

VIRGINIA PRODUCTION INCENTIVES



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Virginia has instituted an incentive program designed to support the state's film production industry, while making the filming experience in Virginia as economical and efficient as possible for production entities that choose Virginia for their projects. Virginia's incentive package includes grants, tax credits, a sales and use tax exemption and lodging tax exemptions. The amount of money allocated to Virginia incentive funds varies from year to year.

To be eligible for a Virginia tax credit, a production company must make a best faith effort to shoot at least 50 percent of principal photography in the state and must spend at least \$250,000 in qualifying expenses in Virginia. There is no minimum spend for the grant program. Every project receiving funding must contain a "Filmed in Virginia" credit and a Virginia is for Lovers logo as part of the final production. All projects must be fully funded and be ready to begin production within 90 days of receiving confirmation of funding.

The purpose of the Virginia incentive program is to bring business to the Commonwealth and jobs to its citizens. Therefore, additional funding will be given to those projects which hire Virginia residents, shoot in economically distressed areas of the state or hire first-time film employees, many of whom are recent graduates of one of the state's many film programs.

Virginia Film Office

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For detailed information regarding the requirements for the *Virginia Motion Picture Tax Credit Program*, please read the guidelines beginning on page 7. This comprehensive document was developed by Virginia's Department of Taxation with the Virginia Film Office and contains valuable information about Virginia's tax credit and grant programs.

FAQ'S

What's the difference between the Governor's Motion Picture Opportunity Fund and the Virginia Motion Picture Tax Credit Fund?

The *Governor's Motion Picture Opportunity Fund* is a grant program and the *Virginia Motion Picture Tax Credit Program* is a refundable tax credit program. Both programs use the same criteria for eligibility and use the same application form. Virginia Film Office staff will assist you in making a determination about which program works best for your production.

What's the difference between a tax credit and a grant?

Tax credits are designed to replace tax liability. Therefore, to receive a tax credit, the production company must file a Virginia tax return when filming is completed. The allowable credit will be used against the taxpayer's Virginia individual or corporate income tax liability for the taxable year in which physical production was completed. Any of the award money remaining after the taxes are paid will go directly to the production entity. A grant is not subject to any tax liability and filing a Virginia tax return is not required to receive funding. (Although any outstanding tax liability must be paid by the production company.) The tax credit will be paid to the production company approximately 60 days after filing the state tax return.

What's a Certification Letter?

Upon completion of filming, the production entity must submit documentation of qualifying Virginia expenditures and any other documentation required by the Virginia Film Office. Once this process has been satisfactorily completed, the Film Office will issue a Certification Letter stating the final amount of funding the production is eligible to receive.



Are there any other incentives for filmmakers?

Virginia has a sales and use tax exemption for filmmakers. It's easy to use and it exempts many production purchases from the state's sales tax. Hotel and motel stays of 90 or more consecutive days are also exempt. The Virginia Film Office can help reduce your expenses by working with you to cut your production costs even further.

How big does my production have to be to receive funding?

The entire amount of your spending in Virginia must be at least \$250,000 to be eligible for tax credits. There is no minimum limit to the production budget on projects receiving a grant from the Governor's Motion Picture Opportunity Fund.

What kinds of projects can receive tax credits from the Virginia Motion Picture Tax Credit Fund?

Feature length films, documentaries, long-form specials, television mini-series, episodic television series, commercial advertisements, videos and music videos and interactive television designed to fit a thirty minute or longer time slot.

What kinds of projects can receive a grant from the Governor's Motion Picture Opportunity Fund?

Feature films, documentaries, television series, children's programs or other television programs designed to fit a thirty-minute or longer time slot.

What about video game production?

In 2013, digital interactive media (video game) production will be eligible to receive tax credits.

Other states base their incentives on a percentage of the budget. What does Virginia do?

Tax credits in Virginia begin at 15 percent of all qualifying expenses, including wages. If the production is shot in an economically distressed area of the state as designated by the Virginia Economic Development Partnership, the base amount increases to 20 percent. An additional 10-20 percent can be added for the payroll of workers from Virginia, and each first-time film industry employee is eligible for an additional credit of 10 percent.

So it really pays to hire Virginia crew and actors?

Absolutely. Virginia is proud of its exceptional crew, actors and young film professionals. Virginia workers of all kinds qualify for additional funding.

I just found out about the incentive program and I've nearly completed filming. Can I still apply?

In all cases, incentive applications must be received and approved before the start of principal photography.

How do I apply?

The application can be found online at FilmVirginia.org. Complete it and either send or deliver it to the Virginia Film Office along with a copy of the script, production budget and proposed production schedule.

When will I know if my request has been approved?

The Virginia Film Office will respond within 30 business days.

What can I do to ensure a successful proposal?

