
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 393 Session of
2017

INTRODUCED BY P. COSTA, READSHAW, BARRAR, D. COSTA, DONATUCCI,
DRISCOLL, McNEILL, O'BRIEN, ROZZI, SCHWEYER, THOMAS AND
YOUNGBLOOD, FEBRUARY 8, 2017

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 8, 2017

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 entertainment production tax credit, further
11 providing for definitions, for credit for qualified film
12 production expenses and for limitations.

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

15 Section 1. The definitions of "Pennsylvania production
16 expense," "production expense," "start date" and "taxpayer" in
17 section 1711-D of the act of March 4, 1971 (P.L.6, No.2), known
18 as the Tax Reform Code of 1971, renumbered and amended July 13,
19 2016 (P.L.526, No.84), are amended and the section is amended by
20 adding definitions to read:

21 Section 1711-D. Definitions.

22 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Digital interactive media." As follows:

4 (1) The term includes an expense incurred in the
5 development of interactive software that meets all of the
6 following:

7 (i) Is produced at a digital interactive media
8 facility.

9 (ii) Is produced for distribution on or accessed via
10 electronic media, including software accessed via or
11 downloaded from the Internet or a mobile network and
12 software distributed on optical media or embedded in or
13 downloadable to an electronic device, including a mobile
14 phone, game system, computer, tablet and personal digital
15 assistant or other handheld electronic device.

16 (iii) Allows a user to interact with the interactive
17 software via an electronic device, including a mobile
18 phone, game system, computer, tablet and personal digital
19 assistant or other handheld electronic device.

20 (iv) Includes an appreciable quantity of text,
21 sound, fixed images, animated images or 3-D geometry.

22 (2) The term does not include media that contains
23 obscene material or performance as defined in 18 Pa.C.S. §
24 5903(b) (relating to obscene and other sexual materials and
25 performances).

26 "Digital interactive media equipment." Equipment that is
27 required for the development or functioning of a digital
28 interactive media product or service. The term includes:

29 (1) Integrated video and audio equipment, networking
30 routers, switches, network cabling and any other computer-

1 related hardware necessary to create or operate a digital
2 interactive media product or platform.

3 (2) Software, notwithstanding the method of delivery,
4 transfer or access.

5 (3) Computer code.

6 (4) Image files, music files, audio files, video files,
7 scripts and plays.

8 (5) Concept mock-ups.

9 (6) Software tools.

10 (7) Testing procedures.

11 (8) A component part of an item listed under paragraph
12 (2), (3), (4), (5), (6) or (7) necessary and integral to
13 create, develop or produce a digital interactive media
14 product or service.

15 "Digital interactive media facility." A facility where
16 digital interactive media or digital interactive media equipment
17 is developed and that:

18 (1) is located in this Commonwealth;

19 (2) employs at least ten full-time employees who reside
20 in this Commonwealth; and

21 (3) has a capital investment of at least \$500,000.

22 * * *

23 "Pennsylvania digital interactive media expense." A digital
24 interactive media expense incurred at a qualified digital
25 interactive media facility.

26 "Pennsylvania postproduction expense." A postproduction
27 expense incurred at a qualified postproduction facility.

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

30 (1) A payment made by a taxpayer to a person upon which

1 withholding will be made on the payment by the taxpayer as
2 required under Part VII of Article III.

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

7 (3) Payment to a pass-through entity representing
8 individual talent for which withholding will be made by the
9 pass-through entity on the payment as required under Part VII
10 or VII-A of Article III.

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

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

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

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

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

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

26 (8) A qualified postproduction expense.

27 (9) The development and manufacture of digital
28 interactive media equipment.

29 * * *

30 "Production expense." As follows:

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

2 (i) Compensation paid to an individual employed in
3 the production of the film.

4 (ii) Payment to a personal service corporation
5 representing individual talent.

6 (iii) Payment to a pass-through entity representing
7 individual talent.

8 (iv) The costs of construction, operations, editing,
9 photography, sound synchronization, lighting, wardrobe
10 and accessories.

11 (v) The cost of leasing vehicles.

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

14 (vii) The cost of insurance coverage.

15 (viii) The costs of food and lodging.

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

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

18 (xi) Development and production costs relating to
19 digital interactive media.

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

21 (i) Deferred, leveraged or profit participation paid
22 or to be paid to individuals employed in the production
23 of the film or paid to entities representing an
24 individual for services provided in the production of the
25 film.

26 (ii) Development cost.

27 (iii) Expense incurred in marketing or advertising a
28 film.

29 (iv) Cost related to the sale or assignment of a
30 film production tax credit under section 1714-D(e).

1 "Qualified digital interactive media expense." All
2 Pennsylvania digital interactive media expenses if the
3 Pennsylvania digital interactive media expenses comprise at
4 least 60% of the digital interactive media expenses of the
5 digital interactive media produced.

