

COMMITTEE ON ECONOMIC DEVELOPMENT,
AGRICULTURE AND PLANNING

08/13/2014-REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY

BILL NO. 30-0417

Thirtieth Legislature of the Virgin Islands

June 11, 2014

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 Title 29 Virgin Islands Code, chapter 12, subchapter III, is repealed and reenacted with amendments that read as follows: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 motion picture and television industries and related media in the Virgin Islands and to promote the growth of small businesses related to these industries. The objectives of this subchapter are to:

(1) Renew interest in the Virgin Islands as a premier location for the

1 production of motion pictures, documentaries, television programs and commercials, and
2 magazine advertising by off-island production companies;

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

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

7 (4) Assist local filmmakers; and

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

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

12 **§747a. Definitions.** As used in this subchapter, the term:

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

16 (b) "Base investment" means the aggregate funds actually expended by a production
17 company as qualified production expenditures incurred in this Territory that are directly used in a
18 territory certified production or productions.

19 (c) "Compensation" means salary, wages, or other compensation, including related
20 benefits paid to a Virgin Islands resident.

21 (d) "Incentives" includes the rebates, credits, waivers or other offsets available under
22 this subchapter.

23 (e) "Production Company" means a company primarily engaged in qualified
24 production activities which have been approved by the Economic Development Commission and

1 the Film Office of the Department of Tourism. The term does not include any form of business
2 owned, affiliated, or controlled, in whole or in part, by any company or person that is in default
3 on any tax obligation of the Territory, or a loan made by the territory or a loan guaranteed by the
4 territory.

5 (f) "Qualified production expenditures" means preproduction, production,
6 postproduction expenditures incurred in this Territory that are directly used in a qualified
7 production activity. This term does not include, scouting activities, postproduction expenditures
8 for marketing and distribution.

9 (g) "Qualified Virgin Islands promotion" means a qualified promotion of this
10 Territory approved by the Economic Development Commission and the Film Office of the
11 Department of Tourism consisting of a:

12 (1) Qualified movie production that includes an approximately five-second
13 long animated logo that promotes Virgin Islands within its presentation and all
14 promotional trailers worldwide for the life of the project; or any of the Virgin Islands
15 clearly identified on screen or spoken words in continuing dialogue;

16 (2) Qualified TV production that includes an imbedded five-second long U.S.
17 Virgin Islands promotion during each broadcast half hour worldwide for the life of the
18 project;

19 (3) Qualified music video that includes the Virgin Islands logo at the end of
20 each video and within online promotions; or any of the Virgin Islands clearly identified
21 on screen or spoken words in continuing dialogue;

22 (4) Qualified interactive game that includes a 15-second long Virgin Islands
23 advertisement in units sold and imbedded in online promotions.

(h) "Qualified production activity" means the production of new film, video, or digital projects produced in this Territory and approved by the Economic Development Commission 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;

(2) 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;

(3) Licensing for exhibition by individual television stations, groups of stations, networks, cable television stations, public broadcasting stations, corporations, live venues, the Internet, or any other channel of exhibition;

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

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

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

(7) Editing and related services; rental of facilities and equipment; leasing of vehicles;

(8) Costs of food and lodging;

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

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

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

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

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

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

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

(l) "Territory Certified Production" means a production engaged in qualified production activities which have been approved by the Economic Development Commission and the Film Office of the Department of Tourism and in accordance with regulations promulgated pursuant to this subchapter.

(m) "Total aggregate payroll" means the total sum expended by a production company on salaries paid to 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 salary 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 Tax Incentives

(a) There is established within the Virgin Islands Economic Development Commission, a division 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 Chairman of the Board of the Economic Development Commission shall designate the Assistant Chief Executive Officer to oversee the division responsible for managing applications for tax incentives.

(c) Funding for the establishment of the incentive program and attendant division at the Economic Development Commission and the payment of rebates provided for in this subchapter must be appropriated from the Tourism Revolving Fund at a maximum of 20 percent of the previous year's funding appropriated annually or a minimum of \$2,500,000 per year.

§747c. Office of Film Making and recording

(a) The Film Office in concurrence with the Economic Development Commission is responsible for the creation of the application and shall serve as the initial point of contact for

1 interested parties.

