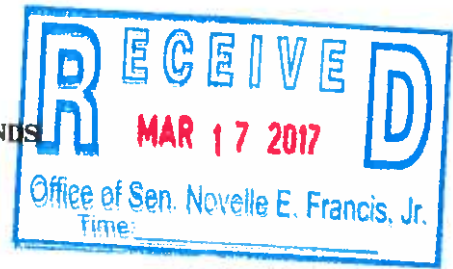




THE UNITED STATES VIRGIN ISLANDS

OFFICE OF THE GOVERNOR
GOVERNMENT HOUSE
Charlotte Amalie, V.I. 00802
340-774-0001



March 9, 2017

Honorable Novelle E. Francis, Jr.
Senator, 32nd Legislature of the Virgin Islands
Chairman, Committee on Rules and Judiciary
Capitol Building
St. Thomas, V.I. 00802

Re: U.S. Virgin Islands Economic Development Authority's Approved Rules and Regulations for the Sustainable Tourism Through Arts-Based Revenue Streams (STARS)

Dear Senator Francis, Jr.:

Transmitted herewith in accordance with the provisions of Title 3, Section 913(b) of the Virgin Islands Code, is one duplicate of the original Rules and Regulations of the Sustainable Tourism Through Arts-Based Revenue Streams (STARS) approved by the U.S. Virgin Islands Economic Development Authority, and subsequently approved by me, pursuant to Title 3, Virgin Islands Code, Section 913(a). Pursuant to Title 3, Section 933 of the Virgin Islands Code I have filed these rules and regulations with the office of the Lieutenant Governor.

Please note that pursuant to Title 3, Virgin Islands Code, Section 938, I have found compelling circumstances in the public's interest to have these rules and regulations take immediate effect without delay of prior publication. Accordingly, these rules and regulations shall become effective on March 9, 2017

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Mapp".

Kenneth E. Mapp
Governor

Cc: Hon. Myron D. Jackson, Senate President

Enclosures

RULES and REGULATIONS

**UNITED STATES VIRGIN ISLANDS
ECONOMIC DEVELOPMENT AUTHORITY**

**SUSTAINABLE TOURISM THROUGH
ARTS-BASED REVENUE STREAMS
(STARS)**

APPROVED:

8th day of March, 2017

**The Honorable Kenneth E. Mapp
Governor of the U.S. Virgin Islands**

**José A. Penn
Chairman
U.S. Virgin Islands Economic Development Authority**

CERTIFICATION

It is hereby certified that the document below is a true and correct copy of the Sustainable Tourism through Arts-based Revenue Streams Rules and Regulations ("STARS R&R") adopted pursuant to authority granted in V.I. CODE ANN. tit. 29, §§ 747k, 752(a) and 3 V.I.C. § 913.

U.S. Virgin Islands Economic Development Authority



José A. Penn
Chairman

This document interprets or applies V.I. CODE ANN., tit. 29, Chapter 12, Subchapters III and IV

**RULES and REGULATIONS
UNITED STATES VIRGIN ISLANDS
ECONOMIC DEVELOPMENT AUTHORITY**

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TITLE 29 PUBLIC PLANNING AND DEVELOPMENT
CHAPTER 12
SUBCHAPTER III
SUSTAINABLE TOURISM THROUGH ARTS-BASED REVENUE STREAM
PRODUCTION FOR THE MUSIC INDUSTRY

PURPOSE

- (a) The purpose of these rules and regulations is to govern the operation of the United States Virgin Islands Sustainable Tourism through Arts-based Revenue Stream Production for the Music Industry, 29 V.I.C., Chapter 12, Subchapter III.
- (b) The purposes of the Act are to enhance the U.S. Virgin Islands economy by revitalizing the music industry in the United States Virgin Islands and to promote the growth of U.S. Virgin Islands small businesses related to and servicing this industry.

SECTION 747
DEFINITIONS

Section 747. Definitions. As used in these regulations, the term:

- (a) "Affiliate" means an entity that is included in the production company's affiliated group, as defined in 26 U.S.C. § 1504(a), and any other entity that is directly or indirectly owned 50% or more by a member of the affiliated group.
- (b) "Affiliated Group" means entities as defined in 26 U.S.C. § 1504(a) that are engaged in Qualified Production Activity.
- (c) "Applicant" means a party applying for Incentives under this subchapter.
- (d) "Application Fee" means a processing fee for an application for Incentives to be paid to the USVIEDA pursuant to this subchapter.
- (e) "Audio Data Content" means any recordable form of audio or MIDI information in any digital or analog format resulting from music recording, music production or filming process, capturing the audio data or the mixing and mastering process, editing and sound design and related activities.
- (f) "Base Investment" means the aggregate funds actually expended by a Production Company as Qualified Production Expenditures incurred in the Territory which are directly used in a Territory Certified Production.
- (g) "Beneficiary" means the party granted Incentives pursuant to the provisions of this chapter.

(h) "Certificate" means the Certificate of Tax Incentive Benefits setting forth the particular terms of the Incentives granted under this subchapter.

(i) "CEO" means the Chief Executive Officer of the U.S. Virgin Islands Economic Development Authority.

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

(k) "Compensation" means salary, wages, or other compensation, including related benefits paid to and on behalf of Residents.

(l) "Compliance fees" mean a per project compliance fee, which may be established by the USVIEDA to monitor compliance under this subchapter. This fee shall not limit the assessment against an applicant or beneficiary of any extraordinary costs and expenses to process the application or monitor the beneficiary's performance under the certificate, including costs of outside consultants necessitated by the application or compliance investigation.

(m) "Director" means the CEO or CEO's designee.

(n) "Eligible Live Productions" means live performances including theater, opera, ballet, jazz, comedy revue, and variety entertainment in the Territory as provided in 29 V.I.C. § 747e(f)(1)(D).

(o) "Incentives" means tax benefits such as rebates, credits, waivers or other offsets available under this subchapter.

(p) "Local Goods and Services" means goods purchased from a Qualified Vendor and services provided by a properly licensed service provider in the U.S. Virgin Islands.

(q) "Local Musician" means a musician or music engineer who is a bona fide resident in the U.S. Virgin Islands pursuant to 26 U.S.C. §§ 932, 934 and 937 and has been licensed in the U.S. Virgin Islands for a minimum of one year before applying for a certificate for tax incentives or governmental promotion or subsidies to the corporation that hires the musician under this subchapter.

(r) "Local Music Studio" means a music recording facility located in the U.S. 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.

(s) "Multimarket Commercial Distribution" means distribution of projects for pay intended for mass market consumption extending to multiple markets outside the U.S. Virgin Islands, including but not limited to international, national or regional distribution via

internet, compact disc, blu-ray, fixed audio or video media, broadcast television, satellite television, cable television, movie theaters, video on demand, retail outlets, home video, online video game subscription distribution, DVD sales and distribution, an advertiser-supported website or New Media.

(t) "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.

(u) "New media" means the development, usually electronic, forms of visual and audio communication media regarded as on-demand electronic mass media on an interactive platform combined with computerized devices.

(v) "Production Company" means a company primarily engaged in Qualified Production Activities that have been approved by the USVIEDA and the VIDOT. 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.

(w) "Qualified Production Activity" means the production of music in accordance with Section 747d(b)(2)(A) of this subchapter or construction of infrastructure, including a Local Music Studio, and performance of Eligible Live Productions in the Territory and approved by the USVIEDA and VIDOT. Includable productions costs include:

(1) Music projects recorded in the Territory, in whole or in part, in either short or long form, fixed on a delivery system and intended for mass market consumption and extending to multiple markets outside the U.S. Virgin Islands and multimarket commercial distribution;

(2) Costs associated with preproduction; location scouting and related travel expenses; studio rental; sets and set construction; on-location expenses; instrument and equipment rental fees; recording; mixing and mastering services; production crew costs; production session fees for musicians, producers, directors, songwriters, composers, arrangers, programmers, engineers and technicians; on-camera talent costs; insurance, shooting permits, contingencies; online and offline editing; advertising, promotion, and publicity; materials, supplies, and miscellaneous expenses; sound synchronization; and post production expenditures incurred in the Territory, which are directly used in a Qualified Production Activity;

(3) Costs of food, lodging, and transportation expenditures directly related to the music production;

(4) Total aggregate payroll; airfare, if purchased through a U.S. Virgin Islands based travel agency or travel company; insurance costs and bonding, if purchased through an insurance agency licensed in the U.S. Virgin Islands;

(5) Professional services including legal, accounting, payroll, consulting and security; and

(6) Other direct costs of producing the project in accordance with generally accepted entertainment industry practices.

