

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 983 Session of
2005

INTRODUCED BY T. STEVENSON, MANN, BAKER, BALDWIN, BASTIAN,
CALTAGIRONE, CAPPELLI, CAUSER, CAWLEY, CREIGHTON, DENLINGER,
DeWEESE, FEESE, FRANKEL, GEIST, GODSHALL, HENNESSEY, HERMAN,
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R. STEVENSON, THOMAS, TURZAI, WALKO, WATSON, WILT,
YOUNGBLOOD, ADOLPH AND FABRIZIO, MARCH 15, 2005

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,
AS AMENDED, MAY 11, 2005

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," further providing, in film production tax credit,
11 for the definitions of ~~"film,"~~ "DEPARTMENT," "FILM," "PASS- <—
12 THROUGH ENTITY," "Pennsylvania production expense" and
13 "production expense"; providing, in film production tax
14 credit, for the definition of "start date"; further
15 providing, in film production tax credit, for credit for
16 qualified film production expenses; providing for film
17 production tax credits; further providing, in film production
18 tax credit, for carryover and refund of credits ~~and~~, for <—
19 limitation on credits, FOR PASS-THROUGH ENTITY, FOR REPORT TO <—
20 GENERAL ASSEMBLY AND FOR TERMINATION; imposing penalties; and
21 providing for findings and declarations.

22 The General Assembly of the Commonwealth of Pennsylvania

23 hereby enacts as follows:

24 Section 1. The definitions of ~~"film,"~~ "DEPARTMENT," "FILM," <—

1 "PASS-THROUGH ENTITY," "Pennsylvania production expense" and
2 "production expense" in section 1702-C of the act of March 4,
3 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added
4 July 20, 2004 (P.L.801, No.95), are amended and the section is
5 amended by adding a definition read:

6 Section 1702-C. Definitions.

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

10 * * *

<—

11 "DEPARTMENT." THE DEPARTMENT OF [REVENUE] COMMUNITY AND
12 ECONOMIC DEVELOPMENT OF THE COMMONWEALTH.

<—

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

26 * * *

27 "PASS-THROUGH ENTITY." A PARTNERSHIP [AS DEFINED IN SECTION
28 301(N.0)] OR A PENNSYLVANIA S CORPORATION AS DEFINED IN SECTION
29 [301(N.1)] 301(N.0) AND (N.1).

<—

30 "Pennsylvania production expense." A production expense

1 incurred in this Commonwealth. The FOR PURPOSES OF WAGES AND
2 SALARIES, THE term includes only wages and salaries on which the
3 taxes imposed by Article III or IV have been paid or accrued.

4 "Production expense." An expense incurred in the production
5 of a film. The term includes the aggregate amount of wages and
6 salaries of individuals each of whom receive less than
7 \$1,000,000 and are employed in the production of [a film on
8 which the taxes imposed by Article III or IV have been paid or
9 accrued] the film; the costs of construction, operations,
10 editing, photography, sound synchronization, lighting, wardrobe
11 and accessories; and the cost of rental of facilities and
12 equipment. The term does not include expenses incurred in
13 purchasing story rights, development costs, marketing or
14 advertising a film.

15 * * *

16 "Start date." The first day of principal photography in this
17 Commonwealth.

18 * * *

19 Section 2. Section 1703-C of the act, added July 20, 2004
20 (P.L.801, No.95), is amended to read:

21 Section 1703-C. Credit for qualified film production expenses.

22 [(a) General rule.--A taxpayer who incurs a qualified film
23 production expense in a taxable year may apply for a film
24 production tax credit as provided in this article. A taxpayer
25 seeking a credit under this article must submit an application
26 to the department by February 15 for qualified film production
27 expenses incurred in the taxable year that ended in the prior
28 calendar year.

29 (b) Amount of credit.--A taxpayer that is qualified under
30 subsection (a) shall receive a film production tax credit for

1 the taxable year in the amount of 20% of the qualified film
2 production expenses.

3 (c) Notification.--By August 15 of the calendar year
4 following the close of the taxable year during which the
5 qualified film production expense was incurred, the department
6 shall notify the taxpayer of the amount of the taxpayer's film
7 production tax credit approved by the department.]

