

COMMITTEE ON ECONOMIC DEVELOPMENT,
AGRICULTURE AND PLANNING

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BILL NO. 30-0417

Thirtieth Legislature of the Virgin Islands

June 11, 2014

An Act repealing and reenacting with amendments title 29 Virgin Islands Code, chapter 12 subchapter III relating to sustainable tourism through art-based revenue stream production

PROPOSED BY: Senator Clifford F. Graham
Co Sponsor: Sammuell Sanes and Myron D. Jackson

1 *Be it enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 29 Virgin Islands Code, chapter 12, subchapter III, is repealed and
3 reenacted with amendments that read as follows:

4 *“SUBCHAPTER III*

5 **§747.** Purpose

6 (a) The purposes of this subchapter are to enhance the Virgin Islands' economy by
7 revitalizing and expanding the attraction of the audio and music video recording, motion picture,
8 and television industries and related media productions to the Virgin Islands and to promote the
9 growth of Virgin Islands small businesses related to and servicing these industries. The
10 objectives of this subchapter are to:

1 (1) Renew interest in the Virgin Islands as a premier location for the
2 production of motion pictures, documentaries, television programs and digital media,
3 webcast, any new media format programs, commercials, and music videos and magazine
4 advertising by off-island production companies;

5 (2) Encourage the creation of jobs that pay well for Virgin Islands workers
6 and university graduates;

7 (3) Enhance the growth of the Virgin Islands businesses that provide goods
8 and services for these types of productions;

9 (4) Assist local filmmakers; and

10 (5) Help promote the tourism industry in the Virgin Islands.

11 (b) The Legislature declares that the objectives of section (a) are best achieved by
12 offering tax incentives or other offsets to production companies for hiring Virgin Islands
13 residents, for purchasing Virgin Islands goods and services and for filming and recording in the
14 territory.

15 **§747a. Definitions.** As used in this subchapter, the term:

16 (a) "Affiliate" means an entity that is included in the production company's affiliated
17 group, as defined 26 U.S.C. §1504(a), and any other entity that is directly or indirectly owned 50
18 percent or more by a member of the affiliated group.

19 (b) "Audio data content" means any recordable form of audio or MIDI information in
20 any digital or analog resulting from either the recording process, capturing the audio data or the
21 mixing and mastering process.

22 (c) "Base investment" means the aggregate funds actually expended by a Production
23 Company as Qualified Production Expenditures incurred in this Territory that are directly used in
24 a Territory Certified Production or Productions.

1 (d) “Compensation” means salary, wages, or other compensation, including related
2 benefits paid to and on behalf of Virgin Islands resident.

3 (e) “Incentives” includes the rebates, credits, waivers or other offsets available under
4 this subchapter.

5 (f) “Music recording” means all forms, steps or techniques involved in the recording
6 of audio for commercial purposes-including non-musical audio recording such as “books on
7 tape” or voice-overs-for release on any media, including compact discs, digital downloads,
8 digital streaming, or any other vehicle for such transmittal.

9 (g) “New media” means the development, usually electronic, forms of visual and
10 audio communication media regarded as on-demand electronic mass media on an interactive
11 platform combined with computerized devices.

12 (h) "Production Company" means a company primarily engaged in qualified
13 production activities which have been approved by the Economic Development Authority and
14 the Film Office of the Department of Tourism. The term does not include any form of business
15 owned, affiliated, or controlled, in whole or in part, by any company or person that is in default
16 on any tax obligation of the Territory, or a loan made by the Territory or a loan guaranteed by the
17 Territory.

18 (i) "Qualified Production Expenditures" means preproduction, including scouting
19 activities, production, postproduction expenditures incurred in this Territory that are directly
20 used in a Qualified Production Activity. This term does not include postproduction expenditures
21 for marketing and distribution unless these function are implemented in the Territory and utilize
22 local goods and services.

1 (j) "Qualified Virgin Islands Promotion" means a qualified promotion of this
2 Territory approved by the Economic Development Authority and the Film Office of the
3 Department of Tourism consisting of a:

4 (1) Qualified movie production that includes any reference to identification of
5 the Virgin Islands or contains credits within its presentation as being made in the Virgin
6 Islands.