Qualified Production Activity costs shall not include recording live concerts; artists and producer royalties or advances; licensing fees for samples; interpolations or other music clearance costs; mastering or post-production expenditures for projects that were not principally tracked and recorded in the U.S. Virgin Islands; nor any costs associated with manufacturing, duplication, packaging, distribution, promotion, marketing and touring not specifically outlined above.

(x) "Qualified Production Expenditures" means preproduction, production, postproduction expenditures for Music Recording or construction of infrastructure, including a Local Music Studio, incurred in the Territory that 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.

(y) "Qualified Vendor" means a properly licensed vendor of goods who has an office in the Territory and who employs at least one Resident in providing such goods.

(z) "Qualified Virgin Islands Music Video Promotion" means the promotion of the Territory consisting of a chyron or credit which reads "Filmed in the U.S. Virgin Islands" or "Partially Filmed in the U.S. Virgin Islands", or such similar language or promotion as approved by USVIEDA and VIDOT.

(aa) "Resident" means an individual as designated in 29 V.I.C. § 703(e).

(bb) "Residency Employment Requirement" means that a minimum of 20% of the total employees working on the production in the U.S. Virgin Islands, including extras, day players, and a maximum of three paid interns who are U.S. Virgin Islands Residents ("Resident Employment Requirement"), unless a documented waiver request is submitted and approved by the USVIEDA as further set forth in the Waiver of Rules and Regulations provision of this subchapter.

(cc) "Resident Production Company" means a production company that has been organized under the laws of the U.S. Virgin Islands, has Territory or source income effectively connected with the Territory, has more than 50% of its controlling interest owned by a Resident, is headquartered in the U.S. Virgin Islands and licensed to do business in the U.S. Virgin Islands and undertakes projects that are originated or produced locally by a Resident.

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

(ee) "Territory Certified Production" means a production engaged in Qualified Production Activities whose Application for Incentives has been approved by the USVIEDA and the VIDOT in accordance with this subchapter.

(ff) "Total Aggregate Payroll" means the total sum expended by a Production Company on salaries paid to Virgin Islands Resident employees working within the 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 \$500,000.00 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.

(gg) "USVIEDA" means the United States Virgin Islands Economic Development Authority.

(hh) "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.

(ii) "VIDOT" means the United States Virgin Islands Department of Tourism.

(jj) "VI Source Income" means income as set forth in 26 U.S.C. § 937(b).

SECTION 747a
OFFICE OF FILMMAKING AND MUSIC RECORDING PROMOTION ESTABLISHED
[REPEALED]

SECTION 747b
DUTIES OF OFFICE

To the extent the "Office" was initially contemplated as the "Office of Filmmaking and Music Recording Promotion" within the USVIEDA to be operated by VIDOT pursuant to now repealed 29 V.I.C. § 747a (Office of Filmmaking and Music Recording Promotion Established), references to the Office pursuant to 29 V.I.C. § 747b (Duties of Office) shall now mean the USVIEDA.

SECTION 747b-1
ADMINISTRATION OF INCENTIVES

(a) The USVIEDA is responsible for managing Applications for Incentives under this subsection.

(b) USVIEDA is responsible for the creation of the Application and both USVIEDA and the VIDOT shall assist in the review of each Application. The USVIEDA shall serve as the initial point of contact for interested parties.

(c) After carefully considering all relevant factors regarding an application for tax Incentive rebates and subsidies under this subchapter, in executive session at a meeting closed to the public, the USVIEDA shall make its determination regarding whether said benefits should be granted or denied, and shall prepare and submit to the Governor and the Applicant a detailed report containing its findings thereon.

SECTION 747c
DUTIES OF THE DIRECTOR

To the extent the "Office of Filmmaking and Music Recording Promotion" was initially contemplated as an office within the USVIEDA to be operated by VIDOT pursuant to now repealed 29 V.I.C. § 747a (Office of Filmmaking and Music Recording Promotion Established), references to the authority granted to the VIDOT Commissioner under said office pursuant to 29 V.I.C. § 747c (Duties of the Director) shall now mean the CEO or designee.

SECTION 747c-1
DUTIES

(a) The CEO or designee shall:

- (1) Review all applications for tax incentive benefits;
- (2) Recommend 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 in conjunction with the VIDOT; and
- (5) Perform such other acts or functions within his or her area of responsibility as the Board of the USVIEDA may direct and consider necessary in furtherance of the purposes of this chapter.

(b) The CEO shall make all reasonable efforts to encourage entities seeking tax incentive certificates to conduct filmmaking or music recording in both the St. Croix District and the St. Thomas-St. John District. The CEO 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 USVIEDA shall:

- (1) 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;
- (2) In addition to the application fee and any applicable 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;
- (3) 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 under this subchapter whether they are operational or not;
- (4) Conduct, as necessary, investigations with respect to all applications and beneficiaries

for/of tax incentive benefits. Investigation shall include but not be limited to preliminary research and investigations, including, but not limited to the reputation, business background and experience of the applicant, as deemed necessary in formulating a recommendation with regard to the application.

(d) The USVIEDA and VIDOT 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) Recommend such regulations as may be necessary to implement the provisions of this subchapter;
- (5) Prepare and submit their respective annual reports to the Governor and the Legislature containing data regarding all tax incentive benefits.
- (6) 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;
- (7) Conduct, as necessary, investigations with respect to all applications and beneficiaries for/of tax incentive benefits;
- (8) Promote the STARS tax incentive program;
- (9) Prepare respective annual budgets for consideration and approval by the USVIEDA and VIDOT Commissioner, as applicable;
- (10) Perform such other acts or functions within its area of responsibility as the USVIEDA may direct and as necessary in furtherance of the purposes of this subchapter.

SECTION 747d
QUALIFICATION FOR BENEFITS

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

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

(1) Consistent with section 747f(a) of this subchapter, partnerships, firms, corporations and limited liability companies shall qualify for benefits under this subchapter. Such entities shall be organized under Virgin Islands Code titles 13 (corporations) and 26 (partnerships) and licensed to do business in the Territory under 29 V.I.C. § 302 under the laws of the Virgin Islands with a Virgin Islands source income or income effectively connected with its Virgin Islands trade or business. An entity 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. As used in this section, the term "local" shall be synonymous with "Resident of the Virgin Islands" as defined in 29 V.I.C. § 703(e).

(4) Comply with all territorial and federal laws.

(c) Applications shall be processed in the order received and deemed complete by the CEO or designee and shall satisfy the requirements set forth in 29 V.I.C. § 747d.

**SECTION 747e
TAX INCENTIVES**

(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 U.S. Virgin Islands pursuant to 26 U.S.C. § 934.

(b) The beneficiaries of the tax incentives under section 747d(c)(2)(B) have the burden of demonstrating income arising from works recorded in the U.S. Virgin Islands to the Virgin Islands Bureau of Internal Revenue.

**SECTION 747e(d)(3)(A)-(C)
ADDITIONAL INCOME TAX INCENTIVES**

An additional 10% income tax reduction is granted to entities receiving a tax incentive certificates for the following:

1. EMPLOYMENT

A music recording that employs a minimum of three (3) local musicians during the recording process, with a minimum of 10 billable hours or \$1,000, if a flat fee, paid to each local musician.

2. MUSIC VIDEO RECORDED FULLY OR PARTIALLY IN THE U.S. VIRGIN ISLANDS

A Qualified music video recorded in the U.S. Virgin Islands shall include "Filmed in the U.S. Virgin Islands", "Partially Filmed in the U.S. Virgin Islands" or such similar language or promotion as approved by the USVIEDA and VIDOT in the chryon or credits of the music video, whenever possible, and within the following criteria:

- (a) A Qualified music video which includes a U.S. Virgin Islands logo approved by the USVIEDA and VIDOT at the end of each video and within online promotions;
- (b) A Qualified interactive game which includes a U.S. Virgin Islands logo in the game product and weblink for online promotions as approved by USVIEDA and VIDOT.

