

VIRGINIA PRODUCTION INCENTIVES



VIRGINIA IS FOR
FILM LOVERS
VIRGINIA FILM OFFICE

VIRGINIA PRODUCTION INCENTIVES

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 Film 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.

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VIRGINIA PRODUCTION INCENTIVES

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 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 the same application form.

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

Tax credits are designed to replace tax liability. To receive tax credits, the production company must file a Virginia tax return when filming is completed. Tax credits will be used to "pay" Virginia individual or corporate income tax liability for the taxable year in which physical production was completed. Any of the remaining allowable tax credits will be paid directly to the production entity. A grant is not subject to any tax liability and filing a Virginia tax return is not required. The allowable tax will be paid in the form of a check to the production company approximately 60 days after required documentation is approved.

What kinds of projects can receive tax credits or grants?

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 other incentives are available?

Virginia has a sales and use tax exemption for filmmakers that exempts many production purchases from the state's sales tax. Hotel and motel stays of 90 or more consecutive days are also exempt.

Does Virginia fund video game production?

Digital interactive media (video game) production is eligible to receive tax credits.

How are funding amounts determined?

Funding in Virginia begins at 15 percent of all qualifying expenses, including wages. If the production is shot in an economically distressed area of the state, the base amount increases to 20 percent. An additional 10-20 percent of payroll expenses of workers from Virginia is also available and each first-time film industry employee is eligible for an additional credit of 10 percent.

Does it really pay 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.

When to apply?

Incentive applications must be received and approved before the start of principal photography.

How do I apply?

The application can be found on this website. 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 information in the Virginia Incentive brochure. Virginia Film Office staff members Andrew Edmunds or Dawn Blacksten are available to answer questions and to help ensure that your proposal meets all necessary requirements. Call 804.545.5530 or email aedmunds@Virginia.org or dblacksten@Virginia.org.

When will I receive the funding?

In the case of the 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.

UPDATED GUIDELINES FOR THE MOTION PICTURE PRODUCTION TAX CREDIT

**These Guidelines supersede the Guidelines for the Virginia Motion Picture Production Tax Credit issued by the Department on August 6, 2012 (Public Document 12-128) and December 21, 2010 (Public Document 10-281).

INTRODUCTION

During the 2010 Session, the Virginia General Assembly enacted House Bill 861 and Senate Bill 257 (2010 Acts of Assembly, Chapters 418 and 599) which established the Motion Picture Production Tax Credit. This is a refundable income tax credit for certain motion picture production companies that film motion picture productions in Virginia.

For the 2012-2014 biennium, the credit was capped at \$5 million. For the 2010-2012 biennium, the credit was capped at \$2.5 million.

During the 2014 Session, the Virginia General Assembly enacted House Bill 460 (2014 Acts of Assembly, Chapter 730) which increased the credit cap to \$6.5 million per fiscal year for Fiscal Years 2015 and thereafter, imposed a January 1, 2019 sunset date on the credit, and amended the reporting requirements imposed on the Department of Taxation ("the Department"). During the 2020 session, this sunset was extended through January 1, 2027 via the enactment of House Bill 1318.

These guidelines are published by the Department to provide updated guidance to tax-payers regarding the Motion Picture Production Tax Credit as required by Va. Code § 58.1-439.12.03. These guidelines are not rules or regulations subject to 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. These guidelines supersede the Guidelines for the Virginia Motion Picture Production Tax Credit issued by the Department on August 6, 2012 (Public Document 12-128) and December 21, 2010 (Public Document 10-281). As necessary, additional information will be published and posted on the Department's website, www.tax.virginia.gov.

These guidelines represent the Department's interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under Va. Code §§ 58.1-105, 58.1-1835 and 58.1-1845]...[continued on next page]

To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question.

GENERAL OVERVIEW

The Motion Picture Production Tax Credit is comprised of three separate components, (1) a base credit, (2) an additional Virginia resident employee credit, and (3) an additional Virginia resident first-time industry employee credit. A motion picture production company (as defined in the “Definitions” section below) may apply to the Virginia Film Office (“VFO”) for each of the above credits that it qualifies for in a single taxable year. To be eligible for the two additional Virginia resident credits, a production company must qualify for the base credit.

