5)

## 280-RICR-20-20-5 ACTIVE RULE

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### 5.1 Purpose

These rules implement R.I. Gen. Laws Chapter 44-31. These rules govern the procedures for the application, certification, and issuance of these tax credits.

### 5.2 Authority

These rules and regulations are jointly promulgated by the Rhode Island Division of Taxation (within the Department of Revenue) and the Rhode Island Film and Television Office (within the Rhode Island State Council on the Arts) pursuant to R.I. Gen. Laws § 44-31.2-6.

### 5.3 Application

The terms and provisions of these rules and regulations shall be liberally construed to permit the Rhode Island Division of Taxation, within the Department of Revenue, and the Rhode Island Film and Television office, within the Rhode Island Council on the Arts, to effectuate the purposes of R.I. Gen. Laws Chapter 44-31.2 and other applicable state laws and regulations.

### 5.4 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.

### 5.5 Definitions

A. "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," "production" and/or "post-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.

B. "Accountant's certification" means a certified audit by a Rhode Island certified public accountant licensed in accordance with R.I. Gen. Laws § 5-3.1-5.

C. "Act" means R.I. Gen. Laws Chapter 44-31.2, 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 and the Division of Taxation. The amended application must individually meet the statutory requirements for a state certified production including, but not limited to, a total production budget of a minimum of one hundred thousand dollars (\$100,000). The additional production expenditures shall be included in a separate cost report, require a separate accountant's certification, and be subject to a separate review by the Division of Taxation.

F. "Applicant" means a motion picture production company domiciled in Rhode Island, which is a corporation, partnership, limited partnership, or other entity or individual, submitting an application to the film office and the Division of Taxation for initial or final certification of a production.

G. "Application year" means within the calendar year the motion picture production company files any application for the tax credit.

H. "Certificate of motion picture production tax credit" means a certificate issued by the Division of Taxation, which states the amount of the motion picture production tax credit for which the production has qualified. A motion picture production company is prohibited from using State funds, State loans or State guaranteed loans to qualify for the motion picture tax credit. 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 on which production completed, date of final certification by the Division of Taxation, 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.

I. "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 and the Division of Taxation as part of the production's cost report.

J. "Costs"

1. include, but are not limited to, the following pre-production, production and post-production expenses which shall qualify when incurred within the State of Rhode Island and paid to a qualified vendor:

a. 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;

b. wardrobes, make-up, accessories, props, expendables, supplies and related services;

c. 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;

d. 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;

e. salary, wages, and other compensation, including related benefits paid by the employer for health insurance, pension/retirement benefits, and life insurance of persons employed, either directly or indirectly, in the production of a film including, but not limited to, writer, actor, motion picture director, and producer (provided the work is performed in the State of Rhode Island);

f. rental of facilities, site locations, including preparation, security, clean-up and equipment located and procured in the State of Rhode Island;

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

h. 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;

i music, if performed, composed, or recorded by a Rhode Island musician, or released or published by a person domiciled in Rhode Island;

j. 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

k. 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.

2. costs that do not qualify as state certified production costs, include without limitation, the following:

a. any salaries, wages, and other compensation, including related benefits to individuals who are performing services outside the State of Rhode Island;

b. any travel expenses for persons departing from the State of Rhode Island;

c. any expense attributable to a completion bond;

- d. insurance expenses, including workers' compensation insurance and temporary disability insurance;
- e. any cost associated with the promotion or marketing of the production including premier showings, special screenings and advertising;
- f. costs that were not incurred in Rhode Island;
- g. costs that have not been paid at the time of the application for final certification;
- h. costs which have not been the subject of the Rhode Island accountant's certification;
- i. bank fees or charges;
- j. federal and state withholding tax amounts;
- k. payments to the Rhode Island Secretary of State's office;
- l. payments to the Rhode Island Division of Taxation, including, but not limited to, payments for tax filings, letter of good standing requests, and audits conducted under R.I. Gen. Laws Chapter 44-31.2;
- m. payments to the Rhode Island film office;
- n. expenses incurred for the preparation of the cost report;
- o. payments made to a nonqualified vendor;
- p. costs incurred prior to filing a completed initial certification application with the film office; and
- q. costs that are not arms-length transactions.

3. In the case where props and other production assets, with a cost of more than two thousand five hundred dollars (\$2,500), 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 in conjunction with the Rhode Island Division of Taxation.

a. Example:

(1) 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 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 by an independent appraiser. For purposes of the cost report, only the \$1,000 value consumed during production will be allowed.