"Partially Filmed in the U.S. Virgin Islands" means that at least 20% of the screen time, including footage of the U.S. Virgin Islands, is filmed in the U.S. Virgin Islands.

"Filmed in the U.S. Virgin Islands" means that at least 50% of the screen time, including footage of the U.S. Virgin Islands, is filmed in the U.S. Virgin Islands.

3. VISITING RECORDING ARTISTS

A live performance by a visiting recording artist shall take place at a public or licensed music venue in the U.S. Virgin Islands, except on those properties for which a use permit is required.

For the purpose of this subchapter, "public" shall be defined as a venue owned or operated by a public entity.

For the purpose of this subchapter, a "music venue" shall be defined as a building, building complex, and/or an indoor or outdoor area used to accommodate live musical performances. A music venue may be a stand-alone use or may be associated with another use such as a restaurant, nightclub and bar, and special event venue.

SECTION 747e(f) REPORTING VI SOURCE INCOME TO BUREAU OF INTERNAL REVENUE

An applicant has the obligation to report to the Virgin Islands Bureau of Internal Revenue the relevant amount of "VI Source Income" to be applied to the tax benefits provided in this subchapter.

SECTION 747e(f)(1)-(2) ADDITIONAL TAX INCENTIVES

(a) Additional Tax Incentives.

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.

(1) "Sound Recording Investor Tax Rebate" means a 15% refundable tax credit based on total in-territory expenditures for the production of sound recordings. The "Sound Recording Investor Tax Rebate" applies to works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.

(2) "Infrastructure Investor Tax Rebate" means a 15% refundable tax credit on sound

recording infrastructure development. A taxpayer may claim an income tax credit for the construction or conversion, or equipping, or any combination of these activities of a music studio or postproduction facility in the U.S. Virgin Islands.

(3) "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. This incentive is open to all companies producing digital interactive media products or platforms in the U.S. Virgin Islands. Certain exclusions apply, such as static internet websites or software primarily designed for internal use, which are non-qualifying. Only work physically performed in the U.S. Virgin Islands and only direct development equipment purchased through licensed U.S. Virgin Islands businesses qualifies for the incentive.

Qualifying development products include digital media and games, web-based and mobile applications, consumer software, entertainment software, business and enterprise software, interactive devices and consoles, embedded systems.

(4) "Live Performance Tax Credit" provide a 15% 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 as defined in 29 V.I.C. § 703(e).

(b) Qualifications for Hotel Tax Waiver.

(1) A hotel tax waiver will apply only to a non-Virgin Islands production company that has obtained a license to do business in the Territory under 27 V.I.C. § 302. 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:

(A) For a minimum Qualified Production Expenditure of \$225,00.00 to \$499,999.99 and hotel stay over 30 room nights, the Production Company shall receive a 2% waiver on the hotel room tax;

(B) For a minimum Qualified Production Expenditure of \$500,000.00 to \$749,999.99 and hotel stay over 30 room nights, the Production Company shall receive a 4% waiver on the hotel room tax;

(C) For a minimum Qualified Production Expenditure of \$750,000.00 to \$999,999.99 and hotel stay over 30 room nights, the Production Company shall receive a 6% waiver on the hotel room tax;

(D) For a minimum Qualified Production Expenditure of \$1,000,000.00 to \$1,499,999.99 and hotel stay over 30 room nights, the Production Company shall receive a 7.5% waiver on the hotel room tax; and

(E) For a minimum Qualified Production Expenditure greater than \$1,500,000.00 and a hotel stay over 30 room nights, the Production Company shall receive a 10% waiver on the hotel room tax.

(c) Refundable tax rebates are as delineated in Section 747e(f)(1)(A) & (B) of these rules and regulations.

(d) Procedure for Refundable Incentives.

(a) In its Application, the Applicant will estimate the amount of its budget;

(b) Within 90 days after completion of the Qualified Production Expenditure, the Applicant shall provide a reconciliation to the USVIEDA of said Expenditure.

(c) Within 60 days after receipt of the reconciliation, the USVIEDA shall issue a decision to the Applicant with a copy to VIDOT accepting or rejecting, in whole or in part, the amount set forth in the reconciliation.

(d) Within 10 calendar days after receipt, by email and/or US Postal Service, of the USVIEDA's decision to Applicant's reconciliation, in whole or in part, the Applicant may seek reconsideration of said decision.

(e) Within 30 days of receipt, the USVIEDA may vote to grant or deny Applicant's petition for reconsideration.

(f) Within 30 days of receipt of USVIEDA's decision regarding reconsideration, VIDOT shall issue the tax rebate to the Applicant.

(g) In the event that a Production Company after the completion of production has underestimated its Qualified Production Expenditure, it shall remit the remainder due under the higher tax rate to the VIBIR. In the event that estimate is underestimated by five (5%) percent or more, the Production Company shall submit to a voluntary audit by the

USVIEDA at Applicant's sole cost and expense. The failure to comply with this provision shall be grounds for revocation of the Certificate and all Incentives granted therein.

(e) Procedure for Income Tax Credits.

The tax credits granted under section 747e(f)(1)(C) and (D) are 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, at a minimum:

(A) A description of the Qualified Production Activity, along with the certification of the Qualified Production Expenditures from the USVIEDA;

(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 Activity required by subparagraph (A) of paragraph (1) information that demonstrates that the activities included in the base investment during such year.

(f) Procedure for Hotel Tax Incentives.

(a) In its Application, the Applicant shall estimate the number of required room nights;

(b) Within ninety (90) days after the end of production, the Applicant shall provide a reconciliation of the Qualified Production Expenditure and hotel night stays.

(c) In the event that a Production Company after the completion of production has underestimated its Qualified Production Expenditure and/or room nights, it shall remit the remainder due under the higher hotel tax rate to the IRB. In the event the estimate provided is underestimated by five (5%) percent or more, the Company shall submit to a

voluntary audit by the USVIEDA at its sole cost and expense. The failure to comply with this provision is grounds for revocation of the Certificate and all Incentives granted therein.

SECTION 747f APPLICATION PROCESS

Section 747f-1. Procedure for Application for Incentives.

(a) The Applications under this subchapter must be submitted to the USVIEDA on forms designed, printed and provided by the USVIEDA. The Application must contain such directives and information as are prescribed by these regulations. The submission of the Application must be accompanied by payment of the Application Fee as indicated on the form.

(b) The initial Application Fee shall be Five Hundred Dollars (\$500.00) payable by cash, cashier's check, credit card or certified funds. In each fiscal year, the governing board of the USVIEDA shall establish the Application Fee. The Application Fee is non-refundable.

(c) An Application with all required elements may only be submitted no earlier than one hundred and twenty (120) days and no later than thirty (30) days after the start of music recording.

(d) For projects that are not completed within the Applicant's tax year (fiscal year or calendar year), a new certification must be applied for each successive tax year. A Certificate must be obtained for each project for each year that Incentives are claimed.

(e) Upon receipt of an Application, the USVIEDA shall notify the Applicant in writing whether the Application has been accepted.

(1) If the Application is complete, the notice should indicate the date of acceptance of the Application.

(2) If the Application is not complete, the USVIEDA shall notify the Applicant via formal correspondence (letter transmitted via email and/or U.S. Postal Service) of such deficiency no later than 10 business days from the date of receipt of the original application.

(3) Upon receipt of notification from the USVIEDA that its application has been deemed incomplete, Applicant shall have 10 business days within which to provide the USVIEDA with the required information and/or documents.

(4) In the event Applicant does not satisfactorily comply with USVIEDA's request within the 10 day period, the application shall be deemed incomplete and ineligible for further consideration. USVIEDA has no duty to retain applications deemed incomplete or ineligible. The application fee is non-refundable.

(5) The USVIEDA shall process the Applications in the order that the Applications are received and deemed complete by the CEO or designee.

(f) The Qualified Production Activity must begin no later than ninety (90) days after issuance of the Certificate; and the Certificate expires one hundred and eighty (180) days after issuance, unless an extension is granted by the USVIEDA.

(g) The USVIEDA shall be only permitted to grant one such extension for 30 days for the start of Qualified Production Activity to the extent that the Certificate includes a Rebate as one of the Incentives.

(h) Each Production Company, both resident and nonresident, is eligible for the Incentives provided in this subchapter upon meeting the applicable requirements of these rules and regulations.

