

COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE
AND PLANNING

BILL NO. 31-0009

Thirty-first Legislature of the Virgin Islands

February 4, 2015

An Act repealing and reenacting with amendments title 29 Virgin Islands Code, chapter 12 subchapter III relating to sustainable tourism through art-based revenue stream production

PROPOSED BY: Senator Clifford F. Graham

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 29 Virgin Islands Code, chapter 12, subchapter III, is repealed and reenacted with amendments that read as follows:

“SUBCHAPTER III

§747. Purpose

(a) The purposes of this subchapter are to enhance the Virgin Islands' economy by revitalizing and expanding the attraction of the audio and music video recording, motion picture, and television industries and related media productions to the Virgin Islands and to promote the growth of Virgin Islands small businesses related to and servicing these industries. The objectives of this subchapter are to:

(1) Renew interest in the Virgin Islands as a premier location for the production of motion pictures, documentaries, television programs and digital media, webcast, any new media format programs, commercials, and music videos and magazine advertising by off-island production companies;

(2) Encourage the creation of jobs that pay well for Virgin Islands workers and university graduates;

(3) Enhance the growth of the Virgin Islands businesses that provide goods and services for these types of productions;

(4) Assist local filmmakers; and

(5) Help promote the tourism industry in the Virgin Islands.

(b) The Legislature declares that the objectives of section (a) are best achieved by offering tax incentives or other offsets to production companies for hiring Virgin Islands residents, for purchasing Virgin Islands goods and services and for filming and recording in the territory.

§747a. Definitions. As used in this subchapter, the term:

(a) "Affiliate" means an entity that is included in the production company's affiliated group, as defined 26 U.S.C. §1504(a), and any other entity that is directly or indirectly owned 50 percent or more by a member of the affiliated group.

(b) "Audio data content" means any recordable form of audio or MIDI information in any digital or analog resulting from either the recording process, capturing the audio data or the mixing and mastering process.

(c) "Base investment" means the aggregate funds actually expended by a Production Company as Qualified Production Expenditures incurred in this Territory that are directly used in a Territory Certified Production or Productions.

(d) “Compensation” means salary, wages, or other compensation, including related benefits paid to and on behalf of Virgin Islands resident.

(e) “Incentives” includes the rebates, credits, waivers or other offsets available under this subchapter.

(f) “Music recording” means all forms, steps or techniques involved in the recording of audio for commercial purposes-including non-musical audio recording such as “books on tape” or voice-overs-for release on any media, including compact discs, digital downloads, digital streaming, or any other vehicle for such transmittal.

(g) “New media” means the development, usually electronic, forms of visual and audio communication media regarded as on-demand electronic mass media on an interactive platform combined with computerized devices.

(h) "Production Company" means a company primarily engaged in qualified production activities which have been approved by the Economic Development Authority and the Film Office of the Department of Tourism. The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person that is in default on any tax obligation of the Territory, or a loan made by the Territory or a loan guaranteed by the Territory.

(i) "Qualified Production Expenditures" means preproduction, including scouting activities, production, postproduction expenditures incurred in this Territory that are directly used in a Qualified Production Activity. This term does not include postproduction expenditures for marketing and distribution unless these function are implemented in the Territory and utilize local goods and services.

(j) "Qualified Virgin Islands Promotion" means a qualified promotion of this Territory approved by the Economic Development Authority and the Film Office of the Department of Tourism consisting of a:

(1) Qualified movie production that includes any reference to identification of the Virgin Islands or contains credits within its presentation as being made in the Virgin Islands.

(2) Qualified television production that includes any reference to identification of the Virgin Islands or contains credits within its presentation as being made in the Virgin Islands.

(3) Qualified music video that includes any reference to identification of the Virgin Islands or contains credits within its presentation as being made in the Virgin Islands.

(4) Qualified interactive game that includes any reference to identification of the Virgin Islands or contains credits within its presentation as being made in the Virgin Islands.

(5) Qualified new media format program including digital media, webcast, and on-demand access video that includes any reference to identification of the Virgin Islands or contains credits within its presentation as being made in the US Virgin Islands.

