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HOUSE BILL NO. 1318

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on February 5, 2020)

(Patron Prior to Substitute—Delegate Aird)

*A BILL to amend and reenact §§ 58.1-439.12:03 and 58.1-609.6 of the Code of Virginia, relating to motion picture production tax credit; media-related exemptions.***Be it enacted by the General Assembly of Virginia:****1. That §§ 58.1-439.12:03 and 58.1-609.6 of the Code of Virginia are amended and reenacted as follows:****§ 58.1-439.12:03. Motion picture production tax credit.**

A. For taxable years beginning on and after January 1, 2011, but prior to January 1, 2022 2027, 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 Virginia Tourism Authority. The qualifying criteria established by the Virginia Film Office Virginia Tourism Authority 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

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

65 2. Any taxpayer seeking credits under this section must enter into a memorandum of understanding
66 with the ~~Virginia Film Office~~ *Virginia Tourism Authority* that at a minimum provides the requirements
67 that the taxpayer must meet in order to receive the credits, including but not limited to the estimated
68 amount of money to be spent in Virginia, the timeline for completing production in Virginia, and the
69 maximum amount of credits allocated to the taxpayer.

70 3. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the
71 satisfaction of the ~~Virginia Film Office~~ *Virginia Tourism Authority* and completed production in
72 Virginia, ~~the taxpayer may claim the applicable amount of credits up to the amount that has been~~
73 ~~allocated by the Virginia Film Office on a~~ *the Virginia Tourism Authority shall certify the final tax*
74 *credit amount to the taxpayer and to the Tax Commissioner. In addition, such certificate shall specify*
75 *the fiscal year in which such tax credit may be refunded by the Department of Taxation. The tax return*
76 *filed for the taxable year in which the Virginia production activities are completed shall contain*
77 *information specifying the amount of tax credit and shall specify the fiscal year in which such tax credit*
78 *may be refunded.* The return must state the name of the production, provide a description of the
79 production, and include a detailed accounting of the qualifying expenses with respect to which a credit
80 is claimed.

81 4. *The Virginia Tourism Authority shall report to the Tax Commissioner on an annual basis the*
82 *amount of tax credits that have been authorized for each fiscal year and the amount of tax credits that*
83 *may be claimed for the current fiscal year by each taxpayer.*

84 5. *No interest shall be paid pursuant to § 58.1-1833 on any tax credit issued by the Department*
85 *under this section.*

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

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

95 G. 1. The total amount of credits allocated to all taxpayers under this section shall not exceed \$2.5
96 million in the 2010-2012 biennium, \$5 million in the 2012-2014 biennium, and \$6.5 million in fiscal
97 year 2015 and each fiscal year thereafter.

98 2. *Any such tax credit unallocated at the end of any fiscal year shall not expire and shall be*
99 *available for allocation by the Virginia Tourism Authority in future fiscal years.*

100 H. The Department of Taxation, in consultation with the ~~Virginia Film Office~~ *Virginia Tourism*
101 *Authority*, must publish by November 1 of each year for the 12-month period ending the preceding
102 December 31 the following information:

- 103 1. Location of sites used in a production for which a credit was claimed;
104 2. Qualifying expenses for which a credit was claimed, classified by whether the expenses were for
105 goods, services, or compensation paid by the production company;
106 3. Number of people employed in the Commonwealth with respect to credits claimed; and
107 4. Total cost to the Commonwealth's general fund of the credits claimed.

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

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

115 **§ 58.1-609.6. Media-related exemptions.**

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

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

120 2. Broadcasting equipment and parts and accessories thereto and towers used or to be used by
121 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 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, 2022, 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, 2022 2027:

a. (i) The lease, rental, license, sale, other transfer, or use of any audio or video tape, film or other audiovisual work where the transferee or user acquires or has acquired the work for the purpose of licensing, distributing, 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; however, audiovisual works and incidental tangible personal property described in clauses (i) and (iii) 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. Beginning July 1, 1998, and ending July 1, 2022, 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.

2. That the provisions set forth in subdivision G 2 of § 58.1-439.12:03 of the Code of Virginia, as amended by this act, shall be effective for unallocated tax credits beginning in fiscal year 2011.