

(S. B. 1551)

(No. 92-2016)

(Approved July 29, 2016)

AN ACT

To amend Section 7.3 of Act No. 27-2011, as amended, known as the “Puerto Rico Film Industry Economic Incentives Act,” in order to broaden the use of the tax credits granted thereunder.

STATEMENT OF MOTIVES

In light of the fiscal challenges that Puerto Rico is facing, implementing and supporting economic development projects with proven results is critical. One of such programs is provided for in Act No. 362-1999, which promotes the investment in film production and infrastructure projects. Said program generated nearly \$481 million in economic activity within a ten (10)-year period. Act No. 27-2011, better known as the “Puerto Rico Film Industry Economic Incentives Act,” superseded said Act No. 362-1999, improved the incentives program available for the film industry, and placed this program on a par with the best programs available in the United States and worldwide.

The international exposure that the incentives provided for in Act No. 27-2011 received, coupled with the best talent in the film industry have contributed to Puerto Rico successfully becoming a globally competitive destination for the production of feature films, television series, music videos, and advertising campaigns. Said Act has served to attract great productions to the Island from major film studios, namely, Disney, NBC Universal, Sony Pictures, and Amazon, to name a few. Moreover, most of these studios come back to Puerto Rico to film movies because of the incentives and infrastructure that the Island has to offer.

As a result of the enactment of Act No. 27-2011, investments in local film production increased to over \$100 million in 2015 and created more than 10,000 jobs. Moreover, qualified local talent, including production and technical crew, set and costume designers, sound engineers, editors, among others, are in high demand. A variety of local companies such as hotels and restaurants as well as catering services, car rentals, laundries, and stores have reaped the benefits of having productions made in Puerto Rico. In addition to the multiplier effect that each of the productions made in the Island has in our economy, the Island also benefits from the exposure it receives during the international screening of these productions which, in turn, promotes Puerto Rico's tourism.

Furthermore, upon evaluation of the social benefits and costs of the film industry in Puerto Rico, the study entitled *Evaluación de beneficios y costos de créditos e incentivos contributivos a empresas*, coordinated by the economist Ramón J. Cao-García and conducted by the students of the University of Puerto Rico, concluded that the current incentives structure under Act No. 27-2011 is socially convenient for Puerto Rico. Act No. 27-2011 has been a success and it is expected to continue attracting film productions to Puerto Rico which shall contribute to the ongoing development of the film industry of the Island and the creation of additional jobs.

In order to maintain a constant level of film productions in Puerto Rico, the tax credit granted to film studios must be profitable, that is, the demand for tax credits must be high. Unfortunately, Puerto Rico's current fiscal crisis coupled with limitations on the use of tax credits and a high supply of tax credits have caused a significant decrease in the actual demand for the tax credits available in the Island, including those provided under Act No. 27-2011. From January to June 2015, only \$10.9 million out of the over \$30 million of tax credits issued for the film industry were granted. This excess supply of tax credits for the film industry has caused a

decrease in the prices, which affects the capacity of film studios to obtain the total credit amount. In other words, the incentive offered in Puerto Rico has lost its value and efficacy compared to other film destinations, which discourages film studios from filming in Puerto Rico. Given that this film industry tax credit program has surpassed most of the economic development programs in Puerto Rico, it deserves our undivided attention to guarantee that the tax incentives that we offer continue to be attractive in the market.

For the purpose of promoting the demand for the tax credits provided under Act No. 27-2011, this Legislative Assembly introduces the following amendments to allow such credits to be applied to income taxes provided for in special laws. By increasing the number of taxes to which these credits may be applied, the demand therefor must increase substantially.

These amendments shall promote a more competitive and attractive market for the production of film and television projects in Puerto Rico without having an adverse impact on the finances of the Commonwealth of Puerto Rico, since the number of tax credits provided in Act No. 27-2011 is not increased, but rather the taxpayer basis to which these credits available shall be broadened.

This Legislative Assembly deems it convenient to review the use of current incentives in order to guarantee the continuous development and strengthening of our film industry. The amendments herein shall contribute to increase the demand for the tax credits available to the film industry, and stabilize the prices, which, in turn, shall allow the film studio to obtain the full credit amount in a timely manner. This measure, although neutral for the revenues of the Commonwealth of Puerto Rico, shall assist in maintaining and promoting the growth during the next few years of one of the most effective economic incentive programs of Puerto Rico.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 7.3 of Act No. 27-2011, as amended, is hereby amended to read as follows:

“Section 7.3.- Availability of Tax Credits for Grantees

(a) Granting of the Tax Credit. – In accordance with this chapter, 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, any other income tax imposed under a special law, or any combination thereof, 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) ...

(c) Use of the Tax Credit. – The tax credit, as certified by the Auditor, may be taken against the taxes imposed under Subtitle A of the Code or the contributions imposed by Section 8.1(a)(1)(A) of this Act, any other income tax imposed under a special law, or any combination thereof, 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 or period during which 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 over by the taxpayer until exhausted, subject to the limitations provided herein.

(d) ...

(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 the same limitation on use 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, or any other income tax imposed under a special law shall be nonrefundable. Any unused tax credits may be carried forward by the Transferee until exhausted. The tax credits for infrastructure projects issued pursuant to Section 7.3(b)(2) may be carried over to a subsequent taxable year, if such credits are claimed against income taxes, or to subsequent months 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 exempt 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 this Section is hereby exempt 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 the tax credit is eligible. The transferor shall provide the Secretary of the Treasury with such information as the Secretary of the Treasury may require for the proper allocation of the credit.

(f) ...

...”

Section 2.- Effectiveness.

This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 92-2016 (S. B. 1551)** of the **7th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT to amend Section 7.3 of Act No. 27-2011, as amended, known as the “Puerto Rico Film Industry Economic Incentives Act,” in order to broaden the use of the tax credits granted thereunder.

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

In San Juan, Puerto Rico, on this 1st day of November, 2017.

Orlando Pagán-Ramírez
Acting Director