

(S. B. 1833)  
(Conference)

**(No. 27-2011)**

(Approved March 4, 2011)

## **AN ACT**

To enact the “Puerto Rico Film Industry Economic Incentives Act” for the purpose of providing an adequate framework for the continued development of our film industry and other related activities; providing tax incentives to attract foreign capital and foster the economic development and social wellbeing of Puerto Rico; creating infrastructure for the development of the film industry to its full potential; amending Sections 1.03 and 2.02 of Act No. 121 of August 17, 2001, as amended, known as the “Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act”; repealing Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry”; and for other purposes.

## **STATEMENT OF MOTIVES**

Throughout the ages, patrons of the arts have fostered and sustained cultural and artistic expressions. This support and sponsorship has made it possible for many performers, writers, musicians, painters, singers, sculptors, and artisans to express their society’s culture and prevailing universal personality through their work.

The production and distribution of motion pictures and television programs is one of the nation’s most valuable cultural and economic resources. According to a 2010 report by the Motion Picture Association of America, the film and television industry served as a major private sector employer in 2008, accounting for approximately 2.4 million jobs and \$41.7 billion in wages to U.S. workers, with an average salary 26% higher than the national average. The industry was also a major force for small business, accounting for approximately \$40 billion in payments to more than 144,000 businesses in 2008. The impact of the film and television industry had a strong positive effect on the tax base, generating \$15.7

billion in public revenues from federal taxes in 2008. The industry is also one of the most competitive around the world, consistently generating a positive balance of trade in virtually every country in which it does business. According to the same report, the film and television industry generated approximately \$13.6 billion in audiovisual services exports in 2008, representing a positive trade surplus of \$11.7 billion. This surplus surpassed the surpluses of the telecommunications, management and consulting, legal, medical, computer and insurance services sectors.

In order to promote the development of the film and television industries in Puerto Rico and capitalize on its corresponding economic impacts, the Government of Puerto Rico enacted Act No. 362 of December 24, 1999, which provided for incentives to promote the investment in film production and related infrastructure projects. Since the enactment of these incentives, the film and television industries have exhibited continued growth, generating significant contributions to the Puerto Rican economy and creation of thousands of jobs. In the ten-year period since the enactment of Act No. 362, these industries generated approximately \$481 million in economic activity. The level of economic output generated by these industries has similarly achieved continued year-to-year growth, growing by approximately 300% in the period between 2000 and 2009. In 2009 alone, \$22 million in credits generated \$118 million in total economic activity in the film and television industries.

While Act No. 362 was instrumental in laying the foundation for spurring the growth of the film and television industries, current competitive conditions require that the benefits granted to this type of industry be revised and expanded to cover new media and to bring Puerto Rico's cost structure in line or even lower than other leading jurisdictions, such as Connecticut, Georgia, Louisiana, Massachusetts, Michigan and New Mexico.

The enactment of competitive incentive regimes has allowed these jurisdictions to experience superior year-to-year growth, far outpacing the trend in Puerto Rico, allowing them to capture an ever-growing share of the film market. In many instances, incentives programs in these jurisdictions were enacted after Act No. 362. For example, in the case of New Mexico, who has offered film production benefits similar to the ones to be granted under this Act since 2002, reflects that total direct expenditures increased from \$29 million to \$253 million in the five-year period between 2003 and 2007. Employment also increased from 362 direct employees in 2003 to over 2,280 direct employees during the same five-year period. Indirect impacts accounted for an additional \$165.5 million in spending and 1,609 jobs in 2007, bringing total economic output and jobs to \$418.3 million and 3,829, respectively. Other jurisdictions such as Connecticut, Georgia, Louisiana, Massachusetts and Michigan have had similar positive experiences in revenue and job growth in the film production industry as a result of the enactment of favorable tax incentives similar to those provided by Puerto Rico.

In addition to a competitive cost structure, the Government of Puerto Rico must also spur the development of the media infrastructure needed to leverage such production incentives into the type of superior growth experienced by other jurisdictions. The lack of adequate legislation and film and television production physical facilities within Puerto Rico has impaired the Island's ability to develop its film industry to its full potential. The development of film development zones within Puerto Rico together with the development and operation of large scale state-of-the-art motion picture and television studios will provide Puerto Rico with the necessary platform to attract and accommodate local, national and international filmmakers, producers and artists, and will encourage such filmmakers, producers and artists to make their motion pictures in Puerto Rico. By promoting its film industry through the development of film development zones featuring

State-of-the-Art production facilities, Puerto Rico will attract significant direct foreign investment which is expected to have a substantial economic impact within Puerto Rico. In addition to the direct benefits that will be realized within the film industry, the development of such infrastructure will stimulate related sectors of the Puerto Rican economy such as construction, transportation, hospitality, food and beverage, recreation, tourism, entertainment, and retail sales. Growth in these industries will promote the overall economic development of Puerto Rico, encourage further private investment and development in other sectors, and provide new and enhanced employment opportunities, thereby providing significant benefits to the general welfare of the people of Puerto Rico.

In order to achieve the foregoing and to further develop Puerto Rico's film and television industry, this Act empowers the Department of Economic Development and Commerce, through the Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation, to grant incentives for the development of a world-class film and television industry and the development, construction and operation of State-of-the-Art production facilities of global importance in Puerto Rico.

This Act also includes new audiovisual media such as advertisements and music videos, since these media serve as training workshops for new film and television technicians. Furthermore, the increase in production using these media shall boost post-production studio investments and offer job opportunities for editors and other professionals in the audiovisual production phase. This Act also continues to support television projects, since they make use of existing facilities, generate onscreen job opportunities for local talent and promote the establishment of television networking production centers in Puerto Rico aimed at the general national market.

Finally, this Act promotes Puerto Rico's historic responsibility and our present commitment to incentivize and promote technological, economic, and cultural exchanges and dialogue between the preponderant economic and social cultures of our hemisphere.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

## **CHAPTER I**

### **PRELIMINARY PROVISIONS**

#### **Section 1.1. - Title.-**

This Act shall be known as the "Puerto Rico Film Industry Economic Incentives Act".

#### **Section 1.2. - Classification of Provisions.-**

The provisions of this Act are hereby classified and designated as:

Chapter 1 - Preliminary Provisions

Chapter 2 - General Application Clauses

Chapter 3 - Administration

Chapter 4 - Film Projects

Chapter 5 - Infrastructure Projects

Chapter 6 - Film Development Zones

Chapter 7 - Nature of Grants

Chapter 8 - Tax Treatment

Chapter 9 - Miscellaneous Provisions

## CHAPTER II

### GENERAL APPLICATION CLAUSES

#### Section 2.1. - **Rules of Interpretation.**-

The provisions of this Act shall be liberally construed for the purpose of promoting the public policy set forth in the Statement of Motives and for all other purposes provided herein, including the establishment of film development zones through Puerto Rico to promote free competition of the industry. This Act shall apply to all actions by a Grantee that meets the requirements thereof. Nothing provided herein shall impair the development of Film Projects or Infrastructure Projects that do not meet the requirements of this Act, but rather, the project and the Persons owning, investing, or promoting such project shall not be entitled to enjoy the benefits granted by the Act.

#### Section 2.2. - **Definitions.**-

Whenever used as proper nouns, the following words and terms, as used in this Act, shall have the meaning indicated herein below:

(a) “Auditor” – an independent Certified Public Accountant authorized to practice said profession in Puerto Rico, contracted by the Grantee to carry out the functions contemplated under this Act.

(b) “Code” – Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994”, or any subsequent law.

(c) “Film Commissioner” – the Executive Director of the Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation.

(d) “Grantee” – a Person that has received a Grant.