(i) Nothing in this subchapter prohibits a company from applying for benefits under any other USVIEDA program.

Section 747f-2. Action on Applications.

The USVIEDA after due public notice shall carefully considering all relevant factors regarding an application for tax incentives. Such consideration shall take place in executive session at a meeting closed to the public. , the Commission shall make its determination regarding whether said benefits should be granted or denied.

(a) The USVIEDA shall consider the Application pursuant to these rules and regulations.

(1) If the USVIEDA approves the Application (with or without conditions), the USVIEDA shall proceed to issue the Certificate, and notify the Applicant of the date of the Certificate's approval and its transmittal to the Governor for final authorization.

(2) USVIEDA shall submit the Certificate and its recommendation to the Governor within 30 days of after receiving a complete application.

(b) The reason for such grant or denial shall be fully set forth on the record, and, in the case of a denial, the Commission may also specify changes in the Application which might lead to a more favorable consideration.

Section 747f-3. Additional Determinations in Granting Benefits.

(a) If the USVIEDA determines that benefits should be granted, it shall also make the following determinations:

(1) Appropriate conditions, if any, not inconsistent with the Code or these Rules and Regulations, to be attached to the grant of Incentives.

(2) In case part of the basis of a grant of Incentives was the employment of a particular number of employees, number of employees and the date by which such employment requirement shall be met.

(3) Any other determination required by these rules.

(4) The USVIEDA may make any other determinations permitted by the U.S. Virgin Islands Code or these rules and regulations.

Section 747f-4. Effect of Denial.

(a) A finding that said Incentives should be denied shall be final and not subject to review by the Governor.

(b) The response of the USVIEDA to the Applicant shall constitute official notice of the denial of Incentives. Said denial shall describe in detail the reasons for said denial, if any.

(c) The Applicant may request reconsideration in accordance with this Subchapter.

Section 747f-5. Reconsideration on Initiative of the Committee.

(a) The USVIEDA may on its own initiative vote to reconsider any of the following actions within the appropriate time periods:

(1) A grant of Incentives may be reconsidered at any time before a Certificate is issued; or

(2) A vote to deny Incentives may be reconsidered within 10 days, excluding Saturday, Sunday, and holidays, of the vote of the USVIEDA;

Section 747f-6. Petition for Reconsideration.

(a) An Applicant may petition the USVIEDA to vote to reconsider its action with respect to the applicant's Application by letter to the Chairman, with a copy to the CEO, within 10 days, excluding Saturday, Sunday, and holidays, from the date a decision is sent to the Applicant.

(b) The petition:

(1) Shall allege at least one of the factors set forth in Section 752h below.

(2) Shall fully set forth which factors are applicable and the reasons for rehearing.

(c) The CEO shall include on the agenda of the next regularly scheduled meeting of the USVIEDA, after the petition is received, a vote on the petition.

- (d) USVIEDA may vote to grant or deny the petition.

Section 747f-7. Findings in Support of Reconsideration.

- (a) The USVIEDA shall reconsider an action only if it first finds that:
 - (1) There has been a change in material fact or in applicable law which change occurred after submission of the Application; or
 - (2) The USVIEDA's action was based on a substantive error in material fact or in the applicable law; or
 - (3) The USVIEDA's action was based on a finding, conclusion, or other matter upon which the Applicant has not previously submitted but was relevant to consideration of the Application.

Section 747f-8. Procedure on Reconsideration.

- (a) A vote to reconsider shall:
 - (1) Stay further action by the USVIEDA.
 - (2) Stay all applicable time limits in these Rules and Regulations.
- (b) If the USVIEDA votes to reconsider an Application, it shall issue a decision within 10 days, excluding Saturday, Sunday, and holidays, of the date on which the USVIEDA votes to rehear.

Section 747f-9. Conflict of Interest.

- (a) For purposes of this section:
 - (1) "Significant legal or beneficial interest" shall mean, in the case of a corporation, legal or beneficial ownership or control of five (5%) percent or more of any class of stock of the corporation entitled to vote. Shares owned by a member of the immediate family shall be counted in determining the percentage of ownership or control.
 - (2) "Pecuniary interest" shall include among other things, ownership of less than five (5%) percent ownership or control.
 - (3) "Personal interest" shall include any direct interest of a USVIEDA board member, staff member, or any spouse, child, parent or sibling of a USVIEDA board or staff member.

(b) When participating in actions on Applications or other USVIEDA business, board members and staff shall act on behalf of the people of the U.S. Virgin Islands and as trustees for the public.

(c) Any USVIEDA board member or staff who has any personal, professional, or pecuniary interest in an Applicant which has a matter pending before the USVIEDA shall so inform the Chairman of the interest as soon as the board member or staff becomes aware that such a matter is pending.

(d) Any USVIEDA board member or staff who has any personal, professional, or pecuniary interest in an Applicant which has a matter pending before the USVIEDA shall abstain from participation in any actions, votes, discussions, meetings or other activities related to the matter.

(e) USVIEDA board members, staff, agents and consultants shall refrain from any activity which would give the appearance of impropriety.

(f) The failure of any USVIEDA board member, staff, agent or consultant of the USVIEDA to disclose any personal, professional, pecuniary, legal or beneficial interest in an Applicant shall constitute ground for removal or termination, for cause, in addition to any civil or criminal penalties imposed by law.

SECTION 747g

CERTIFICATE; EFFECT OF; CONTENTS

Section 747g-1. Certificate; Effect of; Contents.

(a) The Certificate issued under this subchapter constitutes an enforceable contract between the Government of the U.S. Virgin Islands and the Production Company, 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 USVIEDA in the name of the Government of the U.S. Virgin Islands and must bear the signature of the Chairman of the USVIEDA.

(b) The Certificate shall provide the following:

(1) The name of Qualified Production Company;

(2) 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;

(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 specific Incentives granted;

- (5) applicable terms;
- (6) the date or dates upon which the respective Incentives commence, which may be retroactive to the first date of investment by the Production Company in the Qualified Production Activities granted in the Certificate, but the date may not be before the effective date of this subchapter;
- (7) the termination date or dates for the respective Incentives are granted;
- (8) such other terms and conditions as the USVIEDA considers appropriate, and not inconsistent with these regulations or this subchapter.

(c) The Certificate must contain recitals that:

(1) The grant of benefits under the Certificate is conditioned upon the Production Company's continued performance and observance of the terms and conditions established in the Certificate within the specified period of time, 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 of 1986, as amended, section 934;

(2) Upon failure of the Production Company to perform or observe the conditions as required by the USVIEDA within the specified period or any extension thereof granted for good cause shown to the Economic Development Authority, the Certificate is of no force and effect, and the Production Company shall pay or refund as the case may be, to the Government of the U.S. 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 Production Company has not complied with the requirements of Internal Revenue Code of 1986, as amended, section 934, the Production Company shall pay or refund, as the case may be, to the Government of the U.S. 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.

SECTION 747h

TRANSFERABILITY OF CERTIFICATES

Section 747h-1. Qualification for Transferable Tax Credit.

The Director shall determine whether the transferee qualifies to receive such benefits in the industry or business activity for which the Certificate was granted to the transferor corporation.

(a) A Production Company is allowed a transferable tax credit of up to 15% of the Qualified Expenditure in digital media and 15% of Qualified Expenditures for an Eligible Live Production and an additional 10% tax credit on payroll.

(b) Within 30 days of completion of the Qualified Production activity, the Production Company shall provide notice to the USVIEDA that the applicable Qualified Virgin Islands Promotion was included in the production to be entitled to the following additional cash rebate:

(1) The Production Company is allowed an additional cash rebate equal to 10% of the total Qualified Production Expenditures if the Territory Certified Production includes a Qualified U.S. Virgin Islands Promotion.

(2) The Production Company is allowed an additional cash rebate equal to 10% of the total Qualified Production Expenditures if the Qualified Production Activities are undertaken on the island of St. Croix.

Section 747h-2. Procedure for Transferable Tax.

(a) In its Application, the Applicant shall estimate the amount of its Qualified Production Expenditures and provide detail on the types of expenditures.

(b) Within ninety (90) days after the end of production, the Production Company shall provide a best practices review of Qualified Production Expenditures by a Certified Public Accountant licensed in the Territory ("Review").

