

Virgin Islands
Economic Development Commission

Sustainable Tourism Through Arts-Based Revenue Stream Production

TITLE TWENTY-NINE Public Planning and Development
Chapter 12. Economic Development and Incentives
*** Current through Act 7751 of the 2015 Regular and Special Session ***

Chapter 12. Economic Development and Incentives
Subchapter III. Sustainable Tourism Through Arts-Based Revenue Stream Production
for the Music Industry

*As amended by Act 7751 passed by the Legislature of the Virgin Islands on July 30, 2015
and approved by the Governor with Line Item Veto on August 18, 2015*

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Subchapter IV. Sustainable Tourism Through Arts-Based Revenue Stream Production
for the Film Industry

*As amended by Act 7751 passed by the Legislature of the Virgin Islands on July 30, 2015 and approved
by the Governor with Line Item Veto on August 18, 2015; Act 7728, passed by the Legislature of the
Virgin Islands on March 11, 2015 and approved by the Governor on March 27, 2015.*

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Subchapter III. Sustainable Tourism Through Arts-Based Revenue Stream Production for the Music Industry

§ 747. Definitions

As used in this subchapter, the following terms have the meaning prescribed in this section:

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

(2) "Certificate" means the Certificate of Tax Incentive Benefits issued under this subchapter to a Virgin Islands company engaged in filmmaking or the recording of audio in a local music studio.

(3) "Commissioner" means the Commissioner of the Department of Tourism or the Commissioner's designee.

(4) "Director" means the Director of the Office of Film and Music Promotion established in section 747b.

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

(6) "Local music studio" means a music recording facility located in the Virgin Islands that has a business license for the purpose of operating a music studio, and has been in operation for a minimum of two years before applying for a certificate for tax benefits or governmental promotion or subsidies to the studio's clients under this subchapter.

(7) "Local musician" means a musician or music engineer who is a bona fide resident in the Virgin Islands pursuant to section 26 U.S.C. § 932(c) for a minimum of one before applying for a certificate for tax benefits or governmental promotion or subsidies to the corporation that hires the musician under this subchapter.

(8) "Office" means the Office of Film and Music Promotion established in section 747a.

(9) "Virgin Islands" means the Virgin Islands, as defined in section 2 of the Revised Organic Act of the Virgin Islands.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, pp. 11, 12.

§ 747a. [Repealed]

§ 747b. Duties of office

(a) The Office shall:

(1) Undertake a vigorous program designed to advertise and promote the Virgin Islands as an ideal location for major and minor film productions and music/audio recording projects, including the production and distribution of pamphlets and brochures; the placing of appropriate advertising in various cinematography, music industry and other national and international publications; and the attendance at various music and film industry conventions;

(2) Enlist the cooperation of other governmental departments, agencies and instrumentalities in arranging and scheduling film and music recording productions in the Virgin Islands, establishing procedures to facilitate such productions and establishing within the Office an information dissemination service to familiarize prospective film or music companies with local procedures and requirements;

(3) Undertake appropriate promotion measures at the local level designed to foster an interest in all aspects of cinematography, music recording, live music performances and related fields, and providing information on the various employment opportunities in these fields available to Virgin Islands residents;

(4) Submit periodic reports to the Governor and the Legislature regarding the success or shortcomings of the film and music promotion program, and recommend appropriate legislation designed to advance the goals of the program, including modifications to various tax exemptions, subsidies or other incentives;

(5) Establish contact with and enlist the cooperation of private industries or businesses whose merchandise, equipment, facilities or services might be utilized by film-makers and recording artists/musicians/labels in the various steps of the film production process,

(6) Establish contact with and enlist the cooperation of local film production companies, music studios and local musicians, whose facilities or services might be utilized by music production entities that seek to conduct business in the Virgin Islands;

(7) Establish contact with and enlist the cooperation of local music venues and sound reinforcement companies, whose facilities or services might be utilized by artists/musicians/labels in live performances;

(8) Establish a program and fund for scholarship grants or loans or similar program that:

(A) is designed to promote the formal education of and provide assistance to Virgin Islands residents desiring to pursue careers in cinematography, audio recording and related fields; and