(k) "Qualified Production Activity" means the production of new film, video, or digital projects produced in this Territory and approved by the Economic Development Authority and the Film Office, such as feature films, TV series, movies for television, digital release, webcasts, commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, TV series, or movies for television, including:

(1) Projects recorded in this Territory, in whole or in part, in either short or long form, animation or music, fixed on a delivery system which includes without limitation film; videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters; licensing for exhibition by individual television

1 stations, groups of stations, networks, cable television stations, public broadcasting
2 stations, corporations, live venues, the Internet, or any other channel of exhibition;

3 (2) Storyboard preparation, scripting, art direction, set construction and
4 operation;

5 (3) Wardrobes, make-up, accessories, and related services;

6 (4) Costs associated with cinematography, photography and sound
7 synchronization, lighting, and related services and materials;

8 (5) Editing and related services; rental of facilities and equipment; leasing of
9 vehicles;

10 (6) Costs of food and lodging;

11 (7) Digital or tape editing, film processing, transfers of film to tape or digital
12 format, sound mixing, computer graphics services, special effects services, and animation
13 services;

14 (8) Total aggregate payroll; airfare, if purchased through a Virgin Islands based
15 travel agency or travel company; insurance costs and bonding, if purchased through a
16 Virgin Islands based insurance agency;

17 (9) Professional services, including legal, accounting, payroll and security; and

18 (10) Other direct costs of producing the project in accordance with generally
19 accepted entertainment industry practices.

20 (l) "Resident" means an individual as designated in section 703(e) of this title.

21 (m) "Resident Production Company Program" means a production company that has
22 been organized under the laws of the Virgin Islands, is headquartered in the Virgin islands and
23 licensed to do business in the Virgin Islands and undertakes projects that are originated or
24 produced locally by a Virgin Islands resident filmmaker, music production company, or
25 videographer.

(n) "Territory" means the Virgin Islands, as defined in section 2 (a) of the Revised Organic Act of the Virgin Islands, 48 U.S.C. 1541(a).

(o) "Territory Certified Production" means a production engaged in Qualified Production Activities that have been approved by the Economic Development Authority and the Film Office of the Department of Tourism and in accordance with regulations promulgated under to this subchapter.

(p) "Total aggregate payroll" means the total sum expended by Production Company on salaries paid to Virgin Islands resident employees working within this territory in a Territory Certified Production or Productions. For purposes of this subsection:

(1) With respect to a single employee, the portion of any compensation which exceeds \$500,000 for a single production shall not be included when calculating total aggregate payroll; and

(2) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest must be considered as having been paid to the employee and must be aggregated regardless of the means of payment or distribution.

§747b. Office of Film Tax Incentives

(a) There is established within the Virgin Islands Economic Development Authority, an Office of Film Tax Incentives that in partnership with the Film Office of the Department of Tourism is responsible for managing applications for tax incentives under this Program.

(b) The Assistant Chief Executive Officer of the Economic Development Authority shall oversee the office and is responsible for managing applications for tax incentives.

(c) Funding for the establishment of the incentive program and attendant office at the Economic Development Authority must be budgeted from the operational funds of the Economic Development Authority; and the payment of rebates provided for in this subchapter must be

funded from the Tourism Advertising Revolving Fund (Title 33 Virgin Islands Code Section 3072) at a maximum of 20 percent of the previous year's funding appropriated annually or a minimum of \$2,500,000 per year.

§747c. Relationship of Office of Film Tax Incentives and Film Office

(a) The Film Office of the Department of Tourism in concurrence with the Economic Development Authority is responsible for the creation of the application and shall assist in the review of each application. The Economic Development Authority shall serve as the initial point of contact for interested parties.

(b) Once a complete application has been received by the Economic Development Authority, the application for Incentives under this subchapter must be forwarded to the Film Office no later than 10 business days after the receipt of the completed application for its review, analysis, and recommendation to the Economic Development Authority. The Film Office shall have 7 business days from receipt of the application in which to submit its analysis and recommendation to the Economic Development Authority.

(c) Upon receipt by the Economic Development Authority of the Film Office analysis and recommendation, the Assistant Chief Executive Officer has twenty-five business days in which to approve or reject the application in writing to the applicant.

(d) Upon the approval of the application by the Assistant Chief Executive Officer, the Economic Development Authority shall then proceed to issue the appropriate certificate setting forth the particular terms of the Incentives granted.

§747d. Qualification for tax benefits

In order to qualify and remain eligible for tax incentive benefits under this subchapter, an applicant must:

(1) Be a Resident Production Company or a non-Virgin Islands entity that has obtained a license to do business in the Territory under 27 VIC §302(b);

1 (2) Expend a minimum of \$250,000 for each Qualified Production Activity;

2 (3) Employ residents of the Virgin Islands as defined in section 703(e) of this title such
3 that a minimum of 20% of the total employees working on the production in the Virgin Islands,
4 including extras, day players, and a maximum of three paid interns who must be residents of the
5 Virgin Islands, UNLESS a documented waiver request is submitted to the Economic Development
6 Authority upon a requisite showing according to regulations promulgated.

