

DR Rhode Island Department of Revenue
Division of Taxation

Via Electronic Mail

May 7, 2024

The Honorable Marvin L. Abney
Chair, House Committee on Finance
Rhode Island State House
Providence, RI 02903

**RE: Letter of Concern Regarding House Bill 8180 – An Act Relating to Taxation –
Motion Picture Production Tax Credits**

Dear Chair Abney:

I am writing on behalf of the Rhode Island Department of Revenue, Division of Taxation (“Division”), to: i) express my strong concern on the proposed House Bill 8180 as currently drafted; ii) explain the background and current statutory context in order to clarify the intended and unintended consequences of this bill; and iii) make recommendations and request your support in implementing those recommendations.

There are significant, material administrative and legal impacts related to House Bill 8180 that could set dangerous precedent from a tax administration perspective if this bill is enacted and those reasons are stated below.

As you know, this bill amends the definition of “[s]tate-certified production cost” in R.I. Gen. Laws § 44-31.2-2 (“Motion Picture Production Tax Credits”) to include “without limitation as to the person or business providing the goods or services, those costs, as long as services are performed in Rhode Island, tangible personal property is used in Rhode Island and real property used by the motion picture production company is located in Rhode Island.” The amendment provides for exceptions for “music, legal or accounting services.”

The bill further specifies that “a vendor’s failure to comply [with applicable Rhode Island laws, including, where required, registering with the office of the secretary of state] is not a basis to disqualify a motion picture production company’s state-certified production costs provided by that vendor” and that if “a vendor does not maintain a place of business in Rhode Island, that failure is not a basis to disqualify a motion picture production company’s state-certified production costs provided by that vendor.”

Additionally, as the bill is currently drafted, the amendment would apply to “all state-certified productions, including state-certified productions aggrieved by the tax administrator’s denial, in whole or in part, of a tax credit or tax benefit, that have requested a hearing relative to the denial of a tax credit or tax benefit and have not received a final decision by the tax administrator or a final decision that has been appealed for judicial review until a final decision is entered by the court.”

The bill is set to take effect upon passage.

My understanding after reviewing this bill is that the purpose of the bill is to remove the current requirement that a vendor be a "Qualified vendor" under the Rules and Regulations for the Certification of Motion Picture Production Tax Credits, 280-RICR-20-20-5.5(CC), which states:

"Qualified vendor" means any individual, partnership, corporation, limited liability company or other business entity that

1. provides goods and services in this state to a state certified motion picture during production;
2. maintains a place of business in Rhode Island;
3. is subject to Rhode Island taxation;
4. is registered with the Rhode Island Division of Taxation; and
5. is registered with the Rhode Island Secretary of State's office and is qualified to do business in Rhode Island.

The definition of "Qualified vendor" has existed in regulation, which was filed in conjunction with the Rhode Island Film and TV Office, since June 1, 2008 and is consistent with the explicit statutory findings and purpose set forth in R.I. Gen. Laws § 44-31.2-1(d), which states: "[t]he primary objective of this chapter is to encourage development in **Rhode Island** of a strong capital base for motion picture film, videotape, and television program productions, in order to achieve a more independent, self-supporting industry." (Emphasis added).

Additionally, other states include analogous limiting criteria in their definitions of qualified vendor. If Rhode Island does not have similar criteria, there would be parity concerns. For example, Virginia defines a qualified vendor as any individual, partnership, corporation, limited liability company, or other business entity that 1) provides goods and services that it provides in its ordinary course of business to a qualified motion picture during the filming of the motion picture production; 2) **maintains a physical place of business in Virginia**; and 3) is qualified to do business in Virginia. See [Updated Guidelines for Motion Picture Production Tax Credit at 4-5 \(available at 2015-motion-picture-production-tax-credit-guidelines.pdf \(virginia.gov\)\)](#). Maryland has a similar limitation and defines a qualified vendor as a vendor that 1) is qualified to do business in the State and, if applicable, registered and in good standing with the State's Department of Assessments and Taxation; 2) **maintains a physical location in the State from which employees of the vendor are based**; 3) provides goods and services to the film production entity which are provided in the vendor's historic ordinary course of business; and, 4) the goods and services provided by the vendor to the film production entity are generated from the vendor's physical location in the State, unless generated from an on-line order. See [Maryland Film Production Activity Tax Credit – Authorized Direct Costs at 1 \(available at https://marylandfilm.org/Documents/Authorized%20Direct%20Costs.pdf\)](#). These are just two examples of states with limiting criteria that align with Rhode Island's definition; including them here is not an indication that this is an exhaustive list.

