

(H. B. 3962)

**(No. 110)**

(Approved July 15, 2008)

## **AN ACT**

To amend subsection (i) of Section 5, amend Section 8, amend subsection (b) of Section 9, and amend Sections 12 and 15 of Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry,” in order to clarify the purposes for which moneys collected on account of filming organization license fees may be used, to expedite tax credit certification, and to maximize the economic impact of such incentive; to provide for its effectiveness; and for other purposes.

### **STATEMENT OF MOTIVES**

The purpose of Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry,” is to encourage motion picture production in the Island by granting various tax incentives. Such Act has been instrumental in the promotion of film projects, in the investment by foreign organizations in Puerto Rico, and in the creation of jobs in such industry. Furthermore, both the aforementioned Act and the Puerto Rico Motion Picture Arts, Sciences and Industry Development Corporation Fund, established by virtue of Act No. 121 of August 17, 2001, and preserved by Act No. 23 of March 8, 2007, have been the main mechanisms for fostering and expanding the film industry in Puerto Rico.

Puerto Rico has competition from various countries as well as states of the United States, which successfully employ tax credits as an incentive to attract motion picture productions. Canada, Australia, New Zealand, and

Germany, as well as several states of the United States, have in place an incentive system based on tax credits similar to ours.

The forty-percent (40%) incentive offered in Puerto Rico on sums paid to the residents of Puerto Rico in tax credits is one of the most attractive incentives worldwide. However, the experience gained over more than eight (8) years as of the date of implementation of Act No. 362 shows that it is necessary to expedite the procedure whereby tax credits are granted and certified, so as to keep and improve the competitiveness of the program.

While the tax credit derives from sums paid to the residents of Puerto Rico, the current state of the Act requires that a certified public accountant contracted by the Executive Director of the Puerto Rico Motion Picture Arts, Sciences and Industry Development Corporation ascertain that all of the project budget was expended or that the project is edited in its final form, and that distribution arrangements have been made, as a condition to certify the tax credit. This causes unnecessary delays in tax credit certification, for it takes several months after the project has spent its budget in Puerto Rico, which in turn raises financing costs for projects, while for most productions, tax credits are an indispensable element for the repayment of project financing. The value of tax credits decreases for every day their certification is delayed. After all, the purpose sought is to incentivize investment in Puerto Rico, and there is no reason for having to wait until the project has been fully completed. The important thing here is to audit investments in Puerto Rico for which tax credits are granted, in order to ascertain that such investments are made pursuant to such Act. That is the spirit of the amendments proposed herein for Sections 9 and 15 of Act No. 362 of 1999.

Experience has shown that a partial or total modification of the bureaucratic requirements mentioned above is not contrary to government

interests. Inasmuch as the tax credit is derived from the sums paid to the residents of Puerto Rico, the government is protecting its interests when the certified public accountant contracted by the Motion Picture Corporation ascertains that, in fact, the residents of Puerto Rico received payment, which is a condition for granting tax credits, according to the provisions of the Act. Thus, the amendments proposed enable the government to further the development of this industry, to foster the investment of foreign capital, and to create jobs, by eliminating requirements that cause unnecessary delays in the tax credit certification process.

This measure modifies Section 8 to reset the fees payable to one percent (1%) of the budget item sums to be paid to the residents of Puerto Rico, and to clarify the purposes for which the moneys collected on account of film entity license fees may be used—in favor of the cinematographic activity in Puerto Rico.

Furthermore, Section 12 of the said Act is amended to provide that the Commissioner may modify or eliminate the main photography requirement with the consent of the Secretary of the Department of Economic Development and Commerce in those cases in which the Commissioner evaluates the activities that a film entity intends to carry out and considers that such activities would substantially contribute to the development of the film industry in Puerto Rico due to its high economic impact or the possibility of internationally exposing our technical or acting talent. This measure provides greater flexibility as to the granting of tax credits without rendering such process liberal, while setting—in all instances—a minimum for substantial investments in Puerto Rico or in services paid out to the residents of Puerto Rico, which lends assistance to the film industry and to our general economy as well.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.—Subsection (i) of Section 5 of Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry,” is hereby amended to read as follows:

“Section 5.—Definitions.—

(a) ...

...

(i) Budget.—Shall mean the itemization of the sums to be paid to the residents of Puerto Rico necessary for developing a film project or an infrastructure project that is submitted for the consideration of the Commissioner together with the application for a license.

...”

Section 2.—Section 8 of Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry,” is hereby amended to read as follows:

“Section 8.—Fees.—Film Entities that obtain a license shall pay a fee equal to one percent (1%) of their Budget to the Commissioner through the purchase of a voucher at an Internal Revenue Collection Center of the Department of the Treasury of Puerto Rico. The Secretary of the Treasury shall create a special fund, to be named the ‘Special Film Entity Oversight Fund’ and deposit therein the moneys collected for fees paid. The Commissioner shall use said funds to pay any expenses incurred in implementing this Act and overseeing film entities.”

Section 3.—Subsection (b) of Section 9 of Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry,” is hereby amended to read as follows:

“Section 9.—Examinations and Reports.—

(a) ...