K. "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.

1. Examples

a. Wardrobe 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, wardrobe purchased or rented from a non-qualified vendor and shipped to Rhode Island will not constitute a cost incurred within the state.

b. Catering expenses and services provided by 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, catering services rendered outside of Rhode Island or by a non-qualified vendor will not constitute a cost incurred within the state.

c. Props 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, props acquired from a non-qualified vendor or created outside of Rhode Island will not constitute a cost incurred within the state.

d. 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.

e. 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 to an out of state location will not constitute a cost incurred within the state.

L. “Division of Taxation” means that office within the Department of Revenue that operates under the authority and direction of the tax administrator, pursuant to R.I. Gen. Laws § 44-1-1 et seq.

M. “Documentary production” means a non-fiction production intended for educational or commercial distribution that may require out of state principal photography.

N. “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 R.I. Gen. Laws § 44-30-5. 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, R.I. Gen. Laws Chapters 44-11 and 44-30.

O. “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.

P. “Film office” means an office within the Rhode Island State Council on the Arts that has been established in order to promote and encourage the locating of film and television productions within the State of Rhode Island. The office is also referred to within as the “Rhode Island film and television office.”

Q. “Film office director” means the Director of the Rhode Island Film and Television Office.

R. “Final production budget” means and includes the total pre-production, production and post-production out of pocket costs incurred and paid in connection with the making of the motion picture. The final production budget excludes costs associated with the promotion or marketing of the motion picture.

S. “Inspection” means a visit by an authorized representative of the film office and/or the Division of Taxation to a property, including a set, a soundstage, a location or a production office for services performed in Rhode Island.

T. “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 or other person is loaned out to perform services for the motion picture production company. Regardless of structure, employees or other persons of such loan-out companies and the loan out company itself shall be subject to all applicable provisions of the Rhode Island personal income tax and any applicable payroll or other tax provisions. A loan-out company shall be registered with the Rhode Island Secretary of State and the Rhode Island Division of Taxation.

U. "Motion picture" means feature-length film, documentary production, video, television series, or commercial made in Rhode Island, in whole or in part, for theatrical or television viewing or as a television pilot or for educational distribution. 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 18 U.S.C. § 2257, to be maintained with respect to any performer in such production or reporting of books, films, etc. with respect to sexually explicit conduct.

V. "Motion picture production company" means

1. 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.

2. 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:

- (1) on taxes owed to the state; or

- (2) on a loan made by the state in the application year; or

- (3) on a loan guaranteed by the state in the application year; or

- b. any company or person who has discharged an obligation to pay or repay public funds or monies by:

- (1) filing a petition under any federal bankruptcy, or state receivership, or insolvency law against such company or person;



(2) having a petition filed under any federal bankruptcy, or state receivership, or insolvency law against such company or person;

(3) consenting to, acquiescing in, or joining in a petition named in §§ 5.5(V)(2)(b)((1)) or ((2)) of this Part above;

(4) consenting to, acquiescing in, joining in the appointment of a custodian, receiver, trustee, or examiner for such company's or person's property; or

(5) making an assignment for the benefit of creditors, or admitting in writing or in any legal proceeding its insolvency or inability to pay debts as they become due.

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

X. "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.

Y. "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.

Z. "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.

AA. "Primary locations" means the locations within which

1. at least fifty-one percent (51%) of the motion picture's total principal photography days are filmed; or

2. at least fifty-one percent (51%) of the motion picture's final production budget is spent and at least five (5) individuals were employed by the production company during the production in this State; or
3. for documentary productions, the location of at least fifty-one percent (51%) of the total productions days, which shall include pre-production and post-production locations.

BB. "Principal photography and/or animation" means the filming and/or animation of major and significant portions of a state certified production that involves the lead actors and/or animators.

CC. "Qualified vendor" means any individual, partnership, corporation, limited liability company or other business entity that

1. provides goods and services in this state to a state certified motion picture during production;
2. maintains a place of business in Rhode Island;
3. is subject to Rhode Island taxation;
4. is registered with the Rhode Island Division of Taxation; and
5. is registered with the Rhode Island Secretary of State's office and is qualified to do business in Rhode Island.

DD. "Rhode Island film and television office" means an office within the Rhode Island Council on the Arts that has been established in order to promote and encourage the locating of film and television productions within the State of Rhode Island. The office is also referred to within as the "film office."

EE. "State certified production" means a motion picture production approved by the Rhode Island film and 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:

1. signed a viable distribution plan; or
2. is producing the motion picture; or
  - a. a major motion picture distributor; or

- b. a major theatrical exhibitor; or
- c. a television network; or
- d. a cable television programmer; or
- e. web-based streaming distribution.

