
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 652 Session of
2009

INTRODUCED BY PICCOLA, BROWNE, RAFFERTY, EARLL, ERICKSON AND
ALLOWAY, MARCH 19, 2009

REFERRED TO FINANCE, MARCH 19, 2009

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," repealing provisions relating to sales and use
11 tax exclusion for rental or licensing of film for commercial
12 exhibition and provisions relating to film production tax
13 credit.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 204(34) of the act of March 4, 1971
17 (P.L.6, No.2), known as the Tax Reform Code of 1971, added
18 August 31, 1971 (P.L.362, No.93), is repealed:

19 Section 204. Exclusions from Tax.--* * *

20 [(34) The sale at retail, or use of motion picture film
21 rented or licensed from a distributor for the purpose of
22 commercial exhibition.]

23 * * *

1 Section 2. Article XVII-D of the act, added July 25, 2007
2 (P.L.373, No.55), is repealed.

3 [ARTICLE XVII-A

4 EMPLOYMENT INCENTIVE PAYMENTS

5 Section 1701-D. Scope of article.

6 This article relates to film production tax credits.

7 Section 1702-D. Definitions.

8 The following words and phrases when used in this article
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Department." The Department of Community and Economic
12 Development of the Commonwealth.

13 "Film." A feature film, a television film, a television talk
14 or game show series, a television commercial or a television
15 pilot or each episode of a television series which is intended
16 as programming for a national audience. The term does not
17 include a production featuring news, current events, weather and
18 market reports, public programming, sports events, awards shows
19 or other gala events, a production that solicits funds, a
20 production containing obscene material or performances as
21 defined in 18 Pa.C.S. § 5903(b) (relating to obscene and other
22 sexual materials and performances) or a production primarily for
23 private, political, industrial, corporate or institutional
24 purposes.

25 "Pass-through entity." A partnership as defined in section
26 301(n.0) or a Pennsylvania S corporation as defined in section
27 301(n.1).

28 "Pennsylvania production expense." Production expense
29 incurred in this Commonwealth. The term includes:

30 (1) Compensation paid to an individual on which the tax

1 imposed by Article III will be paid or accrued.

2 (2) Payment to a personal service corporation
3 representing individual talent if the tax imposed by Article
4 IV will be paid or accrued on the net income of the
5 corporation for the taxable year.

6 (3) Payment to a pass-through entity representing
7 individual talent if the tax imposed by Article III will be
8 paid or accrued by all of the partners, members or
9 shareholders of the pass-through entity for the taxable year.

10 (4) The cost of transportation incurred while
11 transporting to or from a train station, bus depot or
12 airport, located in this Commonwealth.

13 (5) The cost of insurance coverage purchased through an
14 insurance agent based in this Commonwealth.

15 (6) The purchase of music or story rights if any of the
16 following subparagraphs apply:

17 (i) The purchase is from a resident of this
18 Commonwealth.

19 (ii) The purchase is from an entity subject to
20 taxation in this Commonwealth, and the transaction is
21 subject to taxation under Article III, IV or VI.

22 (7) The cost of rental of facilities and equipment
23 rented from or through a resident of this Commonwealth or an
24 entity subject to taxation in this Commonwealth.

25 "Production expense." As follows:

26 (1) The term includes all of the following:

27 (i) Compensation paid to an individual employed in
28 the production of the film.

29 (ii) Payment to a personal service corporation
30 representing individual talent.

1 (iii) Payment to a pass-through entity representing
2 individual talent.

3 (iv) The costs of construction, operations, editing,
4 photography, sound synchronization, lighting, wardrobe
5 and accessories.

6 (v) The cost of leasing vehicles.

7 (vi) The cost of transportation to or from a train
8 station, bus depot or airport.

9 (vii) The cost of insurance coverage.

10 (viii) The costs of food and lodging.

11 (ix) The purchase of music or story rights.

12 (x) The cost of rental of facilities and equipment.

13 (2) The term does not include any of the following:

14 (i) Deferred, leveraged or profit participation paid
15 or to be paid to individuals employed in the production
16 of the film or paid to entities representing an
17 individual for services provided in the production of the
18 film.

19 (ii) Development cost.

20 (iii) Expense incurred in marketing or advertising a
21 film.

22 (iv) Cost related to the sale or assignment of a
23 film production tax credit under section 1705-D(e).

24 "Qualified film production expense." All Pennsylvania
25 production expenses if Pennsylvania production expenses comprise
26 at least 60% of the film's total production expenses. The term
27 shall not include more than \$15,000,000 in the aggregate of
28 compensation paid to individuals or payment made to entities
29 representing an individual for services provided in the
30 production of the film.

1 "Qualified tax liability." The liability for taxes imposed
2 under Article III, IV or VI. The term shall not include any tax
3 withheld by an employer from an employee under Article III.

