THE CITY OF PROVIDENCE

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 301

Approved May 27, 1999

RESOLVED, That the City Council hereby endorses and urges passage by the General Assembly of House Bill 99-H 5919 and Senate Bill 99-S 0729 relating to Taxation -- Investment Tax Credit - - Film Production, in substantially the form attached.

IN CITY COUNCIL
MAY 20 1999
READ AND PASSED

PRES.

CLERK

APPROVED

MAY 27 1999

MAYOR

IN CITY COUNCIL
MAR 3 0 1999
FIRST READING
REFERRED TO COMMITTEE ON
STATE LEGISLATION
Michael R. Clement CLERK

THE COMMITTEE ON
State Legislation
Recommends Passage
Lori L Hugo
Clerk

Council President Lombardi

LC01866

STATE OF RHODE ISLAND

99-H 5919

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 1999

AN ACT

RELATING TO TAXATION -- INVESTMENT TAX CREDIT -- FILM PRODUCTION

99-H 5919

Introduced By: Reps. Costantino, Fox, Slater, Moura and Palangio

Date Introduced: February 2, 1999

Referred To: Committee on Finance

It is enacted by the General Assembly as follows:

SECTION 1. Section 44-31-1 of the General Laws in Chapter 44-31 entitled "Investment Tax Credit" is hereby amended to read as follows:

44-31-1. Investment tax credit. [Effective January 1, 1998.]. -- (a) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by chapters 11, 14, 17, and 30 of this title. The amount of the credit shall be two percent (2%) of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in subsection (b) of this section, acquired, constructed, reconstructed, or erected after December 31, 1973. Provided however, the amount of the credit shall be four percent (4%) of the: (1) cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in subsection (b)(1) of this section, acquired, constructed, reconstructed or erected after December 31, 1993; and (2) qualified amounts for leased assets of tangible personal property and other tangible property described in subsection (b)(1) of this section, acquired, constructed, reconstructed or erected after January 1, 1998, and the amount of the credit shall be ten (10%) percent of the cost or other basis for federal income tax purposes, and the qualified amounts for leased assets, of tangible personal property and other tangible property described in subsection (b)(3) of this section, acquired, constructed, reconstructed or erected after January 1, 1998~~.~~ , and provided further, however, that there shall be allowed a credit in the amount of twenty-five percent (25%) for investments otherwise qualifying under this chapter in film production business located within the city of Providence and films whose primary locations are within the state of Rhode Island and whose total production budget does not exceed five million dollars ($5,000,000).

(b) (1) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to 26 U.S.C. section 167, have a useful life of four (4) years or more, are acquired by purchase as defined in 26 U.S.C. section 179(d) or are acquired by lease as set forth in subsection (b)(3)(c) of this section, have a situs in this state and are principally used by the taxpayer in the production of goods by manufacturing, process, or assembling. The credit shall be allowable in the year the property is first placed in service by the taxpayer, which is the year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins, or the year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function, whichever is earlier. For purposes of this paragraph, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances, and other similar equipment. Property used in the production of goods shall include machinery, equipment, or other tangible property which is principally used in the repair and service of other machinery, equipment, or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced.

(2) Within the meaning of the preceding paragraph, the term "manufacturing" shall mean the activities of a "manufacturer" as defined in section 44-3-3(20)(iii) and (iv).

(3) (a) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, excluding buildings and structural components of buildings, motor vehicles and furniture, which are depreciable pursuant to 26 U.S.C. section 167, have a useful life of four (4) years or more, are acquired by purchase as defined in 26 U.S.C. section 179(d) or acquired by lease as set forth in subsection (b)(3)(c) of this section, have a situs in this state and to the extent such property is used by a qualified taxpayer, as that term is defined in subsection (b)(3)(d) of this section, in any of the businesses described in major groups 20 through 39, 50 and 51, 60 through 67, 73, 76, 80 through 82, 87 and 89 in the standard industrial

classification manual prepared by the technical committee on industrial classification, office of the statistical standards, executive office of the president, United States bureau of the budget, as revised from time to time ("SIC Code") and/or any the businesses described in the three (3) digit SIC Code 781.