While there are no guarantees that your proposal will receive funding, you will greatly increase your chances of success by carefully reading and understanding the guidelines and rules in the following pages. Virginia Film Office Director Rita McClenny is also available to answer questions and to help ensure that your proposal meets all necessary requirements. Call 800.854.6233 or email rmcclenny@virginia.org.

When will I get the money?

In the case of the Governor's Motion Picture Opportunity Fund, a check may be issued within approximately 30 days after all documentation has been received and verified. In the case of tax credits, the check is issued approximately 60 days after a [Virginia state tax form has been submitted](#).



VIRGINIA MOTION PICTURE PRODUCTION TAX CREDIT

Guidelines

■ Virginia Department of Taxation

House Bill 861 and Senate Bill 257 (2010 Acts of Assembly, Chapters 418 and 599) established the Virginia Motion Picture Production Tax Credit. According to the Acts, qualifying motion picture production companies are eligible to receive a series of refundable individual and corporate income tax credits for taxable years beginning on and after January 1, 2011, in the aggregate amount of \$2.5 million for the 2010-2012 biennium and \$5 million for any biennium thereafter.

These guidelines and rules (“Guidelines”) are issued by the Department of Taxation (“The Department”) to provide guidance to taxpayers regarding the Virginia Motion Picture Production Tax Credit. These Guidelines are exempt from the provisions of the Administrative Process Act (Va. Code § 2.2-4000 et seq.) according to the provisions outlined in Va. Code § 58.1-439.12.03. As necessary, additional guidelines and rules will be published and posted on the Department’s website, www.tax.virginia.gov.

■ Description of Credits Available

Base-Income Tax Credit: The base credit available is 15 percent of all qualifying expenses (including wages), with a bonus of 5 percent if the production is filmed in an economically distressed area of the Commonwealth, making the total base credit available up to 20 percent of qualifying expenses.

Additional Virginia Resident Credit: The production company is allowed an additional credit of 10 to 20 percent of aggregate payroll for Virginia residents employed in connection with the motion picture production. For companies that spend at least \$250,000 in total production costs in the Commonwealth, but not more than \$1 million, the credit will equal 10 percent of the total Virginia resident aggregate payroll. For companies that spend over \$1 million in total production costs in the Commonwealth, the credit will equal 20 percent of the total aggregate Virginia resident payroll.

Additional Virginia Resident First-Time Industry Employee Credit: In addition to the above outlined credits, companies may claim a credit of 10 percent of their total aggregate payroll for Virginia residents who are employed as first time actors or first time members of a production crew in connection with a production in Virginia.

Credits available through the Virginia Motion Picture Production Tax Credit are offered in addition to other Virginia production incentives. For additional information regarding all available funding assistance for Virginia productions, please refer to the Virginia Film Office's ("VFO") website (FilmVirginia.org).

■ Definitions

"Actor" means an individual paid by the production company for performing a role in Virginia, including, but not limited to, featured actors, stunt performers, voice-over talent, hosts, judges, announcers and roles or performers that appear on a recurring basis.

"Amounts Spent in the Commonwealth" means, in the case of tangible property, expenses for goods and materials purchased or leased from a qualified vendor that are actually and physically provided, supplied, consumed or used within Virginia and, in the case of services, means expenses for services performed within Virginia.

"Certification Letter" means a document issued by the VFO upon completion of a qualified production reflecting the credit amount to be allocated to the production company.

"Commercial Advertisement" means advertisements recorded on film, videotape or digital medium for multi-market distribution which extends outside the state of Virginia by way of broadcast television networks, cable, satellite, Internet, DVD, home video or motion picture theaters. Branding, marketing, promotion and/or e-advertising campaigns do not qualify. Certain animated productions may qualify.



"Compensation and Wages" means "wages" as defined in § 3401 of the Internal Revenue Code. Payment methods may include, but are not limited to, direct payments or indirect payments such as payments through an agent or agency, or payments through a personal service company or an employee leasing company that pays the individual.

"Credit Allocation Letter of Intent" means a document issued by the VFO after receipt and approval of a production company's initial application outlining the terms and conditions of the credit, which shall include the maximum amount of credits to be received by a production company based on an estimate of qualifying expenses.

"Digital Interactive Media Production" means any interactive entertainment intended for commercial exploitation, including, but not limited to:

- video game projects;
- console games;
- computer games;
- handheld console games;
- mobile electronic device games;
- and massively multi-player online video games (MMOG) and virtual worlds that meet the requirement of multi-market distribution via the Internet or any other channel of exhibition.

"Economically Distressed Area" means an area designated as such by the Virginia Economic Development Partnership.

“Employed for the First Time as an Actor or Member of a Production Crew” means receiving compensation and wages for the first time in Virginia as either an actor or as a member of the production crew as verified by the VFO.

“Employed in Connection with the Production of a Film in the Commonwealth” means any individual listed on a production company’s payroll for the production for which the production company is receiving the credit.

