

SENATE SUGGESTION FOR CONFERENCE COMMITTEE  
DRAFT

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

“SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(1)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Motion picture”, a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

“Principal photography”, the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 15 per cent of the total aggregate payroll for people employed within the commonwealth by a motion picture production company when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed within the commonwealth by

such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide

to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$8,000,000.

(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner” the commissioner of revenue.

“Motion picture”, a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term “motion picture” shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

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(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 15 per cent of the total aggregate payroll for persons employed within the commonwealth by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed within the commonwealth by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

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(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$8,000,000.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment;



terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--

(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

SECTION 6. Notwithstanding any general or special law to the contrary, upon application by a motion picture production company, the secretary of economic development shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 7. Notwithstanding any general or special law to the contrary, except for extraordinary activities, a department or agency of the commonwealth shall not charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the

normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof.

SECTION 8. Notwithstanding any general or special law to the contrary, the secretary of economic development shall conduct an economic impact study of motion picture production and development in the commonwealth and shall issue a report together with any recommendations no later than December 31, 2009; provided, however, that the secretary shall file annually by December 31 an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to this act. The secretary shall file annually said report by December 31, with the clerk of the senate and house of representatives, the house and senate committees on ways and means and with the joint committee on economic development and emerging technologies.

SECTION 9. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this act and shall file the report by December 31 with the clerk of the senate and the house of representatives, the house and senate committees on ways and means, the joint committee on revenue and the joint committee on economic development and emerging technologies.

SECTION 10. This act shall be effective for tax years beginning on or after November 1, 2005 and before January 1, 2011, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2011.

# WAYS + MEANS REPORT

SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:--

(1)(1) As used in this subsection, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Motion picture”, a feature length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting event, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances as defined by law.

“Motion picture production company”, a company engaged in the business of producing motion pictures, as defined in this section. The term shall not include any company at least 5 per cent owned or controlled by, or affiliated with, any company or person in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for a motion picture clearly and demonstrably incurred in the commonwealth.

“Principal photography”, the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The

term shall include wages and salaries paid to individuals employed in the production of a motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; location fees and the cost of purchase or rental of facilities or equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

“Taxpayer”, an entity engaged in the making of a film, including a person, firm, partnership or other entity subject to the income tax imposed by this chapter or chapter 63.

(2) A taxpayer shall be allowed a credit against taxes imposed by this chapter for any Massachusetts production expense within any consecutive 12-month period if (i) at least 50 per cent of the total production expenses are incurred in the commonwealth or (ii) at least 50 per cent of the total principal photography days of the film take place in the commonwealth. The credit shall be equal to 15 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth are less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$5,000,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to 25 per cent of the Massachusetts production

expense when the total production costs incurred in the commonwealth equal or exceed \$10,000,000 during the taxable year. For the purposes of this paragraph, the term "Massachusetts production expense" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) The tax credit shall be taken against taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(4)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue. Any tax credit transferred, sold or assigned shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67 of chapter 63. The limitation provided under section 32C of chapter 63 shall also apply.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a

certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(5) The total amount of tax credits provided under this subsection for any 1 motion picture shall not exceed \$10,000,000.

(6) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S, as so appearing, the following section:--

Section 38T. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Motion picture”, a feature length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting event, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances as defined by law.

“Motion picture production company”, a company engaged in the business of producing motion pictures, as defined in this section. The term shall not include any company at least 5 per cent owned or controlled by, or affiliated with, any company or

person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for a motion picture clearly and demonstrably incurred in the commonwealth.

“Principal photography”, the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of a motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; location fees and the cost of purchase or rental of facilities or equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

“Taxpayer”, an entity engaged in the making of a film, including a person, firm, partnership or other entity subject to the income tax imposed by chapter 62 or this chapter.