(b) To the extent otherwise allowable, the credit allowed under this section shall be allowed for computers, software and telecommunications hardware used by a taxpayer even if such property has a useful life of less than four (4) years.

(c) The credit for such property acquired by lease shall be based on the fair market value of the property at the inception of the lease times the portion of the depreciable life of the property represented by the term of the lease, excluding renewal options, and

(d) For purposes of this subsection, a qualified taxpayer is defined to mean a taxpayer in any of the businesses described in major groups 20 through 39, 50 and 51, 60 through 67, 73, 76, 80 through 82, 87 and 89 of the SIC Code, and/or any of the businesses described in the three (3) digit SIC Code 781, and which meet the following criteria:

(1) The median annual wage paid to qualified taxpayer's full-time equivalent employees must be above the average annual wage paid by all taxpayers in the state which share the same two-digit SIC Code, unless such qualified taxpayer is the only qualified taxpayer in the state conducting business in such two-digit SIC Code, in which case this requirement does not apply; and

(2) With respect to major groups 50 and 51, 60 through 67, 73, 76, 80 through 82, 87 and 89 and/or the three (3) digit SIC Code 781(except for those qualified taxpayers whose businesses are described in any of the four (4) digit SIC Codes 7371, 7372 and 7373) only:

(A) More than one-half of its gross revenues are a result of sales to customers outside the state; or

(B) More than one-half of its gross revenues are a result of sales to the federal government; or

(C) More than one-half of its gross revenues are a result of a combination of sales described in subsection (b)(3)(d)(2)(A) and (B).

For purposes of this section, sales to customers outside the state is defined to mean sales to individuals, businesses and other entities, as well as divisions and/or branches of businesses and other entities, residing or located outside of the state. Notwithstanding the foregoing, the requirement of subsection (b)(3)(d)(1) shall not apply to any qualified taxpayer: (i) whose expenses for training or retraining its employees exceeds two percent (2%) of such qualified taxpayer's total payroll costs: or (ii) whose median annual wage paid to its full-time equivalent employees is equal to or greater than one hundred twenty-five percent (125%) of the average annual wage paid in this state by employers to employees: or (iii), with respect to major groups 20 through 39 only, the average annual wage paid to such Qualified Taxpayer's full-time equivalent employees, classified as production workers by the Rhode Island Department of Labor and Training, is above the average annual wage paid to the production workers of all such taxpayers in the state which share the same two-digit SIC Code. At the election of a taxpayer, which shall be made at such time and in such manner as may be determined by the tax administrator, the taxpayer's ability in a particular fiscal year to qualify as a qualified taxpayer may be based on the expenses and gross receipts of the taxpayer for either the prior fiscal year or the immediately proceeding fiscal year rather than on the expenses and gross receipts for that fiscal year. For purposes of this Article, the director of Rhode Island Human Resource Investment Council shall certify as to legitimate training and retraining expenses in accordance with the guidelines set forth in Rhode Island General Laws Title 42, Chapter 64.6 and any rules and regulations promulgated thereto. For purposes of this subsection, a full time equivalent employee is defined to mean an employee who works a minimum of 30 hours per week within the state or two (2) part-time employees who together work a minimum of 30 hours per week within the state. For purposes of this subsection, the director of the Rhode Island Department of Labor and Training, upon receipt of an application from a Qualified Taxpayer, shall certify whether such qualified taxpayer meets the requirement in subsection (b)(3)(d)(1) or is exempt from such requirement because the median annual wage it pays its full-time equivalent employees is equal to or greater than one hundred twenty-five (125%) percent of the average annual wage paid in this state by employers to employees or, with respect to major groups 20 through 39 only, the average annual wage paid to such Qualified Taxpayer's full-time equivalent employees, classified as production workers by the Rhode Island Department of Labor and Training, is above the average annual wage paid to the production workers of all such taxpayers in the state which share the same two-digit SIC Code. The director of the Rhode Island Department of Labor and Training shall promulgate such rules and regulations as required for the implementation of this requirement.