“Employee Leasing Company” means a business, which by agreement and for a fee, places employees of a client company on the leasing company’s payroll. In turn, the leasing company “leases” these employees back to their original employer, usually for an unlimited period of time.

“Episodic Television Series” means a television program consisting of multiple episodes of a single season. For the purpose of these Guidelines, an entire season of episodes shall be deemed one motion picture production.

“Filmed” means the creation or digital manipulation of a moving image project; the actual production activity for various industry segments:

- for a live action feature film, television program, or commercial project, the production of the project involving the capture of images by a camera;
- for an animated feature film, television program, or commercial, the creation of computer generated digital images or the use of a camera to film with stop motion or time lapse photography;
- for a video game, the use of computers or software to create interactive digital images and visual effects; and
- for a visual effects project, the finishing of a feature film, television program, or commercial with the creation of visual effects including, but not limited to, editing, visual effects, sound effects, music or animation.

“Filmed in the Commonwealth” means a motion picture production that has made best faith efforts to film at least 50 percent of its principal photography days within the Commonwealth.

“Goods and Services” means physical products and services domiciled and used in Virginia that are directly attributable to the production of a project including, but not limited to, contractors, subcontractors and service providers, and product or equipment purchases, rentals, and leases. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.

Example: Elite Motion Pictures purchases a new car for \$50,000 to be used as a prop on the set of their movie for filming. At the completion of production the car’s value has depreciated to \$40,000. Elite Motion Pictures may only report \$10,000 worth of expenses for the cost of the car to qualify for the credit.

“Member of a Production Crew” means persons employed as production staff or on-set technicians, including, but not limited to, accountants, coordinators, secretaries, camera, casting, construction, costume, electric, editing, grip, location, hair, make-up, props, swing gang, set decorating, sound, special effects, transportation, and visual effects.

“Memorandum of Understanding” means a document issued by the VFO to be signed by both the VFO and the production company as an agreement of the terms and conditions that must be met in order for the production company to receive the tax credits.

“Motion Picture Production” means any recorded audio-visual project using a series of moving images intended for distribution or commercial use including, but not limited to, feature films, episodic television series, commercials, etc. On January 1, 2013, this term will include digital interactive media productions. “Film”, “production”, and “project” mean the same as “motion picture production” for the purpose of these Guidelines.

“Motion Picture Production Company” means any individual, corporation, partnership, electing small business corporation (S corporation), limited liability company, or other form of business association producing

a motion picture production. "Production company" shall mean the same as "motion picture production company" for the purpose of these Guidelines.

"Obscene Material" means any material which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

"Personal Service Company" means a business that is a qualified personal services corporation under § 448(d)(2) of the Internal Revenue Code.

"Political Advertising" means advertising whose central focus is the marketing of ideas, attitudes, and concerns about public issues, including political concepts and political candidates.

"Post Production" means the period of physical production that occurs at the completion of production (principal photography), including, but not limited to, editing, sound editing and mixing, music, visual effects and animation.

"Pre-Production" means the period of physical production that occurs before the start of principal photography, but after the project has received a Credit Allocation Letter of Intent. This includes, but is not limited to, activities such as location scouting, hiring of crew members, and establishment of a dedicated production office.

"Principal Photography" means the phase of production during which the motion picture production is actually being filmed or created.

"Production" means the period encompassing pre-production, principal photography, and post production.

"Qualified Motion Picture Production" means a production that has been certified by the VFO as fully meeting the initial requirements for the credit and had received a Credit Allocation Letter of Intent.

"Qualified Vendor" means any individual, partnership, corporation, limited liability company or other business entity that 1) provides goods and services that they provide in their ordinary course of business to a qualified motion picture during production; 2) maintains a physical place of business in Virginia; and 3) is qualified to do business in Virginia.

"Qualifying Expenses" means the sum of actual amounts spent in the Commonwealth by a production company in connection with the production of a motion picture filmed in the Commonwealth for certain goods and services leased or purchased and certain compensation and wages as approved by the VFO. Examples of qualifying expenses include:

- resident and non-resident cast and crew wages (less than \$1 million per individual);
- accommodations;
- costs of set construction and operations;
- editing and related services;
- photography;
- sound synchronization;
- lighting;
- wardrobe; makeup and accessories;
- film processing;
- sound mixing;
- special and visual effects;
- music;
- location fees;
- purchase and rental of facilities and equipment;
- licensing, registration, and permitting fees;
- costs associated with the independent certified public accountant's report ; and
- any other production expense for which taxes are assessed or imposed by the state and is approved by the VFO.

Examples of non-qualifying expenses include:

- wages or compensation in excess of \$1 million paid to individuals for personal services with respect to a single production (In such cases, only the first \$1 million of salary is considered a qualifying expense.);
- development costs, marketing and promotion expenses, distribution expenses, or any expenses incurred prior to preproduction or after post production of a feature film, television production or video game; and
- any expenditures made or incurred outside the Commonwealth of Virginia.