(B) may be funded in whole or in part from fees collected under the music and film recording tax benefit program;

(9) Establish liaisons with other governmental film and music promotion agencies in the United States, as well as in foreign countries, in order to encourage the free flow of information and ideas regarding the promotion of the filmmaking and music recording industries;

(10) Encourage music artists, or music recording labels to film, in whole or in part, music videos in the Virgin Islands;

(11) Encourage music artists and music labels to conduct film or audio recording projects in the Virgin Islands;

(12) Promote and publicize the decisions by prominent companies, music artists or music labels to conduct audio recording projects in the Virgin Islands; and

(13) Perform such other functions as it considers appropriate to promote the film and music recording industries in the Virgin Islands.

(b) The Office shall use its best efforts to ensure that all film production activities and music recording projects solicited or handled by the Office result in a production that reflects and portrays the Virgin Islands and its people in a positive light.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, pp. 12-14.

§ 747c. Duties of the Director

(a) The Director shall with the assistance and through the Virgin Islands Economic Development Authority ("EDA"):

(1) Review all applications for tax incentive benefits;

(2) Recommend to the EDA such regulations as may be necessary to implement the provisions of this subchapter;

(3) Prepare and submit annual reports to the Governor and the Legislature containing data regarding all tax incentive benefits;

(4) Promote the tax incentive program; and

(5) Perform such other acts or functions within its area of responsibility as the Commissioner of Tourism may direct, the Board of the EDA may request, and as the Director considers necessary in furtherance of the purposes of this subchapter.

(b) The Director shall make all reasonable efforts to encourage entities seeking tax benefit certificates to conduct filmmaking or music recording in both the St. Croix District and the St. Thomas-St. John District. The Director shall seek to achieve parity in the number of certificates granted for film or music production in the St. Thomas-St. John District and in the St. Croix District.

(c) The Economic Development Authority shall:

(1) Design and implement an application process for tax incentive benefits;

(2) Review all applications recommended by the Director for tax incentive benefits, issue Certificates, and transmit Certificates to the Governor for final approval;

(3) Determine compliance of the beneficiary with this subchapter and the regulations issued under this subchapter.

(4) Modify, suspend or revoke a certificate of tax incentive benefits after holding a hearing in which the beneficiary has an opportunity to show cause why its certificate of tax incentive benefits should not be modified, suspended or revoked;

(5) Recommend to the Commissioner such regulations as may be necessary to implement the provisions of this subchapter;

(6) Prepare and submit annual reports to the Governor and the Legislature containing data regarding all tax incentive benefits.

(7) In addition to the application fee and the annual compliance fees, assess against an applicant or beneficiary any extraordinary costs and expenses to process the application or monitor the beneficiary's performance of the conditions in the certificate, including costs of the services of outside consultants necessitated by the application or compliance investigation;

(8) Notify the Office of the Lieutenant Governor, V.I. Bureau of Internal Revenue and other government entities as necessary, of any corporation, joint venture, limited liability company, partnership or any other entity that has been approved for tax incentive benefits within sixty days of such approval, as well as prepare and submit an annual listing of all entities that are approved for tax incentive benefits whether they are operational or not;

(9) Conduct, as necessary, investigations with respect to all applications and beneficiaries for/of tax incentive benefits;

(10) Promote the tax incentive program; prepare an annual budget for consideration and approval by the Commissioner;

(11) Perform such other acts or functions within its area of responsibility as the Board of the EDA may direct and as the EDA considers necessary in furtherance of the purposes of this chapter.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, pp. 14-16.

§ 747d. Qualifications for benefits

(a) The Director may recommend to the EDA a grant of benefits only to applicants that meet the requirements established in this section.

(b) The Director and EDA may not require an applicant to meet qualifications or requirements in excess of the conditions listed in this subchapter for the granting of an initial certificate.

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

(1) Be a corporation organized and licensed under the laws of the Virgin Islands with a Virgin Islands source income or income effectively connected with its Virgin Islands trade or business. A corporation that is organized under the laws of the Virgin Islands or one of the states, territories or commonwealths, whose principal office is located in the Virgin Islands, is presumed to be continually domiciled in the Virgin Islands for purposes of this section, unless it is established that such domicile has been superseded by a new domicile.