(e) “Motion Picture Corporation” – the Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation created under Act No. 121 of August 17, 2001, as amended.

(f) “Grant” – the concession of authority pursuant to this Act and the Motion Picture Corporation Act by the Secretary of Development to allow a Person engaged in Film Projects or Infrastructure Projects or a Studio Operator or Large-Scale Studio Operator to avail him/herself of the incentives set forth in this Act, subject to compliance with the requirements of this Act. Grant shall have the same meaning as “incentives grant,” “tax exemption,” “tax incentives” or merely “incentives,” “exemption”, “grant”, or “license”, which can be used indiscriminately as may be convenient for the purpose of illustrating what is provided in the corresponding text.

(g) “Studio” – a comprehensive purpose-built, high-capacity film and television production studio, developed and operated anywhere in Puerto Rico, suitable for the purposes of housing soundstages and exterior sets, including facilities for set construction and design, production offices and production services departments catering to the production community and such other built-in necessary amenities or facilities, as determined by the Secretary of Development through regulation, circular letter or administrative determination, with a budget equal to or greater than fifty million dollars (\$50,000,000), as certified by the Auditor.

(h) “Large-Scale Studio” – a comprehensive purpose-built, high-capacity film and television production studio, developed and operated within a Film Development Zone, suitable for the purposes of housing soundstages and exterior sets, including facilities for set construction and design, production offices, and production services departments catering to the production community and such other built-in necessary amenities or facilities, as determined by the Secretary of Development through regulation, circular letter or administrative determination, with a budget equal to or greater than one hundred million dollars (\$100,000,000), as certified by the Auditor.

(i) “Bond” – an irrevocable standby letter of credit issued by a financial institution duly authorized to do business in Puerto Rico, the assurance of a surety, insurance or bonding company or a guarantee issued by a creditworthy Person, in each case acceptable to the Secretary of the Treasury, to the effect that a Film Project or Infrastructure Project shall be completed within the corresponding proposed term and parameters. In the case of Film Projects, Bond shall include a “completion bond”.

(j) “Principal Photography” – the phase of production during which a Film Project is actually filmed. The term shall not include preproduction or postproduction.

(k) “Production Expenditures” – development, preproduction, production, and postproduction expenditures directly incurred in the production of a Film Project. Expenditures related to the development of a Film Project shall only be included when not less than fifty percent (50%) of the Principal Photography takes place in Puerto Rico. Expenditures related to the preproduction, production, and postproduction shall not be required to comply with the aforementioned fifty percent (50%) of Principal Photography requirement to be considered Production Expenditures.

(k) “Puerto Rico Production Expenditures” – payments made to Puerto Rico Residents, and/or to Nonresident Talent for services physically rendered in Puerto Rico, that are directly attributable to the development, preproduction, production, and postproduction of a Film Project. Expenditures related to the development of a Film Project shall only be included when not less than fifty percent (50%) of the Principal Photography takes place in Puerto Rico. Expenditures related to the preproduction, production, and postproduction shall not be required to comply with the aforementioned fifty percent (50%) of Principal Photography requirement to be considered Puerto Rico Production Expenditures.

In order to constitute Puerto Rico Production Expenditures, the payments received by the Puerto Rico Residents and Nonresident Talent shall be subject to income taxes in Puerto Rico as provided in this Act, whether directly or through a professional services corporation or other legal entity. Puerto Rico Production Expenditures include payments related to the development, preproduction, production, and postproduction of a Film Project, including, but not limited to, the following:

(1) wages, fringe benefits, per diems or fees for talent, management or labor to a Person who is a Puerto Rico Resident or a Nonresident Talent;

(2) interest, charges, and fees paid to Persons listed in Section 1024(f)(4) of the Code; and/or

(3) any of the following goods or services provided by a supplier that is a Puerto Rico Resident:

(a) the story and screenplay to be used for a Film Project;

(b) set construction and operations, wardrobe, accessories, and related services;

(c) photography, sound synchronization, lighting, and related services;

(d) editing and related services;

(e) rental of facilities and equipment;

(f) leasing of vehicles, including the chartering of aircraft or watercraft provided such aircraft or watercraft is registered and homeported in Puerto Rico and such leasing is limited for travel within Puerto Rico, its airspace and territorial waters;

(g) food and lodging;

(h) airfare if purchased through a Puerto Rico-based travel agency or travel company for travel to and from Puerto Rico or within Puerto Rico that is directly attributable to the Film Project;

(i) insurance coverage and bonding; provided, that it is purchased through an insurance producer authorized to do business in a Puerto Rico; and

(j) other costs directly attributable to the Film Project in accordance with generally accepted entertainment industry practice, as determined by the Secretary of Development through regulations, circular letter or administrative determination.

(4) The following shall be excluded from the Puerto Rico Production Expenditures definition:

(a) those items paid to Puerto Rico Residents with the money in cash obtained through any subsidy, gift, or fund appropriation from the Government of Puerto Rico. Those items paid to Puerto Rico Residents with monies in cash obtained through contributions made to a Film Project, that by their nature and terms are refundable, such as loans or investments, including contributions by the Puerto Rico Motion Picture Fund created under the Motion Picture Corporation Act may, at the discretion of the Secretary of Development, be included in the definition of Puerto Rico Production Expenditures.

(b) the cost of goods acquired or leased by Puerto Rico Resident suppliers outside of Puerto Rico for resale to a Grantee, when, in the judgment of the Auditor, with the consent of the Secretary of Development, there is no economic substance in the transaction; and

(c) those items paid to Puerto Rico Resident entities mainly for the services rendered by natural persons other than Puerto Rico Residents, except for entities rendering Nonresident Talent services.

(m) “Government of Puerto Rico” – the Government of Puerto Rico including all of its municipalities, instrumentalities, political subdivisions, agencies, public and quasi-public corporations.

(n) “Act” – the Puerto Rico Film Industry Economic Incentives Act.

(o) “Motion Picture Corporation Act” – Act No. 121 of August 17, 2001, as amended, known as the “Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act.”

(p) “Large-Scale Studio Operator” – a Person engaged in the administration and operation of a Large-Scale Studio.

(q) “Studio Operator”- the Person engaged in the administration and operation of a Studio.

(r) “Person” - any natural person, corporation, partnership, professional service corporation, association, trust, limited liability company or any other entity or organization, including the Government of Puerto Rico.

(s) “Infrastructure Project” – the development or substantial expansion in Puerto Rico of studios, Studios, Large-Scale Studios, laboratories, facilities for the international transmission of television images or other media, or other permanent facilities to carry out Film Projects (regardless of whether said projects avail themselves of the provisions of this Act) whose hard costs budget, as certified by the Auditor, exceeds five million dollars (\$5,000,000).

(t) “Film Project” – one or more of the activities contemplated in Section 4.1 of this Act.

(u) “Puerto Rico Resident” – an individual who meets the requirements set forth in Section 1411(a) (25) of the Code and a corporation, partnership, limited liability company or other legal entity organized under the laws of the Government of Puerto Rico, or engaged in trade or business in Puerto Rico pursuant to the

provisions of the Code, which must derive not less than eighty percent (80%) of its gross income from sources within Puerto Rico, using the rules prescribed in Section 1123 of the Code related to sources of income.

(v) “Secretary of Development” – the Secretary of the Department of Economic Development and Commerce of the Government of Puerto Rico.

(w) “Secretary of the Treasury” – the Secretary of the Treasury of the Government of Puerto Rico.

(x) “Nonresident Talent” – onscreen talent, including stuntmen, other than a Puerto Rico Resident. A background actor, also known as an extra, will not be considered a Nonresident Talent.