Base Credit:

Any production company with qualifying expenses of at least \$250,000 with respect to a motion picture production filmed in Virginia is eligible for the base credit. The base credit is equal to 15 percent of a production company’s qualifying expenses, or 20 percent of such expenses if the motion picture production is filmed in an economically distressed area of Virginia as designated by the Virginia Economic Development Partnership Authority.

Additional Virginia Resident Credit:

A production company that qualifies for the base credit may qualify for an additional credit equal to 10 percent of its total aggregate payroll for Virginia residents employed in connection with a motion picture production filmed in Virginia. To be eligible for this credit, the production company’s total costs in Virginia related to the motion picture production must be at least \$250,000. If the production company’s total costs in Virginia related to the motion picture production exceed \$1 million, the amount of this additional credit is increased to 20 percent of the total aggregate payroll for Virginia residents employed in connection with the motion picture production.

Additional Virginia Resident First-Time Industry Employee Credit:

A production company that qualifies for the base credit is eligible for an additional 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 a motion picture production filmed in Virginia. “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.

DEFINITIONS

“Motion picture production company” (“production company”) means any individual, corporation, partnership, electing small business corporation (S corporation), limited liability company, or other form of business association that films a motion picture production. For purposes of determining whether a company qualifies to receive the Motion Picture Production Tax Credit, an entity that is at least 80 percent owned by a production company and that is required to file a Virginia income tax return may also be considered a production company if the memorandum of understanding between the VFO and the production company designates such entity as the company that will receive the credit. If a production company hires another production company to film a motion picture production, only the hiring production company may claim the Motion Picture Production Tax Credit for such motion picture production.

“Motion picture production” means any recorded motion picture project using a series of moving images intended for distribution or commercial use.

“Production” means the period encompassing the pre-production, principal photography, and post-production of a recorded motion picture project.

MINIMUM ELIGIBILITY REQUIREMENTS

A production company may be eligible for the Motion Picture Production Tax Credit if it:

- Satisfactorily completes the initial application at least 30 days prior to production (found on the VFO website, <http://FilmVirginia.org>);
- Meets all deadlines outlined by the VFO;
- Completes all of the requirements specified in the memorandum of understanding;
- Films a motion picture production eligible for the credit in Virginia;
- Has at least \$250,000 in qualifying expenses;
- Makes a best faith effort to film at least 50 percent of the motion picture production's principal photography in Virginia; and
- Agrees to contain a "filmed in Virginia" credit and Virginia logo in the final motion picture production.

Motion Picture Productions Eligible for the Credit

The credit will only be granted for expenses with respect to motion picture productions that are eligible for the credit. Motion picture productions that are eligible for the credit include, but are not limited to:

- Feature length films;
- Documentaries;
- Long-form specials;
- Television mini-series;
- Episodic television series, which include a television program consisting of multiple episodes of a single season. An entire season of episodes is considered to be one motion picture production;
- Commercial advertisements, which include 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;
- Videos and music videos; and

- Interactive television.

Digital interactive media productions are eligible for the credit in taxable years beginning on or after January 1, 2013. "Digital interactive media productions" are 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.

Motion Picture Productions Ineligible for the Credit

The following productions are ineligible for the credit:

- Political advertising or editorial based content;
- A television program consisting primarily of news, weather or financial market reports;
- A live or pre-recorded motion picture production featuring current events, sporting events or an awards show or other gala event;
- A reality television production;
- Motion picture productions primarily featuring a game, questionnaire, auction or contest;
- Any motion picture production that contains obscene material, as determined by the VFO;
- Motion picture productions with the sole purpose of fundraising;
- A long-form motion picture production that primarily markets a product or service;
- A motion picture production used for corporate training or in-house corporate advertising;
- Games of chance websites and other motion picture productions related to games of chance;
- Marketing and promotional websites, or microsites;
- All forms of social media, social networking, market-

ing, and brand promotion;

- Infomercials, infotainment, or edutainment content;
- Solicitation-based motion picture productions; and
- Branding, marketing, promotion, and e-advertising campaigns.