(c) A taxpayer shall not be allowed a credit under subsection (a) of this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation and shall not be allowed a credit under subsection (a) of this section with respect to buildings and structural components of buildings it leases from any other person or corporation. For the purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use the property shall be considered a lease, unless a contract or agreement is treated for federal income tax purposes as an installment purchase rather than a lease.

(d) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for the year by more than fifty percent (50%) of the tax liability that would otherwise be payable, and further in the case of corporations, to less than the minimum tax as set forth in section 44-11-2(e). However, if the amount of credit allowable under this subdivision for any taxable year is less than the amount of credit available to the taxpayer any amount of credit not deductible in the taxable year may be carried over to the following year or years (not to exceed seven (7) years) and may be deducted from the taxpayer's tax for the year or years.

(e) At the option of the taxpayer, air or water pollution control facilities which qualify for elective amortization deduction may be treated as property principally used by the taxpayer in the production of goods by manufacturing, processing, or assembling, provided the property otherwise qualifies under subsection (b) of this section, in which event, an amortization deduction shall not be allowed.

(f) With respect to property which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in subsection (a) of this section which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve (12) consecutive years, it shall not be necessary to add back the credit as provided in this subsection. Provided further that a credit allowed to a qualified taxpayer shall not be recaptured merely because the taxpayer subsequently fails to retain the classification as a qualified taxpayer. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subsection, useful life of property shall be the same as the taxpayer (or in the case of property acquired by lease, the owner of the property) uses for depreciation purposes when computing his or her federal income tax liability. Comparable rules shall be used in the case of property acquired by lease to determine the amount of credit, if any, that will be recaptured if the lease terminates prematurely or if the property covered by the lease otherwise fails to be in qualified use.

(g) The credit allowed under this subdivision shall only be allowed against the tax of that corporation included in a consolidated return that qualifies for the credit and not against the tax of other corporations that may join in the filing of a consolidated tax return.

SECTION 2. This act shall take effect upon passage.

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99-H 5919

EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

AN ACT

RELATING TO TAXATION -- INVESTMENT TAX CREDIT -- FILM PRODUCTION

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This act would provide a 25% investment tax credit for Providence based film production businesses whose production costs per film are $5.000.000 or less.

This act would take effect upon passage.

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STATE OF RHODE ISLAND

99-S 0729

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 1999

AN ACT

RELATING TO TAXATION -- INVESTMENT TAX CREDIT -- FILM PRODUCTION

99-S 0729

Introduced By: Senators Roney, Goodwin, Ruggerio and Igliozzi

Date Introduced: February 9, 1999

Referred To: Senate Committee on Finance

It is enacted by the General Assembly as follows:

SECTION 1. Section 44-31-1 of the General Laws in Chapter 44-31 entitled "Investment Tax Credit" is hereby amended to read as follows:

44-31-1. Investment tax credit. -- (a) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by chapters 11, 14, 17, and 30 of this title. The amount of the credit shall be two percent (2%) of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in subsection (b) of this section, acquired, constructed, reconstructed, or erected after December 31, 1973. Provided however, the amount of the credit shall be four percent (4%) of the: (1) cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in subsection (b)(1) of this section, acquired, constructed, reconstructed or erected after December 31, 1993; and (2) qualified amounts for leased assets of tangible personal property and other tangible property described in subsection (b)(1) of this section, acquired, constructed, reconstructed or erected after January 1, 1998, and the amount of the credit shall be ten (10%) percent of the cost or other basis for federal income tax purposes, and the qualified amounts for leased assets, of tangible personal property and other tangible property described in subsection (b)(3) of this section, acquired, constructed, reconstructed or erected after January 1, 1998~~.~~ , and provided further, however, that there shall be allowed a credit in the amount of twenty-five percent (25%) for investments otherwise qualifying under this chapter in film production business located within the city of Providence and firms whose primary locations are within the state of Rhode Island and whose total production budget does not exceed five million dollars ($5,000,000).