“Reality Television Production” means a television production depicting real events and non-actors through actual footage which presents persons engaged in seemingly unscripted situations; no fictional characters are created.

“The Department” means the Virginia Department of Taxation.

“VFO” means the Virginia Film Office.

“Virginia Resident” means an individual domiciled in Virginia at any time during the taxable year and every other individual who, for an aggregate of more than 183 days of the taxable year, maintained his place of abode within Virginia, whether domiciled in Virginia or not.



■ Production Eligibility Requirements

These are the minimum requirements a production company must complete to be eligible for the tax credit.

A production company may be eligible for the credit if it:

- satisfactorily completes the initial application (found on the VFO website, FilmVirginia.org);
- meets all deadlines outlined by the VFO; and
- completes all of the requirements specified in the memorandum of understanding.

A production company must also meet the following requirements:

- spends at least \$250,000 in “qualifying expenses;”
- makes a best faith effort to film at least 50 percent of principal photography in the Commonwealth;
- agrees to contain a ‘filmed in Virginia’ credit and Virginia logo in the final production;
- is fully funded with a multi-market distribution contract, without taking into account the value of the tax credits; and
- verifies that the project will go into pre-production within 90 days of the approval of the application.

The credit shall only be granted for expenses with respect to eligible motion picture productions. Eligible motion picture productions include, but are not limited to:

- feature length films;
- documentaries;
- long-form specials,
- television mini-series;
- episodic television series;
- commercial advertisements;
- videos and music videos;
- interactive television; and
- effective on January 1, 2013, digital interactive media productions.



Eligible motion picture productions do not include:

- political advertising and editorial based content;
- any ongoing television program created primarily as news, weather or financial market reports;
- any live or pre-recorded production featuring current events, sporting events or an awards show or other gala event;
- a reality television production, including, but not limited to, productions in the respect of a game, questionnaire, auction or contest;
- any production that contains obscene material;
- productions whose sole purpose is fundraising;
- a long-form production that primarily markets a product or service;
- a production used for corporate training or in-house corporate advertising or other similar productions;
- games of chance websites and other games of chance productions;
- marketing and promotional websites or microsites; all forms of social media, social networking, marketing and brand promotion;
- infomercials, infotainment or edutainment content;
- solicitation-based productions; and
- productions that do not spend at least \$250,000 in qualifying expenses.

Application Process and Procedures

■ Initial Application

Production companies meeting the basic eligibility requirements outlined above must submit an initial application to the VFO at least 30 days prior to production. The application must include any documentation required by the VFO. Applications can be found online at the VFO website, which is located at FilmVirginia.org.

■ Processing of Applications by the VFO

The VFO will review each application to ensure that all necessary documentation is attached. If the application is incomplete, the VFO will contact the production company to request missing information. The application will not be reviewed for credit allocation until the application is complete.

Completed applications will be reviewed by the VFO to determine the estimated amount of qualified expenses, the total cost of production and other information necessary to determine both eligibility and level of credit allocation. The VFO will determine which productions to approve and which to deny credit allocations based on any or all of the following factors:

- the amount of in-state production spending; and
- the qualifying criteria of the motion picture production, which shall include, but not be limited to:
 - whether the production involves physical production within the Commonwealth of Virginia;
 - the number of residents of Virginia that will be employed in the production and the level of compensation they will be paid;
 - the extent to which the production will contribute to the support and expansion of existing production companies in Virginia;
 - the extent to which the production will impact existing local businesses and the local economy;
 - the extent to which the production will involve existing and new companies located in Virginia;
 - the extent to which the production provides employment at facilities physically located within the Commonwealth of Virginia; and
 - any other relevant considerations as determined by the VFO.

Productions will only be considered when funding is available. As funding is limited, it is possible that all of the funds will have been reserved by earlier productions at the time of the production company's submittal of its initial application. In this case, the VFO will inform the production company of the next date when a review of the production may be performed. The VFO will also inform the production company if a new application is required for later review.

The allocation of available credit funding is at the sole discretion of the VFO and its decisions as to the eligibility of motion picture company and the amount of credit funding initially allocated to it are final.

Motion picture production companies that are rejected by the VFO for a particular production may apply in the future for tax credits regarding other productions.

■ Credit Notification

The VFO intends to approve or deny completed applications within 10 business days of receipt of application but reserves the right to take up to 30 days to respond.

A decision to potentially grant tax credits to a production company will be confirmed by a Credit Allocation Letter of Intent that will include:

- the maximum amount of the tax credit allotted;
- the date that eligibility for qualified expenses begins; and
- the date that eligibility for qualified expenses ends.