3. 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 one hundred thousand dollars (\$100,000).

FF. "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. State certified production costs do not include costs paid for using State funds, State loans or State guaranteed loans to qualify for the motion picture tax credit.

GG. "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.

HH. "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).

II. "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; costs not incurred within Rhode Island; costs not paid; or costs provided by nonqualified vendors.

## **5.6 Overview**

A. The process of applying for and receiving motion picture production tax credit certificates consist of the following steps:

1. The production company files an application for initial certification with the film office. (For details see § 5.7 of this Part)
2. The film office prepares an impact analysis based on information provided by the production company on its initial application. The analysis is available for public inspection and is posted on the Division of Taxation's website. (For details see § 5.8 of this Part)
3. The film office, following review and approval of the initial certification request, issues an initial certification notice to the motion picture production company and to the tax administrator. If the film office rejects an initial certification request, a written notification will be sent to the applicant. (For details see § 5.9 of this Part)
4. The production company notifies the film office in writing of the commencement of production. (For details see § 5.11 of this Part)
5. The production company, after completion of a production, files an application for final certification of the production with the film office and the Division of Taxation. (For details see §§ 5.7 and 5.9 of this Part)
6. The Division of Taxation makes a determination of the amount of tax credit based on its review of state certified production costs. (For details see § 5.13 of this Part)
7. The Division of Taxation, upon determination that the production company has complied with all necessary requirements, issues tax credit certificates to the production company. (For details see § 5.14 of this Part)

B. In addition, all recipients of motion picture production tax credits are required to file annual reports with the tax administrator, for the year they receive a tax credit, as follows:

1. Rhode Island Form TC-100 must be filed by August 15th. (For details see § 5.8 of this Part)
2. Rhode Island Form 8201A must be filed by September 1st. (For details see § 5.8 of this Part)

## **5.7 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](http://www.film.ri.gov) and the Division of Taxation's website at [www.tax.ri.gov](http://www.tax.ri.gov). The Initial Application is used to request initial certification of a motion picture production and shall 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 Division of Taxation of any credit documents relating to the completion of a state certified production.

B. Application for initial certification of a production.

1. 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.
2. Any costs incurred prior to filing a complete initial certification application shall not be allowed for purposes of meeting the one hundred thousand dollars (\$100,000) minimum Rhode Island production budget or as a cost in calculating the motion picture production tax credits.
3. The information submitted 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 (including name, address and federal employer identification number) 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 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, address, and federal employer identification number 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; and;

(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. payroll company information: name, address, and federal employer identification number of any company or other entity who will make withholding tax payments and employer tax payments on behalf of the production company. The payroll company must be a qualified vendor.

f. 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.

1. When production is completed, the applicant shall submit a completed application for final certification to the film office and the Division of Taxation. Such application must contain the signature of the applicant, including title and date. 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 as prescribed by the tax administrator and an “accountant’s certification” to evidence the motion picture production company’s compliance with all provisions of R.I. Gen. Laws Chapter 44-31.2. 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.

2. The application for final certification information shall, in addition to the items above, include all the following information, and any other information that the Division of Taxation determines necessary for proper evaluation and administration of the application. The following information is to be submitted to both the film office and the Division of Taxation:

- 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 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.

3. 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 the 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 general 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.

#### D. Disclosure of Application Information.

1. Records maintained by the Division of Taxation may not be publicly disclosed as provided in R.I. Gen. Laws § 38-2-2.

2. Access to Public Records



a. In the event a request for access to public records is made, application information submitted to the film office may be publicly disclosed under the Access to Public Records Act, R.I. Gen. Laws Chapter 38-2, as amended, unless it comes within one of the exemptions set forth R.I. Gen. Laws § 38-2-2.

b. Records that are exempt from disclosure are described in R.I. Gen. Laws § 38-2-2(4). For example, R.I. Gen. Laws § 38-2-2(4)(B) provides an exemption that “Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature” are not deemed public.

c. If an Applicant believes that certain information submitted as part of its applications is exempt from public disclosure, on the submitted record such information should be marked or labeled “Exempt from Public Disclosure”. This label should also set forth the applicable statutory exemption. For the example above, please reference R.I. Gen. Laws § 38-2-2(4)(B).

d. In the event that a person requests that all or part of a submitted record be publicly disclosed, the person must submit such a request to the film office. As stated in the Access to Public Records Act, the film office must respond in writing within 10 business days of receipt. If any submitted record has been described as exempt from disclosure, the film office will consider whether or not the exempted record falls within a particular exemption.

