

The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

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 2002 Official Edition, is hereby amended by adding the following subsection:—

(1)(a) For the purposes of this subsection, unless the context clearly requires otherwise, the following words shall have the following meanings: -

|| "Motion picture", a feature-length film, direct-to-video, made for television movie, 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 as defined by law.

"Motion picture production company", a company or group of related companies 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 owned, affiliated, or controlled, in whole or in part, 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. Said 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 but is not limited to 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, if performed, composed or recorded by a Massachusetts musician; 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 does 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.

"Resident", (1) any natural person domiciled in the commonwealth, or (2) any natural person who is not domiciled in the commonwealth but who maintains a permanent place of abode in the commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth."

"Secretary", the secretary of the executive office of economic development.

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

(b) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the employment of residents of the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive twelve-month period. The credit shall be equal to fifteen per cent of the total aggregate payroll for residents of the Commonwealth employed by a motion picture production company when total production costs incurred in the commonwealth equal or exceed \$250,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to twenty per cent of the total aggregate payroll for residents of the commonwealth employed by such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$10,000,000 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 said 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 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 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.

(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 such information as he 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. No tax credit may 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 \$10,000,000.

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(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of paragraphs (c), (d) and (e).

SECTION 2. Chapter 63 of the General Laws, as amended by chapter 304 of the acts of 2004, is hereby further amended by adding after section 38S the following section:—

Section 38T. (a) For the purposes of this section, unless the context clearly requires otherwise, the following words shall have the following meanings:—

“Commissioner” the commissioner of the department of revenue.

“Motion picture”, a feature-length film, ~~direct-to-video, made for television movie, 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 as defined by law.

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“Motion picture production company”, a company or group of related companies 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 owned, affiliated, or controlled, in whole or in part, 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. Said 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 but is not limited to 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, if performed, composed or recorded by a Massachusetts musician; 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 does 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.

"Resident", (1) any natural person domiciled in the commonwealth, or (2) any natural person who is not domiciled in the commonwealth but who maintains a permanent place of abode in the commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth."

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(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 said 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 if 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 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.

(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 such transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as he 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. No tax credit may 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 \$10,000,000.

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(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of paragraphs (c), (d) and (e).

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following definitions:—

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"Motion picture", a feature-length film, ~~direct-to-video, made for television movie, 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 as defined by law.

"Motion picture production company", a company or group of related companies 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 owned, affiliated, or controlled, in whole or in part, 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 amended by chapter 262 of the acts of 2004, is hereby further amended by added the following paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company.

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 twelve-month period and have the approval of the secretary of the Massachusetts executive office 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. Exempt expenditures shall be made from a checking account at any financial institution in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive twelve-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 the Massachusetts

office 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, no department or agency of the commonwealth may 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 7. Notwithstanding any general or special law to the contrary, the secretary of the Massachusetts office 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, annually by December 31<sup>st</sup>, file an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to the provisions of this act. The secretary shall file said report annually by December 31<sup>st</sup>, 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.

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 file such report by December 31<sup>st</sup> 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.

SECTION 9. This act shall be effective for tax years beginning on or after January 1, 2005.

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(e)(1) All or any portion of tax credits issued in accordance with the provisions of 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 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.

(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 such information as he 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. No tax credit may be transferred, sold or assigned without a certificate.

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SECTION 2. Chapter 63 of the General Laws, as amended by chapter 304 of the acts of 2004, is hereby further amended by adding after section 38S the following section:—

Section 38T. (a) For the purposes of this section, unless the context clearly requires otherwise, the following words shall have the following meanings:—

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

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of abode in the commonwealth and spends in the aggregate more than one hundred eighty-three days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth."

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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 twelve-month period and have the approval of the secretary of the Massachusetts executive office of economic development and the commissioner.

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(b) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the employment of residents of the commonwealth in connection with the filming or

production of one or more motion pictures in the commonwealth within any consecutive twelve-month period. The credit shall be equal to fifteen per cent of the total aggregate payroll for residents of the Commonwealth employed by a motion picture production company when total production costs incurred in the commonwealth equal or exceed \$250,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to twenty per cent of the total aggregate payroll for residents of the commonwealth employed by such motion picture production company when total production costs incurred in the commonwealth equal or exceed \$10,000,000 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 twenty-five per cent of all Massachusetts production expenses where such expenses exceed sixty per cent of the total production expenses for a motion picture that is also eligible for a credit pursuant to subsection (b) of this Section.

(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 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 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.

(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 such information as he 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. No tax credit may 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.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of paragraphs (c), (d) and (e).

SECTION 2. Chapter 63 of the General Laws, as amended by chapter 304 of the acts of 2004, is hereby further amended by adding after section 38S the following section:

Section 38T. (a) For the purposes of this section, unless the context clearly requires otherwise, the following words shall have the following meanings:-

"Commissioner" the commissioner of the department 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 as defined by law.

"Motion picture production company", a company or group of related companies 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 owned, affiliated, or controlled, in whole or in part, 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.