8 (a) Application.--A taxpayer may apply to the Department of <—
9 Community and Economic Development DEPARTMENT for a film <—
10 production tax credit. The application shall be on the form
11 required by the Department of Community and Economic Development <—
12 DEPARTMENT. <—

13 (b) Review and approval.--The Department of Community and <—
14 Economic Development DEPARTMENT shall review the application. <—
15 Upon determining the qualified film production expense amount
16 for the taxpayer, the Department of Community and Economic <—
17 Development DEPARTMENT may approve the taxpayer for a film <—
18 production tax credit. The Department of Community and Economic <—
19 Development DEPARTMENT shall give priority considerations to <—
20 applications with the earliest start date.

21 (C) APPEALS.--IF A TAXPAYER DISAGREES WITH THE DETERMINATION <—
22 OF THE DEPARTMENT AS TO THE ELIGIBILITY OF THE TAXPAYER TO
23 RECEIVE A FILM PRODUCTION TAX CREDIT OR THE TAXPAYER DISAGREES
24 WITH THE AMOUNT OF THE FILM PRODUCTION TAX CREDIT APPROVED BY
25 THE DEPARTMENT, THE TAXPAYER MAY APPEAL THE DETERMINATION OF THE
26 DEPARTMENT PURSUANT TO THE ACT OF APRIL 9, 1929 (P.L.177,
27 NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929.

28 (c) (D) Contract.--If the Department of Community and <—
29 Economic Development DEPARTMENT approves the taxpayer's <—
30 application under subsection (b), the Department of Community <—

~~and Economic Development~~ DEPARTMENT and the taxpayer shall enter
into a contract containing the following:

(1) An itemized list of production expenses to be
incurred.

(2) An itemized list of Pennsylvania production expenses
to be incurred.

(3) A commitment by the taxpayer to incur the qualified
film production expenses as itemized.

(4) The start date.

(5) Any other information the ~~Department of Community~~
~~and Economic Development~~ DEPARTMENT deems appropriate.

~~(d)~~ (E) Certificate.--Upon execution of the contract
required by subsection ~~(c)~~, the ~~Department of Community and~~
~~Economic Development~~ (D), THE DEPARTMENT shall award the
taxpayer a film production tax credit and issue the taxpayer a
film production tax credit certificate.

~~(e)~~ (F) Limitations.--

(1) The aggregate amount of film production tax credits
awarded by the ~~Department of Community and Economic~~
~~Development under subsection (d)~~ DEPARTMENT UNDER SUBSECTION
(E) shall not exceed \$10,000,000 in any fiscal year.

(2) FOR THE 2005-2006 FISCAL YEAR THE AMOUNT OF FILM
PRODUCTION TAX CREDITS TO BE APPROVED UNDER THIS ARTICLE
SHALL BE \$10,000,000 LESS THE FILM PRODUCTION TAX CREDITS TO
BE AWARDED BY THE DEPARTMENT OF REVENUE BY AUGUST 15, 2005,
FOR EXPENSES INCURRED FOR THE PERIOD FROM JULY 1, 2004, TO
DECEMBER 31, 2004.

(3) IF A TAXPAYER APPEALED THE DETERMINATION OF THE
DEPARTMENT PURSUANT TO SUBSECTION (C) AND A FINAL
DETERMINATION IS MADE THAT AN ENTITY IS ENTITLED TO A FILM

PRODUCTION TAX CREDIT OR ADDITIONAL FILM PRODUCTION TAX CREDIT, THE AMOUNT OF NEW OR ADDITIONAL CREDIT GRANTED SHALL BE DEDUCTED FROM THE \$10,000,000 FILM PRODUCTION TAX CREDIT AVAILABLE FOR APPROVAL IN THE FISCAL YEAR THE FINAL DETERMINATION WAS MADE IF POSSIBLE. IF THE ENTIRE \$10,000,000 FILM PRODUCTION TAX CREDIT AVAILABLE FOR THE FISCAL YEAR HAS BEEN APPROVED WHEN THE FINAL DETERMINATION IS MADE, THE AMOUNT OF NEW OR ADDITIONAL CREDIT SHALL BE DEDUCTED FROM THE \$10,000,000 FILM PRODUCTION TAX CREDIT AVAILABLE IN THE FOLLOWING FISCAL YEAR.

