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SENATE BILL NO. 1451

Offered January 16, 2017

A *BILL to amend and reenact § 58.1-439.12:03 of the Code of Virginia, relating to the motion picture production tax credit.*

Patron—Lucas

Referred to Committee on Finance

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

A. 1. For taxable years beginning on and after January 1, 2011, but prior to January 1, 2019, 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.

2. In lieu of the credit set forth in subdivision 1, for taxable years beginning on and after January 1, 2017, any motion picture production company with qualifying expenses of at least \$250,000 with respect to a motion picture production filmed in the Commonwealth shall be allowed a refundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 20 percent of such expenses if at least 80 percent of the production is filmed or produced in a qualified area of the Commonwealth. 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. For purposes of eligibility for refundable tax credits, a motion picture film production shall include digital interactive media production. Notwithstanding the provisions of subsection G, credits allocated pursuant to this subdivision shall not be included in the \$6.5 million cap established pursuant to subsection G, and there shall be no limit on the amount of credits that may be authorized pursuant to this subdivision. In no case shall a taxpayer be allowed a credit pursuant to this subdivision and subdivision 1.

B. 1. In addition to the refundable credit credits 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

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59 Virginia residents employed in connection with such production when total production costs in the
60 Commonwealth exceed \$1 million.

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

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

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

70 D. 1. The issuance of refundable tax credits under this section shall be in accordance with
71 procedures, qualifying criteria, and deadlines established by the Department and the Virginia Film
72 Office. The qualifying criteria established by the Virginia Film Office shall take into account whether
73 the production involves physical production within the Commonwealth of Virginia, the number of
74 residents of Virginia that will be employed in the production and the level of compensation they will be
75 paid, the extent to which the production will contribute to the support and expansion of existing
76 production companies in Virginia, the extent to which the production will impact existing local
77 businesses and the local economy, the extent to which the production will involve existing and new
78 companies located in Virginia, and other relevant considerations. The taxpayer shall apply for a credit by
79 submitting such forms as prescribed by the Virginia Film Office, prior to the start of production in
80 Virginia.

81 2. Any taxpayer seeking credits under this section must enter into a memorandum of understanding
82 with the Virginia Film Office that at a minimum provides the requirements that the taxpayer must meet
83 in order to receive the credits, including but not limited to the estimated amount of money to be spent
84 in Virginia, the timeline for completing production in Virginia, and the maximum amount of credits
85 allocated to the taxpayer.

86 3. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the
87 satisfaction of the Virginia Film Office and completed production in Virginia, the taxpayer may claim
88 the applicable amount of credits up to the amount that has been allocated by the Virginia Film Office on
89 a return filed for the taxable year in which the Virginia production activities are completed. The return
90 must state the name of the production, provide a description of the production, and include a detailed
91 accounting of the qualifying expenses with respect to which a credit is claimed.

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

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

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

103 H. The Department of Taxation, in consultation with the Virginia Film Office, ~~must~~ *shall* publish by
104 November 1 of each year for the 12-month period ending the preceding December 31 the following
105 information:

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

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

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

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

111 *Notwithstanding any provision of § 58.1-3 or any other law, such information shall be published*
112 *regardless of the number of taxpayers who claim the credit during the 12-month period.*

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

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

120 *J. For purposes of this section:*

121 *"Qualified area" means a location in the Commonwealth that is (i) in an area certified by the U.S.*
122 *Small Business Administration as a Historically Underutilized Business Zone or (ii) at a place or in an*
123 *area designated by the United States Secretary of the Interior as a National Historic Landmark or a*
124 *Federal Historic District that is listed on the National Register of Historic Places.*

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

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

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