(2) Conduct audio recording or mixing in the Virgin Islands at a licensed, local music studio or conduct a film project on location in the Virgin Islands.

(A) For audio/music projects, at least 50% of the audio data content of the audio recordings for any commercial release to which the tax benefit certificate will apply must be created or recorded at a licensed Virgin Islands local music studio in order to receive the certificate,

(3) Agree in writing to make all best efforts to employ local Virgin Islands musicians, recording engineers, or other personnel during the audio recording process, and to notify the Virgin Islands Department of Labor of the availability of employment, the number of employees required, the occupational classification of such workers, and the applicable wage rate.

(4) Comply with all territorial and federal laws.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, pp. 16, 17.

§ 747e. Tax benefits

(a) The tax liabilities for income meeting the requirements of section 747d(c)(2)(A) may be reduced or rebated pursuant to the Internal Revenue Code of 1986, as amended and as applicable to the Virgin Islands 26 U.S.C. section 934(b)(l)

(b) The beneficiaries of the tax benefits under section 747d(c)(2)(B) have the burden of demonstrating to the Internal Revenue Service and the Virgin Islands arising from works recorded in the Virgin Islands.

(c) Each applicant granted a Certificate, under this subchapter is exempt from payment of the following taxes to the extent that same is utilized in the business and activity for which a certificate has been granted:

(1) 90% Gross receipt taxes

(2) 90% Corporate income taxes

(3) 90% Personal income taxes as specified in subsection (d) of this section.

(d) Each applicant granted a Certificate under this subchapter shall have its income tax liability for income derived from the business for which the Certificate is granted, and income from investment

described in this section reduced on a current basis, as provided in this section. A tax-exempt music recording corporation receiving a certificate is entitled to:

(1) For C-class corporations: reduction of the amount of each payment of estimated income tax by 90% for a period of ten years, at which time the beneficiary shall apply for renewal, if the applicant desires to continue receiving benefits after the initial period.

(2) For all other classification of corporations: the reduction of the amount of each payment of estimated income tax by 80% for a period of ten years, at which time the beneficiary must apply for renewal, if the applicant desires to continue receiving benefits.

(3) An additional 10% of income tax reduction is granted to entities receiving the tax incentive benefit certificate for music recording that accomplishes one of the following:

(A) Employment of a minimum of three local musicians during the recording process, with a minimum of ten billable hours or \$ 1000, if flat fee, paid to each local musician;

(B) Recording of a music video in the Virgin Islands, with at least 20% of the screen time, including footage filmed in the Virgin Islands, and includes "Filmed in the U.S. Virgin Islands" or "Partially Filmed in the U.S. Virgin Islands" in the chryonor credits of the music video whenever possible; and

(C) Arrange for the visiting recording artists to conduct at least one live performance in the Virgin Islands during their stay for the recording process. Such a live performance must take place at a public, licensed music venue in the Virgin Islands and must be no less than ninety minutes in length.

(e) The reduction of income tax liability on a current basis of, or the reduction of income taxes otherwise payable by, applicants entitled to such reduction is applicable with respect to all of the computations, assessments, and collection of such income taxes, as provided by the 1954 Internal Revenue Code, as amended, and with respect to the payment of estimated income taxes as provided by sections 6105, 6153, 6154 and 6201 of the 1954 Internal Revenue Code, as amended.

(f) The applicant has the obligation to report to the Internal Revenue Service the relevant amount of "VI Source Income" to be applied to the tax benefits provided in this subchapter.

(1) Additional Tax Incentives.

(A) "Sound Recording Investor Tax Rebate" means a 15% refundable tax credit based on total in-territory expenditures for the production of sound recordings.

(B) "Infrastructure Investor Tax Rebate" means a 15% refundable tax credit on sound recording infrastructure development.

(C) "Digital Interactive Media Tax Credits" provides a sellable tax credit up to 15% of the base investment in digital media production done in the Virgin Islands, including salary of Virgin Islands labor.

(D) "Live Performance Tax Credit" provide a 15 percent Virgin Islands tax credit for eligible live productions, including theater, opera, ballet, jazz, comedy revues and variety entertainment on base investment and construction costs with an additional 10% tax credit on payroll for Virgin Islands residents.