(b) A taxpayer shall be allowed a credit against taxes imposed by this chapter for any Massachusetts production expense within any consecutive 12-month period if: (i) at

least 50 per cent of the total production expenses are incurred in the commonwealth; or  
(ii) at least 50 per cent of the total principal photography days of the film take place in the commonwealth. The credit shall be equal to 15 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth are less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$5,000,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to 25 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$10,000,000 during the taxable year. For the purposes of this paragraph, the term "Massachusetts production expense" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) The credit allowed under this section for any taxable year shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67. Any unused portion of the credit may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(d)(1) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any tax credit transferred, sold or assigned shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67. The limitation provided under section 32C shall also apply. Any amount of the tax credit that



exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which such transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(e) The total amount of tax credits provided under this subsection for any motion picture shall not exceed \$10,000,000.

(f) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Chapter 64G of the General Laws is hereby amended by adding the following section:--

Section 13. Notwithstanding any general or special law to the contrary, an excise shall not be imposed, pursuant to this chapter, upon the transfer or occupancy of a room in a hotel, lodging house or motel if the occupant: (i) is an employee of a motion picture production company, as defined in section 6 of chapter 62; (ii) occupies the room for 20 or more consecutive days; and (iii)

demonstrates that during the 20-day period the occupant is actively working on the making or producing of a motion picture by a motion picture production company qualifying for a tax credit under section 6 of chapter 62.

SECTION 4. Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which qualifies for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--

(f) The sale of supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which qualifies for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating

boxes and extension cables used with exempt equipment; time code equipment;

VTR editing equipment; switches; and character generators.

SECTION 6. This act shall be effective for tax years beginning on or after

January 1, 2006.

# Conference Committee Report

## -Draft-

10-27-05

*Conference Report  
Redline*

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

“SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(1)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Motion picture”, a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

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"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this

**Deleted:** 15

**Deleted:** for people employed

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**Deleted:** when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed by such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year.

subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to paragraph (2), where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper

allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

Deleted: 10

(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Commissioner" the commissioner of revenue.

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials



intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

"  
"

(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to subsection(b), where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any

**Deleted:** A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 15 per cent of the total aggregate payroll for persons employed by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

**Deleted:**

amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

Deleted: 10

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial

market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of said chapter 64H, as so appearing, is hereby amended by adding the following paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company or to an accredited film school student for the production expenses related to a school film project.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate not less than \$250,000 within the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12 period and have the approval of the secretary of economic development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in the commonwealth and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in

the commonwealth in connection with the filming or production of such motion picture or television program and shall designate a member or representative of the motion picture production company as a primary liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the commissioner. Said estimate of expenditures shall be filed prior to the commencement of filming in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive 12 month period shall be liable for the sales taxes that would have been paid had the approval not been granted. The sales taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner shall promulgate rules for the implementation of this paragraph.

SECTION 5. Notwithstanding any general or special law to the contrary, upon application by a motion picture production company, the secretary of economic development shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 6. Notwithstanding any general or special law to the contrary, except for extraordinary activities, a department or agency of the commonwealth shall not charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the

**Deleted:** Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--¶  
(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

**Deleted:** SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--¶  
(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators. ¶

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normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof.

SECTION 7. Notwithstanding any general or special law to the contrary, the secretary of economic development shall conduct an economic impact study of motion picture production and development in the commonwealth and shall issue a report together with any recommendations no later than December 31, 2011; provided, however, that the secretary shall file annually by December 31 an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to this act. The secretary shall file annually said report by December 31, with the clerk of the senate and house of representatives, the house and senate committees on ways and means and with the joint committee on economic development and emerging technologies.

SECTION 8. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this act and shall file the report by December 31 with the clerk of the senate and the house of representatives, the house and senate committees on ways and means, the joint committee on revenue and the joint committee on economic development and emerging technologies.

SECTION 9. This act shall be effective for tax years beginning on or after January 1, 2006 and before January 1, 2013, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2013."

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Deleted: SECTION 10. Sections 4 and 5 shall take effect on November 1, 2005 and shall cease to be in effect on December 31, 2010.

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Deleted: Except as otherwise specified,

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# Conference Committee Report -Draft-

Note there has been a minor change  
10-27-05

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

“SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(1)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Motion picture”, a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term “motion picture” shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.



"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

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Deleted: for people employed

Deleted:

Deleted: when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed by such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to paragraph (2), where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a

certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$7,000,000.

Deleted: 10

(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Commissioner" the commissioner of revenue.