2 (b) Once a complete application has been received by the Film Office, the application
3 for incentives under this subchapter must be forwarded to the appropriate division of the
4 Economic Development Commission no later than 10 business days after the receipt of the
5 completed application along with the appropriate recommendation of the Director of the Film
6 Office.

7 (c) Upon receipt by the Economic Development Commission, the Assistant Chief
8 Executive Officer has five business days in which to concur with the determination of the
9 Director of the Film Office or reject the application in writing to the applicant.

10 (d) Upon the concurrence of the Assistant Chief Executive Officer, the application
11 must be forwarded forthwith to the Office of the Governor for approval.

12 (e) Upon receiving a finding from the Film Office and the Economic Development
13 Commission recommending an application be approved, the Governor shall proceed to make a
14 determination as to whether to approve the findings, and in this event the Film Office and the
15 Economic Development Commission shall submit all relevant data and all other requested data
16 to the Governor along with the reports for the Governor's consideration. If, after 12 calendar
17 days, excluding Sundays and holidays, have elapsed from the date of official receipt at
18 Government House of the joint findings, the Governor has neither actively approved nor
19 disapproved the plan of operation and issuance of benefits to the applicant, the plan of operation
20 and issuance of benefits must be deemed approved, and the Economic Development Commission
21 shall then proceed to issue the appropriate certificate.

22 **§747d. Qualification for tax benefits**

23 (a) In order to qualify and remain eligible for tax incentive benefits under this
24 subchapter, an applicant must:

1 (1) Be an entity organized and licensed under the laws of the Virgin Islands or
2 a non-Virgin Islands entity that has obtained a license to do business in the Territory
3 under 27 VIC §302(b).

4 (2) Expend a minimum of \$250,000 for each production project.

5 (3) Employ residents of the Virgin Islands as defined in section 703(e) of this
6 title such that a minimum of 20% of the total employees working on the production in the
7 Virgin Islands including a maximum of three paid interns must be residents of the Virgin
8 Islands.

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

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

20 (b) The Department of Licensing and Consumer affairs shall process a business
21 license application for the production company applicant within 15 days after the applicant's
22 submitting a completed application to the Department of Licensing and Consumer Affairs. If a
23 determination as to the propriety of the issuance of a business license is not made within 15 days,
24 the Department shall issue a temporary license to the applicant entitling the applicant to

1 commence business at the expiration of the fifteen-working-days period, allowing it to conduct
2 business as if in receipt of a valid business license for a period not exceeding 60 days pending
3 completion of the process.

4 (c) The economic Development Commission shall prescribe regulations including a
5 procedure for review of that department's denial or revocation of territory certification, necessary
6 to carry out the provisions of this section.

7 **§747e. Procedure for application for tax incentives**

8 (a) The tax liabilities for income meeting the requirements of section 747d may be
9 reduced or rebated pursuant to the Internal Revenue Code of 1986, as amended, and as
10 applicable to the Virgin Islands.

11 (b) Each production company, both resident and nonresident, is eligible for the tax
12 credits provided in this section upon meeting the requirements of section 747d:

13 (1) A production company that has submitted an application for incentives
14 and has been approved is allowed a tax credit against the taxes imposed by and payable to
15 the Territory for the employment of residents of this territory in connection with a
16 Territory-certified production in the Territory. The aggregate of the credit allowed under
17 this section for a production occurring in the production company's tax year is equal to
18 the sum of 10 to 17% of the of actual compensation paid to each Virgin Islands resident
19 employed in connection with the Territory-certified production during the tax year as
20 provided in this section.

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

23 (A) Where 20 to 25% of the total workforce, including paid interns of
24 the production company employed in the Territory are Virgin Islands residents,

1 the allowable percentage is be 10%;

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

5 (C) Where 30.1% or greater of the total workforce, including paid
6 interns, of the production company employed in the Territory are Virgin Islands
7 residents, the allowable percentage is 17%.

8 (3) A production company that has submitted an application for incentives is
9 allowed a rebate for qualified production expenditures made in connection with a
10 Territory-certified production in the Territory. The rebate allowed under this section is
11 equal up to 9% of the total qualified expenditures incurred in connection with the
12 Territory-certified production during the tax year up to a maximum of \$500,000.