## **5.8 Impact Analysis and Periodic Reporting**

A. Impact Analysis and Periodic Reporting shall be done in accordance with R.I. Gen. Laws § 44-31.2-6.1.

1. Motion Picture Production companies shall file the Rhode Island Form TC-100 when fulfilling the periodic reporting requirements set forth in R.I. Gen. Laws § 44-31.2-6.1(f).

2. Motion picture production companies shall file the Rhode Island Form 8201A when fulfilling the period reporting requirement set forth in R.I. Gen. Laws § 44-31.2-6.1(h).

## **5.9 Certification of a Production**

#### A. Initial Certification of a Production:

1. 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.

2. Any costs incurred prior to filing a complete initial certification application shall not be allowed for purposes of meeting the one hundred thousand dollars (\$100,000) minimum Rhode Island production budget or as a cost in calculating the motion picture production company tax credits.

3. The film office will complete its review for initial certification requests within thirty (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.

#### 4. Initial Certification Notice:

a. Once the review is completed, the film office will issue initial certification of the motion picture production in the form of a notice issued to the motion picture production company and to the tax administrator. The notice states that, after appropriate review, the initial application meets the appropriate criteria for conditional eligibility. The notice 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 R.I. Gen. Laws § 44-31.2-8.

b. The notice 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 notice 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 R.I. Gen. Laws § 44-31.2.

**B. Final Certification of a Production:**

1. 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.

2. Within ninety (90) business days after the Division of Taxation's receipt of the motion picture production company's application for final certification and fully documented cost report, the Division of Taxation shall issue a certification of the amount of credit for which the motion picture production company qualifies under R.I. Gen. Laws § 44-31.2-5. When adequate information is not provided, the Division of Taxation will notify the applicant of the additional information needed to complete the review. The Division of Taxation 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.

3. The Division of Taxation 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 Division of Taxation will calculate the amount of Rhode Island Motion Picture Production Tax Credit and issue the applicable Certificate[s]. To claim the tax credit, the tax credit certificate issued by Division of Taxation shall be attached to the state tax return on which the credit is initially claimed. If the Division of Taxation denies final certification, the applicant may appeal the Division of Taxation's decision under the provisions of R.I. Gen. Laws § 44-31.2-8 (For details see § 5.15 of this Part).

**C. Decisions, Reliance on Application:**

1. Initial certifications are only issued in writing by the film office director or other duly authorized representative of the film office. Final certifications are only issued in writing by the tax administrator or other duly authorized representative of the Division of Taxation. 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 and the Division of Taxation that the facts contained therein are true and correct, and the film office and the Division of

Taxation is entitled to rely thereon. 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 or the Division of Taxation 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 or the Division of Taxation's decision under the provisions of R.I. Gen. Laws § 44-31.2-8.

2. 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.

## **5.10 Priority and Allocation of Credits**

### **A. Limitation**

1. No more than fifteen million dollars (\$15,000,000) in total may be issued for any calendar year beginning after December 31, 2007 for motion picture tax credits pursuant to R.I. Gen. Laws Chapter 44-31.2 and/or musical and theatrical production tax credits pursuant to R.I. Gen. Laws Chapter 44-31.3. Said credits shall be equally available to motion picture productions and musical and theatrical productions. No specific amount shall be set aside of either type of production.

2. Notwithstanding § 5.10(A)(1) of this Part, the tax credit for any motion picture production shall not exceed five million dollars (\$5,000,000).

3. The tax administrator may issue a waiver of the five million dollar (\$5,000,000) tax credit cap provided:

- a. the production is a feature-length film or television series;
- b. the requested tax credits do not exceed the remaining portion of the fifteen million dollars (\$15,000,000) in total motion picture production company tax credits available for the calendar year; and
- c. the production company meets all other conditions and requirements under these rules and regulations.

4. Credits shall be allocated against the cap established in § 5.10(A)(1) of this Part for the calendar year determined by film office in the initial certification notice.

B. In order to comply with the requirements of § 5.10(A)(1) of this Part 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:

1. 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”;
2. 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;
3. This estimated amount will not be allocated to any other production, except as set forth below under “loss of place in the queue”;
4. If a production
  - a. falls out of “good standing status” with the Secretary of State; or
  - b. halts production; or
  - c. declares in writing to the film office that the estimated state certified production costs will not be expended in Rhode Island; or
  - d. fails to meet the deadlines as indicated in § 5.10(B)(5) of this Part, the production will lose its place in the queue, and shall be moved to the end of the queue.
5. 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 notice. Upon receipt of a written request the director of the film office 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 notice;
6. 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;

7. 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;

8. Remaining productions in the queue, which are not qualified 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.

## **5.11 Commencement of Production**

A. Once production has begun, the film office shall 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 an 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 the initial certification notice, 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 or the Division of Taxation to approve an amended production for a motion picture that has already obtained final certification, the applicant must repeat the application process and the amended production must meet all appropriate criteria.