After receipt of the Credit Allocation Letter of Intent, the production company will enter into a memorandum of understanding with the VFO outlining the requirements the production company must meet in order to receive the credits. The memorandum will include at minimum:

- the estimated amount of money to be spent in Virginia;
- the estimated number of Virginia resident hires;
- the timeline for completing production in Virginia; and
- the maximum amount of credits to be allocated to the production company.

By signing the memorandum of understanding, the motion picture production company forfeits any right to contest the amount of tax credits that have been assigned to it and agrees that while the amount of credits granted upon the completion of the motion picture production may be lower than the maximum amount listed on the memorandum of understanding based on the amount of qualifying expenses, it may not be more.

Production companies seeking the tax credit must receive a Credit Allocation Letter of Intent from the VFO before making or incurring any qualified production expenditures in order for those expenditures to be eligible for the credit.

■ Requirements During Production

The applicant must at all times keep proper books of record and accounts in accordance with generally accepted accounting principles consistently applied, with the books, records, or papers related to the accredited production in the custody or control of the taxpayer open for reasonable inspection and audits by the Department, including, without limitation, the making of copies of the books, records, or papers, and the inspection or appraisal of any of the assets of the applicant or the accredited production. This must include all vendor receipts for which the production is applying for tax credits.

If physical production goes over one calendar year, the production company must file a report with the VFO that verifies the progress of the production. The report shall include a detailed account of amounts spent in the Commonwealth at the current stage of production and provide proof that it is moving forward.

■ After Production

Upon completion of a qualified production, the applicant must submit to the VFO proof of the amount spent in the Commonwealth and any additional documentation required by the VFO in combination with the Department. Any pass-through entity that wishes to claim the credit at the entity level rather than allocating the credit to its individual owners must notify the VFO in writing at the time the final application is submitted.

Upon approval, the VFO shall issue a Certification Letter to the applicant indicating the amount of the tax credit that the taxpayer may claim on its Virginia income tax return. The Certification Letter will include the name of the production, a description of the production, and a detailed account of the qualifying expenses with respect to which the credit is being claimed.

■ Claiming the Credit

Under the requirements of Va. Code § 58.1-499 C, the taxpayer, upon receipt from the VFO of copies of the Certification Letter, must file the applicable Virginia state income tax return and attach any required documentation in order to receive the refundable Virginia Motion Picture Production Credit. The credit is refundable and shall be used against the taxpayer's Virginia individual or corporate income tax liability for the taxable year in which physical production was completed.

Whenever a taxpayer is eligible to claim more than one Virginia income tax credit, the taxpayer shall exhaust all other applicable credits before utilizing the refundable Motion Picture Production Credit to ensure that the taxpayer receives the maximum benefit of his credits. The Motion Picture Production Credit has no carryforward provision, and, as such, must be used against Virginia income tax liability for the taxable year in which physical production was completed. If the amount of the available credit exceeds the taxpayer's tax liability, the taxpayer will receive a refund from the Department of the net excess of the refundable credit over such remaining tax liability. See Public Document 95-240 (9/22/95) for further information regarding the ordering of tax credits.

Any taxpayer allowed this tax credit must maintain and make available for inspection any information or records that the Department requests.



photo credit: Kent Fones

■ Pass Through Entities

The amount of any credit attributable to a pass-through entity, such as a partnership, electing small business corporation (S corporation), or limited liability company, will generally be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities. If a pass-through entity wishes to claim this credit at the entity level without allocating the amount of credit to the individual owners, the pass-through entity must notify the VFO in writing at the time it submits its final application and, upon approval, must follow any instructions for claiming the credit as provided in the certification letter.

■ Details for the Department's Annual Report

The Department, in consultation with the VFO, must publish a report by November 1 of each year or the 12 month period ending the preceding December 31. This report will include the following information:

- location of sites used in a production for which a credit was claimed;
- qualifying expenses for which a credit was claimed, classified by whether the expenses were for goods, services, or compensation paid by the production company;
- number of people employed in the Commonwealth in connection with the production for which the credits were claimed; and
- the total cost to the Commonwealth's general fund of the credits claimed.

■ Additional Information

These Guidelines and rules are available on-line in the Tax Policy Library section of the Department's website, located at www.policylibrary.tax.virginia.gov. For additional information, please contact Department of Taxation at (804) 367-8037, visit www.tax.virginia.gov, contact the Virginia Film Office at (804) 545-5530, or visit FilmVirginia.org.

MOTION PICTURE FILM PRODUCTION REFUNDABLE TAX CREDITS SENATE BILL 257 & HOUSE BILL 861

CHAPTER 599

An Act to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, relating to motion picture film production tax incentives.