(c) Within sixty (60) days after receipt of the Review, the USVIEDA shall issue a decision to accept or reject, in whole or in part, the amount set forth in the Review.

Section 747h-3. Sale or Transfer of Tax Credits.

(a) Any transferable tax credits earned by an Applicant and previously claimed but not used by such Applicant against its income tax or other tax liability as prescribed by this subchapter may be transferred or sold, in whole or in part, by such Applicant to another U.S. Virgin Islands taxpayer, subject to the following conditions:

(1) The Applicant 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 Applicant shall submit to the USVIEDA and to the U.S. 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 Applicant's transferable 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 USVIEDA or the U.S. Virgin Islands Bureau of Internal Revenue;

(3) The transferable tax credit must be used or sold within five (5) years of the date of transferable tax credit. The transfer of this transferable tax credit does not extend the time in which such transferable tax credit may be used. The carry-forward period for a transferable tax credit that is transferred or sold begins on the date on which the transferable tax credit was originally earned;

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

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

(6) An Applicant seeking to transfer a transferable tax credit shall retain a Certified Public Accountant to provide a written opinion as to Qualified Production Expenditures ("CPA Opinion"). This CPA Opinion shall be submitted by the CPA to the USVIEDA. The Applicant shall also provide a copy of the CPA Opinion to any transferee of the transferable tax credit.

(b) Any Applicant claiming, transferring, or selling the transferable tax credit shall reimburse the Government of the U.S. Virgin Islands for any USVIEDA initiated audits relating to the transferable tax credit. This subsection does not apply to routine tax audits of a taxpayer which may include the review of the transferable tax credit.

SECTION 747i

REVOCATION, SUSPENSION OR MODIFICATION OF CERTIFICATE

Section 747i-1. Revocation, suspension or modification of Certificate.

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

(1) the Production Company has failed to maintain compliance with the requirements of STARS or any rules or regulations under this subchapter;

(2) certification received by the CEO or designee from the Lieutenant Governor or the Attorney General of the U.S. Virgin Islands indicates that the Production Company:

- (A) has been dissolved; or
- (B) has filed, or there has been filed against the Production Company, a petition in bankruptcy which has been approved;
- (3) the Production Company has failed to make any filings or reporting as required by this subchapter;
- (4) an officer, shareholder, member, manager, or director acting on behalf of the Production Company has been convicted of a felony in connection with the operation of the Production Company's business; or
- (5) an officer, shareholder, member, manager, or director acting on behalf of the Production Company 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 Incentives benefit program under this subchapter.

(b) USVIEDA shall determine the Production Company's compliance to the terms and conditions of the Certificate and the Beneficiary shall bear the expenses of any investigation by the USVIEDA to determine the Beneficiary's compliance.

Section 747i-2. Record-Keeping Requirements.

(a) Each qualifying Production Company undertaking a Territory Certified Production and granted a Certificate is subject to an audit by the USVIEDA on completion of the Qualified Production Activity to ensure that the Production Company has met the terms of its Application and Certificate. To assist the USVIEDA in its audit, the Production Company shall furnish the USVIEDA with, and grant access to, all information reasonably related to such audit.

(b) Applicants shall keep records adequate to substantiate that all Qualified Production Activity have been conducted in accordance with the laws and these regulations.

(c) Applicants shall maintain records containing all Qualified Production Expenditures.

(d) Said records shall be retained by the Applicants for at least three (3) years after the date of the Certificate.

(e) Upon request of the CEO, Applicants shall make all requested records open and available for inspection by the CEO or designee.

(1) The CEO of USVIEDA or his designee, shall afford confidentiality to competitive or other confidential information contained in the records.

(2) At the Applicant's option, and at its own expense, the Applicants may instead furnish the requested records or information to a licensed U.S. Virgin Islands Certified Public Accountancy firm, or an internationally recognized independent public auditor acceptable to the Beneficiary and the CEO, to audit such records and information and to furnish the CEO with a written auditor's report of its independent findings and conclusions with respect to its investigation of the information requested by the CEO regarding the Applicant's compliance hereunder.

SECTION 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.

SECTION 747k REGULATIONS

[See 29 V.I.C. § 747k.]

SECTION 747l FALSE OR FRAUDULENT STATEMENTS OR REPRESENTATIONS; FALSE CLAIMS FOR INCENTIVES

Section 747l-1. False or fraudulent statements or representations; false claims for Incentives

(a) A Production Company 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 Production Company for Incentives under this subchapter, or for the continuation or extension of the Incentives, or who willfully makes or presents any claim for Incentives under this subchapter knowing the claim to be false, fictitious or fraudulent, is subject to a fine of not more than \$25,000.00 or imprisonment of not more than two years, or both.

(b) In addition to the penalties prescribed above, any Incentives granted under this subchapter to such Production Company convicted hereunder is deemed automatically revoked, without necessity for the procedures established under Section 753f of this subchapter. All taxes that were otherwise due and payable by such convicted Production

Company but for the Incentives granted, become due and payable as of the date or dates when, but for such tax incentives under the Incentives, 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 the applicable date or dates. The amount of all Incentives received by the convicted Production Company or officer or shareholder, based on income tax liability and rebates, constitute debts due and owing to the Government of the U.S. Virgin Islands as of the date or dates when the respective Incentives were received.

SECTION 748 MISCELLANEOUS PROVISION

Section 748. Waiver of Rules and Regulations

To prevent undue hardship or material injustice, or if the expeditious conduct of business so requires, any of the rules in these Rules and Regulations may be waived in any particular case or proceeding by a two-thirds (2/3) vote of those members of the USVIEDA present and voting, except to the extent that such waiver would be inconsistent with any statute.

(a) The USVIEDA may, upon written request from an Applicant showing extraordinary or special circumstances, grant a permanent or temporary waiver of all or any part of the rules in this division.

(b) Such waiver shall be granted in accordance with these rules and regulations.

(c) The USVIEDA must specifically approve any Application for Incentives before granting any such waiver.

**TITLE 29 PUBLIC PLANNING AND DEVELOPMENT
CHAPTER 12
SUBCHAPTER IV
SUSTAINABLE TOURISM THROUGH ARTS-BASED REVENUE STREAM
PRODUCTION FOR THE FILM INDUSTRY**

**SECTION 750
PURPOSE**

Section 750. Purpose

(a) The purpose of these rules and regulations is to govern the operation of the U.S. Virgin Islands Sustainable Tourism through Arts-based Revenue Stream Production for the Film Industry, 29 V.I.C., Chapter 12, Subchapter IV.

(b) The purposes of the Sustainable Tourism through Arts-based Revenue Stream Production for the Film Industry Act are to enhance the U.S. Virgin Islands' economy by revitalizing and expanding the attraction of the motion picture, and television industries and related media productions to the U.S. Virgin Islands and to promote the growth of U.S. Virgin Islands small businesses related to and servicing these industries. The objectives of this subchapter are to:

- (1) Renew interest in the U.S. Virgin Islands as a premier location for the production of motion pictures, documentaries, television programs and digital media, webcast, any new media format programs, and commercials by off-island production companies;
- (2) Encourage the creation of jobs that pay well for U.S. Virgin Islands workers and university graduates;
- (3) Enhance the growth of the U.S. 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 U.S. Virgin Islands.

SECTION 751 DEFINITIONS

Section 751. Definitions. As used in these regulations, 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% or more by a member of the affiliated group.

(b) "Affiliated Group" means entities as defined in 26 U.S.C. § 1504(a) that are engaged in Qualified Production Activity.

(c) "Applicant" means a party applying for Incentives under this subchapter.

(d) "Application Fee" means a processing fee to be paid to the USVIEDA pursuant to this subchapter.

(e) "Base Investment" means the aggregate funds actually expended by a Production Company as Qualified Production Expenditures incurred in the Territory which are directly used in a Territory Certified Production.

(f) "CEO" means the Chief Executive Officer of the U.S. Virgin Islands Economic Development Authority.

(g) "Certificate" means the certificate setting forth the particular terms of the Incentives granted to a Production Company under this subchapter.

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

(i) "Compensation" means salary, wages, or other compensation, including related benefits paid to and on behalf of Residents.

(j) "Director" means the CEO or CEO's designee.

(k) "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.

(l) "Incentives" includes the rebates, credits, waivers or other offsets available under this subchapter.