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per

cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures

in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to subsection(b), where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

**Deleted:** A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 15 per cent of the total aggregate payroll for persons employed by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

**Deleted:**

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$7,000,000.

Deleted: 10

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily

markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of said chapter 64H, as so appearing, is hereby amended by adding the following paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company or to an accredited film school student for the production expenses related to a school film project.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate not less than \$250,000 within the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12 period and have the approval of the secretary of economic development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in the commonwealth and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in the commonwealth in connection with the filming or production of such motion picture or television program and shall designate a member or representative of the motion

picture production company as a primary liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the commissioner. Said estimate of expenditures shall be filed prior to the commencement of filming in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive 12 month period shall be liable for the sales taxes that would have been paid had the approval not been granted. The sales taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner shall promulgate rules for the implementation of this paragraph.

SECTION 5. Notwithstanding any general or special law to the contrary, upon application by a motion picture production company, the secretary of economic development shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 6. Notwithstanding any general or special law to the contrary, except for extraordinary activities, a department or agency of the commonwealth shall not charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof.

**Deleted:** Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--¶

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators. ¶

**Deleted:** SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--¶

(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators. ¶

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SECTION 7. Notwithstanding any general or special law to the contrary, the secretary of economic development shall conduct an economic impact study of motion picture production and development in the commonwealth and shall issue a report together with any recommendations no later than December 31, 2009; provided, however, that the secretary shall file annually by December 31 an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to this act. The secretary shall file annually said report by December 31, with the clerk of the senate and house of representatives, the house and senate committees on ways and means and with the joint committee on economic development and emerging technologies.

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SECTION 8. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this act and shall file the report by December 31 with the clerk of the senate and the house of representatives, the house and senate committees on ways and means, the joint committee on revenue and the joint committee on economic development and emerging technologies.

SECTION 9. This act shall be effective for tax years beginning on or after January 1, 2006 and before January 1, 2013, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2013."

Deleted: SECTION 10. Sections and 5 shall take effect on November 1, 2005 and shall cease to be in effect on December 31, 2010.

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## Explanation of SECTIONS

SECTION 1- Establishes the RTA service fund on the books of the Commonwealth. It reflects the language of other funds established in Chapter 10. The RTA service fund will be used to supplement existing fund to restore and expend service to meet unmet need.

SECTION 2- SECTION funds the RTA service fund with excess registry fees of not more than \$90,000,000. Also amends the Excess Registry fees distribution order. Presently the fees go to in order (i) the costs of central artery (ii) the statewide road and bridge program (iii) RTA forward funding. SECTION changes order to (i) central artery (ii) RTA service fund (iii) statewide road and bridge. SECTION provides that not more than \$90 million in the aggregate be deposited in fund. Deposits occur between June 30, 2006 through June 30, 2011 to fund the restoration and expansion of service.

SECTION 3. Changes current funding source for RTA forward funding from registry fees to RTA service fund. SECTION also follows prior SECTION allocating \$90 million in registry funds. Directs the state treasurer to transfer the funds. SECTION also requires the treasurer to report excess registry fees identified and the actual balance transferred each year to ways and means, joint committee on transportation, A&F and EOT by August 15 of each year.

SECTION 4. Extends the current date of complete transfer of registry fees to the road and bridge program from 2009 to 20011 in keeping with RTA service Fund transfer dates.

SECTION 5. Amends transportation bond bill to add a section to current fund of the RTAs. SECTION provides \$75,000,000 in the RTA Current Financing Act of xxx to retire all outstanding RANs and interest expenses attributable to state assistance with capital bond funds. The SECTION requires the RTAs to submit a certified statement of the amounts to A&F and EOT. The SECTION also requires EOT to develop policies rules and procedures for the RTAs to follow to receive funding to pay the outstanding state assistance RANs. The Commonwealth used bond funds to forward fund the MBTA, this SECTION maintains the uses of bond funds to current finance the RTAs.

SECTION 6. Accompanying SECTION to SECTION 5 allowing the Treasurer to borrow to fund the RTA Current Financing Fund.

SECTION 7. Repeals RTA Forward Funding fund in current in Acts. The repealed section uses registry fees to fund forward funds and conflicts with SECTION 5 of this act which proposes to use bond funds to current finance the RTAs.

