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SENATE BILL NO. 667

Offered January 10, 2008

A BILL to amend and reenact §§ 58.1-609.6 and 58.1-2403 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02, relating to income tax, retail sales and use tax, and motor vehicle sales and use tax incentives for motion picture production companies.

Patrons—Lucas, Edwards and Reynolds; Delegates: BaCote, Dance, McClellan and Ware, O.

Unanimous consent to introduce

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.6 and 58.1-2403 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:02 as follows:

§ 58.1-439.12:02. Motion picture production company tax credit.

A. For taxable years beginning on and after January 1, 2008, any motion picture production company with qualifying expenses of at least $250,000 with respect to a motion picture film production filmed in Virginia shall be allowed a credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 15 percent of the production company's qualifying expenses. The credit shall be computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. For purposes of this section, in the case of an episodic television series, an entire season of episodes shall qualify as one production.

"Qualifying expenses" means the sum of the following amounts spent in Virginia by a production company for the production of a motion picture film or an episodic television series filmed in Virginia:

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

2. Compensation and wages. Compensation and wages less the amount paid to an individual who directly or indirectly receives compensation in excess of $1,000,000 for personal services with respect to a single production. An individual is deemed to receive compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

B. 1. In addition to the credit authorized in subsection A, such production company shall be allowed an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of a film in Virginia when total production costs in Virginia are at least $250,000 but not more than $1,000,000. The additional credit shall be equal to 20 percent of the total aggregate payroll of such residents when total production costs in Virginia exceed $1,000,000.

2. In addition to the credits authorized in subsection A and subdivision B 1, the production company shall be allowed an additional credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as a member of a production crew in connection with the production of a film in Virginia. In the event such residents reside in a fiscally distressed area of Virginia, as defined by the Secretary of Commerce and Trade, the additional credit shall be equal to 20 percent of the total aggregate payroll of such residents.

C. A taxpayer may claim the credits allowed by this section on a tax return filed for the taxable year in which the production activities are completed. The tax return shall include the name of the television or film production, a description of such production, and a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

D. If the credits allowed by this section exceed the amount of the tax imposed for the taxable year reduced by the sum of all other credits allowable, the excess shall be redeemable by the Tax Commissioner within 90 days after filing the return in accordance with the limitations described in subsection E. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

E. The amount of the credit allowed under this section with respect to movie film production shall not exceed $7,500,000. No credit shall be allowed under this section for any production that satisfies one of the following conditions:

1. It is political advertising.

2. It is a television production of a news program or live sporting event.

3. It contains obscene material.

F. A taxpayer allowed a credit under this section shall maintain and make available for inspection any information or records required by the Tax Commissioner. The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The Tax Commissioner shall consult with the Virginia Film Office to determine the amount of qualifying expenses.

G. The Department of Taxation, in consultation with the Virginia Film Office, shall publish by November of each year the following information, for the preceding 12-month period ending the preceding December 31:

1. The location of sites used in a production for which a credit was claimed.

2. The qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company.

3. The number of individuals employed in Virginia with respect to credits claimed.

4. The total cost to the general fund of the credits claimed.

H. The Department of Taxation shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) consistent with the provisions of this section, including, but not limited to, the definition of "qualifying expenses" and describing the recordkeeping requirements applicable to production companies claiming this credit.

§ 58.1-609.6. Media-related exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Leasing, renting or licensing of copyright audio or video tapes, and films for public exhibition at motion picture theaters or by licensed radio and television stations.

2. Broadcasting equipment and parts and accessories thereto and towers used or to be used by commercial radio and television companies, wired or land based wireless cable television systems, common carriers or video programmers using an open video system or other video platform provided by telephone common carriers, or concerns which are under the regulation and supervision of the Federal Communications Commission and amplification, transmission and distribution equipment used or to be used by wired or land based wireless cable television systems, or open video systems or other video systems provided by telephone common carriers.