(m) "Local Goods and Services" means goods purchased from a Qualified Vendor and services provided by a properly licensed service provider in the U.S. Virgin Islands.

(n) "Multimarket Commercial Distribution" means distribution of projects for pay intended for mass market consumption extending to multiple markets outside the U.S. Virgin Islands, including but not limited to international, national or regional distribution via internet, compact disc, blu-ray, fixed audio or video media, broadcast television, satellite television, cable television, movie theaters, video on demand, retail outlets, home video, online video game subscription distribution, DVD sales and distribution, or an advertiser supported website.

(o) "New media" means the development, usually electronic, forms of visual and audio communication media regarded as on-demand electronic mass media on an interactive platform combined with computerized devices.

(p) "Production Company" means a company primarily engaged in Qualified Production Activities that have been approved by the USVIEDA and the U.S. Virgin Islands Department of Tourism ("VIDOT"). 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.

(q) "Qualified Production Activity" means the production of film, video, or digital projects produced in the Territory and approved by the USVIEDA and the VIDOT, such as feature films, television series, movies for television, digital release, webcasts, commercials, music videos, 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 the 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, make-up, 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 U.S. Virgin Islands based travel agency or travel company; insurance costs and bonding, if purchased through an insurance agency licensed in the U.S. 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.

(r) "Qualified Production Expenditures" means preproduction, including scouting activities, production, postproduction expenditures incurred in the Territory that 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.

(s) "Qualified Vendor" means a properly licensed vendor of goods who has an office in the Territory and who employs at least one Resident in providing such goods.

(t) "Qualified Virgin Islands Promotion" means the promotion of the Territory approved by the USVIEDA and the VIDOT consisting of:

(1) An end chryon or credit which reads "Made in the U.S. Virgin Islands"; or such similar language or promotion as approved by USVIEDA and VIDOT; or

(2) If all or portions are made in St. Croix, U.S. Virgin Islands, the credit shall read "Made in St. Croix, U.S. Virgin Islands" or such similar language or promotion as approved by USVIEDA and VIDOT;

(3) At the end of the credits the logo of the USVIEDA and VIDOT, as provided by each agency pursuant to the following criteria;

(a) A Qualified movie production shall include a five-second long static or animated logo that promotes the U.S. Virgin Islands in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to a website approved by the USVIEDA and VIDOT on the project's web page;

(b) A Qualified TV production shall include an embedded five-second long U.S. Virgin Islands promotion during each broadcast worldwide for the life of the project and which includes a link to a website approved by the USVIEDA and VIDOT on the project's web page;

(c) A Qualified music video which includes a U.S. Virgin Islands logo approved by the USVIEDA and VIDOT at the end of each video and within online promotions;

(d) A Qualified interactive game which includes a U.S. Virgin Islands logo in the game product and weblink for online promotions as approved by USVIEDA and VIDOT..

(4) In addition, the Applicant may choose to engage in alternate promotional activities which will be deemed a Qualified Virgin Island Promotion, including but not limited to (1) "behind the scenes" video of filming in the U.S. Virgin Islands, which shall be included in all forms of the projects; (2) a U.S. Virgin Islands premiere; or (3) creation of a two minute minimum video of the producer, director, or above-the-line talent talking about how/why the U.S. Virgin Islands was chosen for the project. The approval of Additional Qualified Promotions are subject to the discretion of USVIEDA;

(5) Qualified new media format program, including digital media, webcast, and on-demand access video which include any reference to or identification of the U.S. Virgin Islands, or contains credits within its presentation as being made in the U.S. Virgin Islands.

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

(v) "Residency Employment Requirement" means that a minimum of 20% of the total employees working on the production in the U.S. Virgin Islands, including extras, day players, and a maximum of three paid interns who are U.S. Virgin Islands Residents ("Resident Employment Requirement"), unless a documented waiver request is submitted and approved by the USVIEDA as further set forth in the Waiver of Rules and Regulations provision of this subchapter.

(w) "Resident Production Company" means a production company that has been organized under the laws of the U.S. Virgin Islands, has more than 50% of its controlling interest owned by a Resident, is headquartered in the U.S. Virgin Islands and licensed to do business in the U.S. Virgin Islands and undertakes projects that are originated or produced locally by a Resident filmmaker or videographer.

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

(y) "Territory Certified Production" means a production whose Application for Incentives has been approved by the USVIEDA and VIDOT in accordance with this subchapter and is engaged in Qualified Production Activities.

(z) "Total Aggregate Payroll" means the total sum expended by a Production Company on salaries paid to Resident employees working within the 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 \$500,000.00 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.

(aa) "USVIEDA" means the United States Virgin Islands Economic Development Authority.

(bb) "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 relative activities.

(cc) "VIDOT" means the United States Virgin Islands Department of Tourism.

SECTION 752 ADMINISTRATION OF INCENTIVES

Section 752. Coordination of Agencies for the Administration of Incentives.

(a) The USVIEDA in partnership with the VIDOT is responsible for managing Applications for Incentives.

(b) Funding for the establishment of the Incentives must be budgeted from the operational funds of the USVIEDA; 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% 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.

(c) The VIDOT, in concurrence with the USVIEDA, is responsible for the creation of the Application and shall assist in the review of each Application. The USVIEDA shall serve as the initial point of contact for interested parties.

(d) The procedure for applying for the Incentives is set forth in Section 753a of this subchapter.

Section 752b. Procedure for Application for Incentives.

(a) The Applications under this subchapter must be submitted to the USVIEDA on forms designed, printed and provided by the USVIEDA. The Application must contain such directives and information as are prescribed by these regulations. The submission of the Application must be accompanied by payment of the Application Fee as indicated on the form.

(b) The initial Application Fee shall be \$500.00 payable in cash, cashier's check, credit card or certified funds. In each subsequent fiscal year, the governing board of the USVIEDA shall establish the Application Fee. The Application Fee is non-refundable.

(c) An Application with all required elements may only be submitted no earlier than one hundred and twenty (120) days and no later than thirty (30) days after the start of principal photography.

(d) For projects that are not completed within the Applicant's tax year (fiscal year or calendar year), a new certification must be applied for each successive tax year. A Certificate must be obtained for each project for each year that Incentives are claimed.

(e) All projects must be fully funded and have an existing Multimarket Commercial Distribution contract, a letter of intent for Multi-Market Commercial Distribution or demonstrate that they intend in good faith to seek such qualified distribution in order to qualify for the Incentives.

(f) Upon receipt of an Application, the USVIEDA shall notify the Applicant in writing whether the Application has been accepted.

(1) If the Application is complete, the notice should indicate the date of acceptance of the Application.

(2) If the Application is not complete, the notice should indicate (A) all missing items to be submitted by the Applicant and (B) the date by which the missing items have to be submitted before the Application is deemed to have lapsed and the Applicant has to submit a new Application with a new Application Fee. An Application shall be deemed incomplete if it does not include an Application Fee.

(g) The USVIEDA shall process the Applications in the order that the Applications are received.

(h) Once a complete Application has been received by the USVIEDA, not later than seven (7) business days after its receipt, the USVIEDA shall forward the Application to the VIDOT for its review, analysis, and recommendation.

(i) The Application and VIDOT's analysis and recommendation shall be submitted to the USVIEDA, which shall consider the Application pursuant to these rules and regulations. If the USVIEDA approves the Application (with or without conditions), the it shall proceed to issue the Certificate to the Applicant, and such Certificate shall accompany the written notice of approval.

(j) The Qualified Production Activity must begin no later than ninety (90) days after issuance of the Certificate; and the Certificate expires one hundred and eighty (180) days after issuance, unless an extension is granted by the USVIEDA.

(k) The USVIEDA shall be only permitted to grant one such extension for thirty (30) days for the start of Qualified Production Activity to the extent that the Certificate includes a Rebate as one of the Incentives.

(l) Each Production Company, both resident and nonresident, is eligible for the Incentives provided in this subchapter upon meeting the applicable requirements of these rules and regulations.

(m) Upon meeting the requisite requirements for the different types of Incentives, Resident Production Companies are eligible for tax Incentives and rebates provided for in in this subchapter up to a maximum of 3 projects per annum.

(n) Nothing in this subchapter prohibits a Resident Production Company from applying for benefits under any other USVIEDA program.

Section 752c. Action on Applications.