QUALIFYING EXPENSES

“Qualifying expenses” means the sum of actual amounts spent in Virginia by a production company in connection with a motion picture production filmed in Virginia for:

- Goods and services leased or purchased; and
- Compensation and wages paid to employees (not to exceed \$1 million per individual with respect to a single production).

Goods and Services

In the case of tangible property, qualifying expenses are expenses for goods and materials purchased or leased from a qualified vendor that are actually and physically provided, supplied, consumed or used within Virginia. A “qualified vendor” is any individual, partnership, corporation, limited liability company or other business entity that:

- Is qualified to do business in Virginia;
- Maintains a physical place of business in Virginia; and
- Provides goods and services in its ordinary course of business to a production company during the filming of a motion picture production.

“Goods and services” include physical products and services that are leased or purchased in Virginia in connection with a motion picture production filmed in Virginia. For goods with a purchase price of \$25,000 or more, the amount included in qualifying expenses is the purchase price of the goods less the fair market value of the goods at the time production is completed.

- **Example 1:**

Taxpayer A is a production company that is filming a motion picture production in Virginia. During Tax-

able Year 2015, Taxpayer A purchased a new car in Virginia for \$50,000 to be used as a prop on the set of the motion picture production. The car’s value depreciated to \$40,000 during production. Taxpayer A may only report the \$10,000 of depreciation as a qualifying expense.

In the case of services, qualifying expenses are expenses, not including wages, for services performed within Virginia.

Expenses that are for goods and services may only qualify for the base portion of the credit.

Compensation and Wages

“Compensation and wages” means “wages” as defined in Internal Revenue Code (“IRC”) § 3401. Only the first \$1 million of compensation paid to each employee will be considered a qualifying expense. Acceptable payment methods include, but are not limited to, direct payments, indirect payments through an agent, and payments through a personal service company or employee leasing company.

For purposes of the two additional Virginia resident credits, “payroll” is defined the same as “compensation and wages.”

Fringe benefits may qualify for the two additional Virginia resident credits to the extent they are included in the federal definition of “wages” and are subject to federal withholding pursuant to IRC § 3401. Fringe benefits that are not considered to be wages under federal law may qualify for the base credit to the extent such expenses were for qualifying goods and services, but may not qualify for the two additional Virginia resident credits. For additional information regarding the treatment of fringe benefits see Public Document 13-188 (October 18, 2013).



Examples of Qualifying Expenses

To the extent that they meet the above requirements, examples of qualifying expenses include, but are not limited to:

- Resident and non-resident cast and crew wages (less than or equal to \$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 expenses for which taxes are assessed or imposed by the state, and that are approved by the VFO.

Example of non-qualifying expenses include:

- Development costs;
- Marketing promotion expenses;
- Distribution expenses;
- Any expenses incurred prior to pre-production or after post-production of a feature film, television production or video game; and
- Any expenditures made or incurred outside of Virginia.

The credit is computed based on all of a production company's qualifying expenses that were incurred with respect to a motion picture production, not just the qualifying expenses incurred during the taxable year when production was completed.



APPLICATION PROCESS AND PROCEDURES

The application process for the Motion Picture Production Tax Credit is as follows:

- The production company must submit its application to the VFO no later than 30 days prior to the planned beginning of production;
- The production company must begin production within 90 days of the approval of the application;
- Final accounting documents must be submitted to the VFO within 120 days after the completion of principal photography;
- Upon receipt of all agreed upon final accounting documents, the VFO has 30 days to review such materials and determine the amount of credits such production company is eligible to receive; and
- Upon approval of the final accounting documents, the VFO has 30 days to furnish the tax credit certificate to the production company.