3. Any publication issued daily, or regularly at average intervals not exceeding three months, and advertising supplements and any other printed matter ultimately distributed with or as part of such publications; however, newsstand sales of the same are taxable. As used in this subdivision, the term "newsstand sales" shall not include sales of back copies of publications by the publisher or his agent.

4. Catalogs, letters, brochures, reports, and similar printed materials, except administrative supplies, the envelopes, containers and labels used for packaging and mailing same, and paper furnished to a printer for fabrication into such printed materials, when stored for 12 months or less in the Commonwealth and distributed for use without the Commonwealth. As used in this subdivision, "administrative supplies" includes, but is not limited to, letterhead, envelopes, and other stationery; and invoices, billing forms, payroll forms, price lists, time cards, computer cards, and similar supplies. Notwithstanding the provisions of subdivision 5 of this section or the definition of "advertising" contained in § 58.1-602, (i) any advertising business located outside the Commonwealth which purchases printing from a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials when such purchases would have been exempt under this subdivision, and (ii) from July 1, 1995, through June 30, 2002, and beginning July 1, 2002, and ending July 1, 2008, any advertising business which purchases printing from a printer within the Commonwealth shall not be deemed the user or consumer of the printed materials when such purchases would have been exempt under subdivision 3 or this subdivision, provided that the advertising agency shall certify to the Tax Commissioner, upon request, that such printed material was distributed outside the Commonwealth and such certification shall be retained as a part of the transaction record and shall be subject to further review by the Tax Commissioner.

5. Advertising as defined in § 58.1-602.

6. ~~Beginning July 1, 1995, and ending July 1, 2009:~~

a. (i) The lease, rental, license, sale, other transfer, or use of any audio or video tape, film, *streaming video, digital image* or other audiovisual work where the transferee or user acquires or has acquired the work for the purpose of licensing, distributing *(including but not limited to electronic Internet or computer network transmission)*, broadcasting, commercially exhibiting or reproducing the work or using or incorporating the work into another such work; (ii) the provision of production services or fabrication in connection with the production of any portion of such audiovisual work, including, but not limited to, scriptwriting, photography, sound, musical composition, special effects, animation, adaptation, dubbing, mixing, editing, cutting and provision of production facilities or equipment; ~~or~~ (iii) the transfer or use of

tangible personal property, including, but not limited to, scripts, musical scores, storyboards, artwork, film, tapes and other media, incident to the performance of such services or fabrication; *or (iv) from July 1, 2008, to July 1, 2009, the purchase or lease of tangible personal property or services for use or consumption by a motion picture production crew in the production of a motion picture film in Virginia, including but not limited to lodgings and meals;* however, audiovisual works and incidental tangible personal property described in clauses (i) and (iii) of this subdivision shall be subject to tax as otherwise provided in this chapter to the extent of the value of their tangible components prior to their use in the production of any audiovisual work and prior to their enhancement by any production service; and

b. Equipment and parts and accessories thereto used or to be used in the production of such audiovisual works.

7. From July 1, 1998, and ending July 1, 2012, textbooks and other educational materials withdrawn from inventory at book-publishing distribution facilities for free distribution to professors and other individuals who have an educational focus.

§ 58.1-2403. Exemptions.

No tax shall be imposed as provided in § 58.1-2402 or 58.1-2402.1 if the vehicle is:

1. Sold to, rented or used by the United States government or any governmental agency thereof;

2. Sold to, rented or used by the Commonwealth of Virginia or any political subdivision thereof;

3. Registered in the name of a volunteer fire department or rescue squad not operated for profit;

4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth living on the tribal reservation;

5. Transferred incidental to repossession under a recorded lien and ownership is transferred to the lienholder;

6. A manufactured home permanently attached to real estate and included in the sale of real estate;

7. A gift to the spouse, son, or daughter of the transferor. With the exception of a gift to a spouse, this exemption shall not apply to any unpaid obligation assumed by the transferee incidental to the transfer;

