

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1526 Session of
2012

INTRODUCED BY BROWNE, PILEGGI, PIPPY, HUGHES AND MCILHINNEY,
MAY 21, 2012

REFERRED TO FINANCE, MAY 21, 2012

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," in film production tax credits, further providing
11 for definitions, for carrying and assignment, for limitations
12 and for pass-through entities.

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

15 Section 1. The definitions of "qualified film production
16 expense," "qualified tax liability," "start date" and "taxpayer"
17 in section 1702-D of the act of March 4, 1971 (P.L.6, No.2),
18 known as the Tax Reform Code of 1971, added July 25, 2007
19 (P.L.373, No.55), are amended to read:

20 Section 1702-D. Definitions.

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

1 * * *

2 "Qualified film production expense." All Pennsylvania
3 production expenses if:

4 (1) at least \$10,000,000 is spent on qualified
5 production expenses;

6 (2) on a television film, a television talk or game show
7 series, a television commercial or a television pilot or each
8 episode of a television series which is intended as
9 programming for a national audience, at least \$3,000,000
10 spent on qualified production expenses; or

11 (3) Pennsylvania production expenses comprise at least
12 [60%] 50% of the film's total production expenses.

13 The term shall not include more than \$15,000,000 in the
14 aggregate of compensation paid to individuals or payment made to
15 entities representing an individual for services provided in the
16 production of the film.

17 "Qualified tax liability." The liability for taxes imposed
18 under Article III, IV [or], VI, VII or IX. The term shall not
19 include any tax withheld by an employer from an employee under
20 Article III.

21 "Start date." [The] As determined by the department:

22 (1) the first day of principal photography in this
23 Commonwealth; or

24 (2) the opening of a production office in this
25 Commonwealth.

26 * * *

27 "Taxpayer." A film production company subject to tax under
28 Article III, IV [or], VI, VII or IX. The term does not include
29 contractors or subcontractors of a film production company.

30 Section 2. Sections 1705-D, 1707-D and 1709-D of the act,

added July 25, 2007 (P.L.373, No.55), are amended to read:
Section 1705-D. Carryover, carryback and assignment of credit.

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

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

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

(d) [(Reserved).] Refund.--A taxpayer is entitled to a refund not to exceed 85% of an unused tax credit granted to the taxpayer under this article. If a refund of 85% of the tax credit is issued under this section, the 15% remaining of the tax credit granted shall revert to the pool of tax credits available in the program for the current fiscal year.

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

(1) A taxpayer, upon application to and approval by the

1 department, may sell or assign, in whole or in part, a tax
2 credit granted to the taxpayer under this article.

3 (2) The department and the Department of Revenue shall
4 jointly promulgate regulations for the approval of
5 applications under this subsection.

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

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

18 (f) Purchasers and assignees.--

19 (1) The purchaser or assignee of all or a portion of a
20 tax credit under subsection (e) shall immediately claim the
21 credit in the taxable year in which the purchase or
22 assignment is made.

23 (2) The amount of the tax credit that a purchaser or
24 assignee may use against any one qualified tax liability may
25 not exceed [50%] 75% of such qualified tax liability for the
26 taxable year.

27 (3) The purchaser or assignee may [not] carry forward[,]
28 the tax credit for no more than one year.

29 (4) The purchaser or assignee may not carry back or
30 obtain a refund of or sell or assign the tax credit.

1 (5) The purchaser or assignee shall notify the
2 Department of Revenue of the seller or assignor of the tax
3 credit in compliance with procedures specified by the
4 Department of Revenue.

5 Section 1707-D. Limitations.

6 (a) Cap.--In no case shall the aggregate amount of tax
7 credits awarded in any fiscal year under this article exceed
8 \$75,000,000. Tax credits may be awarded for up to five years
9 beyond the current fiscal year, payable no sooner than the
10 fiscal year of the award. If all funds available for the tax
11 credit program are allocated before the end of a fiscal year,
12 the department may contract for funds beyond the current fiscal
13 year that would be guaranteed, but not payable, until the year
14 for which they are contracted.

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

16 (1) The aggregate amount of film production tax credits
17 awarded by the department under section 1703-D(d) to a
18 taxpayer for a film may not exceed:

19 (i) except as set forth in subparagraph (ii), 25% of
20 the qualified film production expenses to be incurred; or
21 (ii) if a substantial portion of the qualified film
22 expenses are incurred in a depressed rural area of this
23 Commonwealth or are incurred on a qualified sound stage
24 in this Commonwealth, 30% of the qualified film
25 production expenses to be incurred.

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

30 (3) For purposes of this subsection, the department

1 shall determine what qualifies as a depressed rural area and
2 a qualified sound stage.

3 Section 1709-D. Pass-through entity.

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

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

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

22 Section 3. The following provisions shall apply to taxable
23 years beginning after December 31, 2011:

24 (1) The amendment of section 1702-D of the act.

25 (2) The amendment of section 1705-D of the act.

26 (3) The amendment of section 1707-D of the act.

27 (4) The amendment of section 1709-D of the act.

28 Section 4. This act shall take effect immediately.