# Conference Committee Report -Draft-

10-27-05

*Conference Report  
Redline*

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

“SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(1)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Motion picture”, a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term “motion picture” shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

“Principal photography”, the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this

**Deleted:** 15

**Deleted:** for people employed

**Deleted:**

**Deleted:** when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed by such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year.

subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to paragraph (2), where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper

allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

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(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Commissioner" the commissioner of revenue.

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials

intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.



(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to subsection(b), where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any

**Deleted:** A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 15 per cent of the total aggregate payroll for persons employed by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

**Deleted:**

amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial

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market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of said chapter 64H, as so appearing, is hereby amended by adding the following paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company or to an accredited film school student for the production expenses related to a school film project.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate not less than \$250,000 within the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12 period and have the approval of the secretary of economic development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in the commonwealth and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in

the commonwealth in connection with the filming or production of such motion picture or television program and shall designate a member or representative of the motion picture production company as a primary liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the commissioner. Said estimate of expenditures shall be filed prior to the commencement of filming in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive 12 month period shall be liable for the sales taxes that would have been paid had the approval not been granted. The sales taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner shall promulgate rules for the implementation of this paragraph.

SECTION 5. Notwithstanding any general or special law to the contrary, upon application by a motion picture production company, the secretary of economic development shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 6. Notwithstanding any general or special law to the contrary, except for extraordinary activities, a department or agency of the commonwealth shall not charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the

**Deleted:** Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--¶

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

**Deleted:** SECTION 5. . Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--¶

(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators. ¶

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AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

"SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(1)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Motion picture", a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 15 per cent of the total aggregate payroll for people employed within the commonwealth by a motion picture production company when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed within the commonwealth by

such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide

to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$8,000,000.

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(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner” the commissioner of revenue.

“Motion picture”, a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term “motion picture” shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.



"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 15 per cent of the total aggregate payroll for persons employed within the commonwealth by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed within the commonwealth by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$8,000,000.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

Deleted: 10

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment;

terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--

(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

SECTION 6. Notwithstanding any general or special law to the contrary, upon application by a motion picture production company, the secretary of economic development shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 7. Notwithstanding any general or special law to the contrary, except for extraordinary activities, a department or agency of the commonwealth shall not charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the

normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof.

SECTION 8. Notwithstanding any general or special law to the contrary, the secretary of economic development shall conduct an economic impact study of motion picture production and development in the commonwealth and shall issue a report together with any recommendations no later than December 31, 2009; provided, however, that the secretary shall file annually by December 31 an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to this act. The secretary shall file annually said report by December 31, with the clerk of the senate and house of representatives, the house and senate committees on ways and means and with the joint committee on economic development and emerging technologies.

SECTION 9. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this act and shall file the report by December 31 with the clerk of the senate and the house of representatives, the house and senate committees on ways and means, the joint committee on revenue and the joint committee on economic development and emerging technologies.

SECTION 10. This act shall be effective for tax years beginning on or after November 1, 2005 and before January 1, 2011, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2011."

**Deleted:** SECTION 10. Sections and 5 shall take effect on November 1, 2005 and shall cease to be in effect on December 31, 2010.

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# Conference Committee Report -Draft-

10-27-05

Conference Report  
Redline

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

“SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(1)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Motion picture”, a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.



"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this

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**Deleted:** when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed by such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year.

subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to paragraph (2), where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper

allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$2,000,000.

(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Commissioner" the commissioner of revenue.

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials

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intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to subsection(b), where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any

**Deleted:** A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 15 per cent of the total aggregate payroll for persons employed by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

**Deleted:**

amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

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(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial

market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of said chapter 64H, as so appearing, is hereby amended by adding the following paragraph:—

(wv) Sales of tangible personal property to a qualifying motion picture production company or to an accredited film school student for the production expenses related to a school film project.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate not less than \$250,000 within the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12 period and have the approval of the secretary of economic development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in the commonwealth and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in

the commonwealth in connection with the filming or production of such motion picture or television program and shall designate a member or representative of the motion picture production company as a primary liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the commissioner. Said estimate of expenditures shall be filed prior to the commencement of filming in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive 12 month period shall be liable for the sales taxes that would have been paid had the approval not been granted. The sales taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner shall promulgate rules for the implementation of this paragraph.

