

TITLE TWENTY-NINE Public Planning and Development  
Chapter 12. Industrial Development and Incentives  
Subchapter III. Sustainable Tourism Through Arts-Based Revenue Stream  
Production

29 V.I.C. § 747 (2014)

**§ 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) "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.

(6) "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.

(7) "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.

(8) "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.

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

**(10)** "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.

**(11)** "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, p. --.

**§ 747a. Office of Filmmaking and Music Recording Promotion established**

**(a)** There is established within the Virgin Islands Economic Development Authority a Department which will assist an established Department of Tourism Office of Film-making and Music Recording Promotion in the promotion of a Film and Music Promotion plan for the Territory of the Virgin Islands.

**(b)** The Commissioner shall designate a Director on the basis of knowledge of and experience in the filmmaking and music recording industries.

**(c)** The Commissioner shall provide such furnishings, equipment and supplies and assist with secretarial, clerical and other administrative services as necessary to carry out the functions of the Office.

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

**§ 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 film or 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 filmmakers, film production companies, music artists and music labels to conduct film or audio recording projects in the Virgin Islands;

**(12)** Promote and publicize the decisions by prominent filmmakers, film production companies, music artists or music labels to conduct film or 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, p. --.

#### **§ 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, p. --.

**§ 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,

**(B)** For film projects, at least 50% of the video data content of the film project for any commercial release to which the tax benefit certificate will apply must be filmed on location in the Virgin Islands. Data content percentages must be determined by the applicant for the certificate.

**(3)** Agree in writing to make all best efforts to employ local Virgin Islands musicians, recording engineers, filming assistants, or other personnel during the audio recording or filming 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, p. --.

**§ 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)(1)

**(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 filmed or 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.

**(4)** An additional 10% of income tax reduction is granted to entities receiving the Certificate for film which accomplish one of the following:

**(A)** Employment of a minimum of three local film employees or assistants during the filming or editing process, with a minimum of ten billable hours or \$ 1000, if flat fees, paid to each hired individual;

**(B)** Inclusion of significant screen time of the natural scenery of the Virgin Islands, as determined exclusively by the Director; or

**(C)** Inclusion of "Virgin Islands", "St. Croix", "St. Thomas" or "St. John" in the title of the film project.

**(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, p. --.

**§ 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 industrial 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, p. --.

**§ 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 filming to take place in the District of St. Thomas/St. John or the District of St. Croix;

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

(5) 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;

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

(7) 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, p. --.

#### **§ 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. --.

**§ 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, p. --.

**§ 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. --.

**§ 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. --.

**§ 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. --.



