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HOUSE BILL NO. 861

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, relating to motion picture film production tax incentives.*

Patrons—Cline, Cox, J.A., Hugo, Ingram, Landes, Lohr, Merricks, Morefield, Nutter, O'Bannon, Peace and Pogge

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03 as follows:

§ 58.1-439.12:03. Motion picture film production tax credit.

A. *For taxable years beginning on and after January 1, 2010, 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 or 20 percent of such expenses if the production is filmed in an economically distressed area of the Commonwealth. The Secretary of Commerce and Trade shall designate which areas of the Commonwealth are deemed to be economically distressed areas. For purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. 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.*

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

1. *Goods and services leased or purchased. For goods with a purchase price 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 except in the case of each individual who directly or indirectly receives compensation in excess of \$1 million for personal services with respect to a single production. In such a case, only the first \$1 million of salary shall be considered a qualifying expense. 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 under 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 the Commonwealth when total production costs in the Commonwealth are at least \$250,000 but not more than \$1 million. The additional credit shall be equal to 20 percent of the total aggregate payroll for Virginia residents employed in connection with such production when total production costs in the Commonwealth exceed \$1 million.*

2. *In addition to the credits authorized under subsection A and subdivision B 1, such 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 actors or members of a production crew in connection with the production of a film in the Commonwealth.*

C. *A taxpayer may claim the credits allowed by this section on a return filed for the taxable year in which the production activities are completed. The return must state the name of the production, provide a description of the production, and include 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 tax imposed for the taxable year reduced by the sum of all other credits allowable, the excess shall not be redeemable by the Tax Commissioner on behalf of the Commonwealth. The total amount of credits allowed under this section for any biennium shall not exceed \$10 million.*

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.*

F. *No credit shall be allowed under this section for any production that (i) is political advertising;*

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58 (ii) is a television production of a news program or live sporting event; or (iii) contains obscene
59 material.

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

64 H. The Department of Taxation, in consultation with the Virginia Film Office, must publish by
65 November 1 of each year for the 12-month period ending the preceding December 31 the following
66 information:

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

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

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

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

72 I. The Department of Taxation shall promulgate regulations in accordance with the Administrative
73 Process Act (§ 2.2-4000 et seq.) consistent with the provisions of this section including but not limited to
74 the definition of "qualifying expenses" and setting forth the record-keeping requirements applicable to
75 production companies claiming this credit.

76 J. The General Assembly of Virginia finds that modern motion picture film productions may be
77 located within a state with minimal regard to the location of such state, and that the economic vitality
78 of the Commonwealth would be enhanced if such productions were filmed in Virginia. Accordingly, the
79 provisions of this section targeting the credit to expenditures made in this Commonwealth and the
80 employment of Virginia residents and limiting the credit to those companies which meet those criteria
81 are integral to the purpose of the credit earned pursuant to this section and shall not be deemed
82 severable.