Given the implicit rationale for amending this statute in House Bill 8180, it may be useful to understand the audit and administrative history of the Motion Picture Production Tax Credits Program for the past four (4) years.

For the period of 2020-2024, 27 motion picture productions (“Productions”) have been received for audit by the Division of Taxation.¹

- Of those 27 Productions, audits of 24 Productions have been completed and 3 are currently under review.²
- For the 24 Productions that were completely reviewed:
 - The total qualified expenses claimed by the taxpayer prior to the audit is \$130,252,647.39.
 - The total expenses disallowed after audit is \$11,318,883.92.
 - The percentage of expenses disallowed is 9%.
 - The total credit disallowed after audit is \$3,336,248.48.
 - The total credit allowed after audit is \$35,672,774.54.³
- Of the 24 Productions that have been fully audited, 12 Productions requested hearings (7 have been resolved through the hearing process and 5 are still pending at various stages of the administrative hearing process).
- For the 12 Productions where a hearing was requested:
 - The total qualified expenses claimed by the taxpayer prior to the audit is \$113,433,438.11.
 - The total expenses disallowed after audit is \$10,839,079.16.
 - The percentage of expenses disallowed is 10%.
 - The total credit disallowed after audit is \$3,192,307.05.
 - The total credit allowed after audit is \$30,778,307.67.⁴
- For the 5 Productions still in hearing:
 - The total qualified expenses claimed by the taxpayer is \$69,554,128.
 - The total expenses disallowed after audit is \$6,064,513.93.
 - The percentage of expenses disallowed is 9%.
 - The total credit disallowed after audit is \$1,819,354.18.
 - The total credit allowed pending resolution of the hearing is \$19,046,883.80.

¹ This data is provided in the aggregate to protect taxpayer confidentiality and the summaries of Productions currently in hearing are general descriptions of issues related only to the vendor requirements as that is the subject and purpose of House Bill 8180.

² The Division is statutorily required to complete its review within ninety (90) days after receipt of the Production’s final certification from the Rhode Island Film and TV Office and the cost report. *See* R.I. Gen. Laws 44-31.2-6(b).

³ For those Productions in hearing, this is subject to change based on the outcome of the hearing.

⁴ For those Productions in hearing, this is subject to change based on the outcome of the hearing.

Given the above context, there are several potential issues with the bill that impact tax administration, including, but not limited to:

- In essence, this bill would negate the long-term primary objective of the motion picture production tax credits of encouraging “increased employment opportunities” and development in Rhode Island. *See* R.I. Gen. Laws § 44-31.2-1(d). The purpose of the “Qualified vendor” requirement is to ensure that Rhode Island businesses are the businesses that are supporting the film and television industry in Rhode Island. The amendments in House Bill 8180 abolish those requirements and allow vendors, both in-state and out-of-state, to provide support, services, and employees to the Rhode Island productions.
- This bill would have a retroactive effect. It would undermine the principle of the rule of law as it would apply to all state-certified productions currently in the administrative hearing process, thereby subverting a state agency’s power to make determinations, creating statutory, regulatory, and administrative inequities between productions that complied with the qualified vendor requirements and others who may not have complied with that requirement and who did not appeal a denial of the tax credits.
- To the extent that these matters are in hearing, a neutral arbiter is able to determine the validity of the Division’s and the taxpayers’ positions and decide these issues with finality so that there may be transparency, equity, fairness, and confidence regarding the Division’s determinations. Undermining the administrative hearing and appeal process with legislation that seeks to retroactively redefine well-established law and regulation weakens the rule of law and creates chaos and confusion for taxpayers. It also sets dangerous precedent in that it supplants the Division’s authority with a new path for resolving taxpayer disputes.

For the reasons delineated above, the Division strongly urges you to reconsider this bill as currently drafted and looks forward to discussing these issues with you. A similar letter was sent for hearing on the Senate companion bill (Senate Bill 3004) on April 25, 2024.

For the Committee’s awareness, the Division has engaged with the community and various stakeholders through myriad meetings, discussions, and regulation review. While the Division understands the context of the industry and appreciates engagement with the community, the Division is tasked with administering the law and must always comply with statutory and regulatory authority, as well as rely on the administrative process for proper resolution of potential disputes.

I look forward to working with you to address the issues raised in this letter and appreciate your consideration.

Very truly yours,



Neena S. Savage
Tax Administrator

cc: The Honorable Members of the House Committee on Finance (via:
HouseFinance@rilegislature.gov)
The Honorable Jacquelyn M. Baginski (rep-baginski@rilegislature.gov)
Nicole McCarty, Esquire, Chief Legal Counsel to the Speaker of the House
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