8. Transferred from an individual or partnership to a corporation or limited liability company or from a corporation or limited liability company to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation or limited liability company in which the individual or partnership holds the majority interest;

9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent corporation to a wholly owned subsidiary;

10. Being registered for the first time in this Commonwealth and the applicant holds a valid, assignable title or registration issued to him by another state or a branch of the United States Armed Forces and (i) has owned the vehicle for longer than 12 months or (ii) has owned the vehicle for less than 12 months and provides evidence of a sales tax paid to another state. However, when a vehicle has been purchased by the applicant within the last 12 months and the applicant is unable to provide evidence of a sales tax paid to another state, the applicant shall pay the Virginia sales tax based on the fair market value of the vehicle at the time of registration in Virginia;

11. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale;

12. A motor vehicle having seats for more than seven passengers and sold to an urban or suburban bus line the majority of whose passengers use the buses for traveling a distance of less than 40 miles, one way, on the same day;

13. Purchased in the Commonwealth by a nonresident and a Virginia title is issued for the sole purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than Virginia;

14. A motor vehicle designed for the transportation of 10 or more passengers, purchased by and for the use of a church conducted not for profit;

15. Loaned or leased to a private nonprofit institution of learning, for the sole purpose of use in the instruction of driver's education when such education is a part of such school's curriculum for full-time students;

16. Sold to an insurance company or local government group self-insurance pool, created pursuant to § 15.2-2703, for the sole purpose of disposition when such company has paid the registered owner of such vehicle a total loss claim;

17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, their employees or agents, and members of their families, if such persons are nationals of the state by which they are appointed and are not citizens of the United States;

18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a nonprofit hospital or a cooperative hospital service organization as described in § 501 (e) of the United States Internal Revenue Code;

19. A motor vehicle having seats for more than seven passengers and sold to a restricted common

carrier or common carrier of passengers;

20. Beginning July 1, 1989, a self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, sold to, rented to, or used by a nonprofit hospital, or a cooperative hospital service organization as described in § 501 (e) of the United States Internal Revenue Code, or a nonprofit corporation as defined in § 501 (c) (3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments;

21. Transferred, as a gift or through a sale to an organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, provided the motor vehicle is not titled and tagged for use by such organization;

22. A motor vehicle sold to an organization which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code and which is organized for the primary purpose of distributing food, clothing, medicines and other necessities of life to, and providing shelter for, needy persons in the United States and throughout the world;

23. A truck, tractor truck, trailer, or semitrailer, as severally defined in § 46.2-100, except trailers and semitrailers not designed or used to carry property and vehicles registered under § 46.2-700, with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, in which case no tax shall be imposed pursuant to subdivisions 1 and 3 of subsection A of § 58.1-2402;

24. Transferred to the trustees of a revocable inter vivos trust, when the individual titleholder of a Virginia titled motor vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries of the trust may also be named in the trust instrument, when no consideration has passed between the titleholder and the beneficiaries; and transferred to the original titleholder from the trustees holding title to the motor vehicle;

25. Transferred to trustees of a revocable inter vivos trust, when the owners of the vehicle and the beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust following the death of the grantor, when no consideration has passed between the grantor and the beneficiaries in either case;

26. Sold by a vehicle's lessor to its lessee upon the expiration of the term of the vehicle's lease, if the lessee is a natural person and this natural person has paid the tax levied pursuant to this chapter with respect to the vehicle when he leased it from the lessor, and if the lessee presents an original copy of the lease upon request of the Department of Motor Vehicles or other evidence that the sales tax has been paid to the Commonwealth by the lessee purchasing the vehicle; ~~or~~

27. Titled in the name of a deceased person and transferred to the spouse or heir, or under the will, of such deceased person~~.~~*; or*

28. Beginning July 1, 2008, leased in connection with the production of a motion picture film in Virginia.