(2) Hotel Tax Waiver.

(A) A hotel tax waiver will apply only to production companies which do not establish business entities in the Virgin Islands and will be applied as follows:

(B) Minimum Production Expenditure of \$ 225,000 and hotel stay over 30 days equals 2% waiver on the total room tax.

(C) Minimum Production Expenditure of \$ 500,000 and hotel stay over 30 days equals 4% waiver on the total room tax.

(D) Minimum Production Expenditure of \$ 750,000 and hotel stay over 30 days equals 6% waiver on the total room tax.

(E) Minimum Production Expenditure of \$ 1,000,000 and hotel stay over 30 days equals 7.5% waiver on the total room tax.

(F) Minimum Production Expenditure of \$ 1,500,000 or greater and hotel stay over 30 days equals full 10% tax waiver on the total room tax.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, pp. 17-20.

§ 747f. Application process

(a) Applications for benefits or extensions of benefits under this subchapter must be filed with the Director on forms designed, printed and provided by the Office.

The application must contain such directives and information as prescribed by regulations. All applications of partnerships shall include a list of the names and addresses of the partners. All applications from a corporation shall include a statement listing the names and addresses of all persons, firms or corporations owning five or more percent of the stock or equitable interest in the enterprise filing the application, which statement shall specify the percentage of stock or equitable interest owned by each such listed person, firm or corporation and, in the case of such a firm or corporation, shall also specify the names of its directors and principal officers. All applications of limited liability companies shall include a list of the names and addresses of the members.

(b) The EDA after receipt of recommendation from the Director shall carefully review all such applications and undertake such preliminary research and investigations, including, but not limited to the reputation, business background and experience of the applicant, as he deems necessary in formulating his recommendations with regard to same.

(c) The application must be accompanied by a reasonable application and processing fee, as prescribed by regulations to be promulgated by the Economic Development Authority.

(d) The Director shall, no later than 30 days after receiving an application for economic development benefits, approve or disapprove, and, if approved, transmit a Certificate to the Governor accompanied by a detailed report containing the Director's findings and recommendations with regard to that application. Before taking action on the application, the Director shall, prior to submitting his

recommendations, consult with the Virgin Islands Department of Tourism and any other governmental department or agency possessing expertise regarding a particular application, and shall conduct such investigations or inquiries as the Director considers appropriate.

(e) In making a determination on the issuance of a Certificate, the EDA shall consider such factors and criteria as prescribed by regulations.

(f) The EDA may issue a Certificate and recommend that the Governor approve the Certificate, or the EDA may deny the certificate outright or until such time as the applicant corrects specific deficiencies. If the EDA grants the Certificate, the EDA shall notify the applicant of the dates of the Certificate's approval and its transmittal to the Governor for final authorization. If the EDA denies the application, the Director shall transmit to the applicant, no later than five business days after the denial, a written, detailed explanation of the reasons for denying the application. The EDA's written denial constitutes official notice of denial of benefits.

(g) The Governor has 10 days, excluding Sundays and holidays, after the Director's issuance of the Certificate to deny the Certificate in writing. If the Governor disapproves the Certificate, the Governor shall certify the disapproval to the EDA, accompanied by specific reasons for the disapproval and, the EDA shall within two (2) business days after receipt of the Governor's disapproval, forward a copy of the disapproval and accompanying comments to the applicant. The copy of the Governor's disapproval constitutes official notice of the denial of benefits.

(h) If Governor does not disapprove the Certificate in writing within the ten (10)-day period described in subsection (g), the Certificate is deemed approved, and the Certificate is effective without the Governor's approval.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, pp. 20-22.

§ 747g. Certificate; effect of; contents

(a) The Certificate issued under this subchapter constitutes an enforceable contract between the Government of the Virgin Islands and the beneficiary, and pursuant to 48 U.S.C. §1561, the Government may not enact any law impairing the obligation of such contract. The Certificate must be issued by the Director in the name of the Government of the Virgin Islands and must bear the signature of the Commissioner.