~~(2)~~ (4) The aggregate amount of film production tax credits awarded by the Department of Community and Economic Development under subsection ~~(d)~~ DEPARTMENT UNDER SUBSECTION (E) to a taxpayer for a film may not exceed 20% of the qualified film production expenses to be incurred.

Section 3. The act is amended by adding a section to read:

Section 1703.1-C. Film production tax credits.

(a) Claim.--In accordance with subsection (b), a taxpayer may claim a film production tax credit against the qualified tax liability of the taxpayer.

(b) Cap.--The aggregate amount of film production tax credits claimed by a taxpayer under subsection (a) may not exceed the amount approved by the Department of Community and Economic Development under section 1703-C(e)(3) DEPARTMENT UNDER SECTION 1703-C(B) for the taxpayer for that taxable year.

Section 4. Sections 1704-C and 1707-C of the act, added July 20, 2004 (P.L.801, No.95), are amended to read:

Section 1704-C. Carryover, carryback, refund and assignment of credit.

(a) General rule.--If the taxpayer cannot use the entire

1 amount of the film production tax credit for the taxable year in
2 which the film production tax credit is first approved, then the
3 excess may be carried over to succeeding taxable years and used
4 as a credit against the qualified tax liability of the taxpayer
5 for those taxable years. Each time that the film production tax
6 credit is carried over to a succeeding taxable year, it shall be
7 reduced by the amount that was used as a credit during the
8 immediately preceding taxable year. The film production tax
9 credit provided by this article may be carried over and applied
10 to succeeding taxable years for no more than three taxable years
11 following the first taxable year for which the taxpayer was
12 entitled to claim the credit.

13 (b) Application.--A film production tax credit approved by
14 the ~~Department of [Revenue] Community and Economic Development~~ <—
15 [DEPARTMENT OF REVENUE] DEPARTMENT for qualified film production <—
16 expenses in a taxable year first shall be applied against the
17 taxpayer's qualified tax liability for the current taxable year
18 as of the date on which the credit was approved before the film
19 production tax credit can be applied against any tax liability
20 under subsection (a).

21 (c) No carryback.--A taxpayer is not entitled to carry back
22 or obtain a refund of an unused film production tax credit.

23 (d) Sale or assignment.--

24 (1) A taxpayer, upon application to and approval by the
25 [Department of Community and Economic Development] <—
26 DEPARTMENT, may sell or assign, in whole or in part, a film <—
27 production tax credit granted to the taxpayer under this
28 article.

29 (2) The Department of [Community and Economic <—
30 Development] REVENUE and the department shall jointly <—

1 promulgate regulations for the approval of applications under
2 this subsection.

3 (3) Before an application is approved, the [department] <—
4 DEPARTMENT OF REVENUE must make a finding that the applicant <—
5 has filed all required State tax reports [for the taxable
6 year for which the qualified expenses were approved] and
7 returns for all applicable taxable years and paid any balance
8 of State tax due as determined at settlement, assessment or
9 determination by the [department] DEPARTMENT OF REVENUE. <—

10 (4) Notwithstanding any other provision of law, the
11 [department] DEPARTMENT OF REVENUE shall settle, assess or <—
12 determine the tax of an applicant under this subsection
13 within 90 days of the filing of all required final returns or
14 reports in accordance with section 806.1(a)(5) of the act of
15 April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

16 (e) Purchasers and assignees.--The purchaser or assignee of
17 a portion of a film production tax credit under subsection (d)
18 shall immediately claim the credit in the taxable year in which
19 the purchase or assignment is made. The amount of the film
20 production credit that a purchaser or assignee may use against
21 any one qualified tax liability may not exceed 50% of such
22 qualified tax liability for the taxable year. The purchaser or
23 assignee may not carry over, carry back, obtain a refund of or
24 sell or assign the film production tax credit. The purchaser or
25 assignee shall notify the Department of Revenue of the seller or
26 assignor of the film production tax credit in compliance with
27 procedures specified by the Department of Revenue.