Initial Application

Production companies meeting the minimum eligibility requirements outlined above must submit an initial application to the VFO at least 30 days prior to beginning production. The application must include any documentation required by the VFO. Applications can be found on the VFO's website, at <http://www.FilmVirginia.org>.

Processing of Applications by the VFO

The VFO will review each application to ensure that it is complete. The VFO will not review any incomplete applications. If an application is incomplete, the VFO will contact the production company to request any missing information, and will only review the application upon receiving such information.

Completed applications will be reviewed by the VFO to determine whether a production company is eligible for the credit, the total cost of production, the estimated amount of qualified expenses, and the amount of credits to allocate to the production company. The VFO will determine which applications to approve based on any or all of the following factors:

- The amount of in-state production spending;
- Whether the motion picture production involves physical production within Virginia;
- The number of residents of Virginia that will be employed by the motion picture production and the level of compensation they will be paid;
- The extent to which the motion picture production will contribute to the support and expansion of existing production companies in Virginia;
- The extent to which the motion picture production will impact existing local businesses and the local economy;
- The extent to which the motion picture production will involve existing and new companies located in Virginia;
- The extent to which the motion picture production provides employment at facilities physically located

within Virginia; and

- Any other relevant considerations as determined by the VFO.

Motion picture productions will only be considered for credit allocation when funding is available. As funding is limited, it is possible that all of the funds will have been reserved by earlier motion picture productions at the time a production company submits its initial application. In this case, the VFO will inform the production company of the next date when a review of the motion picture production may be performed.

If the next review date is more than six months after the date the production company submitted its application, such application will expire and the production company will be required to submit a new application to the VFO for the motion picture production to be considered for credit allocation. The VFO will inform a production company when an application has expired. A production company may request a waiver allowing its application to remain eligible for credit allocation for more than six months by submitting such request in writing to the VFO.

The allocation of available credit funding is at the sole discretion of the VFO and its decisions as to credit eligibility and the amount of credit funding are final. Production companies that are rejected by the VFO for a particular motion picture production may apply in the future for tax credits regarding other motion picture productions.

Initial Credit Notification

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

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

- The maximum amount of credits allotted;
- The date that eligibility for qualifying expenses begins; and



- The date that eligibility for qualifying 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. At a minimum, each memorandum of understanding will include the following:

- 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 a memorandum of understanding, the production company forfeits any right to contest the amount of credits that has been allocated to it and agrees that, while the amount of credits granted upon the completion of production may be lower than the maximum amount listed on the memorandum of understanding based on the amount of qualifying expenses, it may not exceed such allocation.

After receipt of the Credit Allocation Letter of Intent, the production company is required to begin production

within 90 days. Production companies must receive a Credit Allocation Letter of Intent from the VFO before making or incurring any qualifying expenses in order for those expenses to be eligible for the credit.

Requirements During Production

Production companies must keep proper books, records, and papers related to the accredited motion picture production in accordance with generally accepted accounting principles. Such documentation must remain available 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 motion picture production. This must include all vendor receipts substantiating the production company's qualifying expenses.

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

Credit Approval After Production

Within 120 days of the completion of principal photography, the production company must submit to the VFO proof of the amount spent in Virginia, any additional documentation required by the VFO and the Department, and a form approved by the VFO and signed by a licensed independent certified public accountant ("CPA"). The CPA must certify that (i) he or she has reviewed the expenses claimed by the production company, (ii) such expenses meet the definition of qualifying expenses, and (iii) such expenses were incurred in Virginia by the production company in connection with a motion picture production filmed in Virginia. After receiving all agreed upon final accounting documents, the VFO has 30 days to review such materials.

Upon approval of the final accounting documents, the VFO shall issue a Certification Letter to the production

company within 30 days indicating the amount of credits allocated to such production company. The Certification Letter will include the name of the motion picture production, a description of the motion picture production, and the amount of qualifying expenses.

Extension of Deadlines

A production company may request an extension of any of the above deadlines in the "Application Process and Procedures" section by submitting such request in writing to the VFO.