(y) “Transfer” – means, as appropriate in each case, a lease, sale, exchange, transfer, assignment or conveyance in any manner of real or personal property, as the case may be.

(z) “Film Development Zones” – the geographic areas designated pursuant to Section 6.1.

### **CHAPTER III**

#### **ADMINISTRATION**

##### **Section 3.1. - Grants in General.-**

(a) The Secretary of Development may issue Grants upon such terms and conditions as he/she deems necessary or convenient to further the purposes of this Act. To benefit from the provisions of this Act, it shall be necessary to obtain a Grant. Any Person engaged in a Film Project, an Infrastructure Project or a Large-Scale Studio Operator or a Studio Operator, may submit to the Secretary of Development an application for a Grant in a form to be provided by the Secretary of Development. The information and documents furnished in such application

shall be treated as confidential and may only be disclosed to third parties with the previous consent of the Grantee, except as necessary to enforce the provisions of the Grant, this Act or any other law.

(b) The Secretary of Development shall notify the Secretary of the Treasury of his/her intention to issue a Grant and shall submit a copy of the appropriate application to the Secretary of the Treasury. The Secretary of the Treasury shall have a term of fifteen (15) working days to submit comments regarding the application for a Grant. Such term shall be deemed to be interrupted if the Secretary of the Treasury requires additional information. However, whenever such term is so interrupted and the information required is furnished, the Secretary of the Treasury shall only have the remaining days of the fifteen (15)-day working period to endorse or oppose the Grant. In the case of a Grant that entails the granting of credits, the Secretary of the Treasury shall certify the availability thereof prior to their granting. This certification shall be a necessary requirement for the granting of credits under a Grant. Once said term has expired, the Secretary of Development shall issue the same.

(c) Grants issued in connection with Film Projects and Infrastructure Projects may be effective before the Grant application filing and shall have a term equal to the life of the project. Grants issued to Studio Operators or Large-Scale Studio Operators shall have a term of fifteen (15) years.

(d) Any Large-Scale Studio Operator may apply for an extension of its Grant for an additional term of ten (10) years, under the same terms and conditions of such Grant in effect as of the date of the application for an extension, including the income tax rate and exemptions on property, municipal license and other taxes provided thereunder. The application shall be made within the eighteen (18) months prior to the date prescribed by law for filing the last income tax return corresponding to the year in which its Grant would expire. The same shall include

such information, data, and evidence that shows it has complied and shall continue to comply with all the applicable provisions of law, including the terms and conditions of its Grant. In the event that the Grantee has an outstanding debt with the Government of Puerto Rico, the application for the extension of the Grant shall be denied until such debt is paid in full.

(e) A Large-Scale Studio Operator who holds a Grant shall have the option to choose the specific taxable years to be covered thereunder as to their income taxes, municipal license taxes, and/or property taxes when so notified to the Secretary of the Treasury, the Municipality or the Municipal Revenues Collection Center, as applicable, and the Secretary of Development not later than the date prescribed by law to file their income tax return for such taxable year, municipal license statement or personal property tax return, including any extensions granted therefor. In the case of real property taxes, the Municipal Revenue Collection Center shall be notified sixty (60) days before January first (1st) of the fiscal year in which such option is to be exercised. Once a Large-Scale Studio Operator opts for this benefit, the exemption period corresponding to such operator shall be extended for the number of taxable years in which such exemption was not enjoyed under the Grant.

(f) Grants issued under the provisions of this Act shall be transferable, subject to the authorization of the Secretary of Development.

**Section 3.2. - Evaluation Criteria.-**

(a) Subject to the provisions of Section 9.5 of this Act, the Secretary of Development shall establish through regulations, in consultation with the Secretary of the Treasury, the documents, information, and guarantees to be furnished by a Person to avail itself of the provisions of this Act.

(b) The Secretary of Development and the Secretary of the Treasury shall consider the following criteria to evaluate an application for a Grant:

(1) The possibility that, in the absence of the incentives granted by this Act, the Film Project, Infrastructure Project or the business of the Studio Operator or Large-Scale Studio Operator would be undertaken in a location other than Puerto Rico.

(2) The viability of the Film Project, Infrastructure Project or the business of the Studio Operator or Large-Scale Studio Operator to have the effect of promoting Puerto Rico as a tourist destination or filming destination.

(3) The viability of the Film Project, Infrastructure Project or the business of the Studio Operator or Large-Scale Studio Operator to have the effect of promoting economic development or job creation in Puerto Rico.

(4) The viability of the tax incentives granted under this Act to attract private investment for Film Projects, Infrastructure Projects in Puerto Rico or the business of the Studio Operator or Large-Scale Studio Operator.

(5) The track record of the Person applying for a Grant in meeting commitments to engage in Films Projects, Infrastructure Projects, or operating a Studio or a Large-Scale Studio.

(6) Any other factor to be established by the Secretary of Development through regulations or circular letter consistent with promoting the best interests of Puerto Rico and/or the purposes of this Act.

(c) The Secretary of Development may only deny an application for a Grant for failure to meet one or more of the criteria set forth in paragraph (b) of this Section 3.2 or because of the unavailability of tax credits according to the limitations set forth in Section 7.3. The Secretary of Development shall state in writing to the applicant of a Grant the reasons for denying the application therefor.

### Section 3.3. - **Fees.-**

With regard solely to Film Projects, every Grantee shall pay to the Secretary of Development, through the purchase of a voucher in an Internal Revenue Collection Center of the Department of the Treasury, a fee equal to one percent (1%) of the Puerto Rico Production Expenditures qualifying for a credit pursuant to Section 7.3, as certified by the Auditor, up to two hundred and fifty thousand dollars (\$250,000). The Secretary of the Treasury shall create a special fund, denominated “Special Fund under the Puerto Rico Film Industry Economic Incentives Act”, and shall deposit in it the funds generated from the fees paid. The Secretary of Development shall use said funds to pay for any expenditures incurred in promoting, administering, and implementing this Act. The Secretary of Development may also employ such funds to foster the development of the local film industry and/or pay any administrative or operational expenditures of the Motion Picture Corporation. The Secretary of Development shall require Grantees pay fifty percent (50%) of the estimate of such fees upon issuance of the Grant, computed based on an estimate of the Puerto Rico Production Expenditures filed with the application for a Grant, and the balance after the Auditor finishes the determination of the Puerto Rico Production Expenditures and before he/she certifies the amount of Puerto Rico Production Expenditures and the computation of the tax credit pursuant to Section 7.3.

### Section 3.4. - **Inspections and Reports.-**

(a) The Secretary of Development shall carry out from time to time such investigations as he/she deems necessary with respect to the operations of a Film Project, Infrastructure Project or the Studio Operator or Large-Scale Studio Operator. Each Grantee shall file any and all reports and submit such other information regarding the subject of the Grant as shall be required by the Secretary of Development from time to time.

(b) The Grantee shall contract an Auditor approved by the Secretary of Development to determine and render to the Secretary of Development a report certifying the amount in cash that has been paid to defray Puerto Rico Production Expenditures and to compute the appropriate tax credit. Said Auditor shall meet all the requirements established by the Secretary of Development through regulations, circular letter, or administrative determination. Once the Grantee furnishes the Auditor with the necessary information for the latter to comply with the preparation of the certification required under Section 7.3, the Auditor shall have a term of thirty (30) days to complete the certification applicable under Section 7.3.

(c) The Grantee shall notify the Secretary of Development the name and address of the administrator or representative who shall be responsible for rendering all the reports and causing the Grantee to meet the requirements established in this Act.

(d) The Secretary of Development shall draft a report to be submitted to the Governor and the Office of the Secretary of the Senate and the Clerk of the House of Representatives of the Government of Puerto Rico evaluating the effectiveness of the tax credits granted under this Act in stimulating growth in the film industry not later than June 30, 2018.