"Production expense", preproduction, production and postproduction expenditures directly incurred in the Commonwealth 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, if performed, composed or recorded by a Massachusetts musician; 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 does 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 the executive office of economic development.

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

(b) A taxpayer shall be allowed a credit against the taxes imposed by this chapter for the employment of residents of the commonwealth in connection with the filming or production of one or more motion pictures in the commonwealth within any consecutive twelve-month period. The credit shall be equal to fifteen per cent of the total aggregate payroll for residents of the commonwealth employed by a motion picture production company when total production costs incurred in the commonwealth equal or exceed \$250,000 but total less than \$10,000,000 during the taxable year. The credit shall be equal to twenty per cent of the total aggregate payroll for residents of the commonwealth employed by such production company when total production costs incurred in the commonwealth equal or exceed \$10,000,000 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 twenty-five per cent of all Massachusetts production expenses where such expenses exceed sixty per cent of the total production expenses for a motion picture that is also eligible for a credit pursuant to subsection (b) of this Section.

(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 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.

(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 such transfer, sale or assignment of tax credit is eligible. The owner, transferee or assignee shall provide to the commissioner such information as he 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. No tax credit may 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.

(g) The commissioner, in consultation with the secretary, shall promulgate regulations necessary for the administration of the provisions of paragraphs (c), (d) and (e).

SECTION 3. Section 1 of chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following 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 as defined by law.

"Motion picture production company", a company or group of related companies 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 owned, affiliated, or controlled, in whole or in part, 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 amended by chapter 262 of the acts of 2004, is hereby further amended by added the following paragraph:—

(ww) Sales of tangible personal property to a qualifying motion picture production company.

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 twelve-month period and have the approval of the secretary of the Massachusetts executive office 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. Exempt expenditures shall be made from a checking account at any financial institution in the commonwealth. Any qualifying motion picture production company that has been approved which fails to expend \$250,000 within a consecutive twelve-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 the Massachusetts office 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, no department or agency of the commonwealth may 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 7. Notwithstanding any general or special law to the contrary, the secretary of the Massachusetts office 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, annually by December 31<sup>st</sup>, file an economic report of all motion picture production activity in the commonwealth that receives a tax credit certificate pursuant to the provisions of this act. The secretary shall file said report annually by December 31<sup>st</sup>, 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.

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 file such report by December 31<sup>st</sup> 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.

SECTION 9. This act shall be effective for tax years beginning on or after January 1, 2005.

**SENATE, No. 2187**

September 14, 2005

The committee on Senate Ways and Means to whom was referred the House Bill providing incentives to the motion picture industry (House, No. 4252), report recommending that the same ought to pass, with an amendment, substituting a new text with the same title (Senate, No. 2187).

Therese Murray,  
For the committee.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand and Five.**

**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 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.

**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 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 by such motion picture production company when total production

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

Deleted: residents of the commonwealth

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Deleted: but total less than \$10,000,000 during the taxable year.

Deleted: residents of the commonwealth

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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 \$10,000,000.

(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

Deleted: 7

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.

**Deleted:** "Resident", (1) a natural person domiciled in the commonwealth, or (2) a natural person who is not domiciled in the commonwealth but who maintains a permanent place of abode in the commonwealth and spends in the aggregate more than 183 days of the taxable year in the commonwealth, including days spent partially in and partially out of the commonwealth. §

**Deleted:** "Taxpayer", an entity engaged in the making of the film, including a person, firm, partnership or other entity subject to the income tax imposed by the provisions of this chapter or chapter 62.

(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 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.

(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

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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 \$10,000,000.

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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 chapter 64H of the General Laws, as appearing in the 2004 Official Edition, 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 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 is hereby amended by adding at the end thereof the following new 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 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 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.

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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.

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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 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.

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

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SECTION 10. Except as otherwise specified, this act shall be effective for tax years beginning on or after January 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.

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## SENATE, No. 1843

By Mr. Lees, a petition (accompanied by bill, Senate, No. 1843) of Brian P. Lees, Bruce E. Tarr and Scott P. Brown for legislation relative to tax credits for motion pictures. Tourism, Arts and Cultural Development

### The Commonwealth of Massachusetts



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In the Year Two Thousand and Five.

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#### AN ACT RELATIVE TO TAX CREDITS FOR MOTION PICTURES

*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:

Chapter 64H of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting thereafter the following new chapter:-

Chapter 64H ½ .

##### SECTION 1. DEFINITIONS.

The following words and phrases when used in this section shall have the following meanings unless the context clearly indicates otherwise:

“Department” shall mean The Department of Revenue of the Commonwealth.

“Film” The term includes a feature film, a television series and a television show of 15 minutes or more in length, intended for a national audience. The term does not include a production featuring news, current events, weather and market reports, or public programming, talk show, game show, sports event, awards show or other gala event, a production that solicits funds, a production that primarily markets a product or service, a production containing obscene material or performances as defined by law, or a production primarily for private, industrial, corporate or institutional purposes. The Massachusetts Film Bureau will establish specific guidelines together with a certification process that will guide the selection and evaluation of film and television projects that are eligible for the Film Production Tax Credit

“Film Production Tax Credit” shall mean the credit provided under this Act for the production of the Film.