SECTION 5. Notwithstanding any general or special law to the contrary, upon

application by a motion picture production company, the secretary of economic

development shall make a determination regarding the inclusion of the name

"Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 6. Notwithstanding any general or special law to the contrary, except for

extraordinary activities, a department or agency of the commonwealth shall not charge a

fee or other cost, except the actual costs incurred by the affected department or agency,

for the use of state-owned property for the purposes of making motion pictures. For the

purposes of this section, the term "extraordinary" shall mean an activity outside the

**Deleted:** Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--¶

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators. ¶

**Deleted:** SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--¶

(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators. ¶

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normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof.

SECTION 7. Notwithstanding any general or special law to the contrary, the secretary of economic development shall conduct an economic impact study of motion picture production and development in the commonwealth and shall issue a report together with any recommendations no later than December 31, 2011; provided, however, that the secretary shall file annually by December 31 an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to this act. The secretary shall file annually said report by December 31, with the clerk of the senate and house of representatives, the house and senate committees on ways and means and with the joint committee on economic development and emerging technologies.

SECTION 8. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this act and shall file the report by December 31 with the clerk of the senate and the house of representatives, the house and senate committees on ways and means, the joint committee on revenue and the joint committee on economic development and emerging technologies.

SECTION 9. This act shall be effective for tax years beginning on or after January 1, 2006 and before January 1, 2013, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2013."

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Deleted: SECTION 10. Sections and 5 shall take effect on November 1, 2005 and shall cease to be in effect on December 31, 2010.

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THIS IS THE BILL W/ CHANGES FROM  
WAYS & MEANS THAT YOU - CREEM

WILL ATTEMPT  
TO FURTHER  
AMEND.

SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004

Official Edition, is hereby amended by adding the following subsection:--

(l)(1) As used in this subsection, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Motion picture”, a feature length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting event, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances as defined by law.

“Motion picture production company”, a company engaged in the business of producing motion pictures, as defined in this section. The term shall not include any company at least 5 per cent owned or controlled by, or affiliated with, any company or person in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for a motion picture clearly and demonstrably incurred in the commonwealth.

“Principal photography”, the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The

term shall include wages and salaries paid to individuals employed in the production of a motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; location fees and the cost of purchase or rental of facilities or equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

“Taxpayer”, an entity engaged in the making of a film, including a person, firm, partnership or other entity subject to the income tax imposed by this chapter or chapter 63.

(2) A taxpayer shall be allowed a credit against taxes imposed by this chapter for any Massachusetts production expense within any consecutive 12-month period if (i) at least 50 per cent of the total production expenses are incurred in the commonwealth or (ii) at least 50 per cent of the total principal photography days of the film take place in the commonwealth. The credit shall be equal to 15 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth are less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$5,000,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to 25 per cent of the Massachusetts production

expense when the total production costs incurred in the commonwealth equal or exceed \$10,000,000 during the taxable year. For the purposes of this paragraph, the term "Massachusetts production expense" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) The tax credit shall be taken against taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(4)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue. Any tax credit transferred, sold or assigned shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67 of chapter 63. The limitation provided under section 32C of chapter 63 shall also apply.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a

certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(5) The total amount of tax credits provided under this subsection for any 1 motion picture shall not exceed \$10,000,000.

(6) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S, as so appearing, the following section:--

Section 38T. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Motion picture”, a feature length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting event, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances as defined by law.

“Motion picture production company”, a company engaged in the business of producing motion pictures, as defined in this section. The term shall not include any company at least 5 per cent owned or controlled by, or affiliated with, any company or

person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for a motion picture clearly and demonstrably incurred in the commonwealth.

“Principal photography”, the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

“Production expense” or “production cost”, preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of a motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; location fees and the cost of purchase or rental of facilities or equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

“Secretary”, the secretary of economic development.

“Taxpayer”, an entity engaged in the making of a film, including a person, firm, partnership or other entity subject to the income tax imposed by chapter 62 or this chapter.