7 (2) Qualified television production that includes any reference to
8 identification of the Virgin Islands or contains credits within its presentation as being
9 made in the Virgin Islands.

10 (3) Qualified music video that includes any reference to identification of the
11 Virgin Islands or contains credits within its presentation as being made in the Virgin
12 Islands.

13 (4) Qualified interactive game that includes any reference to identification of
14 the Virgin Islands or contains credits within its presentation as being made in the Virgin
15 Islands.

16 (5) Qualified new media format program including digital media, webcast,
17 and on-demand access video that includes any reference to identification of the Virgin
18 Islands or contains credits within its presentation as being made in the US Virgin Islands.

19 (k) "Qualified Production Activity" means the production of new film, video, or
20 digital projects produced in this Territory and approved by the Economic Development Authority
21 and the Film Office, such as feature films, TV series, movies for television, digital release,
22 webcasts, commercial advertisements, music videos, interactive entertainment or sound
23 recording projects used in feature films, TV series, or movies for television, including:

1 (1) Projects recorded in this Territory, in whole or in part, in either short or
2 long form, animation or music, fixed on a delivery system which includes without
3 limitation film; videotape, computer disc, laser disc, and any element of the digital
4 domain, from which the program is viewed or reproduced, and which is intended for
5 multimarket commercial distribution via theaters; licensing for exhibition by individual
6 television stations, groups of stations, networks, cable television stations, public
7 broadcasting stations, corporations, live venues, the Internet, or any other channel of
8 exhibition;

9 (2) Storyboard preparation, scripting, art direction, set construction and
10 operation;

11 (3) Wardrobes, make-up, accessories, and related services;

12 (4) Costs associated with cinematography, photography and sound
13 synchronization, lighting, and related services and materials;

14 (5) Editing and related services; rental of facilities and equipment; leasing of
15 vehicles;

16 (6) Costs of food and lodging;

17 (7) Digital or tape editing, film processing, transfers of film to tape or digital
18 format, sound mixing, computer graphics services, special effects services, and animation
19 services;

20 (8) Total aggregate payroll; airfare, if purchased through a Virgin Islands
21 based travel agency or travel company; insurance costs and bonding, if purchased
22 through a Virgin Islands based insurance agency;

23 (9) Professional services, including legal, accounting, payroll and security;
24 and

1 (10) Other direct costs of producing the project in accordance with generally
2 accepted entertainment industry practices.

3 (l) "Resident" means an individual as designated in section 703(e) of this title.

4 (m) "Resident Production Company Program" means a production company that has
5 been organized under the laws of the Virgin Islands, is headquartered in the Virgin islands and
6 licensed to do business in the Virgin Islands and undertakes projects that are originated or
7 produced locally by a Virgin Islands resident filmmaker, music production company, or
8 videographer.

9 (n) "Territory" means the Virgin Islands, as defined in section 2 (a) of the Revised
10 Organic Act of the Virgin Islands, 48 U.S.C. 1541(a).

11 (o) "Territory Certified Production" means a production engaged in Qualified
12 Production Activities that have been approved by the Economic Development Authority and the
13 Film Office of the Department of Tourism and in accordance with regulations promulgated under
14 to this subchapter.

15 (m) "Total aggregate payroll" means the total sum expended by Production Company
16 on salaries paid to Virgin Islands resident employees working within this territory in a Territory
17 Certified Production or Productions. For purposes of this subsection:

18 (1) With respect to a single employee, the portion of any compensation which
19 exceeds \$500,000 for a single production shall not be included when calculating total
20 aggregate payroll; and

21 (2) All payments to a single employee and any legal entity in which the
22 employee has any direct or indirect ownership interest must be considered as having been
23 paid to the employee and must be aggregated regardless of the means of payment or
24 distribution.

1 **§747b. Office of Film Tax Incentives**

2 (a) There is established within the Virgin Islands Economic Development Authority,
3 an Office of Film Tax Incentives that in partnership with the Film Office of the Department of
4 Tourism is responsible for managing applications for tax incentives under this Program.

5 (b) The Assistant Chief Executive Officer of the Economic Development Authority
6 shall oversee the office and is responsible for managing applications for tax incentives.