(b) The Commissioner shall contract an accountant to determine the moneys in cash contributed to the film entity in exchange for stock or shares and the items of the Budget that have been paid out to individuals, entities, and/or corporations residing in Puerto Rico, as defined in this Act, by the film project or by the infrastructure project, and to compute the corresponding tax credit. The Commissioner shall establish through regulations the period of time allotted for the accountant to file the reports required after having compiled all the necessary information. Both the needs of the motion picture industry and the principle of government efficiency shall be tended to upon establishing said time allotment.

(c) ...”

Section 4.—A sentence is hereby added to the last paragraph of Section 12 of Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry,” to read as follows:

“Section 12.—Main Photography Requirements.—

In the case of Film Projects that consist of:

(a) Images generated electronically, it shall be necessary that no less than fifty percent (50%) of such process is carried out in Puerto Rico;

(b) Hand drawn images, it shall be necessary that no less than fifty percent (50%) of the drawing is done in Puerto Rico;

(c) Catalogues for the sale of articles through photographic exhibition of professional models for distribution, it shall be necessary that not less than fifty percent (50%) of the main photography is done in Puerto Rico; and

(d) Original sound track recordings, it shall be necessary for not less than fifty percent (50%) of the sound recording to be carried out in Puerto Rico.

In all other cases, it shall be necessary for not less than fifty percent (50%) of the main photography to be done in Puerto Rico. However, in those cases in which the Commissioner evaluates the activities that a film entity intends to carry out and considers that such activities shall substantially contribute to the development of the motion picture industry in Puerto Rico, the Commissioner may, with the previous consent of the Secretary of Economic Development and Commerce, modify, but not eliminate, the percentage of main photography required for any production with a budget equal to or greater than one million (1,000,000) dollars. The Commissioner, together with the Secretary of the Department of Economic Development and Commerce, may only eliminate the percentage of main photography required herein for any productions in which the sum of the payment made out to technicians, screenwriters or actors who reside in Puerto Rico is equal to or greater than seven hundred thousand (700,000) dollars.”

Section 5.—Section 15 of Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry,” is hereby amended to read as follows:

“Section 15.—Availability of Tax Credit; Film Projects.—

(a) Fifty percent (50%) of the tax credit provided in Section 14 of this Act shall be available to the investor in the taxable year in which the accountant certifies to the Commissioner and to the Secretary of the Treasury that forty percent (40%) or more of the Budget to be paid to the residents of Puerto Rico has been disbursed, and the provisions of this Act have been met. The Secretary of the Treasury, however, may advance the

date of availability of said portion of the tax credit, if the film entity posts a bond or bank letter of credit or surety in which the Secretary of the Treasury is designated as beneficiary. In this case, said portion of the tax credit shall be available on the date said surety is posted with the Secretary of the Treasury.

(b) The availability of the remaining fifty percent (50%) of the tax credit, or of the full tax credit if no advance was given, shall be available to investors within the taxable year in which the Accountant certifies to the Commissioner and to the Secretary of the Treasury, the total number of Budget items paid out to residents of Puerto Rico and the cash capital contributed to the film entity in exchange for primary-issue stock or shares. The Secretary of the Treasury shall confirm by letter to the film entity or its representative, the amount of tax credits available for the film entity investors within thirty (30) days as of the date of receipt of the accountant's certification. This term shall be considered to be interrupted when the Secretary of the Treasury requests additional information. However, upon interruption of term and upon furnishing the information thus requested, the Secretary of the Treasury shall have a maximum term of only sixty (60) days as of the date of receipt of accountant's certification to issue the tax credit certification, provided, that the Department has all documents to be evaluated available.

(c) The amount of the credit available under subsection (b) of this Section shall be the difference between the tax credit to which the investor is entitled under Section 14 and any advance made by the Secretary of the Treasury.

(d) As for episode serials, the Secretary of the Treasury, following the recommendation of the Commissioner and the Secretary of Economic

Development and Commerce, may authorize granting tax credits in stages, when the nature and importance of the project so warrants and the film entity complies with all requirements set forth in this Act.

(e) The certificate issued by an Accountant on or before the deadline, including time extensions, to file the income tax return of the Film Entity investors, shall be deemed as issued within the taxable year for which the income tax return is being filed. The same treatment shall be given when advances are made under subsection (a) of this Section, upon posting of surety with the Secretary of the Treasury.”

Section 6.—This Act shall take effect and be applicable to all new film projects that may arise as of its date of approval.

## **CERTIFICATION**

I hereby certify to the Secretary of State that the following **Act No. 110 (H.B. 3962)** of the **7<sup>th</sup> Session of the 15<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to amend subsection (i) of Section 5, amend Section 8, amend subsection (b) of Section 9, and amend Sections 12 and 15 of Act No. 362 of December 24, 1999, known as the “Act for the Development of the Film Industry,” in order to clarify the purposes for which moneys collected on account of filming organization license fees may be used, to expedite tax credit certification, and to maximize the economic impact of such incentive; to provide for its effectiveness; and for other purposes.

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

In San Juan, Puerto Rico, today 30<sup>th</sup> of October of 2009.

Solange I. De Lahongrais, Esq.  
Director