(b) The Certificate must specify all of the following:

(1) in the case of a non-publicly owned corporation, the names and addresses of all of shareholders holding at least a 5% interest in the stock of the company;

(2) the specific tax income reductions applied for, depending on the corporate status of the applicant and whether or not the applicant intends to pursue an additional 10% reduction based on the contingencies described in § 747e(d)(3);

(3) whether the certificate is for music recording to take place in the District of St. Thomas/St. John or the District of St. Croix;

(4) the date or dates upon which benefits commence, which may be retroactive to the first date of

investment by the beneficiary in the industry or business granted in the Certificate, but the date may not be before the effective date of this subchapter;

(5) the specific commencement and termination dates for the benefits granted under the Certificate;

(6) such other terms and conditions as the Director considers appropriate, not inconsistent with this subchapter or the regulations promulgated under this subchapter.

(c) In addition to the information in subsection (c), the Certificate must contain recitals that:

(1) The grant of benefits under the Certificate is conditioned upon the beneficiary's continued performance and observance of the terms and conditions established in the Certificate within a period of time specified, and upon the final determination of the Secretary of the Treasury of the United States or the Secretary's delegate, of compliance with the requirement of Internal Revenue Code, section 934;

(2) Upon failure of the beneficiary to perform or observe the conditions as required by the Director within the specified period or any extension thereof granted for good cause shown to the Director, the Certificate is of no force and effect, and the beneficiary shall pay or refund as the case may be, to the Government of the Virgin Islands, the amount of any benefit actually received under the certificate; and

(3) Upon a final determination by the Secretary of the Treasury of the United States or his delegate that the beneficiary has not complied with the requirements of Internal Revenue Code section 934, the beneficiary shall pay or refund, as the case may be, to the Government of the Virgin Islands, the amount of any subsidy benefits, based on income tax liability, actually received, or the amount of the reduction of income tax liability on a current basis for all the years of non-compliance.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, pp. 22, 23.

§ 747h. Transferability of Certificates

A Certificate granted under this subchapter may be transferred, for the unexpired portion of the term of the Certificate, to another corporation that succeeds the beneficiary in carrying on or in operating the industry or business for which the Certificate is granted, upon determination of the Director that the corporation is otherwise qualified to receive such benefits, and the industry or business activity with respect to which the Certificate was granted is continued by the corporation. Upon transfer of the certificate, the transferor forfeits all tax incentive benefits under this subchapter and is subject to the tax laws of the Virgin Islands.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, p. 23.

§ 747i. Revocation, suspension or modification of Certificate

(a) The Director may revoke, suspend or modify a Certificate issued under this subchapter, after notice, public hearing, and written findings by the Director that:

(1) the beneficiary has failed to maintain compliance with the requirements of this subchapter or any regulation under this subchapter;

(2) certification received by the Director from the Lieutenant Governor or the Attorney General of the Virgin Islands indicates that the beneficiary corporation:

(A) has been dissolved; or

(B) has filed, or there has been filed against the corporation, a petition in bankruptcy which has been approved;

(3) the beneficiary has failed to file an annual report of ownership as required by this subchapter;

(4) an officer, shareholder or director acting on behalf of the corporation has been convicted of a felony connected with the operation of the beneficiary's business or industry; or

(5) an officer, shareholder or director acting on behalf of the corporation has given or offered, or caused to be given or offered a bribe, or any money, property, or value of any kind or any promise or agreement for it to a public officer, or to a person executing any of the functions of a public office, or to a person elected, appointed or designated to thereafter execute the functions of a public office, with intent to influence the person with respect to any act, decision, vote, opinion, or other proceeding in the exercise of the powers or functions which the person has or may have pertaining in any way to the tax incentive benefit program.

(b) The beneficiary shall bear the expenses of any investigation by the Director to determine the beneficiary's compliance.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, pp. 23, 24.

§ 747j. Judicial review

An applicant or beneficiary aggrieved by any action of the Director or the Governor under this subchapter may petition the Superior Court of the Virgin Islands for judicial review under 5 V.I.C., chapter 97 no later than 30 days after a final decision by the Director or the Governor.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, p. 24

§ 747k. Regulations

The Commissioner may, pursuant to chapter 35 of this title, promulgate regulations to carry out the purpose of this subchapter.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, p. 24.