[S 257]

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03 as follows:

§ 58.1-439.12:03. *Motion picture production tax credit.*

A. For taxable years beginning on and after January 1, 2011, any motion picture production company with qualifying expenses of at least \$250,000 with respect to a motion picture production filmed in Virginia shall be allowed a refundable credit against the taxes imposed by § 58.1-320 or 58.1-400 in an amount equal to 15 percent of the production company's qualifying expenses or 20 percent of such expenses if the production is filmed in an economically distressed area of the Commonwealth. The Virginia Economic Development Partnership Authority shall designate which areas of the Commonwealth are deemed to be economically distressed areas. The credit shall be computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year. The refundable tax credits allowed under this section are for one tax year only. Where a motion picture production continues for more than one year, a separate application for each tax year the production continues must be made. The grant of a refundable tax credit for a motion picture film production does not create a presumption that the production will receive a refundable tax credit for subsequent tax years. Effective on January 1, 2013, for purposes of eligibility for refundable tax credits, a motion picture film production shall include digital interactive media production.

"Qualifying expenses" means the sum of the following amounts spent in the Commonwealth by a production company in connection with the production of a motion picture filmed in the Commonwealth:

- 1. Goods and services leased or purchased. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price less the fair market value of the good at the time the production is completed.*
- 2. Compensation and wages, except in the case of each individual who directly or indirectly receives compensation in excess of \$1 million for personal services with respect to a single production. In such a case, only the first \$1 million of salary shall be considered a qualifying expense. An individual is deemed to receive compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.*

B. 1. In addition to the refundable credit authorized under subsection A, such production company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia residents employed in connection with the production of a film in the Commonwealth when total production costs in the Commonwealth are at least \$250,000 but not more than \$1 million. This additional credit shall be equal to 20 percent of the total aggregate payroll for Virginia residents employed in connection with such production when total production costs in the Commonwealth exceed \$1 million.

2. In addition to the credits authorized under subsection A and subdivision B 1, such production company shall be allowed an additional refundable credit equal to 10 percent of the total aggregate payroll for Virginia residents employed for the first time as actors or members of a production crew in connection with the production of a film in the Commonwealth.

C. 1. For purposes of this section, in the case of an episodic television series, an entire season of episodes shall be deemed to be one production.

2. No credit shall be allowed under this section for any production that (i) is political advertising, (ii) is a television production of a news program or live sporting event, (iii) contains obscene material, or (iv) is a reality television production.

D. 1. The issuance of refundable tax credits under this section shall be in accordance with procedures, qualifying criteria, and deadlines established by the Department and the Virginia Film Office. The qualifying criteria established by the Virginia Film Office shall take into account whether the production involves physical production within the Commonwealth of Virginia, the number of residents of Virginia that will be employed in the production and the level of compensation they will be paid, the extent to which the production will contribute to the support and expansion of existing production companies in Virginia, the extent to which the production will impact existing local businesses and the local economy, the extent to which the production will involve existing and new companies located in Virginia, and other relevant considerations. The taxpayer shall apply for a credit by submitting such forms as prescribed by the Virginia Film Office, prior to the start of production in Virginia.

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

3. Once the taxpayer has satisfied all of the requirements in the memorandum of understanding to the satisfaction of the Virginia Film Office and completed production in Virginia, the taxpayer may claim the applicable amount of credits up to the amount that has been allocated by the Virginia Film Office on a return filed for the taxable year in which the Virginia production activities are completed. The return must state the name of the production, provide a description of the production, and include a detailed accounting of the qualifying expenses with respect to which a credit is claimed.

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

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

G. The total amount of credits allocated to all taxpayers under this section shall not exceed \$2.5 million in the 2010-2012 biennium, and \$5 million in any biennium thereafter.

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

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

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

2. That the General Assembly of Virginia finds that modern motion picture productions may be located within a state with minimal regard to the location of such state, and that the economic vitality of the Commonwealth may be enhanced if such productions are filmed in the Commonwealth. Accordingly, the provisions of this act targeting the credit to expenditures made in the Commonwealth and to the employment of Virginia residents and limiting the credit to those companies that meet those criteria are integral to the purpose of the credit earned pursuant to this act and shall not be deemed severable.

GOVERNOR'S MOTION PICTURE OPPORTUNITY FUND

Guidelines

■ Purpose

The Governor's Motion Picture Opportunity Fund (GMPOF) exists to support the film and video industries in Virginia by providing grants for production companies and studios that produce projects in the Commonwealth using Virginia employees, resources, goods and services.

■ Guiding Principles

Applications must be submitted 30 days prior to principal photography.

Grants are made at the discretion of the Governor. Grants will be awarded for qualified projects that bring revenue to the Commonwealth and will be paid on a reimbursement basis for eligible expenses outlined in the company's application letter. **A condition of receiving the grant is a joint public announcement between the production company and the Governor.**

In determining grant amounts, the following will be considered: employment, investment, presence of any local commitment, and industry or company growth potential in Virginia. Grants will only be made from current appropriations and will not be committed from anticipated future appropriations. Upon completion of the project, the company must provide a request for payment of documented eligible expenses. Payment amounts will be based on whether the contracted employment and investment numbers were met as well as all other required deliverables.