**Section 3.5. - General Responsibilities and Authority of the Secretary of Development.-**

The Secretary of Development may delegate to the Film Commissioner any of the powers granted to him/her under this Act, except for matters related to designation of the geographic areas as Film Development Zones, pursuant to the provisions of Sections 6.1 and 8.4.

**CHAPTER IV**  
**FILM PROJECTS**

**Section 4.1. - Eligible Film Projects.-**

(a) A Person may obtain a Grant in connection with a Film Project provided that:

(1) the production and/or postproduction is carried out in whole or in part in Puerto Rico;

(2) the Film Project is intended for airing, commercial distribution or exhibition to the general public outside of Puerto Rico by any means and media, except for the film projects listed in Sections 4.1(b)(1), 4.1(b)(2) and 4.1(b)(3), which may be intended for airing, commercial distribution or exhibition in Puerto Rico. Any Film Project, other than Film Projects listed in Sections 4.1(b)(1), 4.1(b)(2) and 4.1(b)(3), whose airing, distribution or exhibition outside of Puerto Rico is considered incidental or minimal, and/or which is intended for use in Puerto Rico, shall cause the Film Project to fail to comply with the terms of this paragraph at the discretion of the Secretary of Development; and

(3) Puerto Rico Production Expenditures shall be at least one hundred thousand dollars (\$100,000), provided that in the case of a Film Project described in paragraph (b)(2) below, Puerto Rico Production Expenditures shall be at least fifty thousand dollars (\$50,000).

(b) For purposes of this Act, the term "Film Project" means:

- (1) Feature length films;
- (2) Short films;
- (3) Documentaries;
- (4) Television series, miniseries, and programs similar in nature, including pilots;
- (5) Music videos;

- (6) National and international commercials;
- (7) Video games;
- (8) Recorded live performances;
- (9) Original soundtrack and dubbing recordings for any of the above;

and

(10) Television programs, including but not limited to reality shows, talk shows, news programs, game-shows as well as entertainment, comedy children's and variety programming.

(c) A Film Project does not include any of the following:

- (1) a production that includes pornographic material;
- (2) a production that primarily consists of religious or political advertising;
- (3) a radio program;
- (4) a production intended primarily to market a product or service other than a commercial pursuant to Section 4.1(b)(6);
- (5) a production with the primary purpose of raising funds;
- (6) a production intended primarily for employee training or in-house corporate advertising or other similar production; or
- (7) any other project as determined by the Secretary of Development through regulations or circular letter.

**Section 4.2. - Nature, Means of Production and Dissemination.-**

A Film Project may:

- (a) Use as sources real images as well as animation or electronically generated images;

(b) Use for its production any means currently available or that could be developed in the future, among them, without it being limited to: celluloid, tape, disc or paper. The medium may be magnetic, optic, ink or any other that is developed in the future. The form of recording and reproducing images and sound may be analog, digital or any other developed in the future; or

(c) Be disseminated in any media, including electronic information transmission mediums.

## **CHAPTER V**

### **INFRASTRUCTURE PROJECTS**

#### **Section 5.1. - Eligible Infrastructure Projects.-**

(a) A Person may obtain a Grant in connection with the development of an Infrastructure Project.

(b) The acquisition of machinery and equipment to be used or installed in an Infrastructure Project may be considered as part of the Puerto Rico Production Expenditures. Said machinery and equipment shall remain in Puerto Rico during its useful life or not less than five (5) years, whichever is less, starting from the date of acquisition. Said assets shall only be removed from Puerto Rico in a temporary manner incidental to a Film Project. The Secretary of the Treasury or the Secretary of Development shall require a Bond from the Grantee that acquires the machinery and equipment in order to secure the total of the tax credits generated by the purchase thereof. The Bond shall name the Secretary of the Treasury as the beneficiary and shall be reduced annually in a proportional manner.

(c) In order for a substantial expansion to qualify as an Infrastructure Project, the Grantee must carry out an expansion of the existing studios, Studio, or Large-Scale Studios, laboratories or facilities whose investment is equal to at

least twenty-five percent (25%) of the fair market value of the existing physical plant prior to said substantial expansion. The cost of the land shall not be part of the value considered for purposes of the twenty-five percent (25%).

## **CHAPTER VI**

### **FILM DEVELOPMENT ZONES**

#### **Section 6.1. - Establishment of the Film Development Zones.-**

(a) The Secretary of Development shall designate parcels of land (contiguous or noncontiguous) as Film Development Zones. Such geographical areas shall consist of real property for the development, construction, and operation of Large-Scale Studios and other related developments consistent with the purposes of and as provided in this Act, irrespective of who is the owner of such property. In those cases where the owner of a parcel is a private Person or municipality, a Film Development Zone shall only be designated as such with the consent of such landowner or municipality.

Notwithstanding the above paragraph, a Film Development Zone is hereby established in the Autonomous Municipality of San Juan. This Film Development Zone shall consist of those parcels of land (contiguous or non-contiguous) designated by the Autonomous Municipality of San Juan and notified to the Secretary of Development. The applicability of subparagraph (b) through (h) of this Section 6.1 shall be subject to the consent of the Autonomous Municipality of San Juan.

(b) Parcels of land designated or to be designated as being part of the Film Development Zones owned by the Government of Puerto Rico may be Transferred upon such consideration, terms and/or conditions as agreed to by the owner of the parcels in question and the Secretary of Development; provided, however, that such a Transfer shall not be a prerequisite to the designation of a Film Development Zone. Any law, rule, regulation, policy, norm or guideline limiting

the terms or conditions for the Transfer of such parcels beyond those terms and conditions that would ordinarily apply to transactions between private Persons shall be inapplicable to the Transfers contemplated in this paragraph. The owner of the parcels shall have discretion to negotiate such terms and/or conditions for any such Transfer as he/she deems consistent with furthering the development, construction, expansion, and operation of the Film Development Zones and furthering the purposes of this Act. The Secretary of Development may impose such conditions on the Transfer of real property being part of the Film Development Zones as he/she deems consistent with furthering the development, construction, expansion, and/or operation of the Film Development Zones and furthering the purposes of this Act.

(c) Upon establishment of the Film Development Zones, the Secretary of Development, together with the President of the Puerto Rico Planning Board, in accordance with the provisions of the Organic Act of the Puerto Rico Planning Board, Act No. 75 of 1975, as amended, and Act No. 81-1992, as amended, known as the Autonomous Municipalities Act of 1991, shall promulgate and adopt a joint zoning regulation that shall govern all development and land use within the parcels of land designated by the Secretary of Development as Film Development Zones. All development and land use within the Film Development Zones shall be governed only by such joint zoning regulation and shall not be subject to any other existing zoning law, rule, regulation, policy, norm or guideline issued by the Puerto Rico Planning Board or by any municipality with jurisdiction over the designated parcel(s) under the Autonomous Municipalities Act of 1991.

(d) The parcels of land comprising all or any part of the Film Development Zones may be encumbered by such restrictive covenants, governance systems, rules and regulations, and architectural, design, and construction guidelines as the Secretary of Development from time to time may establish, and any such restrictive covenants, systems, rules, regulations, and guidelines may be amended, cancelled or modified at any time and from time to time with the approval of the Secretary of Development.

(e) The Secretary of Development shall have the authority to (i) impose regular, general or special charges, quotas or fees against any and all parcels in the Film Development Zones; and (ii) impose and collect fees upon the Transfer of any real property interest in the Film Development Zones and/or upon the construction of any improvements in the Film Development Zones, to pay for common area improvement and infrastructure construction, maintenance, and repairs to common areas, landscaping, security, signage, lighting and the rendering of common services; provided, however, that such charges, quotas or fees shall not constitute the imposition of a tax. This Section 6.1(e) shall not apply to properties owned by a municipality.