(b) (1) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are depreciable pursuant to 26 U.S.C. section 167, have a useful life of four (4) years or more, are acquired by purchase as defined in 26 U.S.C. section 179(d) or are acquired by lease as set forth in subsection (b)(3)(c) of this section, have a situs in this state and are principally used by the taxpayer in the production of goods by manufacturing, process, or assembling. The credit shall be allowable in the year the property is first placed in service by the taxpayer, which is the year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins, or the year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function, whichever is earlier. For purposes of this paragraph, manufacturing shall mean the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances, and other similar equipment. Property used in the production of goods shall include machinery, equipment, or other tangible property which is principally used in the repair and service of other machinery, equipment, or other tangible property used principally in the production of goods and shall include all facilities used in the production operation, including storage of material to be used in production and of the products that are produced.

(2) Within the meaning of the preceding paragraph, the term "manufacturing" shall mean the activities of a "manufacturer" as defined in section 44-3-3(20)(iii) and (iv).

(3) (a) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, excluding buildings and structural components of buildings, motor vehicles and furniture, which are depreciable pursuant to 26 U.S.C. section 167, have a useful life of four (4) years or more, are acquired by purchase as defined in 26 U.S.C. section 179(d) or acquired by lease as set forth in subsection (b)(3)(c) of this section, have a situs in this state and to the extent such property is used by a qualified taxpayer, as that term is defined in subsection (b)(3)(d) of this section, in any of the businesses described in major groups 20 through 39, 50 and 51, 60 through 67, 73, 76, 80 through 82, 87 and 89 in the standard industrial

classification manual prepared by the technical committee on industrial classification, office of the statistical standards, executive office of the president, United States bureau of the budget, as revised from time to time ("SIC Code") and/or any the businesses described in the three (3) digit SIC Code 781.

(b) To the extent otherwise allowable, the credit allowed under this section shall be allowed for computers, software and telecommunications hardware used by a taxpayer even if such property has a useful life of less than four (4) years.

(c) The credit for such property acquired by lease shall be based on the fair market value of the property at the inception of the lease times the portion of the depreciable life of the property represented by the term of the lease, excluding renewal options, and

(d) For purposes of this subsection, a qualified taxpayer is defined to mean a taxpayer in any of the businesses described in major groups 20 through 39, 50 and 51, 60 through 67, 73, 76, 80 through 82, 87 and 89 of the SIC Code, and/or any of the businesses described in the three (3) digit SIC Code 781, and which meet the following criteria:

(1) The median annual wage paid to qualified taxpayer's full-time equivalent employees must be above the average annual wage paid by all taxpayers in the state which share the same two-digit SIC Code, unless such qualified taxpayer is the only qualified taxpayer in the state conducting business in such two-digit SIC Code, in which case this requirement does not apply; and

(2) With respect to major groups 50 and 51, 60 through 67, 73, 76, 80 through 82, 87 and 89 and/or the three (3) digit SIC Code 781(except for those qualified taxpayers whose businesses are described in any of the four (4) digit SIC Codes 7371, 7372 and 7373) only:

(A) More than one-half of its gross revenues are a result of sales to customers outside the state; or

(B) More than one-half of its gross revenues are a result of sales to the federal government; or

(C) More than one-half of its gross revenues are a result of a combination of sales described in subsection (b)(3)(d)(2)(A) and (B).