The Film Office will coordinate the announcement of the grant with producers. It is important to note that both the employment and expenditure figures used in the application commit the company to reaching these goals during the Virginia production for which the grant has been awarded and that these figures will be used in any news release distributed to the media. In addition, the Commonwealth of Virginia and Virginia localities where filming takes place must receive an ending credit on the final theatrical and/or broadcast version of the project.

Governor's Motion Picture Opportunity Fund (GMPOF) Guidelines

Any questions regarding the preparation of an application should be directed to: Rita McClenny, Virginia Film Office, 901 East Byrd Street, Richmond, Virginia 23219-4048
Phone: 800.854.6233; Fax: 804.545.5531; e-mail: rmcclenny@virginia.org

■ Project Eligibility

In accordance with Code of Virginia § 2.2-2320, the types of projects eligible for consideration are feature films, children's programs, documentaries, television series or other television programs designed to fit a thirty-minute or longer time slot. Projects not eligible are industrial, corporate or commercial projects, education programs not intended for broadcast, adult films, music videos and news shows or reports.

Company must demonstrate that it has 100% of its anticipated financing in place at the time the GMPOF grant is requested. The project for which the application is made must commence physical production within 12 months following application submission to the Virginia Film Office or the application will be considered non-compliant to the established guidelines.

■ Use

The grant award will be based on qualified company expenses for items such as Virginia salaries and wages, renting, leasing or purchasing Virginia-based goods and services, site rental fees, set construction costs, soundstage rental, film processing and editing/post-production costs. The GMPOF is not intended to cover 100% of the Virginia labor costs.

■ Grant Requests

Applications and all required documentation should be sent to the Virginia Film Office – 901 East Byrd Street, Richmond, Virginia 23219-4048; Attention: Rita McClenny



photo credit: Kent Eanes

GOVERNOR'S MOTION PICTURE OPPORTUNITY FUND

Legislation

§ 2.2-2320. Governor's Motion Picture Opportunity Fund.

There is created a Governor's Motion Picture Opportunity Fund (the Fund) to be used, in the sole discretion of the Governor, to support the film and video industries in Virginia by providing the means for attracting production companies and producers who make their projects in the Commonwealth using Virginia employees, goods and services. The Fund shall consist of any moneys appropriated to it in the general appropriation act or revenue from any other source. The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

The Fund shall be used by the Governor to assist production companies or producers that meet the eligibility requirements set forth in the guidelines. The Authority shall assist the Governor in the development of guidelines for the use of the Fund. The guidelines should include provisions for geographic diversity and a cap on the amount of money available for a certain project. The types of projects eligible for consideration will be feature films, children's programs, documentaries, television series or other television programs designed to fit a thirty-minute or longer format slot. Projects not eligible are industrial, corporate or commercial projects, education programs not intended for rebroadcast, adult films, music videos and news shows or reports.

(1999, cc. 852, 881, § 2.1-548.61; 2001, c. 844.)

VIRGINIA'S PRODUCTION INCENTIVE APPLICATION

Please complete this form and attach required documentation. Send or deliver to the Virginia Film Office no later than 30 days before filming is scheduled to begin. For information, please call 800.854.6233 or email Rita McClenny at rmclenny@virginia.org. If more space is required to answer any of the questions, please attach additional sheets to the application.

PRODUCTION ENTITY INFORMATION

Title of project :		
Legal name of production company:		
Address:		
City, State, Zip:		
Website:		
Production company email address:		
Telephone:		
How long has company been in business?		
Description of company:		
Production credits:		
Name of person submitting request:		
Office phone number:	Mobile number:	Fax number:
Email address:		
Director:	Producer:	
Line producer:	Talent:	

FUNDING REQUEST

Date of request	
Amount of grant or tax credit requested	
Is the request for: <input type="checkbox"/> Governors Motion Picture Opportunity Fund Grant <input type="checkbox"/> Virginia Motion Picture Tax Credit Fund	
Is the project fully funded?	
Is the production company registered as a Virginia Corporation? N / Y	What type?
Tax ID number:	

PARENT COMPANY, if applicable

Name:
Address:
City, State, Zip:
Contact:
Title:
Email Address:
Telephone:
Type of Production Company:

PROJECT INFORMATION

Production budget:			
Estimated Virginia spend:			
Type of project:	<input type="checkbox"/> Feature length film	<input type="checkbox"/> Documentary	<input type="checkbox"/> Television mini-series
	<input type="checkbox"/> Episodic television series	<input type="checkbox"/> Commercial advertisement	<input type="checkbox"/> Videos or music videos
	<input type="checkbox"/> Interactive television	<input type="checkbox"/> Children’s program	<input type="checkbox"/> Other – please specify
Specify Other:			
Project Synopsis:			
Estimated number of Virginia workers:	Crew:	Actors:	Other:
Estimated total crew:			
Virginia localities where filming will occur:			
Other states or countries where filming will occur:			