(b) A taxpayer shall be allowed a credit against taxes imposed by this chapter for any Massachusetts production expense within any consecutive 12-month period if: (i) at

least 50 per cent of the total production expenses are incurred in the commonwealth; or  
(ii) at least 50 per cent of the total principal photography days of the film take place in the commonwealth. The credit shall be equal to 15 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth are less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$5,000,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to 25 per cent of the Massachusetts production expense when the total production costs incurred in the commonwealth equal or exceed \$10,000,000 during the taxable year. For the purposes of this paragraph, the term "Massachusetts production expense" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) The credit allowed under this section for any taxable year shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67. Any unused portion of the credit may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(d)(1) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any tax credit transferred, sold or assigned shall not reduce the excise to less than the amount due under subsection (b) of section 32, subsection (b) of section 39, or section 67. The limitation provided under section 32C shall also apply. Any amount of the tax credit that

exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which such transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(e) The total amount of tax credits provided under this subsection for any 1 motion picture shall not exceed \$10,000,000.

(f) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Chapter 64G of the General Laws is hereby amended by adding the following section:--

Section 13. Notwithstanding any general or special law to the contrary, an excise shall not be imposed, pursuant to this chapter, upon the transfer or occupancy of a room in a hotel, lodging house or motel if the occupant: (i) is an employee of a motion picture production company, as defined in section 6 of chapter 62; (ii) occupies the room for 20 or more consecutive days; and (iii)



demonstrates that during the 20-day period the occupant is actively working on the making or producing of a motion picture by a motion picture production company qualifying for a tax credit under section 6 of chapter 62.

SECTION 4. Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which qualifies for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--

(f) The sale of supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which qualifies for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating

boxes and extension cables used with exempt equipment; time code equipment;  
VTR editing equipment; switches; and character generators.

SECTION 6. This act shall be effective for tax years beginning on or after  
January 1, 2006.

Conference Report  
Redline

AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

“SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(1)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Motion picture”, a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term “motion picture” shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this

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**Deleted:** when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed by such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year.

subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to paragraph (2), where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide to the commissioner information as the commissioner may require for the proper

allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

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(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Commissioner" the commissioner of revenue.

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials

intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 20 per cent of the total aggregate payroll paid by a motion picture production company that constitutes Massachusetts source income, when total production costs incurred in the commonwealth equal or exceed \$250,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses, not including the payroll expenses used to claim a credit pursuant to subsection (b), where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any

**Deleted:** A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 15 per cent of the total aggregate payroll for persons employed by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

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amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one motion picture production shall not exceed \$7,000,000.

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(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial

market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of said chapter 64H, as so appearing, is hereby amended by adding the following paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company or to an accredited film school student for the production expenses related to a school film project.

For the purposes of this paragraph a qualifying motion picture production company must expend in the aggregate not less than \$250,000 within the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive 12 period and have the approval of the secretary of economic development and the commissioner.

Any motion picture production company that intends to film all, or parts of, a motion picture or television program in the commonwealth and qualify for the exemption provided by this paragraph shall provide an estimate of total expenditures to be made in

the commonwealth in connection with the filming or production of such motion picture or television program and shall designate a member or representative of the motion picture production company as a primary liaison with the commissioner for the purpose of facilitating the proper reporting of expenditures and other information as required by the commissioner. Said estimate of expenditures shall be filed prior to the commencement of filming in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive 12 month period shall be liable for the sales taxes that would have been paid had the approval not been granted. The sales taxes shall be considered due as of the date that taxable expenditures were made.

The commissioner shall promulgate rules for the implementation of this paragraph.

SECTION 5. Notwithstanding any general or special law to the contrary, upon application by a motion picture production company, the secretary of economic development shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 6. Notwithstanding any general or special law to the contrary, except for extraordinary activities, a department or agency of the commonwealth shall not charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the

**Deleted:** Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--¶  
(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

**Deleted:** SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--¶  
(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators. ¶

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normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof.

SECTION 7. Notwithstanding any general or special law to the contrary, the secretary of economic development shall conduct an economic impact study of motion picture production and development in the commonwealth and shall issue a report together with any recommendations no later than December 31, 2011; provided, however, that the secretary shall file annually by December 31 an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to this act. The secretary shall file annually said report by December 31, with the clerk of the senate and house of representatives, the house and senate committees on ways and means and with the joint committee on economic development and emerging technologies.