7 (4) Include in the credits of any production the following language “Made or Filmed in
8 the Virgin Islands” or some other designation where the entire production is not completed in the
9 U.S. Virgin Islands, that footage was shot in the territory: “Portions Made in the U.S. Virgin
10 Islands” or in the case of a footage shot in St. Croix “Portions Made or Filmed in St. Croix” and an
11 acknowledgement to the VI Economic Development Authority and the Film Office of the
12 Department of Tourism;

13 (5) Agree that executive production crew, including but not limited to director,
14 producer, production supervisor, writer and department heads shall make themselves available to
15 the Economic Development Authority to speak to local school and university students about
16 music/film/entertainment topics pertinent to the film or video industry applicable to the applicant,
17 where practicable.

18 (6) The Department of Licensing and Consumer affairs shall process a business license
19 application for the production company applicant within 15 days after the applicant's submitting a
20 completed application to the Department of Licensing and Consumer Affairs. If a determination as
21 to the propriety of the issuance of a business license is not made within 15 days, the Department
22 shall issue a temporary license to the applicant entitling the applicant to commence business at the
23 expiration of the fifteen-working-days period, allowing it to conduct business as if in receipt of a
24 valid business license for a period not exceeding 60 days pending completion of the process.

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(7) The Economic Development Authority shall prescribe regulations, including a procedure for review of that department's denial or revocation of Territory certification, necessary to carry out the provisions of this section.

(8) The Qualified production must begin within 180 days of issuance of the Certificate; and the certificate shall expire 180 days after issuance, unless an extension is granted.

(9) Each applicant shall pay an Application Fee as set in the regulations to this chapter.

§747e. Eligible Tax Incentives Granted

(a) Each Qualified Production Company, both resident and nonresident, is eligible for the tax credits and rebates provided in this section upon meeting the requirements of section. Each Qualified Production Company may select one or one more of the following Incentives:

(1) A production company that has submitted an application for incentives and has been approved is allowed a tax credit against the taxes imposed by and payable to the territory for the employment of residents of this Territory in connection with a Territory Certified Production. The aggregate of the credit allowed as an offset under this section for a production occurring in the production company's tax year is equal to the sum of 10 to 17% of the actual compensation paid in connection with the Territory Certified Production during the tax year as provided in this section.

(2) The percentage of available tax credit in paragraph (1) is determined in accordance with the following:

(A) Where 20 to 25% of the total workforce, including paid interns, of the production company employed in the Territory are Virgin Islands residents, the allowable percentage is be 10%

(B) Where 25.1 to 30% of the total workforce including paid interns, of the production company employed in the Territory are Virgin Islands residents, the allowable percentage is 15%; and

1 (C) Where 30.1% or greater of the total workforce, including paid
2 interns, of the production company employed in the territory are Virgin Islands
3 residents, the allowable percentage is 17%.

4 (3) A production company that has submitted an application for incentives is
5 allowed a cash rebate for qualified production expenditures made in connection with a
6 Territory Certified Production. The rebate allowed under this section is equal up to 9% of
7 the total Qualified Expenditures incurred in connection with the Territory Certified
8 Production during the tax year up to a maximum of \$500,000.

9 (4) The production company and its affiliates are allowed an additional cash
10 rebate equal to 10 percent of the total qualified production expenditures if the qualified
11 production activities include a Qualified Virgin Islands Promotion.

12 (5) The production company and its affiliates are allowed an additional cash
13 rebate equal to 10 percent of the total Qualified Production Expenditures if the Qualified
14 Production Activities are undertaken on the island of St. Croix.

15 (6) **Hotel Tax Waiver.** Notwithstanding the provisions of Title 33 Virgin
16 Islands Code Section 54, a Hotel Tax waiver may be applied as follows to both resident and
17 nonresident production companies:

18 (a) For a minimum Qualified Production Expenditure of \$250,000 and
19 hotel stay over 150 room-nights, the Production Company shall pay hotel tax at a
20 rate of 8%;

21 (b) For a Qualified Production Expenditure of between \$250,001 and
22 \$500,000 and hotel stay over 250 room nights the Production Company shall pay
23 hotel tax at a rate of 6%;

(c) For a Qualified Production Expenditure of between \$500,001 and \$750,000 and hotel stay over 350 room nights the Production Company shall pay hotel tax at a rate of 4%;

(d) For a Qualified Production Expenditure of between \$750,001 and \$1,000,000 and hotel stay over 450 room nights the Production Company shall pay hotel tax at a rate of 3%; and

(e) For a Qualified Production Expenditure of at least \$1,000,001 and hotel stay over 1000 rooms' nights, the Production Company shall pay tax at a rate of 1.5%.

(7) Resident Production Companies are eligible for tax incentives and rebates provided for in section (a) up to a maximum of \$350,000 per annum, per project, if they meet all requirements of this subchapter.