For purposes of this section, sales to customers outside the state is defined to mean sales to individuals, businesses and other entities, as well as divisions and/or branches of businesses and other entities, residing or located outside of the state. Notwithstanding the foregoing, the requirement of subsection (b)(3)(d)(1) shall not apply to any qualified taxpayer: (i) whose expenses for training or retraining its employees exceeds two percent (2%) of such qualified taxpayer's total payroll costs; or (ii) whose median annual wage paid to its full-time equivalent employees is equal to or greater than one hundred twenty-five percent (125%) of the average annual wage paid in this state by employers to employees; or (iii), with respect to major groups 20 through 39 only, the average annual wage paid to such Qualified Taxpayer's full-time equivalent employees, classified as production workers by the Rhode Island Department of Labor and Training, is above the average annual wage paid to the production workers of all such taxpayers in the state which share the same two-digit SIC Code. At the election of a taxpayer, which shall be made at such time and in such manner as may be determined by the tax administrator, the taxpayer's ability in a particular fiscal year to qualify as a qualified taxpayer may be based on the expenses and gross receipts of the taxpayer for either the prior fiscal year or the immediately proceeding fiscal year rather than on the expenses and gross receipts for that fiscal year. For purposes of this Article, the director of Rhode Island Human Resource Investment Council shall certify as to legitimate training and retraining expenses in accordance with the guidelines set forth in Rhode Island General Laws Title 42, Chapter 64.6 and any rules and regulations promulgated thereto. For purposes of this subsection, a full time equivalent employee is defined to mean an employee who works a minimum of 30 hours per week within the state or two (2) part-time employees who together work a minimum of 30 hours per week within the state. For purposes of this subsection, the director of the Rhode Island Department of Labor and Training, upon receipt of an application from a Qualified Taxpayer, shall certify whether such qualified taxpayer meets the requirement in subsection (b)(3)(d)(1) or is exempt from such requirement because the median annual wage it pays its full-time equivalent employees is equal to or greater than one hundred twenty-five (125%) percent of the average annual wage paid in this state by employers to employees or, with respect to major groups 20 through 39 only, the average annual wage paid to such Qualified Taxpayer's full-time equivalent employees, classified as production workers by the Rhode Island Department of Labor and Training, is above the average annual wage paid to the production workers of all such taxpayers in the state which share the same two-digit SIC Code. The director of the Rhode Island Department of Labor and Training shall promulgate such rules and regulations as required for the implementation of this requirement.

(c) A taxpayer shall not be allowed a credit under subsection (a) of this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation and shall not be allowed a credit under subsection (a) of this section with respect to buildings and structural components of buildings it leases from any other person or corporation. For the purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use the property shall be considered a lease, unless a contract or agreement is treated for federal income tax purposes as an installment purchase rather than a lease.

(d) The credit allowed under this subdivision for any taxable year shall not reduce the tax due for the year by more than fifty percent (50%) of the tax liability that would otherwise be payable, and further in the case of corporations, to less than the minimum tax as set forth in section 44-11-2(e). However, if the amount of credit allowable under this subdivision for any taxable year is less than the amount of credit available to the taxpayer any amount of credit not deductible in the taxable year may be carried over to the following year or years (not to exceed seven (7) years) and may be deducted from the taxpayer's tax for the year or years.

(e) At the option of the taxpayer, air or water pollution control facilities which qualify for elective amortization deduction may be treated as property principally used by the taxpayer in the production of goods by manufacturing, processing, or assembling, provided the property otherwise qualifies under subsection (b) of this section, in which event, an amortization deduction shall not be allowed.

(f) With respect to property which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in subsection (a) of this section which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve (12) consecutive years, it shall not be necessary to add back the credit as provided in this subsection. Provided further that a credit allowed to a qualified taxpayer shall not be recaptured merely because the taxpayer subsequently fails to retain the classification as a qualified taxpayer. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subsection, useful life of property shall be the same as the taxpayer (or in the case of property acquired by lease, the owner of the property) uses for depreciation purposes when computing his or her federal income tax liability. Comparable rules shall be used in the case of property acquired by lease to determine the amount of credit, if any, that will be recaptured if the lease terminates prematurely or if the property covered by the lease otherwise fails to be in qualified use.

(g) The credit allowed under this subdivision shall only be allowed against the tax of that corporation included in a consolidated return that qualifies for the credit and not against the tax of other corporations that may join in the filing of a consolidated tax return.

SECTION 2. This act shall take effect upon passage.

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99-S 0729

EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO TAXATION -- INVESTMENT TAX CREDIT -- FILM PRODUCTION

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This act would provide a 25% investment tax credit for Providence based film production businesses whose production costs per film are $5,000,000 or less.

This act would take effect upon passage.

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