4 "Start date." The first day of principal photography in this
5 Commonwealth.

6 "Tax credit." The film production tax credit provided under
7 this article.

8 "Taxpayer." A film production company subject to tax under
9 Article III, IV or VI. The term does not include contractors or
10 subcontractors of a film production company.

11 Section 1703-D. Credit for qualified film production expenses.

12 (a) Application.--A taxpayer may apply to the department for
13 a tax credit under this section. The application shall be on the
14 form required by the department.

15 (b) Review and approval.--The department shall review and
16 approve or disapprove the applications in the order in which
17 they are received. Upon determining the taxpayer has incurred or
18 will incur qualified film production expenses, the department
19 may approve the taxpayer for a tax credit.

20 (c) Contract.--If the department approves the taxpayer's
21 application under subsection (b), the department and the
22 taxpayer shall enter into a contract containing the following:

23 (1) An itemized list of production expenses incurred or
24 to be incurred for the film.

25 (2) An itemized list of Pennsylvania production expenses
26 incurred or to be incurred for the film.

27 (3) With respect to a contract entered into prior to
28 completion of production, a commitment by the taxpayer to
29 incur the qualified film production expenses as itemized.

30 (4) The start date.

1 (5) Any other information the department deems
2 appropriate.

3 (d) Certificate.--Upon execution of the contract required by
4 subsection (c), the department shall award the taxpayer a film
5 production tax credit and issue the taxpayer a film production
6 tax credit certificate.

7 Section 1704-D. Film production tax credits.

8 A taxpayer may claim a tax credit against the qualified tax
9 liability of the taxpayer.

10 Section 1705-D. Carryover, carryback and assignment of credit.

11 (a) General rule.--If the taxpayer cannot use the entire
12 amount of the tax credit for the taxable year in which the tax
13 credit is first approved, then the excess may be carried over to
14 succeeding taxable years and used as a credit against the
15 qualified tax liability of the taxpayer for those taxable years.
16 Each time the tax credit is carried over to a succeeding taxable
17 year, it shall be reduced by the amount that was used as a
18 credit during the immediately preceding taxable year. The tax
19 credit provided by this article may be carried over and applied
20 to succeeding taxable years for no more than three taxable years
21 following the first taxable year for which the taxpayer was
22 entitled to claim the credit.

23 (b) Application.--A tax credit approved by the department in
24 a taxable year first shall be applied against the taxpayer's
25 qualified tax liability for the current taxable year as of the
26 date on which the credit was approved before the tax credit can
27 be applied against any tax liability under subsection (a).

28 (c) No carryback or refund.--A taxpayer is not entitled to
29 carry back or obtain a refund of all or any portion of an unused
30 tax credit granted to the taxpayer under this article.

1 (d) (Reserved).

2 (e) Sale or assignment.--The following shall apply:

3 (1) A taxpayer, upon application to and approval by the
4 department, may sell or assign, in whole or in part, a tax
5 credit granted to the taxpayer under this article.

6 (2) The department and the Department of Revenue shall
7 jointly promulgate regulations for the approval of
8 applications under this subsection.

9 (3) Before an application is approved, the Department of
10 Revenue must make a finding that the applicant has filed all
11 required State tax reports and returns for all applicable
12 taxable years and paid any balance of State tax due as
13 determined at settlement, assessment or determination by the
14 Department of Revenue.

15 (4) Notwithstanding any other provision of law, the
16 Department of Revenue shall settle, assess or determine the
17 tax of an applicant under this subsection within 90 days of
18 the filing of all required final returns or reports in
19 accordance with section 806.1(a)(5) of the act of April 9,
20 1929 (P.L.343, No.176), known as The Fiscal Code.

21 (f) Purchasers and assignees.--The purchaser or assignee of
22 all or a portion of a tax credit under subsection (e) shall
23 immediately claim the credit in the taxable year in which the
24 purchase or assignment is made. The amount of the tax credit
25 that a purchaser or assignee may use against any one qualified
26 tax liability may not exceed 50% of such qualified tax liability
27 for the taxable year. The purchaser or assignee may not carry
28 forward, carry back or obtain a refund of or sell or assign the
29 tax credit. The purchaser or assignee shall notify the
30 Department of Revenue of the seller or assignor of the tax

1 credit in compliance with procedures specified by the Department
2 of Revenue.

3 Section 1706-D. Determination of Pennsylvania production
4 expenses.

5 In prescribing standards for determining which production
6 expenses are considered Pennsylvania production expenses for
7 purposes of computing the credit provided by this article, the
8 department shall consider:

9 (1) The location where services are performed.

10 (2) The location where supplies are consumed.

11 (3) Other factors the department determines are
12 relevant.