28 [Section 1707-C. Limitation on credits.

29 (a) General rule.--The total amount of credits approved by
30 the department shall not exceed \$10,000,000 in any fiscal year.

(b) Exception.--If the total amount of film production tax credits applied for by all taxpayers exceeds the amount allocated for those credits, then the film production tax credit to be received by each applicant shall be the product of the allocated amount multiplied by the quotient of the film production tax credit applied for by the applicant divided by the total of all film production credits applied for by all applicants, the algebraic equivalent of which is:

taxpayer's film production tax credit = amount allocated for those credits X (film production tax credit applied for by the applicant/total of all film production tax credits applied for by all applicants).]

Section 5. The act is amended by adding a section to read:

Section 1707.1-C. Penalty.

A taxpayer which claims a film production tax credit and fails to incur the amount of qualified film production expense agreed to in section ~~1703-C(e)(3)~~ 1703-C(D)(3) for a film in that taxable year shall refund to the Commonwealth the film production tax credit claimed under this article for the film.

DIFFERENCE BETWEEN THE AMOUNT OF FILM PRODUCTION TAX CREDIT APPROVED AND THE AMOUNT OF FILM PRODUCTION TAX CREDIT ACTUALLY EARNED PLUS A PENALTY OF 25% OF THE DIFFERENCE.

~~Section 6. The following provisions shall apply to tax years beginning after December 31, 2004:~~

~~(1) The amendment of the definitions of "film," "Pennsylvania production expense" and "production expense" in section 1702-C of the act.~~

~~(2) The addition of the definition of "start date" in section 1702-C of the act.~~

~~(3) The amendment of sections 1703-C, 1704-C and 1707-C~~

1 ~~of the act.~~

2 ~~(4) The addition of sections 1703.1 C and 1707.1 C of~~
3 ~~the act.~~

4 ~~Section 7. This act shall take effect immediately.~~

5 SECTION 6. SECTIONS 1708-C, 1709-C AND 1710-C OF THE ACT, <—
6 ADDED JULY 20, 2004 (P.L.801, NO.95), ARE AMENDED TO READ:
7 SECTION 1708-C. PASS-THROUGH ENTITY.

8 (A) GENERAL RULE.--IF A PASS-THROUGH ENTITY HAS ANY UNUSED
9 TAX CREDIT UNDER SECTION 1704-C, IT MAY ELECT IN WRITING,
10 ACCORDING TO PROCEDURES ESTABLISHED BY THE [DEPARTMENT]
11 DEPARTMENT OF REVENUE, TO TRANSFER ALL OR A PORTION OF THE
12 CREDIT TO SHAREHOLDERS, MEMBERS OR PARTNERS IN PROPORTION TO THE
13 SHARE OF [ITS] THE ENTITY'S DISTRIBUTIVE INCOME TO WHICH THE
14 SHAREHOLDER, MEMBER OR PARTNER IS ENTITLED.

15 (B) LIMITATION.--THE CREDIT PROVIDED UNDER SUBSECTION (A) IS
16 IN ADDITION TO ANY FILM PRODUCTION TAX CREDIT TO WHICH A
17 SHAREHOLDER, MEMBER OR PARTNER OF A PASS-THROUGH ENTITY IS
18 OTHERWISE ENTITLED UNDER THIS ARTICLE. HOWEVER, A PASS-THROUGH
19 ENTITY AND A SHAREHOLDER, MEMBER OR PARTNER OF A PASS-THROUGH
20 ENTITY MAY NOT CLAIM A CREDIT UNDER THIS ARTICLE FOR THE SAME
21 QUALIFIED FILM PRODUCTION EXPENSE.