“Pass-Through Entity” shall mean a partnership taxable in the Commonwealth under M.G.L. c. 62, Section 17 or an S-corporation taxable under M.G.L. c. 62, Section 17a.

“Massachusetts Production Expense” shall mean a production expense for the Film clearly and demonstrably incurred in the Commonwealth.

“Production Expense(s)” shall mean an expense incurred in the production of the Film. Said term includes wages and salaries paid to individuals employed in the production of the Film; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories; and the cost of purchase or rental of

facilities and equipment. The term does not include expenses incurred in marketing or advertising the Film.

“Qualified Film Production Expense(s)” shall mean a Massachusetts Production Expense if at least 50% of the total production expenses of the Film are Massachusetts Production Expenses.

“Qualified Tax Liability” shall mean the liability for taxes imposed on any natural person or entity under M.G.L. c. 62 Or M.G.L. c. 63.

“Taxpayer” shall mean an entity engaged in the making of the Film, including but not limited to any partnership or S-corporation.

## SECTION 2. CREDIT FOR QUALIFIED FILM PRODUCTION EXPENSES.

(A) *General Rule.*--A Taxpayer who incurs a Qualified Film Production Expense in a taxable year shall be allocated a Film Production Tax Credit as provided in this Act.

(B) *Amount of Film Production Tax Credit.*--A Taxpayer shall receive a Film Production Tax Credit for the taxable year in the amount of 20% of the Qualified Film Production Expenses incurred in such year; provided, however, that the maximum amount of Film Production Tax Credits allocable to all Taxpayers in all years with respect to the Film shall not exceed the cumulative amount of \$2 million.

## SECTION 3. CARRYOVER, CARRYBACK, REFUND AND ASSIGNMENT OF CREDIT.

(A) General Rule.--If a Taxpayer cannot use the entire amount of the Film Production Tax Credit for the taxable year in which the Film Production Tax Credit first becomes available under Section 2 of this Act, then the excess may be carried over to succeeding taxable years and used as a credit against the Qualified Tax Liability of the Taxpayer for those taxable years. Each time that the Film Production Tax Credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The Film Production Tax Credit provided by this Act may be carried over and applied to succeeding taxable years for no more than five taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(B) No Carryback.--A Taxpayer is not entitled to carry back or obtain a refund of an unused Film Production Tax Credit.

(C) Sale or Assignment.--A Taxpayer may sell or assign, in whole or in part, a Film Production Tax Credit granted to the Taxpayer under this Article to any person or persons with tax liabilities under M.G.L. c. 62 or c. 63.

(D) Purchasers and Assignees.--A purchaser or assignee of a portion of a Film Production Tax Credit under subsection (C) shall immediately claim the credit in the taxable year in which the purchase or assignment is made. [The amount of the Film Production Tax Credit that a purchaser or assignee may use against any qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year.] The purchaser or assignee may carryover any unused credit in the same manner as the Taxpayer under Section 2. The purchaser or assignee may not carry back, obtain a refund of or assign the

Film Production Tax Credit. The purchaser or assignee shall notify the Department of the seller or assignor of the Film Production Tax Credit in compliance with procedures, if any, specified by the Department.

#### SECTION 4. DETERMINATION OF QUALIFIED FILM PRODUCTION

Expenses.--In determining which Production Expenses are considered Qualified Film Production Expenses for purposes of computing the credit provided by this Act, the Department shall consider:

- (1) The location where the services are performed.
- (2) The residence or business location of the person or persons performing the service.
- (3) The location where Qualified Film Production Expenses are consumed.
- (4) Other factors established in regulations by the Department which are necessary for determination.

#### SECTION 5. TIME LIMITATIONS.

(A) Taxpayer is not entitled to a Film Production Tax Credit for Qualified Film Production Expenses incurred in taxable years ending after December 31, 2006.

#### SECTION 6. PASS-THROUGH ENTITY.

(A) General Rule.-- If a Pass-Through Entity has any unused tax credit, it may assign such credit pursuant to Section 3, above, or it may allocate all or a portion of the credit to

shareholders, members or partners in proportion to the share of its distributive income to which the shareholder, member or partner is entitled.

(B) Limitation.-- Any credit allocated as provided under Subsection (A) is in addition to any Film Production Tax Credit to which a shareholder, member or partner of a Pass-Through entity is otherwise entitled under this Article. However, a Pass-Through Entity and a shareholder, member or partner of a Pass-Through Entity may not claim a credit under this Article for the same Qualified Film Production Expense.

(C) Application.-- A shareholder, member or partner of a pass-through entity to whom a credit is transferred under Subsection (A) shall immediately claim the credit in the taxable year in which the transfer is made. A credit transferred to a natural person may be applied only against the income tax liabilities assessed under M.G.L. c. 62. The shareholder, member or partner may not carry back, obtain a refund of or assign the credit.

#### SECTION 7. REGULATIONS.

The Department may promulgate regulations necessary for the implementation and administration of this Act.

SECTION 8. This Act shall take effect upon its passage.