§ 747l. False or fraudulent statements or representations; false claims for benefits

(a) An applicant or beneficiary who willfully makes any false or fraudulent statement or representation as to any fact required or appropriate to the determination of the qualifications of eligibility of such applicant or beneficiary for benefits under this subchapter, or for the continuation or extension of the benefits, or who willfully makes or presents any claim for benefits under this subchapter knowing the claim to be false, fictitious or fraudulent, is subject to a fine not more than \$ 25,000 or imprisonment of not more than two years, or both the fine and the imprisonment.

(b) In addition to the penalties prescribed in subsection (a), any benefits granted under this subchapter to such applicant or beneficiary convicted under subsection (a) are deemed automatically revoked,

without necessity for the procedures established under section 332i. All taxes that were otherwise due and payable by such an applicant or beneficiary but for the tax exemption benefits granted, become due and payable as of the date or dates when, but for such tax exemption, the taxes would have been due and payable, and the taxes must be assessed and collected in accordance with applicable tax laws in force for such date or dates. The amount of all subsidy benefits, based on income tax liability, actually received, constitute debts due and owing to the Government of the Virgin Islands as of the date or dates when payment of subsidy was made.

HISTORY: --Added Mar. 7, 2012, No. 7344, § 2(c), Sess. L. 2012, p. 25.

Subchapter IV. Sustainable Tourism Through Arts-Based Revenue Stream Production for the Film Industry

§ 750. Purpose

(a) The purposes of this subchapter are to enhance the Virgin Islands' economy by revitalizing and expanding the attraction of the film, video, and other media recording, motion picture, and television industries and related media productions to the Virgin Islands and to promote the growth of Virgin Islands small businesses related to and servicing these industries. The objectives of this sub-chapter are to:

- (1)** Renew interest in the Virgin Islands as a premier location for the production of motion pictures, documentaries, television programs and digital media, webcast, any new media format programs, commercials, and magazine advertising by off-island production companies;
- (2)** Encourage the creation of jobs that pay well for Virgin Islands workers and university graduates;
- (3)** Enhance the growth of the Virgin Islands businesses that provide goods and services for these types of productions;
- (4)** Assist local filmmakers; and
- (5)** Help promote the tourism industry in the Virgin Islands.

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

§ 751. Definitions

As used in this subchapter, the term:

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

(b) "Application Fee" means a fee to be paid by an applicant for Incentives to the Economic Development Authority pursuant to regulations promulgated under this subchapter.

(c) “Base investment” means the aggregate funds actually expended by a Production Company as Qualified Production Expenditures incurred in this Territory which are directly used in a Territory Certified Production.

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

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

(f) “New media” means the development, usually electronic, forms of visual and audio communication media regarded as ondemand electronic mass media on an interactive platform combined with computerized devices.

(g) “Production Company” means a company primarily engaged in Qualified Production Activities that have been approved by the Economic Development Authority and the Department of Tourism. The term does not include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person that is in default on any tax obligation of the Territory, or a loan made by the Territory or a loan guaranteed by the Territory.

(h) “Qualified Production Expenditures” means preproduction, including scouting activities, production, postproduction expenditures incurred in this Territory which are directly used in a Qualified Production Activity. This term does not include postproduction expenditures for marketing and distribution of a project unless these functions are implemented in the Territory and utilize local goods and services.

(i) “Qualified Virgin Islands Promotion” means a qualified promotion of this Territory approved by the Economic Development Authority and the Department of Tourism and as described in the regulations promulgated hereunder consisting of a:

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

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

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

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

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

(j) “Qualified Production Activity” means the production of new film, video, or digital projects produced in this Territory and approved by the Economic Development Authority and the Department of Tourism, such as feature films, television series, movies for television, digital release, webcasts, commercials,

interactive entertainment or sound recording projects used in feature films, TV series, or movies for television, webcasts, commercials, interactive entertainment, including, but not limited to:

- (1)** Projects recorded in this Territory, in whole or in part, in either short or long form, animation or music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, licensing for exhibition by individual television stations, groups of stations, networks, cable television stations, public broadcasting stations, corporations, live venues, the Internet, or any other channel of exhibition;
- (2)** Storyboard preparation, scripting, art direction, set construction and operation;
- (3)** Wardrobe, makeup, accessories, and related services;
- (4)** Costs associated with cinematography, photography and sound synchronization, lighting, and related services and materials;
- (5)** Editing and related services; rental of facilities and equipment; leasing of vehicles;
- (6)** Costs of food and lodging;
- (7)** Digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services;
- (8)** Total aggregate payroll; airfare, if purchased through a Virgin Islands based travel agency or travel company; insurance costs and bonding. if purchased through an insurance agency licensed in the Virgin Islands;
- (9)** Professional services, including legal, accounting, payroll, consulting and security; and
- (10)** Other direct costs of producing the project in accordance with generally accepted entertainment industry practices.

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

(l) "Resident Production Company" means a production company that has been organized under the laws of the Virgin Islands has more than fifty percent of its controlling interest owned by a Virgin Island Resident, is headquartered in the Virgin Islands and licensed to do business in the Virgin Islands and undertake; projects that are originated or produced locally by a Virgin Islands resident filmmaker or videographer.

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

(n) "Territory Certified Production" means a production engaged in Qualified Production Activities whose application for Incentives has been approved by the Economic Development Authority and the Department of Tourism in accordance with regulations promulgated pursuant to this subchapter.

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

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

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

(p) 'Filmmaking' means all forms, steps or techniques involved in the processing and production of items or commodities designed to transmit visual communication through the motion picture media, including celluloid tapes, cassettes or any other vehicle for such transmittal.

(q) 'Video data content' means any recordable form of audio-visual information in any digital or analog format resulting from either the filming process-capturing the audio-visual data-or the post production process, editing, sound design, and related activities.

§ 752. Administration of Incentives

(a) The Virgin Islands Economic Development Authority in partnership with the Department of Tourism is responsible for managing applications for Incentives under this Program.

(b) The Economic Development Authority shall be responsible for managing applications for incentives provided in this subchapter.

(c) Funding for the establishment of the Incentives must be budgeted from the operational funds of the Economic Development Authority; and the payment of rebates provided for in this subchapter must be funded from the Tourism Advertising Revolving Fund, 33 V.I.C. § 3072, at a maximum of 20 percent of the previous year's funding appropriated annually or a minimum of \$ 2,500,000 per year until fully expended in the same fiscal year. The maximum amount of the rebates permitted in any fiscal year shall be the maximum amount funded from the Tourism Advertising Revolving Fund.

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

(e) Once a complete application has been received by the Economic Development Authority, the application for Incentives under this subchapter must be forwarded to the Department of Tourism not later than 10 business days after the receipt of the completed application for its review, analysis, and recommendation to the Economic Development Authority. The Department of Tourism has 7 business days from receipt of the application in which to submit its analysis and recommendation to the Economic Development Authority.

(f) Upon receipt of the Department of Tourism analysis and recommendation, the Economic Development Authority has 25 business days in which to approve or reject the application in writing to the applicant.

(g) Upon the approval of the Economic Development Authority of the application the Economic Development Authority shall proceed to issue the appropriate certificate setting forth the particular terms of the Incentives granted.

(h) The Economic Development Authority may establish an educational scholarship fund that must be administered with the Virgin Islands Board of Education to provide scholarships for film related educational programs for Residents.

§ 753. Qualification for tax incentive benefits

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

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

(2) Expend a minimum of \$ 250,000 on Qualified Production Activities for each Territory Certified Production;

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

(4) Include in the credits of any production language such as the following: “Made or Filmed in the Virgin Islands” or some other designation where the entire production is not completed in the U.S. Virgin Islands, that footage was shot in the territory: “Portions Made in the U.S. Virgin Islands” or in the case of a footage shot in St. Croix “Portions Made or Filmed in St. Croix” and an acknowledgement to the VI Economic Development Authority and the Department of Tourism, as more specifically defined in regulations promulgated hereunder; and

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

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

(c) The Economic Development Authority shall prescribe regulations, including a procedure for review of the denial or revocation of the certifications, necessary to carry out the provisions of this subchapter. The final decision regarding the denial or revocation of the certifications under this subchapter must be made by the Economic Development Authority

(d) The Qualified production must begin no later than 180 days after issuance of the Certificate; and the Certificate expire 180 days after issuance, unless an extension is granted by the Economic Development Authority.