D. Inspection Rights: The film office and the Division of Taxation 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.

## **5.12 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 and the Division of Taxation'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 R.I. Gen. Laws § 44-31-2.2(5).

B. The cost report is a crucial part of and an attachment to the application for final certification of a production. The cost report shall be in a format as prescribed by the tax administrator, and must state:

1. the date of completion of the production in the State of Rhode Island,
2. the amount and listing of production costs incurred and actually paid within the State of Rhode Island with respect to the production as set forth in the rules herein, and
3. that the total production budget is at least \$100,000.

## **5.13 Determination of Tax Credit**

A. The amount of the motion picture production tax credit shall be determined by the Division of Taxation to equal twenty-five percent (25%) of the state certified production costs of a completed state certified production, verified by the Division of Taxation. The credit is considered earned in the tax year the production is completed.

B. The motion picture production tax credit shall be allowed as a credit against a tax imposed by R.I. Gen. Laws Chapters 44-11, 44-14, 44-17 and 44-30 for the tax year the credit is earned. Any unused credit may be carried forward for the next three (3) succeeding tax years.

C. The Division of Taxation shall determine if the cost included in the cost report meets the criteria of "costs" as defined in § 5.5 of this Part. If any cost is denied, the Division of Taxation shall advise the applicant of the denial in writing, citing the reasons for the denial.

## **5.14 Issuance of Tax Credit Certificates**

A. Concurrent with the final certification of the production, the Division of Taxation, 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 on 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. 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 or the Division of Taxation may deny the requested certification or revoke a certification previously given. In such cases, the applicant may appeal the film office's or the Division of Taxation's decision under the provisions of R.I. Gen. Laws § 44-31.2-8.

C. In relation to granting the credit, any motion picture production company applying for the credit shall be required to reimburse the Division of Taxation for its audits.

1. The reimbursement shall be at the rate of one quarter of one percent (0.25%) of the final audited certified production costs and shall not exceed the amount of \$5,000.

2. Such reimbursement shall be paid to the Rhode Island Division of Taxation prior to the issuance of any tax credit certificates.

## **5.15 Hearings and Appeals**

A. From an action of the film office. For matters pertaining exclusively to application, production, and certification of motion picture productions, any person aggrieved by a denial action of the film office under R.I. Gen. Laws Chapter 44-31.2 shall notify the director of the film office in writing, within thirty (30) days from the date of mailing of the notice of denial action by the film office and request a hearing relative to the denial or action. The director of the film office shall, as soon as is practicable, fix a time and place of hearing. Following the hearing the director of the film office shall render a final decision. Appeals from a final decision of the director of the film office under R.I. Gen. Laws



Chapter 44-31.2 are to the Sixth (6th) Division District Court pursuant to R.I. Gen. Laws Chapter 42-35.

B. From denial of tax credit or a portion thereof. Any person aggrieved by the tax administrator's denial of a tax credit or tax benefit under R.I. Gen. Laws Chapter 44-31.2 shall notify the tax administrator in writing within thirty (30) days from the date of mailing of the notice of denial of the tax credit and request a hearing relative to the denial of the tax credit. The tax administrator shall, as soon as is practicable, fix a time and place for a hearing. Following the hearing the tax administrator shall render a final decision. Appeals from a final decision of the tax administrator under R.I. Gen. Laws Chapter 44-31.2 are to the Sixth (6th) Division District Court pursuant to R.I. Gen. Laws Chapter 8-8. The taxpayer's right to appeal is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer files a timely motion for exemption from prepayment with the district court in accordance with the requirements imposed pursuant to R.I. Gen Laws § 8-8-26.

## **5.16 Assignment of Tax Credit Certificates**

A. Each motion picture production tax credit certificate 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 transferors and sellers must submit notice of the assignment, transfer or sale within thirty (30) days of the sale of transfer to the tax administrator. The Division of Taxation 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 Division of Taxation will also collect an administrative fee of two hundred dollars (\$200) on behalf of the film office.

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:

1. It shall be required that written notification is filed with the Division of Taxation of the assignment, transfer or sale, of all or a portion the motion picture production tax credit certificates. Notification submitted to the tax division 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.

2. 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 Division of Taxation 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 Division of Taxation.

## **5.17 Sunset**

No Motion Production Tax Credit shall be issued after the date as prescribed in R.I. Gen. Laws § 44-31.2-11.