(f) A legal lien is hereby created to secure the collection of assessments and fees imposed and/or assessed upon parcels of land in the Film Development Zones. This lien shall have priority over any other lien, except for the lien securing transferred outstanding tax debts as provided by Puerto Rico Act No. 21-1997, as amended, known as the Tax Debt Sale Act; the lien in favor of the Municipal Revenues Collection Center (“CRIM”, by its Spanish acronym) securing the collection of real property taxes; the lien securing the collection of assessments under Puerto Rico Act No. 207-1998, known as the “Puerto Rico Tourism Development Districts Act of 1998,” as amended; the lien securing the collection of the special tax on properties located within a Business Improvement District or a

Residential Improvement Zone authorized by the Autonomous Municipalities Act of 1991; and any other lien securing the payment of assessments used to fund public infrastructure. After the first Transfer of any parcels of land in the Film Development Zones, a voluntary Transferee shall be jointly and severally liable for any then unpaid assessments and fees. Such voluntary Transferee shall have the right to be reimbursed by its seller any amount that he/she paid to satisfy any assessments and fees that are unpaid through and including the day of the closing of the Transfer in question. This Section 6.1(f) shall not apply to properties owned by a municipality.

(g) The Secretary of Development may enter into agreements for the development and operation of the Film Development Zones with any Person and may impose any conditions he/she deems consistent with furthering the development, construction, expansion, and/or operation of the Film Development Zones and furthering the purposes of this Act.

(h) The Secretary of Development shall have the authority to certify the compliance of any Transfer with the rules, requirements, and/or obligations of this Section 6.1.

## **CHAPTER VII**

### **NATURE OF THE GRANTS**

#### **Section 7.1. - Nature of the Grants.-**

(a) Grants issued under this Act shall be considered a contract between the Grantee, its stockholders, members, investors, partners and/or owners, and the Government of Puerto Rico, and such contract shall be considered the law between the parties. Said contract shall be interpreted liberally, in accordance with the purpose of this Act to promote the public policy set forth herein. No such contract may be amended or terminated without the mutual consent of the parties thereto, except in cases of non-compliance with its established terms and conditions. The

Secretary of Development shall have discretion to include in each Grant, such terms and conditions as are consistent with the purposes of this Act, taking into consideration the nature of the petition or action requested, as well as the applicable facts and circumstances.

(b) Every Grantee under this Act shall conduct its operations substantially as stated in the application for the Grant, except as these have been amended through amendments authorized by the Secretary of Development upon request of the Grantee prior to the event for which the amendment was requested.

**Section 7.2. - Studio Operators and Large-Scale Studio Operator.-**

(a) Any operator Studio Operator and/or Large-Scale Studio Operator shall be eligible to obtain a Grant under this Act to avail themselves of all the tax incentives available under this Act.

(b) A Large-Scale Studio Operator shall have, directly, or through endorsed Grantees, as such term is defined herein, the responsibility of ensuring the proper operation of the Large-Scale Studio and the required amenities and components thereto, and the provision of such services required to support the commercial needs of Film Projects.

(c) Any *bona fide* office, business or establishment along with its equipment and machinery, with the capability and skills necessary to render a service on a commercial scale to a Large-Scale Studio Operator, shall be considered a strategic supplier, provided that such services: (i) directly relate to the business of development, preproduction, production, postproduction, and distribution of a Film Project; (ii) are indispensable for the Large-Scale Studio Operator to comply with its obligations pursuant to Section 7.2(b); and (iii) are rendered to the Large-Scale Studio in a regular and exclusive form; provided that a Person whom sporadically renders services to a Large-Scale Operator shall not be considered a strategic supplier.

(d) Once the Large-Scale Studio Operator has identified a strategic supplier, it shall obtain an endorsement from the Secretary of Development, and such supplier, once endorsed by the Secretary of Development, shall become an endorsed concessionary entitled to enjoy the same benefits available to the Large-Scale Studio Operator under its Grant as a Grantee undertaking such activity directly.

**Section 7.3. - Availability of Tax Credits for Grantees.-**

(a) Granting of the Tax Credit.— Grantees engaged in Film Projects or Infrastructure Projects shall be allowed a credit against the taxes imposed by Subtitle A of the Code or the taxes provided under Section 8.1(a)(1)(A) of this Act, as provided herein. Subject to the limitations described in this Section 7.3, such tax credit shall be available to Grantees upon commencement of the activities covered by the Grant in the case of Film Projects and, in the case of Infrastructure Projects, when such project is completed and ready for use as certified by the Secretary of Development. When the requirements of Section 7.3(f) have been satisfied, the Secretary of Development shall authorize the amount of tax credits issued and available, pursuant to the certification issued by the Secretary of the Treasury, and confirm by letter to the Grantee.

(b) Amount of the Tax Credit. –

(1) In the case of Film Projects, the credit granted in Section 7.3(a) shall be equal to:

(A) Forty percent (40%) of those amounts certified by the Auditor as disbursed in connection with all Puerto Rico Production Expenditures, except for payments made to Nonresident Talent; and

(B) twenty percent (20%) of those amounts certified by the Auditor as disbursed in connection with Puerto Rico Production Expenditures consisting of payments to Nonresident Talent. Credits generated by Puerto Rico

Production Expenditures consisting of payments to Nonresident Talent shall not be subject to the limitations imposed in Section 7.3(b)(3).

(2) In the case of Infrastructure Projects, the credit granted in Section 7.3(a) shall be equal to twenty-five percent (25%) of those amounts certified by the Auditor to have been disbursed in connection with the development and/or expansion of the Infrastructure Project in question.

(3) The credits set forth in this Section 7.3 shall be subject to the following limitations:

(A) Except as provided herein and in Section 7.3(b)(1)(B), credits computed pursuant to Section 7.3(b)(1) shall be subject to a fifty million dollars (\$50,000,000) annual cap. Notwithstanding, Film Projects can apply for credits in excess of this annual limit of fifty million dollars (\$50,000,000) if any portion of Puerto Rico Production Expenditures have been incurred within a Film Development Zone: (i) up to an additional annual limit of fifty million dollars (\$50,000,000); (ii) up to an additional annual limit of one hundred fifty million dollars (\$150,000,000) in excess of the additional annual limit of fifty million dollars (\$50,000,000) set forth in subparagraph (i) above, if the development budget of the Large-Scale Studio within the corresponding Film Development Zones, as certified by the Auditor, exceeds two hundred million dollars (\$200,000,000); and (iii) up to an additional annual limit of one hundred million dollars (\$100,000,000) in excess of the additional annual limits of fifty million dollars (\$50,000,000) and one hundred fifty million dollars (\$150,000,000) set forth subparagraphs (i) and (ii) above, respectively, if the amount of credits issued, computed pursuant to Section 7.3(b)(1), equals two hundred fifty million U.S. dollars (\$250,000,000) for two consecutive years. In all cases, credits in excess of

the initial annual limit of fifty million dollars (\$50,000,000) shall require the approval of the Secretary of Development and the Secretary of the Treasury, at their discretion, consistent with promoting the best interests of Puerto Rico.

(B) Credits issued pursuant to Section 7.3(b)(2) shall be subject to a ten million dollars (\$10,000,000) aggregate annual cap for all Infrastructure Projects claiming credits in any given year, provided however, that credits issued under this Act for all Infrastructure Projects shall be subject to a lifetime cap of one hundred fifty million dollars (\$150,000,000).

