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SENATE BILL NO. 257

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 8, 2010)

(Patron Prior to Substitute—Senator Lucas)

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.

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 production tax credit.

A. For taxable years beginning on and after January 1, 2011, any motion picture production company with qualifying expenses of at least \$250,000 with respect to a motion picture production filmed in Virginia shall be allowed a refundable 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 Virginia Economic Development Partnership Authority shall designate which areas of the Commonwealth are deemed to be economically distressed areas. 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. The refundable tax credits allowed under this section are for one tax year only. Where a motion picture production continues for more than one year, a separate application for each tax year the production continues must be made. The grant of a refundable tax credit for a motion picture film production does not create a presumption that the production will receive a refundable tax credit for subsequent tax years. Effective on January 1, 2013, for purposes of eligibility for refundable tax credits, a motion picture film production shall include digital interactive media production. "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 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 refundable credit authorized under subsection A, such production company shall be allowed an additional refundable 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. This 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 refundable 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. 1. For purposes of this section, in the case of an episodic television series, an entire season of episodes shall be deemed to be one production.

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

D. 1. The issuance of refundable tax credits under this section shall be in accordance with procedures, qualifying criteria, and deadlines established by the Department and the Virginia Film Office. The qualifying criteria established by the Virginia Film Office shall take into account whether the production involves physical production within the Commonwealth of Virginia, the number of residents of Virginia that will be employed in the production and the level of compensation they will be paid, the extent to which the production will contribute to the support and expansion of existing production companies in Virginia, the extent to which the production will impact existing local

60 businesses and the local economy, the extent to which the production will involve existing and new
61 companies located in Virginia, and other relevant considerations. The taxpayer shall apply for a credit
62 by submitting such forms as prescribed by the Virginia Film Office, prior to the start of production in
63 Virginia.

64 2. Any taxpayer seeking credits under this section must enter into a memorandum of understanding
65 with the Virginia Film Office that at a minimum provides the requirements that the taxpayer must meet
66 in order to receive the credits, including but not limited to the estimated amount of money to be spent in
67 Virginia, the timeline for completing production in Virginia, and the maximum amount of credits
68 allocated to the taxpayer. 3. Once the taxpayer has satisfied all of the requirements in the memorandum
69 of understanding to the satisfaction of the Virginia Film Office and completed production in Virginia,
70 the taxpayer may claim the applicable amount of credits up to the amount that has been allocated by
71 the Virginia Film Office on a return filed for the taxable year in which the Virginia production activities
72 are completed. The return must state the name of the production, provide a description of the
73 production, and include a detailed accounting of the qualifying expenses with respect to which a credit
74 is claimed.

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

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

83 G. The total amount of credits allocated to all taxpayers under this section shall not exceed \$2.5
84 million in the 2010-2012 biennium, and \$5 million in any biennium thereafter.

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

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

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

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

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

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

97 **2. That the General Assembly of Virginia finds that modern motion picture productions may be**
98 **located within a state with minimal regard to the location of such state, and that the economic**
99 **vitality of the Commonwealth may be enhanced if such productions are filmed in the**
100 **Commonwealth. Accordingly, the provisions of this act targeting the credit to expenditures made**
101 **in the Commonwealth and to the employment of Virginia residents and limiting the credit to those**
102 **companies that meet those criteria are integral to the purpose of the credit earned pursuant to this**
103 **act and shall not be deemed severable.**