SECTION 8. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this act and shall file the report by December 31 with the clerk of the senate and the house of representatives, the house and senate committees on ways and means, the joint committee on revenue and the joint committee on economic development and emerging technologies.

SECTION 9. This act shall be effective for tax years beginning on or after January 1, 2006 and before January 1, 2013, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2013."

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Deleted: SECTION 10. Sections and 5 shall take effect on November 1, 2005 and shall cease to be in effect on December 31, 2010.

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AN ACT PROVIDING INCENTIVES TO THE MOTION PICTURE INDUSTRY.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

“SECTION 1. Section 6 of chapter 62 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:—

(1)(1) As used in this subsection the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Motion picture”, a feature-length film, video, television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

“Motion picture production company”, a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term “motion picture production company” shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

“Massachusetts production expense”, a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. Said term includes wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense.

The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(2) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12 month period. The credit shall be equal to 15 per cent of the total aggregate payroll for people employed within the commonwealth by a motion picture production company when total production costs incurred in the commonwealth are less than \$5,000,000. The credit shall be equal to 20 per cent of the total aggregate payroll for people employed within the commonwealth by

such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(3) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses where the motion picture is also eligible for a credit pursuant to paragraph (2) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(4) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(5)(i) All or any portion of tax credits issued in accordance with this subsection may be transferred, sold or assigned to other film taxpayers with tax liabilities under this chapter or chapter 63. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 63 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(ii) An owner or transferee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner or transferee shall provide

to the commissioner information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(6) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$8,000,000.

(7) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of this subsection.

SECTION 2. Chapter 63 of the General Laws is hereby amended by inserting after section 38S the following section:—

Section 38T. (a) as used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Commissioner” the commissioner of revenue.

“Motion picture”, a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term “motion picture” shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, a production containing obscene material or performances.

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"Motion picture production company", a company including its subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

"Massachusetts production expense", a production expense for the motion picture clearly and demonstrably incurred in the commonwealth.

"Principal photography", the phase of production during which the motion picture is actually filmed. The term shall not include preproduction or postproduction.

"Production expense" or "production cost", preproduction, production and postproduction expenditures directly incurred in the production of a motion picture. The term shall include wages and salaries paid to individuals employed in the production of the motion picture; the costs of set construction and operation, editing and related services, photography, sound synchronization, lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and visual effects; music; location fees and the cost of purchase or rental of facilities and equipment or any other production expense as may be determined by the department of revenue to be an eligible production expense. The term shall not include costs incurred in marketing or advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to persons or businesses as a result of their participation in profits from the exploitation of the production.

"Secretary", the secretary of economic development.

(b) A taxpayer engaged in the making of a motion picture shall be allowed a credit against the taxes imposed by this chapter for the employment of persons within the commonwealth in connection with the filming or production of 1 or more motion pictures in the commonwealth within any consecutive 12-month period. The credit shall be equal to 15 per cent of the total aggregate payroll for persons employed within the commonwealth by a motion picture production company when total production costs incurred in the commonwealth less than \$5,000,000 during the taxable year. The credit shall be equal to 20 per cent of the total aggregate payroll for persons employed within the commonwealth by the production company when total production costs incurred in the commonwealth equal or exceed \$5,000,000 during the taxable year. For purposes of this subsection, the term "total aggregate payroll" shall not include the salary of any employee whose salary is equal to or greater than \$1,000,000.

(c) A taxpayer shall be allowed an additional credit against the taxes imposed by this chapter equal to 25 per cent of all Massachusetts production expenses where the motion picture is also eligible for a credit pursuant to subsection (b) and either Massachusetts production expenses exceed 50 per cent of the total production expenses for a motion picture or at least 50 per cent of the total principal photography days of the film take place in the commonwealth.

(d) The tax credit shall be taken against the taxes imposed under this chapter and shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

(e)(1) All or any portion of tax credits issued in accordance with the provisions of this section may be transferred, sold or assigned to other taxpayers with tax liabilities under this chapter or chapter 62. Any tax credit that is transferred, sold or assigned and taken against taxes imposed by this chapter or said chapter 62 shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable year may be carried forward by the transferee, buyer or assignee to any of the 5 subsequent taxable years from which a certificate is initially issued by the department of revenue.