(c) Use of the Tax Credit. – The tax credit, as certified by the Auditor, shall be taken against the taxes imposed under Subtitle A of the Code or by Section 8.1(a)(1)(A) of this Act and may be claimed:

(1) In the case of Film Projects, in the taxable year when the activities covered by the Grant commence;

(2) In the case of Infrastructure Projects, in the taxable year when such project is completed and ready for use as certified by the Secretary of Development;

(3) The cap limitation provided in Section 7.3(b)(3)(A) shall be set at the time the credit is granted; and

(4) The cap limitation provided in Section 7.3(b)(3)(B) shall be applied and assessed every year in which the Grantee or a transferee of the tax credit claims the credit. Grantees or their transferees, claiming credits for Infrastructure Projects during any given taxable year shall confirm with the Secretary of Development every year, before claiming these credits, the amount of credit available to be claimed for such year. The Secretary of Development shall have absolute discretion to make tax credit cap allocations between Persons claiming credits for Infrastructure Projects.

(5) The tax credit shall be nonrefundable.

(6) Any unused tax credits may be carried forward by the taxpayer until exhausted, subject to the limitations provided herein.

(d) Recapture of the Credit. –

In the event a Grant is revoked pursuant to Section 9.1(b), an amount equal to the tax credits granted therein shall be deemed to be income taxes owed for the taxable year in which the revocation takes place, to be paid by the Grantee affected by the revocation in two (2) installments, the first of which shall become due on the due date for filing the income tax return for the year in which the revocation takes place, without considering any extensions granted, and the second installment shall become due on the due date for filing the tax return, without considering any extension granted, for the following year.

The recapture provisions set forth herein shall not apply with respect to credits acquired by a *bona fide* purchaser from a Grantee.

(e) Transfer and Carryover of the Tax Credit. – All or any portion of tax credits issued in accordance with this Section 7.3 may be Transferred to other Persons, subject to that the same use the limitation imposed under Section 7.3(c). Any tax credit that is Transferred and claimed against taxes imposed by Subtitle A of the Code or by Section 8.1(a)(1)(A) of this Act shall be nonrefundable. Any unused tax credits may be carried forward by the Transferee until exhausted; provided, however, that tax credits for Infrastructure Projects issued pursuant to Section 7.3(b)(2) may be carried over to a subsequent taxable year only if the Grantee, in relation to which such credits were granted, is conducting operations of the corresponding Infrastructure Project under the terms described in the Grant.

The proceeds from the sale of tax credits granted pursuant to Section 7.3 are hereby exempted from the payment of any tax imposed by the Government of Puerto Rico. Any discount received by a Transferee of the tax credits granted pursuant to Section 7.3 is hereby exempted from the payment of any tax imposed by the Government of Puerto Rico.

Prior to any Transfer, the Transferor shall submit to the Secretary of the Treasury a statement that describes the amount of tax credit for which the Transfer of tax credit is eligible. The Transferor shall provide to the Secretary of the Treasury such information as the Secretary of the Treasury may require for the proper allocation of the credit.

(f) Advance of the Tax Credit. – In the case of Film Projects, fifty percent (50%) of the tax credit granted in Section 7.3(a), shall be available in the taxable year in which the Auditor certifies to the Secretary of Development and to the Secretary of the Treasury that forty percent (40%) or more of the Puerto Rico Production Expenditures has been disbursed, and the Secretary of Development determines that the other applicable provisions of this Act have been complied with. The Grantee may advance this fifty percent (50%) of the tax credit granted in Section 7.3(a) if a Bond in which the Secretary of the Treasury is designated as beneficiary is posted. In such case, Grantee shall receive from the Secretary of the Treasury a certification that (i) the Bond was posted to his/her satisfaction; and (ii) as to the amount of tax credits issued and available.

The remaining fifty percent (50%) of the tax credit, or the full tax credit if no advance was authorized, shall be available in the taxable year in which the Auditor certifies to the Secretary of Development and to the Secretary of the Treasury that all Puerto Rico Production Expenditures have been paid.

(g) The confirmation referenced in Section 7.3(a) must be provided within thirty (30) days as of the date of receipt of the Auditor's certification. This thirty-day (30) term shall be considered to be stayed when the Secretary of the Treasury requests additional information. However, upon stay of the thirty-day (30) term and upon furnishing the information thus requested, the Secretary of the Treasury shall only have the days remaining in the thirty-day (30) term from the date of receipt of Auditor's certification to issue the tax credit certification provided that the Secretary of the Treasury has all documents to be evaluated available.

If, as of the date established in this Section 7.3 for credit availability, the Grantee determines that the total of the credit is greater than the total credit to which it is entitled under this Section 7.3 (actual credit), the portion of credit available under this Section 7.3 shall be reduced by the difference between the credit authorized by the Secretary of Development and confirmed by the Secretary of the Treasury and the actual credit.

(h) Credits issued hereunder shall be available for the taxable year in which the Secretary of the Treasury confirms the amount of tax credits issued and available. Credits issued on or before the due date for filing an income tax return, including any extensions, may be claimed for the preceding taxable year associated with said return.

## **CHAPTER VIII**

### **TAX TREATMENT**

#### **Section 8.1. - Tax Treatment of Grantees.-**

(a) To fulfill his/her responsibilities under this Act, the Secretary of Development shall be empowered to issue Grants authorizing Grantees to enjoy the following tax benefits:

(1) Exemption from the Payment of Income Taxes:

(A) Fixed Tax Rates on Net Income.

(i) In General. – Grantee’s net income directly derived from the exploitation of activities covered under a Grant shall be subject to a fixed income tax rate of four percent (4%), in lieu of any other tax, if any, provided in the Code or any other Puerto Rico law.

(ii) Large-Scale Studio Operators. – The fixed income tax rate of four percent (4%) established in subparagraph (i) of Section 8.1(a)(1)(A) above, shall only be available to Large-Scale Studio Operators. Any Large-Scale Studio established within the Film Development Zone in the Autonomous Municipality of San Juan shall be eligible for the tax treatment and other benefits established in this subparagraph.

(iii) Studio Operators. – A Studio Operator will be subject to a fixed income tax rate over its net income derived from the activities under the Grant ranging from six percent (6%) to ten percent (10%), to be determined by the Secretary of Development. The Secretary of Development shall consider for purposes of his/her determination, in respect to the fixed tax rate applicable to the business described in the preceding sentence, in terms of the nature of the business to be carried out, the amount of employment provided by such business, or any other benefit or basis that at the discretion of the Secretary of Development shall promote the best social and economic interests of Puerto Rico.

(B) Tax Exemption on Dividends. – The dividends or benefits distributed by a Grantee to its investors, stockholders, members, or partners from income derived from the exploitation of activities covered under a Grant, including a distribution of the proceeds derived from the sale of the tax credits granted under

this Act, and the distributions made in liquidation shall be totally exempt from taxation, including the alternative minimum tax and the alternate basic tax provided in the Code.

(2) Exemption from Municipal and Puerto Rico Taxes on Real or Personal Property.

The real or personal property devoted to activities covered by a Grant that is otherwise subject to taxation, shall be entitled to a ninety percent (90%) exemption from all municipal and Puerto Rico taxes on real or personal property. Real and/or personal property taxes shall be assessed, imposed, notified, and administered pursuant to the provisions of the Municipal Property Tax Act of 1991, or any subsequent statute in effect as of the date the tax is assessed and imposed.

(3) Exemption Regarding Municipal License Taxes, Excise Taxes and Other Municipal Taxes:

(A) No Grantee shall be subject to municipal license taxes, excise taxes, and other municipal income taxes imposed by a municipal ordinance, as of the effective date of the Grant.