(a) The USVIEDA shall meet to make its determination regarding an Application within 25 calendar days after receipt of VIDOT analysis and recommendations.

(b) After carefully considering all relevant factors regarding an Application, the criteria set out in the Code and these Rules and Regulations, USVIEDA shall determine whether Incentives should be granted or denied within twenty-five (25) days of the submission of a complete Application.

(c) The reason for such grant or denial shall be fully set forth on the record, and, in the case of a denial, the Commission may also specify changes in the Application which might lead to a more favorable consideration.

Section 752d. Additional Determinations in Granting Benefits.

(a) If the USVIEDA determines that benefits should be granted, it shall also make the following determinations:

(1) Appropriate conditions, if any, not inconsistent with the Code or these Rules and Regulations, to be attached to the grant of Incentives.

(2) In case part of the basis of a grant of Incentives was the employment of a particular number of employees, number of employees and the date by which such employment requirement shall be met.

(3) Any other determination required by these rules.

(4) The USVIEDA may make any other determinations permitted by the Code or these Rules and Regulations.

Section 752e. Effect of Denial.

(a) The response of the USVIEDA to the Applicant shall constitute official notice of the denial of Incentives and shall set forth in detail the reasons for denial.

(b) The Applicant may request a reconsideration in accordance with Sections 752f to 752i of these rules and regulations.

Section 752f. Reconsideration on Initiative of the USVIEDA.

(c) The USVIEDA may on its own initiative, vote to reconsider any of the following actions within the appropriate time periods:

(1) A grant of Incentives may be reconsidered at any time before a Certificate is issued; or

(2) A vote to deny Incentives may be reconsidered within 10 calendar days of the vote of the USVIEDA;

Section 752g. Petition for Reconsideration.

(a) An Applicant may petition the USVIEDA to vote to reconsider its action with respect to the applicant's Application by letter to the Chairman, with a copy to the CEO, within 10 calendar days from the date a decision is sent to the Applicant.

(b) The petition:

(1) Shall allege at least one of the factors set forth in Section 752h below.

(2) Shall fully set forth which factors are applicable and the reasons for rehearing.

(c) The CEO shall include on the agenda of the next regularly scheduled meeting of the USVIEDA, after the petition is received, a vote on the petition. USVIEDA may vote to grant or deny the petition.

Section 752h. Findings in Support of Reconsideration.

(a) The USVIEDA shall reconsider an action only if it first finds that:

(1) There has been a change in material fact or in applicable law which change occurred after submission of the Application; or

(2) The USVIEDA's action was based on a substantive error in material fact or in the applicable law; or

(3) The USVIEDA's action was based on a finding, conclusion, or other matter upon which the Applicant has not previously submitted but was relevant to consideration of the Application.

Section 752i. Procedure on Reconsideration.

(a) A vote to reconsider shall:

(1) Stay further action by the USVIEDA.

(2) Stay all applicable time limits in these Rules and Regulations.

(b) If the USVIEDA votes to reconsider an Application, it shall issue a decision within 10 calendar days of the date on which the USVIEDA votes to rehear.

Section 752j. Conflict of Interest.

(a) For purposes of this section:

(1) "Significant legal or beneficial interest" shall mean, in the case of a corporation, legal or beneficial ownership or control of five (5%) percent or more of any class of stock of the corporation entitled to vote. Shares owned by a member of the immediate family shall be counted in determining the percentage of ownership or control.

(2) "Pecuniary interest" shall include among other things, ownership of less than five (5%) percent ownership or control.

(3) "Personal interest" shall include any direct interest of a USVIEDA board member, staff member, or any spouse, child, parent or sibling of a USVIEDA Board or staff member.

(b) When participating in actions on Applications or other USVIEDA business, board members and staff shall act on behalf of the people of the U.S. Virgin Islands and as trustees for the public.

(c) Any USVIEDA board member staff who has any personal, professional, or pecuniary interest in an Applicant which has a matter pending before the USVIEDA shall so inform the Chairman of the interest as soon as the board member or staff becomes aware that such a matter is pending.

(d) Any USVIEDA board member or staff who has any personal, professional, or pecuniary interest in an Applicant which has a matter pending before the USVIEDA shall abstain from participation in any actions, votes, discussions, meetings or other activities related to the matter.

(e) USVIEDA board members, staff, agents and consultants shall refrain from any activity which would give the appearance of impropriety.

(f) The failure of any USVIEDA board member, staff, agent or consultant of the USVIEDA to disclose any personal, professional, pecuniary, legal or beneficial interest in an Applicant shall constitute ground for removal or termination, for cause, in addition to any civil or criminal penalties imposed by law.

Section 752k. Incentive; Effect of; Contents

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

(b) The Incentive shall provide with the following:

- (1) The name of Qualified Production Company;
- (2) the specific Incentives granted;
- (3) applicable terms;
- (4) the date or dates upon which the respective Incentives commence, which may be retroactive to the first date of investment by the Production Company in the

Qualified Production Activities granted in the Incentive, but the date may not be before the effective date of the Act;

(5) the termination date or dates for the respective Incentives are granted;

(6) such other terms and conditions as the USVIEDA considers appropriate, and not inconsistent with these regulations or the Act.

(7) The Incentive must contain recitals that upon failure of the Production Company to perform or observe the conditions as required by the USVIEDA within the specified period or any extension thereof granted for good cause shown to the Economic Development Authority, the Incentive is of no force and effect, and the Production Company shall pay or refund as the case may be, to the Government of the U.S. Virgin Islands, the amount of any benefit actually received under the Incentive.

Section 752I. Revocation, suspension or modification of Certificate.

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

(1) the Production Company has failed to maintain compliance with the requirements of this subchapter or any regulation thereunder;

(2) certification received by the USVIEDA from the Lieutenant Governor or the Attorney General of the U.S. Virgin Islands indicates that the Production Company:

(A) has been dissolved; or

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

(3) the Production Company has failed to make any filings or reporting as required by this subchapter;

(4) an officer, shareholder, member, manager, or director acting on behalf of the Production Company has been convicted of a felony in connection with the operation of the Production Company's business; or

(5) an officer, shareholder, member, manager, or director acting on behalf of the Production Company 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 Incentives benefit program under this subchapter.

(b) Development Authority to determine the Production Company's compliance to the terms and conditions of the Certificate and may also assess any extraordinary costs and expenses incurred of any investigation.

SECTION 753 TAX INCENTIVES

Section 753. Qualification for tax Incentives.

In order to qualify and remain eligible for Incentives, an Applicant must:

(a) Be a Resident Production Company or a non-U.S. Virgin Islands entity that has obtained a license to do business in the Territory under 27 V.I.C. § 302.

(b) Expend a minimum of \$250,000.00 on Qualified Production Activities for each Territory Certified Production;

(c) Included in the end credits of any production, there shall be a Qualified Virgin Island promotion;

(d) A Production Company shall provide a copy of the project in DVD or Blu-ray format with evidence of the Qualified U.S. Virgin Island Promotion ("Deposit Requirement") within thirty (30) days of completion of post-production or the first exhibition of the Project. In the event the Production Company fails to comply with the Deposit Requirement or fails to complete the Project, the USVIEDA can take reasonable actions up to and including revoking the Production Company's Certificate.

(e) 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 USVIEDA to speak to local school and university students about music, film, or entertainment topics pertinent to the film or video industry applicable to the applicant, where practicable ("Educational Requirement"). In the event that a Production Company fails to comply with the Educational Requirement, the USVIEDA shall be able to require that the company provide some sort of substitute performance or payment to the Tourism Revolving Fund.

(f) Each qualifying Production Company undertaking a Territory Certified Production and granted a Certificate is subject to an audit by the USVIEDA on completion of the Qualified Production Activity to ensure that the Production Company has met the terms of its Application and Certificate. To assist the USVIEDA in its audit, the Production Company

shall furnish the USVIEDA with, and grant access to, all information that are reasonably related to such audit.