(2) An owner, transferee or assignee desiring to make a transfer, sale or assignment shall submit to the commissioner a statement which describes the amount of tax credit for which the transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as the commissioner may require for the proper allocation of the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an outstanding tax obligation with the commonwealth in connection with any motion picture for any prior taxable year. A tax credit shall not be transferred, sold or assigned without a certificate.

(f) The total amount of tax credits provided under this subsection in connection with any one production shall not exceed \$8,000,000.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of this subsection.

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting after the definition of "Mobile telecommunications service" the following 2 definitions:—

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"Motion picture", a feature-length film, a video, a television series defined as a season not to exceed 27 episodes, or a commercial made in the commonwealth, in whole or in part, for theatrical or television viewing or as a television pilot. The term "motion picture" shall not include a production featuring news, current events, weather and financial market reports, talk show, game show, sporting events, awards show or other gala event, a production whose sole purpose is fundraising, a long-form production that primarily markets a product or service, or a production containing obscene material or performances.

"Motion picture production company", a company including any subsidiaries engaged in the business of producing motion pictures, videos, television series, or commercials intended for a theatrical release or for television viewing. The term "motion picture production company" shall not mean or include any company which is more than 25 per cent owned, affiliated, or controlled, by any company or person which is in default on a loan made by the commonwealth or a loan guaranteed by the commonwealth.

SECTION 4. Section 6 of chapter 64H of the General Laws, as so appearing, is hereby amended by adding the following paragraph:--

(ww) all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment;

terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

SECTION 5. Section 7 of chapter 64I of the General Laws, as so appearing, is hereby amended by adding the following subsection:--

(f) The sale of all supplies, technical equipment and machinery used in conjunction with the production of a motion picture, as defined in section 6 of chapter 62, which would otherwise qualify for a credit as provided in said chapter 62 or chapter 63; including, but not limited to, cameras and camera accessories; film stock; lights and lighting control systems; sound equipment; grip equipment; video assist systems; fog machines; wind machines; generators used to operate exempt equipment; dollies and cranes used to support exempt equipment; terminating boxes and extension cables used with exempt equipment; time code equipment; VTR editing equipment; switches; and character generators.

SECTION 6. Notwithstanding any general or special law to the contrary, upon application by a motion picture production company, the secretary of economic development shall make a determination regarding the inclusion of the name "Commonwealth of Massachusetts" in the credits of any motion picture filmed or produced in the commonwealth.

SECTION 7. Notwithstanding any general or special law to the contrary, except for extraordinary activities, a department or agency of the commonwealth shall not charge a fee or other cost, except the actual costs incurred by the affected department or agency, for the use of state-owned property for the purposes of making motion pictures. For the purposes of this section, the term "extraordinary" shall mean an activity outside the

normal course of business of an agency or department of the commonwealth, including, but not limited to, demolition or construction projects, or any combination thereof.

SECTION 8. Notwithstanding any general or special law to the contrary, the secretary of economic development shall conduct an economic impact study of motion picture production and development in the commonwealth and shall issue a report together with any recommendations no later than December 31, 2009; provided, however, that the secretary shall file annually by December 31 an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to this act. The secretary shall file annually said report by December 31, with the clerk of the senate and house of representatives, the house and senate committees on ways and means and with the joint committee on economic development and emerging technologies.

SECTION 9. The department of revenue shall, annually, issue a report detailing the amount of tax credit certificates issued to taxpayers pursuant to this act and shall provide an estimate of the cost to the commonwealth of the tax credits contained in this act and shall file the report by December 31 with the clerk of the senate and the house of representatives, the house and senate committees on ways and means, the joint committee on revenue and the joint committee on economic development and emerging technologies.

SECTION 10. This act shall be effective for tax years beginning on or after November 1, 2005 and before January 1, 2011, but credits allowed pursuant to this act may be carried forward pursuant to sections 1 and 2 after January 1, 2011."

Deleted: SECTION 10. Sections 4 and 5 shall take effect on November 1, 2005 and shall cease to be in effect on December 31, 2010.

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