22 (C) APPLICATION.--A SHAREHOLDER, MEMBER OR PARTNER OF A
23 PASS-THROUGH ENTITY TO WHOM A CREDIT IS TRANSFERRED UNDER
24 SUBSECTION (A) SHALL IMMEDIATELY CLAIM THE CREDIT IN THE TAXABLE
25 YEAR IN WHICH THE TRANSFER IS MADE. [A CREDIT TRANSFERRED TO A
26 NATURAL PERSON MAY BE APPLIED ONLY AGAINST THE INCOME REFERRED
27 TO UNDER SECTION 303(A)(2).] THE SHAREHOLDER, MEMBER OR PARTNER
28 MAY NOT CARRY FORWARD, CARRY BACK, OBTAIN A REFUND OF OR ASSIGN
29 THE CREDIT.

30 SECTION 1709-C. REPORT TO GENERAL ASSEMBLY.

1 THE [SECRETARY] DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT TO
2 THE GENERAL ASSEMBLY INDICATING THE EFFECTIVENESS OF THE FILM
3 PRODUCTION TAX CREDIT PROVIDED BY THIS ARTICLE NO LATER THAN
4 [APRIL] OCTOBER 1 FOLLOWING THE YEAR IN WHICH THE CREDITS WERE
5 APPROVED. THE REPORT SHALL INCLUDE THE NAMES OF ALL TAXPAYERS
6 UTILIZING THE CREDIT AS OF THE DATE OF THE REPORT AND THE AMOUNT
7 OF CREDITS APPROVED AND UTILIZED BY EACH TAXPAYER.
8 NOTWITHSTANDING ANY LAW PROVIDING FOR THE CONFIDENTIALITY OF TAX
9 RECORDS, THE INFORMATION CONTAINED IN THE REPORT SHALL BE PUBLIC
10 INFORMATION. THE REPORT MAY ALSO INCLUDE ANY RECOMMENDATIONS FOR
11 CHANGES IN THE CALCULATION OR ADMINISTRATION OF THE CREDIT.

12 SECTION 1710-C. TERMINATION.

13 THE DEPARTMENT SHALL NOT APPROVE A FILM PRODUCTION TAX CREDIT
14 UNDER THIS ARTICLE [FOR TAXABLE YEARS ENDING AFTER DECEMBER 31,
15 2012] AFTER JUNE 30, 2013.

16 SECTION 7. THIS ACT SHALL APPLY TO FILM PRODUCTION EXPENSES
17 INCURRED ON OR AFTER JANUARY 1, 2005. FILM TAX PRODUCTION
18 CREDITS FOR THESE EXPENSES MAY NOT BE AWARDED PRIOR TO JULY 1,
19 2005. THIS ACT SHALL NOT AFFECT FILM TAX PRODUCTION CREDITS FOR
20 PRODUCTION EXPENSES INCURRED FROM JULY 1, 2004, THROUGH DECEMBER
21 31, 2004, AND THE PROCESS FOR THE APPROVAL AND AWARDING OF THE
22 FILM TAX PRODUCTION CREDITS FOR THESE EXPENSES AS PROVIDED FOR
23 IN THE ACT OF JULY 20, 2004 (P.L.801, NO.95), ENTITLED "AN ACT
24 AMENDING THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), ENTITLED 'AN
25 ACT RELATING TO TAX REFORM AND STATE TAXATION BY CODIFYING AND
26 ENUMERATING CERTAIN SUBJECTS OF TAXATION AND IMPOSING TAXES
27 THEREON; PROVIDING PROCEDURES FOR THE PAYMENT, COLLECTION,
28 ADMINISTRATION AND ENFORCEMENT THEREOF; PROVIDING FOR TAX
29 CREDITS IN CERTAIN CASES; CONFERRING POWERS AND IMPOSING DUTIES
30 UPON THE DEPARTMENT OF REVENUE, CERTAIN EMPLOYERS, FIDUCIARIES,

1 INDIVIDUALS, PERSONS, CORPORATIONS AND OTHER ENTITIES;
2 PRESCRIBING CRIMES, OFFENSES AND PENALTIES, ' AUTHORIZING A FILM
3 PRODUCTION TAX CREDIT; AND PROVIDING FOR THE POWERS AND DUTIES
4 OF THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT AND THE
5 DEPARTMENT OF REVENUE."

6 SECTION 8. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.