HOW TO CLAIM CREDIT

Upon receiving copies of the Certification Letter from the VFO, the taxpayer must file its Virginia income tax return and attach any required documentation in order to receive the Motion Picture Production Tax Credit. All taxpayers must claim the credit for the taxable year in which production was completed.

- **Example 2:**

Taxpayer B is a production company and a calendar year filer. Taxpayer B began a motion picture production on July 1, 2014 and completed production on December 1, 2014. Taxpayer B may claim any Motion Picture Production Tax Credits related to such motion picture production on its Virginia income tax return for Taxable Year 2014.

- **Example 3:**

Taxpayer C is a production company and a calendar year filer. Taxpayer C began a motion picture production on December 1, 2014 and completed production on January 31, 2015. Taxpayer C may claim any Motion Picture Production Tax Credits related to such motion picture production on its Virginia income tax return for Taxable Year 2015.

- **Example 4:**

Taxpayer D is a production company with a taxable year that begins on July 1 and ends on June 30 (i.e., a fiscal year filer). Taxpayer D began a motion picture production on March 1, 2015 and complet-

ed production on June 1, 2015. Taxpayer D may claim any Motion Picture Production Tax Credits related to such motion picture production on its Virginia income tax return for Taxable Year 2014.

- **Example 5:**

Assume the same facts as in Example 4, except that Taxpayer E completed production on August 1, 2015. Taxpayer E may claim any Motion Picture Production Tax Credits related to such motion picture production on its Virginia income tax return for Taxable Year 2015.

Any taxpayer claiming this credit must maintain any information or records related to the credit and provide such documentation to the Department upon request.

Pass-Through Entities

Credits granted to a pass-through entity are generally required to be allocated to the partners, members, or shareholders in proportion to their ownership interest in the entity, or in accordance with a written agreement entered into by such individual partners, members, or shareholders. If a pass-through entity wishes to claim this credit at the entity level without allocating the credit its owners, the pass-through entity must so designate by entering the amount of the credit authorized by Virginia Film Office in their certification letter as indicated on Form 502.

Department's Annual Report on the Motion Picture Production Tax Credit

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

- Location of sites used in a motion picture production for which a Motion Picture Production Tax 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 Virginia in connection with the motion picture production for which the credits were claimed; and
- The total cost to Virginia's general fund of the credits claimed.

Pursuant to 2014 House Bill 460, the Department is required to publish the information in such report regardless of how many taxpayers claim the credit in a taxable year.

Requesting Official Guidance Regarding the Credit

To request official written guidance from the Tax Commissioner regarding the Motion Picture Production Tax Credit, submit a letter to the Department in which you explain the issues you would like to receive guidance on and the relevant facts.

Additional Information

These Guidelines and rules are available on-line in the Laws, Rules & Decisions section of the Department's website. For additional information, please contact either the Department of Taxation at (804) 367-8037 (www.tax.virginia.gov) or the Virginia Film Office at (804) 545-5530 (<http://www.FilmVirginia.org>).

Approved:

Craig M. Burns
Tax Commissioner

VIRGINIA ACTS OF ASSEMBLY -- CHAPTER

An Act to amend and reenact § 58.1-439.12:03 of the Code of Virginia, relating to income tax; motion picture production credit.

[H 1318]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.12:03 of the Code of Virginia is amended and reenacted as follows:

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

A. For taxable years beginning on and after January 1, 2011, but prior to January 1, 2027, 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 Tourism Authority. The qualifying criteria established by the Virginia Tourism Authority 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 Tourism Authority, 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 Tourism Authority 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 Tourism Authority and completed production in Virginia, the Virginia Tourism Authority shall certify the final tax credit amount to the taxpayer and to the Tax Commissioner. In addition, such certificate shall specify the fiscal year in which such tax credit may be refunded by the Department of Taxation. The tax return filed for the taxable year in which the Virginia production activities are completed shall contain information specifying the amount of tax credit and shall specify the fiscal year in which such tax credit may be refunded. 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.