(e) Each applicant shall pay an Application Fee as established in the regulations under this subchapter.

§ 753a. Eligible Incentives Granted

(a) Each Qualified Production Company, both resident and nonresident, is eligible for the Incentives provided in this section upon meeting the requirements of section 753; each Qualified Production Company may select one or more of the following Incentives:

(1) A production company that has submitted an application for Incentives and has been approved is allowed a tax credit based on the taxes imposed by and payable to the Territory for the employment of residents of this Territory in connection with a Territory Certified Production. The aggregate of the credit allowed as an offset under this section against any income tax or other tax obligation, except any employee withholding tax, of the Qualified Production Company for a production occurring in the production company's tax year is within the range of 10 to 17% of the actual compensation paid in connection with the Territory Certified Production during the tax year as provided in this section.

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

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

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

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

(2) A production company that has submitted an application for Incentives is allowed a cash rebate for Qualified Production Expenditures made in connection with a Territory Certified Production. First priority for any cash rebate is for Resident Production Companies under the regulations promulgated hereunder. The rebate allowed under this section is equal up to 9 percent of the total Qualified Production Expenditures incurred in connection with the Territory Certified Production during the tax year up to a maximum of \$500,000.

(4) The production company is allowed an additional cash rebate equal to 10 percent of the total Qualified Production Expenditures if the Territory Certified Production includes a Qualified Virgin Islands Promotion.

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

(6) Notwithstanding 33 V.I.C. § 54, and 29 V.I.C. § 747e, a reduction in the payment of Hotel Tax rates may be applied as follows to both resident and nonresident production companies:

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

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

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

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

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

(b) Resident Production Companies are eligible for tax incentives and rebates provided for in subsection (a) up to a maximum of 3 projects per annum with a maximum of Incentives and credits equal to \$1,050,000, if they meet all requirements of this subchapter.

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

§ 753b. Procedure for application for tax incentives

(a) The tax liabilities for income meeting the requirements of section 753a may be reduced or rebated pursuant to the Internal Revenue Code of 1986, as amended, and as applicable to the Virgin Islands by offsets to Qualified Production Expenditures and taxes payable to the Territory.

(b) The tax credit granted under section 753a is subject to the following conditions and limitations:

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

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

(B) A detailed listing of the employee's names Social Security numbers and Virgin Islands wages when salaries are included in the Base Investment;

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

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

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

(2) The Production Company that claims the tax credit granted in this section shall include in the description of the Qualified Production Activities required by subparagraph (A) of paragraph (1) information that demonstrates that the activities included in the base investment or excess base investment equal or exceed \$ 500,000 during such year.

(c) The Economic Development Authority shall promulgate such regulations as are necessary to administer this subchapter.

(d) Each qualifying Production Company undertaking a Territory Certified Production and granted a certificate is subject to an audit by the Economic Development Authority on completion of the Qualified Production Activity to ensure that the Qualified Production Company has met the terms of its application and certificate.

§ 753c. Sale or transfer of tax credits

(a) Any tax credits with respect to a Territory Certified Production earned by a Production Company and previously claimed but not used by such Production Company against its income tax or other tax liability may be transferred or sold in whole or in part by such Production Company to another Virgin Islands taxpayer, subject to the following conditions:

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

(2) The Production Company shall submit to the Economic Development Authority and to the Virgin Islands Bureau of Internal Revenue a written notification of any transfer or sale of tax credits not later than 30 days after the transfer or sale of such tax credits. The notification must include the Production Company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Economic Development Authority or the Virgin Islands Bureau of Internal Revenue;

(3) The Virgin Islands Bureau of Internal Revenue shall disallow tax credits to any Production Company that fails to comply with this subsection until the Production Company is in full compliance;

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

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

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

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

§ 753d. The Bureau of Economic Research shall cause an annual cost benefit analysis of the Incentives awarded under this subchapter for the purpose of determining the overall economic impact on the Treasury of the Virgin Islands.