(8) Nothing in this subchapter prohibits a resident production company from applying for benefits under any other Economic Development Authority tax incentive program.

747f Procedure for application for tax incentives

The tax liabilities for income meeting the requirements of section 747e may be reduced or rebated pursuant to the Internal Revenue Code of 1986, as amended, and as applicable to the Virgin Islands by offsets to Qualified Expenditures and taxes payable to the Territory.

§747g. (a) The credit granted under section 747e is subject to the following conditions and limitations:

(1) The credit may be taken beginning with the taxable year in which the Production Company has met the investment requirement. For each year in which the Production Company either claims or transfer the credit the Production Company shall

1 attach a schedule to the Production Company's Virgin Islands income tax return which
2 must set forth the following information, as a minimum:

3 (A) A description of the Qualified Production Activities, along with the
4 certification from the Economic Development Authority;

5 (B) A detailed listing of the employee's names, Social Security numbers
6 and Virgin Islands wages when salaries are included in the base investment;

7 (C) The amount of tax credit claimed for the taxable year;

8 (D) Any tax credit previously taken by the Production Company against
9 Virgin Islands income liabilities or Production Company's quarterly monthly
10 withholding payments;

11 (E) The amount of tax credit carried over from prior years;

12 (F) The amount of tax credit utilized by the Production Company in the
13 current taxable year; and

14 (G) The amount of tax credit to be carried over to subsequent tax years.

15 (2) In the initial year in which the Production Company claims the credit
16 granted in the section, the Production Company shall include in the description of the
17 Qualified Production Activities required by subparagraph (A) of paragraph (1) of this
18 subsection information that demonstrates that the activities included in the base investment
19 or excess base investment equal or exceed \$5,000,000 during such year.

20 (b) The Economic Development Authority shall promulgate such regulations as are
21 necessary to administer this section.

22 (c) Each qualifying Production Company granted a certificate is subject to an audit on
23 completion of the qualified project to ensure that the Qualified Production Company has met the
24 terms of its application and certificate.
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§747h. Sale or transfer of tax credits

(a) Any tax credits with respect to a Territory Certified Production earned by a Production Company and previously claimed but not used by such Production Company against its income tax may be transferred or sold in whole or in part by such Production Company to another Virgin Islands taxpayer, subject to the following conditions:

(1) The Production Company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) The Production Company shall submit to the Economic Development Authority and to the Virgin Islands Bureau of Internal Revenue a written notification of any transfer or sale of tax credits no later than 30 days after the transfer or sale of such tax credits. The notification must include the Production Company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Economic Development Authority or the Virgin Islands Bureau of Internal Revenue;

(3) Failure to comply with this subsection results in the disallowance of the tax credit until the Production Company is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit may be used. The carry-forward period for tax credit that is transferred or sold begins on the date on which the tax credit was originally earned;

(5) A transferee has only the rights to claim and use the tax credit which were available to the Production Company at the time of the transfer. To the extent that the Production Company did not have rights to claim or use the tax credit at the time of the transfer, the Virgin Islands Bureau of Internal Revenue shall either disallow the tax credit

1 claimed by the transferee or recapture the tax credit from the transferee. The transferee's
2 recourse is against the Production Company; and

3 (6) The transferee must acquire the tax credits in this section for a minimum of
4 60 percent of the amount of the tax credits so transferred.

5 (b) Any Production Company claiming, transferring, or selling the tax credit shall
6 reimburse the Virgin Islands for any department initiated audits relating to the tax credit. This
7 subsection does not apply to routine tax audits of a taxpayer which may include the review of the
8 credit provided in this section.

9 **BILL SUMMARY**

10 This amendment revises title 29, chapter 12, Subchapter III and grants tax credits and
11 rebates to qualified production companies that produce new film, video, music, or digital projects
12 produced in the Territory, Incentives, which are only granted after a threshold spend is reached,
13 include a cash rebate of up to 9% of total qualified expenditures, additional cash rebates of up to
14 10% of the total qualified expenditures for Qualified Virgin Islands Promotions and productions on
15 St. Croix and an additional tax credit based upon the hiring of Virgin Islands residents; and a hotel
16 tax reduction. By tying certain of the credits to local hiring, the legislation ensures that the
17 Territory's residents benefit from the use of the credit by non-USVI production companies. The
18 statute also provides for the transferability of certain credits to third parties, which increases the
19 attractiveness of the incentive program.

20 Production Incentives have become common in the film, commercials, video and music
21 production industry and serve as a key element for attracting such productions to the Territory.
22 This incentives program follows the general guidelines of other programs in the United States and
23 seeks to make the Virgin Islands competitive with such other programs.