(B) Every Grantee and its contractors or subcontractors shall enjoy one hundred percent (100%) exemption from any tax, assessment, license, excise tax, rate or tariff for the construction of works that shall be used in activities covered under a Grant within a municipality, imposed by any ordinance of any municipality, as of the effective date of the Grant. The contractors or subcontractors who work for a Grantee shall determine their volume of business for municipal license tax purposes, deducting the payments they are required to make to subcontractors under the primary contract with the Grantee. Subcontractors, who, in turn, use other subcontractors within the same project,

shall also deduct those payments in the determination of their volume of business. A contractor or subcontractor may deduct the payments described in the preceding paragraph from their respective volumes of business only if said contractor or subcontractor certifies, through a sworn statement, that he/she did not include in the executed contract for works or services to be rendered with regard to the Grantee, an item equal to the municipal license fee resulting from the volume of business deducted pursuant to this paragraph.

(4) Tax Exemption Regarding Articles for Use and Consumption.

(A) Goods and materials for use and consumption introduced or acquired directly or indirectly by a Grantee to be used exclusively in activities covered under a Grant are hereby exempted from the payment of excise taxes imposed under Subtitle B of the Code, and except in the case of Grantees engaged in Film Projects, from the payment of the sales and use taxes imposed by Subtitle BB of the Code or any municipal ordinance.

(B) The exemption granted by this paragraph (4) includes goods and materials acquired by a contractor or subcontractor to be used exclusively by a Grantee in construction works related to the activities covered under a Grant.

(5) Commencement of the Exemption. – The tax benefits granted under this Section 8.1 shall be effective as of the date set in the Grant.

**Section 8.2. - Tax Base.-**

The tax base of an investment made in a Grantee shall be determined pursuant to the provisions of the Code, except that said base shall be reduced dollar for dollar, but never below zero, by the amount of the tax credits that the Grantee is empowered to use or Transfer, regardless of the time when it is claimed or whether the tax credit is Transferred to a third party.

### Section 8.3. - **Special Tax Rate for Nonresident Talent.**-

(a) **Imposition of Tax.**— A special tax shall be imposed, collected and paid in lieu of any other taxes and regardless of any exemption provided in the Code, of twenty percent (20%) on the total amount received by any Nonresident Talent or by a legal entity contracting the Nonresident Talent to render services in Puerto Rico, in relation to a Film Project, which constitutes wages, fringe benefits, per diems, or fees. In the case that this twenty percent (20%) special tax is applied to a legal entity contracting the services of Nonresident Talent, the portion of the payment received by the legal entity that are subject to this special tax shall not be subject to this twenty percent (20%) special tax when paid by the legal entity to the Nonresident Talent.

(b) **Requirement to Deduct and Withhold.**— Every Person who has control, receipt, custody, disposition or payment of the amounts of compensation described in subsection (a) of this Section, shall deduct and withhold said twenty percent (20%) tax and shall pay the amount of said tax thus deducted and withheld at the Internal Revenue Collection Office of Puerto Rico, or deposit it in any of the banking institutions designated as depositaries of public funds that have been authorized by the Secretary of the Treasury to receive said tax. The tax shall be paid or deposited not later than the fifteenth (15th) day of the month following the date on which the payment subject to the twenty percent (20%) withholding imposed by this subsection was made. The amounts subject to the deduction and withholding imposed by this subsection shall not be subject to the provisions of the Code, Section 1147 or 1150, or any subsequent provision similar in nature contained in any other law.

(c) Failure to Withhold.— If the withholding agent, in violation of the provisions of subsection (b), fails to withhold the twenty percent (20%) imposed by subsection (b), the amount that should have been deducted and withheld (unless the receiver of the income pays the tax to the Secretary of the Treasury) shall be collected from the withholding agent, following the same procedure that would be used if it were a tax owed by the withholding agent. The Person who receives the payment shall be required to pay the tax not withheld through the filing of a return within the term provided by Section 1053 of the Code, or any subsequent provision similar in nature that substitutes it or is contained in any other law, and the payment of the tax pursuant to the provisions of Section 1056 of the Code, or any subsequent provision similar in nature that substitutes it or is contained in any other law. Notwithstanding the payment of the corresponding tax by the receiver recipient, the withholding agent shall be subject to the penalties provided in subsection (f) of this Section.

(d) Tax Liability.— Every Person who is required to deduct and withhold the twenty percent (20%) tax imposed by this section, shall be liable to the Secretary of the Treasury for the payment of said tax and shall not be liable to any other Person whatsoever for the amount of any payment thereof.

(e) Tax Return Form.— Every Person who is required to deduct and withhold the twenty percent (20%) tax imposed by this section shall file a tax return form with regard to the same not later than February 28 of the year following the year in which the payment was made. Said return shall be filed with the Secretary of the Treasury and shall contain such information and be prepared in such form as established by the Secretary of the Treasury through regulations. Every person who files the return required by this subsection shall not be required to file the statement required under subsection (j) of Section 1147 of the Code, or any subsequent provision similar in nature contained in any other law.

(f) Penalty.— For the provisions regarding penalties and additions to the tax, see Section 6060 of Subtitle F of the Code, or any subsequent provision similar in nature contained in any other law.

**Section 8.4. - Other Tax Benefits.-**

Any deeds, petitions or documents, judicial, public or private related to the registration, annotation, cancellation, release, restriction, constitution, modification, extension, rectification, limitation, creation or renewal of any real property or contractual right that has access to the Property Registry of Puerto Rico executed in connection with parcels of land located within the Film Development Zones shall be fully exempt from the payment of internal revenue, legal aid and notarial assistance stamps and Property Registry of Puerto Rico presentation and recordation vouchers including, but not limited to, internal revenue, legal assistance or any other stamps taxes required by law or regulation for the execution, issuance of any partial or complete certified copy, presentation, recordation or any other operation in the Property Registry of Puerto Rico. The aforementioned exemption shall be subject to the prior approval in each instance of the Secretary of Development. The approval of the Secretary of Development shall be evidenced by a certification issued by the Secretary of Development to that effect, copy of which (i) must be delivered to the Notary, Property Registrar of Puerto Rico, court of law or any other governmental entity before which the exemptions provided herein are being claimed, and (ii) shall accompany any deed or document filed in the Property Registry of Puerto Rico. The persons and entities described above are hereby authorized to rely on the certification issued by the Secretary of Development, which shall be presumed final and binding for all legal purposes.

The term “real property or contractual right that has access to the Property Registry of Puerto Rico” used in the foregoing paragraph, includes all real property rights or personal rights which currently have or may in the future have access to the Property Registry of Puerto Rico including, without limitation, (A) easements, whether legal, real or personal or equitable easements; (B) constitution of horizontal property, timeshare, vacation club, or condo-hotel property regimes; (C) surface or construction rights, and any other acknowledgement of construction or certification of completion of construction or improvement, the registration of which is requested in the Puerto Rico Registry of Property; (D) leases; (E) mortgages; (F) purchases and sales; (G) exchanges; (H) donations; (I) rights of first offer, refusal and repurchase and annuities (known in Spanish as “censos”); (J) private water rights; (K) administrative concessions; (L) options to purchase; and (M) covenants and use restrictions.

## **CHAPTER IX**

### **MISCELLANEOUS PROVISIONS**

#### **Section 9.1. - Denial, Revocation and Limitation of Benefits.-**

(a) A person who applies for a Grant and receives a written notice from the Secretary of Development with respect to the award or denial of the application for a Grant may request reconsideration by written notice within the term of fifteen (15) days as of the date of the notice of award or denial of the Grant.