SECTION 753a ELIGIBLE INCENTIVES GRANTED

Section 753a-1. Hotel Tax Incentives

(a) **Qualification for hotel tax Incentives.** 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 Production Companies and nonresident Production Companies:

(a) For Qualified Production Expenditure of \$250,000.00 or less, and hotel stay over 150 room-nights, the Production Company shall pay hotel tax at a rate of 8%;

(b) For Qualified Production Expenditure greater than \$250,000.00, up to \$500,000.00, and hotel stay over 250 room nights, the Production Company shall pay hotel tax at a rate of 6%;

(c) For Qualified Production Expenditure greater than \$500,000.00, up to \$750,000.00, and hotel stay over 350 room nights, the Production Company shall pay hotel tax at a rate of 4%;

(d) For Qualified Production Expenditure greater than \$750,000.00, up to \$1,000,000.00, and hotel stay over 450 room nights, the Production Company shall pay hotel tax at a rate of 3%; and

(e) For Qualified Production Expenditure greater than \$1,000,000.00, and hotel stay over 1000 room nights, the Production Company shall pay hotel tax at a rate of 1.5%.

(b) Procedure for hotel tax incentives.

(a) In its Application, the Applicant will provide a copy of the detailed estimate of the amount of its budget and room nights;

(b) Within ninety (90) days after the end of production, the Production Company shall provide a reconciliation of the Qualified Production Expenditure and hotel stays.

(c) In the event that a Production Company after the completion of production has underestimated its Qualified Production Expenditure and/or room nights, it shall remit the remainder due under the higher hotel tax rate to the VIBIR. In the event that estimate is underestimated by five (5%) percent or more, the Company shall submit to a voluntary audit by the USVIEDA at the Company's sole cost and expense. The failure to comply with this provision is grounds for revocation of the Certificate and all Incentives granted therein.

Section 753a-2. Cash Rebates

(a) Qualification for cash rebates.

(a) A Production Company is allowed a cash rebate for Qualified Production Expenditures made in connection with a Territory Certified Production. The rebate allowed under this section is up to 9% of the total Qualified Production Expenditures incurred in connection with the Territory Certified Production during the tax year, up to a maximum rebate of \$500,000.00. Where applicable, priority for cash rebates is given to Resident Production Companies engaged in a Qualified Production that impacts the local economy with new money and/or promotes the destination to appropriate project demographics outside the U.S. Virgin Islands.

(b) Within 30 days of completion of the production, the Production Company shall provide notice to the USVIEDA that the applicable Qualified U.S. Virgin Islands Promotion was included in the production to be entitled to the following additional cash rebate:

(1) The Production Company is allowed an additional cash rebate equal to of the total Qualified Production Expenditures if the Territory Certified Production includes a Qualified U.S. Virgin Islands Promotion.

(2) The Production Company is allowed an additional cash rebate equal to 10% of the total Qualified Production Expenditures if the Qualified Production Activities are undertaken on the island of St. Croix.

(c) The aggregate amount of cash rebates granted to all Production Companies in any particular fiscal year is subject to the cap set forth in 29 V.I.C. § 752.

(2) Procedure for cash rebates.

(a) In its Application, the Applicant will estimate the amount of its Qualified Production Expenditures and provide a preliminary list of possible or probable shooting locations;

(b) Within ninety (90) days after the end of production, the Production Company shall provide a best practices review of Qualified Production Expenditures by a Certified Public Accountant licensed in the Territory ("Review").

(c) Within sixty (60) days after receipt of the Review, the USVIEDA shall issue a decision to accept or reject, in whole or in part, the amount set forth in the Review.

(d) Any amount of Cash Rebates that are unused shall be retained in the Tourism Revolving Fund and the USVIEDA may apply any remainder towards additional Applications for rebates on a first come, first serve basis as of the date of the Application.

SECTION 753b
PROCEDURE FOR TAKING TAX INCENTIVES

(a) The tax liabilities for income meeting the requirements of 29 V.I.C. § 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 29 V.I.C. § 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.

SECTION 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 as prescribed by this subchapter may be transferred or sold in whole or in part by such Production Company to another U.S. 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 USVIEDA and to the U.S. Virgin Islands Bureau of Internal Revenue a written notification of any transfer or sale of tax credits not later than thirty (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 USVIEDA or the U.S. Virgin Islands Bureau of Internal Revenue;

(3) The tax credit must be used or sold within five (5) years of the date of tax credit. The transfer of this tax credit does not extend the time in which such tax credit may be used. The carry-forward period for a tax credit that is transferred or sold begins on the date on which the tax credit was originally earned;

(4) 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 or sale. 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 U.S. 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 sole recourse is against the Production Company; and

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

(6) A Production Company seeking to transfer a tax credit shall retain a Certified Public Accountant to provide a written opinion as to Qualified Production Expenditures ("CPA Opinion"). This CPA Opinion shall be submitted by the CPA to the USVIEDA. The Production Company shall also provide a copy of the CPA Opinion to any transferee of the tax credit.

(b) Any Production Company claiming, transferring, or selling the tax credit shall reimburse the Government of the U.S. Virgin Islands for any USVIEDA 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.

SECTION 753d ANNUAL COST BENEFIT ANALYSIS

[See 29 V.I.C. § 753d.]

SECTION 754 MISCELLANEOUS PROVISIONS

Section 754a. False or fraudulent statements or representations; false claims for Incentives.

(a) A Production Company 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 Production Company for Incentives under this subchapter, or for the continuation or extension of the Incentives, or who willfully makes or presents any claim for Incentives under this subchapter knowing the claim to be false, fictitious or fraudulent, is subject to a fine of not more than \$25,000.00 or imprisonment of not more than two years, or both.

(b) In addition to the penalties prescribed above, any Incentives granted under this subchapter to such Production Company convicted hereunder is deemed automatically revoked, without necessity for the procedures established under Section 753f of this subchapter. All taxes that were otherwise due and payable by such convicted Production Company but for the Incentives granted, become due and payable as of the date or dates when, but for such tax Incentives under the Incentives, 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 the applicable date or dates. The amount of all Incentives received by the convicted Production Company or officer or shareholder, based on income tax liability and rebates, constitute debts due and owing to the Government of the U.S. Virgin Islands as of the date or dates when the respective Incentives were received.

Section 754b. Record-Keeping Requirements

(a) Applicants shall keep records adequate to substantiate that all Qualified Production Activity have been conducted in accordance with the laws and these regulations.

(b) Applicants shall maintain records containing all Qualified Production Expenditures.

(c) Said records shall be retained by the Applicants for at least three (3) years after the date of the Certificate.

(d) Upon request of the CEO, a Applicants shall make all requested records open and available for inspection by the CEO or designee.

(1) The CEO of USVIEDA or designee, shall afford confidentiality to competitive or other confidential information contained in the records.

(2) At the Applicant's option, and at its own expense, the Applicants may instead furnish the requested records or information to a licensed U.S. Virgin Islands Certified Public Accountancy firm, or an internationally recognized independent public auditor acceptable to the Beneficiary and the CEO, to audit such records and information and to furnish the CEO with a written auditor's report of its independent findings and conclusions with respect to its investigation of the information requested by the CEO regarding the Applicant's compliance hereunder.

Section 754c. Waiver of Rules and Regulations

(a) To prevent undue hardship or material injustice, or if the expeditious conduct of business so requires, any of the rules in these Rules and Regulations may be waived in any particular case or proceeding by a two-thirds (2/3) vote of those members of the USVIEDA present and voting, except to the extent that such waiver would be inconsistent with any statute.

(b) The USVIEDA may, upon written request from an Applicant showing extraordinary or special circumstances, grant a permanent or temporary waiver of all or any part of these rules and regulations.

(c) Such waiver shall be granted in accordance with these rules and regulations.

(d) The USVIEDA must specifically approve any Application for Incentives before granting any such waiver.

The forgoing Sustainable Tourism through Arts-based Revenue Streams Rules and Regulations are hereby APPROVED:

03/08/2017
Date

Jose A. Penn
José A. Penn
Chairman

Pursuant to the powers vested in me by Section 11 of the Revised Organic Act of 1954, the foregoing Sustainable Tourism through Arts-based Revenue Streams Rules and Regulations are hereby APPROVED.

03-08-17
Date

K. Mapp
Kenneth E. Mapp
Governor

CERTIFICATION

Having found compelling circumstances pursuant to 3 V.I.C. Section 938, the public interest requires that these Sustainable Tourism through Arts-based Revenue Streams Rules and Regulations become effective without delay of prior publication. These rules and regulations shall become effective upon this 9th day of March, 2017

K. Mapp
Kenneth E. Mapp
Governor