

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 58.1-439.12:03 of the Code of Virginia, relating to motion picture production*
 3 *income tax credit; sunset extended.*

4 [H 400]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 58.1-439.12:03 of the Code of Virginia is amended and reenacted as follows:**8 **§ 58.1-439.12:03. Motion picture production tax credit.**

9 A. For taxable years beginning on and after January 1, 2011, but prior to January 1, ~~2027~~ 2031, any
 10 motion picture production company with qualifying expenses of at least \$250,000 with respect to a motion
 11 picture production filmed in Virginia shall be allowed a refundable credit against the taxes imposed by
 12 § 58.1-320 or 58.1-400 in an amount equal to 15 percent of the production company's qualifying expenses or
 13 20 percent of such expenses if the production is filmed in an economically distressed area of the
 14 Commonwealth. The Virginia Economic Development Partnership Authority shall designate which areas of
 15 the Commonwealth are deemed to be economically distressed areas. The credit shall be computed based on
 16 all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying
 17 expenses incurred during the taxable year. The refundable tax credits allowed under this section are for one
 18 tax year only. Where a motion picture production continues for more than one year, a separate application for
 19 each tax year the production continues must be made. The grant of a refundable tax credit for a motion
 20 picture film production does not create a presumption that the production will receive a refundable tax credit
 21 for subsequent tax years. Effective on January 1, 2013, for purposes of eligibility for refundable tax credits, a
 22 motion picture film production shall include digital interactive media production.

23 "Qualifying expenses" means the sum of the following amounts spent in the Commonwealth by a
 24 production company in connection with the production of a motion picture filmed in the Commonwealth:

25 1. Goods and services leased or purchased. For goods with a purchase price of \$25,000 or more, the
 26 amount included in qualifying expenses is the purchase price less the fair market value of the good at the time
 27 the production is completed.

28 2. Compensation and wages, except in the case of each individual who directly or indirectly receives
 29 compensation in excess of \$1 million for personal services with respect to a single production. In such a case,
 30 only the first \$1 million of salary shall be considered a qualifying expense. An individual is deemed to
 31 receive compensation indirectly when a production company pays a personal service company or an
 32 employee leasing company that pays the individual.

33 B. 1. In addition to the refundable credit authorized under subsection A, such production company shall
 34 be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia
 35 residents employed in connection with the production of a film in the Commonwealth when total production
 36 costs in the Commonwealth are at least \$250,000 but not more than \$1 million. This additional credit shall be
 37 equal to 20 percent of the total aggregate payroll for Virginia residents employed in connection with such
 38 production when total production costs in the Commonwealth exceed \$1 million.

39 2. In addition to the credits authorized under subsection A and subdivision B 1, such production company
 40 shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia
 41 residents employed for the first time as actors or members of a production crew in connection with the
 42 production of a film in the Commonwealth.

43 C. 1. For purposes of this section, in the case of an episodic television series, an entire season of episodes
 44 shall be deemed to be one production.

45 2. No credit shall be allowed under this section for any production that (i) is political advertising, (ii) is a
 46 television production of a news program or live sporting event, (iii) contains obscene material, or (iv) is a
 47 reality television production.

48 D. 1. The issuance of refundable tax credits under this section shall be in accordance with procedures,
 49 qualifying criteria, and deadlines established by the Department and the Virginia Tourism Authority. The
 50 qualifying criteria established by the Virginia Tourism Authority shall take into account whether the
 51 production involves physical production within the Commonwealth of Virginia, the number of residents of
 52 Virginia that will be employed in the production and the level of compensation they will be paid, the extent to
 53 which the production will contribute to the support and expansion of existing production companies in
 54 Virginia, the extent to which the production will impact existing local businesses and the local economy, the
 55 extent to which the production will involve existing and new companies located in Virginia, and other
 56 relevant considerations. The taxpayer shall apply for a credit by submitting such forms as prescribed by the

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57 Virginia Tourism Authority, prior to the start of production in Virginia.

58 2. Any taxpayer seeking credits under this section must enter into a memorandum of understanding with
59 the Virginia Tourism Authority that at a minimum provides the requirements that the taxpayer must meet in
60 order to receive the credits, including but not limited to the estimated amount of money to be spent in
61 Virginia, the timeline for completing production in Virginia, and the maximum amount of credits allocated to
62 the taxpayer.

63 3. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the
64 satisfaction of the Virginia Tourism Authority and completed production in Virginia, the Virginia Tourism
65 Authority shall certify the final tax credit amount to the taxpayer and to the Tax Commissioner. In addition,
66 such certificate shall specify the fiscal year in which such tax credit may be refunded by the Department of
67 Taxation. The tax return filed for the taxable year in which the Virginia production activities are completed
68 shall contain information specifying the amount of tax credit and shall specify the fiscal year in which such
69 tax credit may be refunded. The return must state the name of the production, provide a description of the
70 production, and include a detailed accounting of the qualifying expenses with respect to which a credit is
71 claimed.

72 4. The Virginia Tourism Authority shall report to the Tax Commissioner on an annual basis the amount of
73 tax credits that have been authorized for each fiscal year and the amount of tax credits that may be claimed
74 for the current fiscal year by each taxpayer.

75 5. No interest shall be paid pursuant to § 58.1-1833 on any tax credit issued by the Department under this
76 section.

77 E. A taxpayer allowed a credit under this section must maintain and make available for inspection any
78 information or records required by the Tax Commissioner. The taxpayer has the burden of proving eligibility
79 for a credit and the amount of the credit. The Tax Commissioner shall consult with the Virginia Tourism
80 Authority in order to determine the amount of qualifying expenses.

81 F. For purposes of this section, the amount of any credit attributable to a partnership, electing small
82 business corporation (S corporation), or limited liability company may be allocated to the individual partners,
83 shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

84 G. The total amount of credits allocated to all taxpayers under this section shall not exceed \$2.5 million in
85 the 2010-2012 biennium, \$5 million in the 2012-2014 biennium, and \$6.5 million in fiscal year 2015 and
86 each fiscal year thereafter.

87 H. The Department of Taxation, in consultation with the Virginia Tourism Authority, must publish by
88 November 1 of each year for the 12-month period ending the preceding December 31 the following
89 information:

90 1. Location of sites used in a production for which a credit was claimed;

91 2. Qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods,
92 services, or compensation paid by the production company;

93 3. Number of people employed in the Commonwealth with respect to credits claimed; and

94 4. Total cost to the Commonwealth's general fund of the credits claimed.

95 Notwithstanding any provision of § 58.1-3 or any other law, such information shall be published by the
96 Department, even if such information is not classified, so as to prevent the identification of particular
97 taxpayers, reports, or returns and items.

98 I. The Tax Commissioner shall develop guidelines implementing the provisions of this section, including
99 but not limited to the definition of "qualifying expenses" and setting forth the recordkeeping requirements
100 applicable to production companies claiming this credit. Such guidelines shall be exempt from the provisions
101 of the Administrative Process Act (§ 2.2-4000 et seq.).