13 Section 1707-D. Limitations.

14 (a) Cap.--In no case shall the aggregate amount of tax
15 credits awarded in any fiscal year under this article exceed
16 \$75,000,000.

17 (b) Individual limitations.--The following shall apply:

18 (1) The aggregate amount of film production tax credits
19 awarded by the department under section 1703-D(d) to a
20 taxpayer for a film may not exceed 25% of the qualified film
21 production expenses to be incurred.

22 (2) A taxpayer that has received a grant under 12
23 Pa.C.S. § 4106 (relating to approval) shall not be eligible
24 for a film production tax credit under this act for the same
25 film.

26 Section 1708-D. Penalty.

27 A taxpayer which claims a tax credit and fails to incur the
28 amount of qualified film production expenses agreed to in
29 section 1703-D(c)(3) for a film in that taxable year shall repay
30 to the Commonwealth the amount of the film production tax credit

1 claimed under this article for the film.

2 Section 1709-D. Pass-through entity.

3 (a) General rule.--If a pass-through entity has any unused
4 tax credit under section 1705-D, it may elect in writing,
5 according to procedures established by the Department of
6 Revenue, to transfer all or a portion of the credit to
7 shareholders, members or partners in proportion to the share of
8 the entity's distributive income to which the shareholder,
9 member or partner is entitled.

10 (b) Limitation.--A pass-through entity and a shareholder,
11 member or partner of a pass-through entity shall not claim the
12 credit under subsection (a) for the same qualified film
13 production expense.

14 (c) Application.--A shareholder, member or partner of a
15 pass-through entity to whom a credit is transferred under
16 subsection (a) shall immediately claim the credit in the taxable
17 year in which the transfer is made. The shareholder, member or
18 partner may not carry forward, carry back, obtain a refund of or
19 sell or assign the credit.

20 Section 1710-D. Department guidelines and regulations.

21 The department shall develop written guidelines for the
22 implementation of the provisions of this article. The guidelines
23 shall be in effect until such time as the department promulgates
24 regulations for the implementation of the provisions of this
25 article. The department shall promulgate regulations for the
26 implementation of this article within two years of the effective
27 date of this section.

28 Section 1711-D. Report to General Assembly.

29 (a) General rule.--No later than June 1, 2008, and September
30 1 of each year thereafter, the Secretary of Community and

1 Economic Development shall submit a report to the General
2 Assembly summarizing the effectiveness of the tax credit
3 provided by this article. The report shall include the name of
4 the film produced, the names of all taxpayers utilizing the
5 credit as of the date of the report and the amount of credits
6 approved for, utilized by or sold or assigned by each taxpayer.
7 The report may also include any recommendations for changes in
8 the calculation or administration of the tax credit. The report
9 shall be submitted to the chairman and minority chairman of the
10 Appropriations and Finance Committees of the Senate and the
11 chairman and minority chairman of the Appropriations and Finance
12 Committees of the House of Representatives. In addition to the
13 information set forth above, the report shall include the
14 following information, which shall be separated by geographic
15 location within this Commonwealth:

16 (1) The amount of credits claimed during the fiscal year
17 by film.

18 (2) The total amount spent in this Commonwealth during
19 the fiscal year by film.

20 (3) The total amount of tax revenues generated by this
21 Commonwealth during the fiscal year by film.

22 (4) The total number of jobs created during the fiscal
23 year by film, including the duration of the jobs.

24 (b) Public information.--Notwithstanding any law providing
25 for the confidentiality of tax records, the information in the
26 report shall be public information, and all report information
27 shall be posted on the department's Internet website.

28 Section 1712-D. Film Advisory Board.

29 (a) Composition.--A Film Advisory Board is established. The
30 board shall work with the Pennsylvania Film Office and the

1 regional film offices to promote the film industry throughout
2 this Commonwealth and to examine and file a written report on
3 the effectiveness of the tax credit and grant programs. The
4 report shall be included in the department's report required
5 under section 1711-D. The board shall consist of the following
6 members:

7 (1) The Secretary of Community and Economic Development,
8 or a designee.

9 (2) A member appointed by the Governor.

10 (3) A member appointed by the President pro tempore of
11 the Senate.

12 (4) A member appointed by the Minority Leader of the
13 Senate.

14 (5) A member appointed by the Majority Leader of the
15 House of Representatives.

16 (6) A member appointed by the Minority Leader of the
17 House of Representatives.

18 (b) Compensation.--Members of the board shall not be
19 compensated for their service as board members, but shall be
20 compensated for their reasonable expenses. The department shall
21 provide administrative support for the board.

22 (c) Meetings.--The board shall meet no less than twice each
23 year.

24 (d) Chairman.--The members of the board shall elect the
25 chairman.]

26 Section 3. This act shall take effect July 1, 2009, or
27 immediately, whichever is later.