(b) Upon a finding by the Secretary of Development, after consultation with the Secretary of the Treasury, that (1) the Grantee has failed to comply with (i) its obligations under Puerto Rico tax laws, the terms of the Grant or this Act or (ii) the regulations promulgated thereunder and hereunder; or (2) the benefits of this Act and/or the Grant have been obtained through misrepresentation, malfeasance or fraud, the Secretary of Development may impose fines against a

Grantee and/or modify or revoke the Grant in question. The sums to be paid in the cases in which a fine is imposed in lieu of the revocation or modification of the benefits granted shall be determined by the Secretary of Development through regulations. If a Grant is revoked pursuant to this Section, the amount of the tax credits granted therein may be subject to the recapture provisions of Section 7.3(d). Any Grantee or applicant for a Grant, adversely affected or injured by any action of the Secretary of Development imposing a fine, shall be entitled to request review of the action of the Secretary of Development within fifteen (15) days as of the date of notice of the imposition of the fine.

**Section 9.2. - Administrative Decisions; Finality.-**

(a) Any Grantee or applicant for a Grant or Person attempting to Transfer a Grant or Person to whom the Grant is to be Transferred, adversely affected or injured by any action of the Secretary of Development imposing a fine, awarding or denying an application for a Grant, awarding or denying a request for reconsideration pursuant to Section 9.1(a) hereof, revoking or modifying a Grant, or denying a Transfer of a Grant, shall be entitled to request review of the action of the Secretary of Development before the Court of Appeals within thirty (30) days as of the date of notice of the determination of the Secretary of Development.

**Section 9.3. - Severability and Rules for Interpretation in Case of Other Conflicting Acts.-**

If any portion of this Act is declared null or unconstitutional by a court with competence and jurisdiction, the ruling to that effect shall not affect, impair or invalidate the remainder of this Act, its effects being limited to the specific portion of this Act so ruled unconstitutional. In interpreting and implementing this Act, the terms contained herein shall be given the meaning ordinarily given to those terms in the entertainment industry and shall be interpreted in accordance with generally accepted entertainment industry practices.

#### Section 9.4. - **Relation to Other Acts.**-

(a) In case of a discrepancy between any terms or provisions of this Act and any other statute, law, rule, regulation, ruling, circular letter, administrative determination or the like, the terms and provisions of this Act shall prevail.

(b) A Film Project or Infrastructure Project may be covered under the tax benefits provided under this Act, regardless of whether tax credits have been granted or not.

(c) A Grantee may combine exemptions, incentives, benefits and the provisions of this Act with those of any other statute, law, rule, regulation or program including, but not limited to, the benefits provided by Subchapter K of the Code or other laws, statutes, rules, regulations or programs passed, enacted, created or promulgated after the approval of this Act. Nevertheless, if Grantee chooses to avail itself of the provisions of this Act with respect to the issuance of tax credits, it shall only obtain the tax credits granted in this Act.

(d) A Grantee engaged in a Film Project shall be entitled to apply for the appropriate permits before the Permit Management Office created under Act No. 161 of December 1, 2009, as amended, known as the “Puerto Rico Permit Process Reform Act.” In the case of a ministerial determination, as defined in the Puerto Rico Permit Process Reform Act, the Permit Management Office shall act in connection with such application within a term not to exceed five (5) days. In the case of a discretionary determination, as defined in the Puerto Rico Permit Process Reform Act, the Permit Management Office shall act in connection with said application within a term not to exceed twenty (20) days, except in those cases in which a Environmental Impact Statement is required the Permit Management Office shall act in connection thereto within a term not to exceed thirty (30) days

following the date of notice of the application of the environmental document submitted. The Planning Board and/or the Permit Management Office is hereby authorized to issue any administrative order or resolution to provide for any additional administrative issue related or applicable to the cases presented by said Grantee.”

**Section 9.5. - Regulations under this Act.-**

The Secretary of Development shall establish, in consultation with the Secretary of the Treasury, through regulations or circular letter the guidelines for the interpretation and implementation of this Act. Said regulations shall be subject to the provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act of Puerto Rico.” Until the regulations authorized by this Act have been issued, the provisions of this Act shall be self-executing and shall not depend on the approval of the regulations. The provisions of Section 9.1 with respect to Grant noncompliance, revocation and modification fines shall not be self-executing until such regulations have been approved.

**Section 9.6. - Repeals and Amendments.-**

(a) Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry” is hereby repealed. No new applications for licenses, tax credits or benefits under the Act for the Development of the Film Industry shall be accepted after the effective date of this Act. However, the licenses, tax credits and benefits granted under such Act for the Development of the Film Industry may be amended and/or reviewed in accordance with the provisions thereunder. Application for licenses, tax credits and benefits filed under the Act for the Development of the Film Industry that have not been granted before the effective date of this Act may, at the option of the applicant, be considered under the Act for the Development of the Film Industry or this Act, subject to the

conditions established by the Secretary of Development through regulations, circular letter or administrative determination. Any surplus in the fund created under the Act for the Development of the Film Industry shall be transferred to the Special Fund under the Puerto Rico Film Industry Economic Incentives Act established in Section 3.3 hereunder.

(b) Section 1.02 of Act No. 121 of August 17, 2001, as amended, known as the “Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act”, is hereby amended to read as follows:

“The Government of the Commonwealth of Puerto Rico...

Likewise, the people of Puerto Rico shall also be able to rely on a dynamic entity for achieving the goals and objectives of Act No. 362 of December 24, 1999, known as the ‘Act for the Development of the Film Industry in Puerto Rico,’ *or any subsequent law.*”

(c) Section 1.03 of Act No. 121 of August 17, 2001, as amended, known as the “Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act,” is amended to read as follows:

“The following words and terms shall have the meaning set forth below, except when from the text of this Part it is clear that it has another meaning:...

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) Film Development Zones – the geographic areas established pursuant to the Puerto Rico Film Industry Economic Incentives Act.

(i) Puerto Rico Film Industry Economic Incentives Act – the “Puerto Rico Film Industry Economic Act”.

(d) Subsections (r) and (s) are hereby added to Section 2.02 of Act No. 121 of August 17, 2001, as amended, known as the “Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act,” to read as follows:

“Section 2.02. — General Duties of the Corporation. -

The Corporation shall have the following duties and responsibilities:

(a) ...

(b) ...

(c) ...

(q) ...

...

(r) To ensure that the public policy of the Puerto Rico Film Industry Economic Incentives Act is followed by fostering and undertaking such acts as shall be necessary for the promotion and development of the Film Development Zones.

(s) To exercise the power and authority pursuant to the provisions of the Puerto Rico Film Industry Economic Incentives Act and this Act delegated to it and or to the Executive Director by the Secretary of Economic Development and Commerce of the Government of Puerto Rico.”

**Section 9.7. - Effectiveness.-**

This Act shall take effect immediately after its approval. Applications for benefits under this Act shall be received by the Secretary of Development until June 30, 2018. Taxes imposed and exemptions provided under this Act shall remain in effect during the term in which Grants issued under this Act remain in effect.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 27-2011 (S. B. 1833) (Conference)** of the **5<sup>th</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to enact the “Puerto Rico Film Industry Economic Incentives Act” for the purpose of providing an adequate framework for the continued development of our film industry and other related activities; providing tax incentives to attract foreign capital and foster the economic development and social wellbeing of Puerto Rico; creating infrastructure for the development of the film industry to its full potential; amending Sections 1.03 and 2.02 of Act No. 121 of August 17, 2001, as amended, known as the “Puerto Rico Motion Picture Arts, Sciences, and Industry Development Corporation Act”; repealing Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry”; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on the 17<sup>th</sup> day of August, 2012.

María del Mar Ortiz Rivera, Esq.  
Director