ECONOMIC IMPACT ON VIRGINIA

Private capital invested in project:
Public money and/or dollar value of in-kind services provided to project:
Importance of the incentive to the production:
Competition – What other states are being considered for filming?
Relevance of the project to the community or communities in which it will be made:

DOCUMENTATION

Please include the following documents with this application:
<input type="checkbox"/> Script <input type="checkbox"/> Production budget <input type="checkbox"/> Proposed production schedule

Please submit application no later than 30 days before filming is scheduled to begin. Mail or deliver to:

Virginia Film Office, Attention: Rita McClenny
 901 East Byrd Street, West Tower, 19th Floor; Richmond, Virginia 23219-4048

SALES AND USE TAX EXEMPTION

Many of the expenses incurred in the purchase of production-related supplies or equipment are exempt from the state's 4% sales and use tax. This exemption is realized immediately and can be obtained by submitting a form to the merchant at the time of sale. No paperwork needs to be filed upon completion of production and no rebates will be sent at the end of the tax year.

To receive the exemption, download "Commonwealth of Virginia Sales and Use Tax Certificate of Exemption" from the incentive section of FilmVirginia.org and present it when you purchase a qualified item. In most cases, the merchant will keep a copy on file for future reference.

Some of the major items covered by the Sales and Use Tax Exemption include purchasing and developing film including movie film; materials used to construct costumes, props or scenery; equipment rentals; heating and air conditioning used on the set; scripts, musical scores or storyboards; drafting and design supplies.

For more information about Virginia's tax regulations, contact:

Virginia Department of Taxation

Bland Sutton

Post Office Box 27185

Richmond, Virginia 23261-7185

bland.sutton@tax.virginia.gov

804.371.2332

www.tax.virginia.gov

**COMMONWEALTH OF VIRGINIA
SALES AND USE TAX CERTIFICATE OF EXEMPTION**

(For use by production companies program producers, radio, television and cable TV Companies, and other entities engaged in the Production and creation of exempt audiovisual works and the licensing, distribution and broadcast of the same)

To: _____ Date: _____
(Name of Dealer)

(Number and Street or Rural Address) (City, Town or Post Office) (State & ZIP Code)

The Virginia Retail Sales and Use Tax Act provides that the Virginia sales and use tax shall not apply to the following:

- i) The lease, rental, license, sale, other transfer, or use of any audio or video tape, film or other audiovisual work where the transferee or user acquires or has acquired the work for the purpose of licensing, distributing, broadcasting, commercially exhibiting or reproducing the work or using or incorporating the work into another such work;
- ii) The provision of production services or fabrication in connection with the production of any such portion of such audiovisual work, including, but not limited to scriptwriting, photography, sound, musical composition, special effects, animation, adaptation, dubbing, mixing, editing, cutting and provision of production facilities or equipment;
- iii) The transfer or use of tangible personal property, including, but not limited to, scripts, musical scores, storyboards, artwork, film, tapes and other media, incidental to the performance of such service or fabrication. However, audiovisual works and incidental tangible personal property described in clauses i) and iii) shall be subject to tax as otherwise provided in this chapter to the extent of the value of their tangible components' prior to their use in the production of any audiovisual work and prior to their enhancement by any production service; and,
- iv) Equipment and parts and accessories thereto used or to be used in the production of such audiovisual works.

The undersigned purchaser hereby certifies that all tangible personal property purchased or leased from the above named supplier on and after this date will be purchased or leased for the purpose of producing or creating exempt audiovisual works and the licensing, distribution, broadcasting, commercially exhibiting or reproducing works for viewing or listening by the general public.

Name _____

Trading as Name _____

Registration No., if any _____

Federal I.D. # _____

Address _____
(Number and Street or Rural Route) (City, Town or Post Office) (State and ZIP Code)

Signature _____

Information for dealer: A dealer is required to have on file only one Certificate of Exemption properly executed by each purchaser buying or leasing tax exempt tangible personal property under this certificate.

LODGING TAX EXEMPTIONS

After 90 consecutive days, stays in a Virginia hotel or motel will be exempt from the state's lodging tax on the entire stay. Residents must pay the taxes to the hotel until the stay exceeds 90 days. After that time, lodging tax will no longer be charged and the amount already paid will be credited back to the bill.

Many counties and cities in Virginia charge an additional lodging tax, often referred to as a transient occupancy tax, and the laws governing these taxes vary greatly by locality. As a general rule, however, most localities will exempt residents of hotels and motels from the tax after a stay of 30 consecutive days or more. To find out the specific regulations of the locality in which you are planning to stay, contact the local film liaison for that area or the Virginia Film Office at 800.854.6233. A list of film liaisons can be found on the Virginia Film Office website, FilmVirginia.org.