7 (c) Funding for the establishment of the incentive program and attendant office at the
8 Economic Development Authority must be budgeted from the operational funds of the Economic
9 Development Authority; and the payment of rebates provided for in this subchapter must be
10 funded from the Tourism Advertising Revolving Fund (Title 33 Virgin Islands Code Section
11 3072) at a maximum of 20 percent of the previous year's funding appropriated annually or a
12 minimum of \$2,500,000 per year.

13 **§747c. Relationship of Office of Film Tax Incentives and Film Office**

14 (a) The Film Office of the Department of Tourism in concurrence with the Economic
15 Development Authority is responsible for the creation of the application and shall assist in the
16 review of each application. The Economic Development Authority shall serve as the initial point
17 of contact for interested parties.

18 (b) Once a complete application has been received by the Economic Development
19 Authority, the application for Incentives under this subchapter must be forwarded to the Film
20 Office no later than 10 business days after the receipt of the completed application for its review,
21 analysis, and recommendation to the Economic Development Authority. The Film Office shall
22 have 7 business days from receipt of the application in which to submit its analysis and
23 recommendation to the Economic Development Authority.

1 (c) Upon receipt by the Economic Development Authority of the Film Office analysis
2 and recommendation, the Assistant Chief Executive Officer has twenty-five business days in
3 which to approve or reject the application in writing to the applicant.

4 (d) Upon the approval of the application by the Assistant Chief Executive Officer, the
5 Economic Development Authority shall then proceed to issue the appropriate certificate setting
6 forth the particular terms of the Incentives granted.

7 **§747d. Qualification for tax benefits**

8 (a) In order to qualify and remain eligible for tax incentive benefits under this
9 subchapter, an applicant must:

10 (1) Be a Resident Production Company or a non-Virgin Islands entity that has
11 obtained a license to do business in the Territory under 27 VIC §302(b);

12 (2) Expend a minimum of \$250,000 for each Qualified Production Activity;

13 (3) Employ residents of the Virgin Islands as defined in section 703(e) of this
14 title such that a minimum of 20% of the total employees working on the production in the
15 Virgin Islands, including extras, day players, and a maximum of three paid interns who
16 must be residents of the Virgin Islands, UNLESS a documented waiver request is
17 submitted to the Economic Development Authority upon a requisite showing according
18 to regulations promulgated.

19 (4) Include in the credits of any production the following language “Made or
20 Filmed in the Virgin Islands” or some other designation where the entire production is
21 not completed in the U.S. Virgin Islands, that footage was shot in the territory: “Portions
22 Made in the U.S. Virgin Islands” or in the case of a footage shot in St. Croix “Portions
23 Made or Filmed in St. Croix” and an acknowledgement to the VI Economic Development
24 Authority and the Film Office of the Department of Tourism;

1 (5) Agree that executive production crew, including but not limited to
2 director, producer, production supervisor, writer and department heads shall make
3 themselves available to the Economic Development Authority to speak to local school
4 and university students about music/film/entertainment topics pertinent to the film or
5 video industry applicable to the applicant, where practicable.

6 (6) The Department of Licensing and Consumer affairs shall process a
7 business license application for the production company applicant within 15 days after
8 the applicant's submitting a completed application to the Department of Licensing and
9 Consumer Affairs. If a determination as to the propriety of the issuance of a business
10 license is not made within 15 days, the Department shall issue a temporary license to the
11 applicant entitling the applicant to commence business at the expiration of the fifteen-
12 working-days period, allowing it to conduct business as if in receipt of a valid business
13 license for a period not exceeding 60 days pending completion of the process.

14 (7) The Economic Development Authority shall prescribe regulations,
15 including a procedure for review of that department's denial or revocation of Territory
16 certification, necessary to carry out the provisions of this section.

17 (8) The Qualified production must begin within 180 days of issuance of the
18 Certificate; and the certificate shall expire 180 days after issuance, unless an extension is
19 granted.

20 (9) Each applicant shall pay an Application Fee as set in the regulations to this
21 chapter.

22 **§747e. Eligible Tax Incentives Granted**

1 (a) Each Qualified Production Company, both resident and nonresident, is eligible for
2 the tax credits and rebates provided in this section upon meeting the requirements of section.