13 (4) The production company and its affiliates are allowed an additional tax
14 credit equal up to 10 percent of the total qualified production expenditures if the qualified
15 production activities include a qualified Virgin Islands promotion.

16 (5) The production company and its affiliates are allowed an additional tax
17 credit equal to up to 10 percent of the total qualified production expenditures if the
18 qualified production activities are undertaken on the island of St. Croix.

19 (c) Additional tax incentives; hotel tax waiver. A hotel tax waiver is applied as
20 follows to both resident and nonresident production companies:

21 (1) For a minimum production expenditure of \$250,000 and hotel stay over
22 150 room-nights, the production company shall pay hotel tax at a rate of 8%;

23 (2) For a production expenditure of between \$250,001 and \$500,000 and hotel
24 stays over 250 room nights, the production company shall pay hotel tax at a rate of 6%;

1 (3) For a production expenditure of between \$500,001 and 750,000 and hotel
2 stay over 350 room nights the production company shall pay hotel tax at a rate of 4%;

3 (4) For a Production Expenditure of between \$750,001 and \$1,000,000 and
4 hotel stay over 450 room nights the production company shall pay hotel tax at a rate of
5 3%; and

6 (5) For a production expenditure of at least \$1,000,001 and hotel stay over
7 1000 room nights, the production company shall pay hotel tax at a rate of 1.5%.

8 (d) Resident Production Companies are eligible for the tax incentives and rebates
9 provided for in sections (a) and (b) up to a maximum of \$350,000 per annum, if they meet all
10 requirements of this subchapter.

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

13 §747f. (a) The credit granted under section 747e is subject to the following conditions
14 and limitations:

15 (1) The credit may be taken beginning with the taxable year in which the production
16 company has met the investment requirement. For each year in which the production company
17 either claims or transfer the credit the production company shall attach a schedule to the
18 production company's Virgin Islands income tax return which must set forth the following
19 information, as a minimum:

20 (A) A description of the qualified production activities, along with the
21 certification from the Economic Development Commission;

22 (B) A detailed listing of the employee's names social security numbers and
23 Virgin Islands wages when salaries are included in the base investment;

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

(D) Any tax credit previously taken by the production company against Virgin Islands income liabilities or production company's quarterly monthly withholding payments;

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

(F) The amount of tax credit utilized by the production company in the current taxable year; and

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

(2) In the initial year in which the production company claims the credit granted in the section, the production company shall include in the description of the qualified production activities required by subparagraph (A) of paragraph (1) of this subsection information that demonstrates that the activities included in the base investment or excess base investment equal or exceed \$5000, 000 during such year.

(b) The economic Development Commission shall promulgate such regulations as are necessary to administer this section.

§747g. 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 Commission and to the Virgin Islands Bureau of Internal Revenue a written notification

1 of any transfer or sale of tax credits no later than 30 days after the transfer or sale of such
2 tax credits. The notification must include the production company's tax credit balance
3 prior to transfer, the credit certificate number, the remaining balance after transfer, all tax
4 identification numbers for each transferee, the date of transfer, the amount transferred,
5 and any other information required by the Economic Development Commission or the
6 Virgin Islands Bureau of Internal Revenue;

7 (3) Failure to comply with this subsection results in the disallowance of the
8 tax credit until the production company is in full compliance;

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

12 (5) A transferee has only the rights to claim and use the tax credit which were
13 available to the production company at the time of the transfer. To the extent that the
14 production company did not have rights to claim or use the tax credit at the time of the
15 transfer, the Virgin Islands Bureau of Internal Revenue shall either disallow the tax credit
16 claimed by the transferee or recapture the tax credit from the transferee. The transferee's
17 recourse is against the production company; and

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

20 (b) Any production company claiming, transferring, or selling the tax credit shall
21 reimburse the Virgin Islands for any department initiated audits relating to the tax credit. This
22 subsection does not apply to routine tax audits of a taxpayer which may include the review of the
23 credit provided in this section.”
24

BILL SUMMARY

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

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

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