

Amendments to the Puerto Rico Film Industry Economic Incentives Act

Act No. 304-2012

December 21, 2012

(B. of the S. 2742)

To amend Articles 2.2., 3.3, 7.3 and 8.3 of Act 27-2011, known as the Puerto Rico Film Industry Economic Incentives Act, to incorporate technical amendments, clarify definitions, provisions and terms and for other purposes.

STATEMENT OF MOTIVES

[OMITTED]

BE IT DECREED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Article 1.-Article 2.2 of Act 27-2011, as amended, is hereby amended to read as follows:

“Article 2.2-**Definitions.-**

(a) ...

...

(l) “Puerto Rico Production Expenses” – payments made to Puerto Rico Residents, and/or to Qualified Nonresidents for services physically performed 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 will only be included when no less than 50% of the Principal Photography takes place in Puerto Rico. Expenditures related to the preproduction, production and postproduction will not be required to comply with the aforementioned fifty percent (50%) of Principal Photography requirement to be considered Puerto Rico Production Expenses. In order to constitute Puerto Rico Production Expenses, the payments received by the Puerto Rico Residents, and Qualified Nonresidents shall be subject to income taxation in Puerto Rico, as provided in the Act, whether directly or through a professional services corporation or other legal entity. Puerto Rico Production Expenses include payments relating to the development, preproduction, production and postproduction of a Film Project, including, but not limited to all of 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 Qualified Nonresident. Notwithstanding the foregoing, the Secretary of Development has discretion to include in the definition of Puerto Rico Production Expenses per diems of a person who is not a Puerto Rico Resident or a Qualified Nonresident;

(2) ...

- (x) “Qualified Nonresident”- Producer, director, writer, onscreen talent (except for a background actor, also known as an extra) including stuntmen, known in the English language as “Above the Line”, and any person that carries out technical or creative functions behind the cameras known in the English language as “Below the Line”, and any other similar person that according to the generally accepted practice in the entertainment industry is considered as “Above the Line” or “Below the Line” as determined by the Secretary of Development, that is not considered a Resident of Puerto Rico.“

(y) ...

Article 2.-A second paragraph is added to Article 3.3 of Act 27-2011, as amended, to read as follows:

“Article 3.3-**Fees.-**

...

In addition, only with respect to Film Projects, any Grantee shall pay to the Secretary of Development, through the purchase of an Internal Revenue Voucher to the Department of the Treasury, fees equivalent to one per cent (1%) of the Puerto Rico Production Costs, related to the payments to any person of technical or creative character behind the cameras, known in the English language as “Below the Line” that is a Qualified Nonresident and that qualify for a tax credit under Article 7.3. as certified by the Auditor. The Secretary of the Treasury will create a special fund known as “Special Fund for the Training of the Local Film Industry under the Film Industry Economic Incentives Act”, and shall deposit in it the funds generated from the fees paid pursuant to this paragraph. The Secretary of Development shall use these funds only to organize programs that promote training of the rising local film industry, guaranteeing in this way that the local work force acquire the required skills and abilities known in all of the worldwide film industry. For these purposes, the Secretary of Development will seek the best worldwide resources for these programs. The Secretary of Development will require to the Grantees the payment of these fees after the Auditor finishes with the determination of the Puerto Rico Production Expenses and prior to certifying the amount of the Puerto Rico Production Expenses and the computation of the tax credit, pursuant to Article 7.3.”

Article 3.- Article 7.3 of Act 27-2011, as amended, is amended to read as follows:

“Article 7.3.- Availability of Tax Credits to Grantees.-

(a) ...

(b) Amount of the Tax Credit.—

(1) ...

(A) Forty percent (40%) of those amounts certified by the Auditor to have been disbursed in connection with all Puerto Rico Production Expenses without including payments made to Qualified Nonresidents; and

(B) twenty percent (20%) of those amounts certified by the Auditor to have been disbursed in connection with Puerto Rico Production Expenses consisting of payments to a Qualified Nonresident. Credits generated by Puerto Rico Production Expenses consisting of payments to a Qualified Nonresident shall not be subject to the limitations imposed in Article 7.3(b)(3). ...

(2) ...

Article 4- Article 8.3 of Act 27-2011, as amended, is hereby amended to read as follows:

“Article 8.3.- Article 8.3. - Special Tax Rate for Qualified Nonresidents.-

(a) Imposition of tax.- There shall be levied, collected and paid in lieu of any other taxes, and regardless of any exemption provided in the Code, a special twenty percent (20%) tax on the total amount received by any Qualified Nonresident or by a legal entity contracting the Qualified Nonresident for services rendered in Puerto Rico, in relation to a Film Project which represents 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 Qualified Nonresident, the portion of the payment received by the entity that is subject to this special tax shall not be subject to this twenty percent 20% special tax when paid by the legal entity to the Qualified Nonresident.

(b) ...

“Article 5.-Effectiveness-

The provisions contained in this Act will become effective immediately after their approval.