3 Each Qualified Production Company may select one or one more of the following Incentives:

4 (1) A production company that has submitted an application for incentives
5 and has been approved is allowed a tax credit against the taxes imposed by and payable to
6 the territory for the employment of residents of this Territory in connection with a
7 Territory Certified Production. The aggregate of the credit allowed as an offset under
8 this section for a production occurring in the production company's tax year is equal to
9 the sum of 10 to 17% of the actual compensation paid in connection with the Territory
10 Certified Production during the tax year as provided in this section.

11 (2) The percentage of available tax credit in paragraph (1) is determined in
12 accordance with the following:

13 (A) Where 20 to 25% of the total workforce, including paid interns, of
14 the production company employed in the Territory are Virgin Islands residents,
15 the allowable percentage is be 10%

16 (B) Where 25.1 to 30% of the total workforce including paid interns,
17 of the production company employed in the Territory are Virgin Islands residents,
18 the allowable percentage is 15%; and

19 (C) Where 30.1% or greater of the total workforce, including paid
20 interns, of the production company employed in the territory are Virgin Islands
21 residents, the allowable percentage is 17%.

22 (3) A production company that has submitted an application for incentives is
23 allowed a cash rebate for qualified production expenditures made in connection with a
24 Territory Certified Production. The rebate allowed under this section is equal up to 9% of

1 the total Qualified Expenditures incurred in connection with the Territory Certified
2 Production during the tax year up to a maximum of \$500,000.

3 (4) The production company and its affiliates are allowed an additional cash
4 rebate equal to 10 percent of the total qualified production expenditures if the qualified
5 production activities include a Qualified Virgin Islands Promotion.

6 (5) The production company and its affiliates are allowed an additional cash
7 rebate equal to 10 percent of the total Qualified Production Expenditures if the Qualified
8 Production Activities are undertaken on the island of St. Croix.

9 (6) Hotel Tax Waiver. Notwithstanding the provisions of Title 33 Virgin
10 Islands Code Section 54, a Hotel Tax waiver may be applied as follows to both resident
11 and nonresident production companies:

12 (1) For a minimum Qualified Production Expenditure of \$250,000 and
13 hotel stay over 150 room-nights, the Production Company shall pay hotel tax at a
14 rate of 8%;

15 (2) For a Qualified Production Expenditure of between \$250,001 and
16 \$500,000 and hotel stay over 250 room nights the Production Company shall pay
17 hotel tax at a rate of 6%;

18 (3) For a Qualified Production Expenditure of between \$500,001 and
19 \$750,000 and hotel stay over 350 room nights the Production Company shall pay
20 hotel tax at a rate of 4%;

21 (4) For a Qualified Production Expenditure of between \$750,001 and
22 \$1,000,000 and hotel stay over 450 room nights the Production Company shall
23 pay hotel tax at a rate of 3%; and

1 (5) For a Qualified Production Expenditure of at least \$1,000,001 and
2 hotel stay over 1000 rooms' nights, the Production Company shall pay tax at a
3 rate of 1.5%.

4 (7) Resident Production Companies are eligible for tax incentives and rebates
5 provided for in section (a) up to a maximum of \$350,000 per annum, per project, if they
6 meet all requirements of this subchapter.

7 (8) Nothing in this subchapter prohibits a resident production company from
8 applying for benefits under any other Economic Development Authority tax incentive
9 program.

10 **747f Procedure for application for tax incentives**

11 (a) The tax liabilities for income meeting the requirements of section 747e may be
12 reduced or rebated pursuant to the Internal Revenue Code of 1986, as amended, and as
13 applicable to the Virgin Islands by offsets to Qualified Expenditures and taxes payable to the
14 Territory.

15 **§747g.** (a) The credit granted under section 747e is subject to the following conditions
16 and limitations:

17 (1) The credit may be taken beginning with the taxable year in which the
18 Production Company has met the investment requirement. For each year in which the
19 Production Company either claims or transfer the credit the Production Company shall
20 attach a schedule to the Production Company's Virgin Islands income tax return which
21 must set forth the following information, as a minimum:

22 (A) A description of the Qualified Production Activities, along with the
23 certification from the Economic Development Authority;

1 (B) A detailed listing of the employee's names, Social Security
2 numbers and Virgin Islands wages when salaries are included in the base
3 investment;

4 (C) The amount of tax credit claimed for the taxable year;

5 (D) Any tax credit previously taken by the Production Company
6 against Virgin Islands income liabilities or Production Company's quarterly
7 monthly withholding payments;

8 (E) The amount of tax credit carried over from prior years;

9 (F) The amount of tax credit utilized by the Production Company in
10 the current taxable year; and

11 (G) The amount of tax credit to be carried over to subsequent tax years.