4. The Virginia Tourism Authority shall report to the Tax Commissioner on an annual basis the amount of tax credits that have been authorized for each fiscal year and the amount of tax credits that may be claimed for the current fiscal year by each taxpayer.

5. No interest shall be paid pursuant to § 58.1-1833 on any tax credit issued by the Department under this section.

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 Tourism Authority 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, \$5 million in the 2012-2014 biennium, and \$6.5 million in fiscal year 2015 and each fiscal year thereafter.

H. The Department of Taxation, in consultation with the Virginia Tourism Authority, 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.

Notwithstanding any provision of § 58.1-3 or any other law, such information shall be published by the Department, even if such information is not classified, so as to prevent the identification of particular taxpayers, reports, or returns and items.

I. 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.).

2010, cc. 419, 599; 2014, c. 730; 2017, cc. 108, 425; 2020, cc. 966, 967.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

VIRGINIA DECLARATION OF RESIDENCY

Purpose of the form: Film production companies claiming funding assistance from the Commonwealth of Virginia on wages or salaries paid to Virginia residents for work performed on a motion picture production in Virginia must have each such employee complete this declaration of residency. The film production company must retain this form in its records and submit a completed copy for each Virginia worker employed on the production

Last Name	First Name	Middle Initial
Permanent Residence		
City, State and Zip Code		
Title of Project		

1. Are you presently a resident of Virginia? See *Residency* Below. YES ☐ NO ☐
2. Do you anticipate changing your residence status during the time that you are expected to work on the motion picture production? YES ☐ NO ☐
3. What evidence have you provided the motion picture production to show residency in Virginia?

You must provide **one of the following**:

☐ Valid **Virginia driver's license** with an issue date at least six months prior to the date of this declaration.

Enter the driver's license number: _____

☐ A current **Virginia voter registration card** with an issue date of at least six months prior to the date of this Declaration.

Enter the registering city or county: _____

☐ Copies of **six months of utility bills** with a Virginia address.

4. Is this the first time you have worked on a motion picture as either an actor or crew member?
YES ☐ NO ☐

~YOU MUST PROVIDE A PHOTOCOPY OF YOUR PROOF OF RESIDENCY~

Residency: To be a resident of Virginia for the purpose of funding assistance you must maintain a permanent dwelling within the state and spend an aggregate of at least six months each year within the state. You may only have one permanent dwelling and a change in your permanent dwelling is established only by establishing a physical presence in a new location with intent to abandon your old domicile and make a home in the new location permanently or indefinitely.

I declare under penalty of perjury that everything in this document is true, correct and complete to the best of my knowledge.

Signature

Date

MOTION PICTURE OPPORTUNITY FUND

PURPOSE

The Motion Picture Opportunity Fund (also known as the Governor's Motion Picture Opportunity Fund) 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.



MOTION PICTURE OPPORTUNITY FUND (MPOF) GUIDELINES

Any questions regarding the preparation of an application should be directed to: Dawn Blacksten, Virginia Film Office, 804.545.5530; dblacksten@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 MPOF 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 noncompliant 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, sound-stage rental, film processing and editing/post-production costs. The MPOF is not intended to cover 100% of the Virginia labor costs.

GRANT REQUESTS

Applications and all required documentation should be sent to:

Email:

dblacksten@virginia.org

Mail:

Virginia Film Office
901 East Cary Street Suite 900
Richmond, Virginia 23219
Attention: Dawn Blacksten

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 may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal. 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; 2013, c. 547.)

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 purchasing 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

Vivek Bakshi

Senior Tax Policy Analyst | Policy Development Division

Virginia Department of Taxation

vivek.bakshi@tax.virginia.gov

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,
distributing, and broadcasting of the same

To: _____ Date: _____
Name of Dealer

Number and Street or Rural Route 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 prevision 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 of Purchaser _____ Virginia
Account No. _____

Trading As _____

Address _____
Number and Street or Rural Route City, Town or Post Office State Zip Code

By _____
Signature Title

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 804.545.5530. A list of film liaisons can be found on the Virginia Film Office website, FilmVirginia.org.



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