12 (2) In the initial year in which the Production Company claims the credit
13 granted in the section, the Production Company shall include in the description of the
14 Qualified Production Activities required by subparagraph (A) of paragraph (1) of this
15 subsection information that demonstrates that the activities included in the base
16 investment or excess base investment equal or exceed \$5000, 000 during such year.

17 (b) The Economic Development Authority shall promulgate such regulations as are
18 necessary to administer this section.

19 (c) Each qualifying Production Company granted a certificate is subject to an audit
20 on completion of the qualified project to ensure that the Qualified Production Company has met
21 the terms of its application and certificate.

22 **§747h. Sale or transfer of tax credits**

23 (a) Any tax credits with respect to a Territory Certified Production earned by a
24 Production Company and previously claimed but not used by such Production Company against

1 its income tax may be transferred or sold in whole or in part by such Production Company to
2 another Virgin Islands taxpayer, subject to the following conditions:

3 (1) The Production Company may make only a single transfer or sale of tax
4 credits earned in a taxable year; however, the transfer or sale may involve one or more
5 transferees;

6 (2) The Production Company shall submit to the Economic Development
7 Authority and to the Virgin Islands Bureau of Internal Revenue a written notification of
8 any transfer or sale of tax credits no later than 30 days after the transfer or sale of such
9 tax credits. The notification must include the Production Company's tax credit balance
10 prior to transfer, the credit certificate number, the remaining balance after transfer, all tax
11 identification numbers for each transferee, the date of transfer, the amount transferred,
12 and any other information required by the Economic Development Authority or the
13 Virgin Islands Bureau of Internal Revenue;

14 (3) Failure to comply with this subsection results in the disallowance of the
15 tax credit until the Production Company is in full compliance;

16 (4) The transfer or sale of this tax credit does not extend the time in which
17 such tax credit may be used. The carry-forward period for tax credit that is transferred
18 or sold begins on the date on which the tax credit was originally earned;

19 (5) A transferee has only the rights to claim and use the tax credit which were
20 available to the Production Company at the time of the transfer. To the extent that the
21 Production Company did not have rights to claim or use the tax credit at the time of the
22 transfer, the Virgin Islands Bureau of Internal Revenue shall either disallow the tax credit
23 claimed by the transferee or recapture the tax credit from the transferee. The transferee's
24 recourse is against the Production Company; and

1 (6) The transferee must acquire the tax credits in this section for a minimum
2 of 60 percent of the amount of the tax credits so transferred.

3 (b) Any Production Company claiming, transferring, or selling the tax credit shall
4 reimburse the Virgin Islands for any department initiated audits relating to the tax credit. This
5 subsection does not apply to routine tax audits of a taxpayer which may include the review of the
6 credit provided in this section.

7

8

BILL SUMMARY

9

10 This amendment revises title 29, chapter 12, Subchapter III and grants tax credits and
11 rebates to qualified production companies that produce new film, video, music, or digital projects
12 produced in the Territory, Incentives, which are only granted after a threshold spend is reached,
13 include a cash rebate of up to 9% of total qualified expenditures, additional cash rebates of up to
14 10% of the total qualified expenditures for Qualified Virgin Islands Promotions and productions
15 on St. Croix and an additional tax credit based upon the hiring of Virgin Islands residents; and a
16 hotel tax reduction. By tying certain of the credits to local hiring, the legislation ensures that the
17 Territory's residents benefit from the use of the credit by non-USVI production companies. The
18 statute also provides for the transferability of certain credits to third parties, which increases the
19 attractiveness of the incentive program.

20 Production Incentives have become common in the film, commercials, video and music
21 production industry and serve as a key element for attracting such productions to the Territory.

22 This incentives program follows the general guidelines of other programs in the United States
23 and seeks to make the Virgin Islands competitive with such other programs.

24

25 **BR13-1151/May 15, 2014/AA/Reviewed by YLT**