6 "Qualified digital interactive media facility." A facility
7 where digital interactive media or digital interactive media
8 equipment is developed and that:

9 (1) is located in this Commonwealth;

10 (2) employs at least ten full-time employees who reside
11 in this Commonwealth; and

12 (3) has a capital investment of at least \$500,000.

13 * * *

14 "Start date." As follows:

15 (1) For a film:

16 (i) the first day of principal photography in this
17 Commonwealth; or

18 (ii) an earlier date approved by the Pennsylvania
19 Film Office.

20 (2) For a postproduction project, a date approved by the
21 Pennsylvania Film Office.

22 (3) For digital interactive media, a date approved by
23 the Pennsylvania Film Office.

24 * * *

25 "Taxpayer." A film production or digital interactive media
26 company subject to tax under Article III, IV or VI. The term
27 does not include contractors or subcontractors of a film
28 production company.

29 Section 2. Sections 1712-D and 1716-D of the act, renumbered
30 and amended July 13, 2016 (P.L.526, No.84), are amended to read:

1 Section 1712-D. Credit for qualified film production expenses.

2 (a) Application.--A taxpayer may apply to the department for
3 a tax credit under this section. If a film qualifies for a
4 qualified film production expense, any postproduction work done
5 in this Commonwealth shall qualify for a 30% credit. The
6 application shall be on the form required by the department.

7 (b) Review and approval.--The department shall establish
8 application periods not to exceed 90 days each. All applications
9 received during the application period shall be reviewed and
10 evaluated by the department based on the following criteria:

11 (1) The anticipated number of production days in a
12 qualified production facility.

13 (2) The anticipated number of Pennsylvania employees.

14 (3) The number of preproduction days through
15 postproduction days in Pennsylvania.

16 (4) The anticipated number of days spent in Pennsylvania
17 hotels.

18 (5) The Pennsylvania production expenses in comparison
19 to the production budget.

20 (6) The use of studio resources.

21 (7) If the application includes a qualified
22 postproduction expense or a qualified digital interactive
23 media expense:

24 (i) The qualified postproduction facility where the
25 activity will occur.

26 (ii) The anticipated type of postproduction activity
27 that will be conducted.

28 (iii) The percentage of the total postproduction
29 activity conducted for a film in this Commonwealth.

30 (8) Other criteria that the Director of the Pennsylvania

1 Film Office deems appropriate to ensure maximum employment
2 and benefit within this Commonwealth.

3 Upon determining the taxpayer has incurred or will incur
4 qualified film production expenses, qualified postproduction
5 expenses or qualified digital interactive media expenses, the
6 department may approve the taxpayer for a tax credit.
7 Applications not approved may be reviewed and considered in
8 subsequent application periods. The department may approve a
9 taxpayer for a tax credit based on its evaluation of the
10 criteria under this subsection.

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

14 (1) An itemized list of production or development
15 expenses incurred or to be incurred for the film and
16 software.

17 (2) An itemized list of Pennsylvania production,
18 Pennsylvania postproduction and Pennsylvania digital
19 interactive media expenses incurred or to be incurred for the
20 film and software.

21 (3) With respect to a contract entered into prior to
22 completion of production, a commitment by the taxpayer to
23 incur the qualified film, digital interactive media
24 production or qualified postproduction expenses as itemized.

25 (4) The start date.

26 (5) Any other information the department deems
27 appropriate.

28 (d) Certificate.--Upon execution of the contract required by
29 subsection (c), the department shall award the taxpayer a film
30 production tax credit and issue the taxpayer a film production

1 tax credit certificate.

2 Section 1716-D. Limitations.

3 (a) [Cap.--Except for tax credits reissued under section
4 1761.1-D, in no case shall the aggregate amount of tax credits
5 awarded in any fiscal year under this subarticle exceed
6 \$65,000,000.] Award of credits.--The department may, in its
7 discretion, award in one fiscal year up to:

8 (1) Thirty percent of the dollar amount of film
9 production tax credits available to be awarded in the next
10 succeeding fiscal year.

11 (2) Twenty percent of the dollar amount of film
12 production tax credits available to be awarded in the second
13 successive fiscal year.

14 (3) Ten percent of the dollar amount of film production
15 tax credits available to be awarded in the third successive
16 fiscal year.

17 (a.1) Advance award of credits.--The advance award of film
18 tax credits under subsection (a) shall:

19 (1) count against the total dollar amount of credits
20 that the department may award in that next succeeding fiscal
21 year; and

22 (2) reduce the dollar amount of credits that the
23 department may award in that next succeeding fiscal year.

24 The individual limitations on the awarding of film production
25 tax credits apply to an advance award of film production tax
26 credits under subsection (a) and to a combination of film
27 production tax credits awarded against the current fiscal year
28 cap and against the next succeeding fiscal year's cap.

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

30 (1) Except as set forth in paragraph (1.1) or (1.2), the

1 aggregate amount of film production, postproduction or
2 digital interactive media tax credits awarded by the
3 department under section 1712-D(d) to a taxpayer for a film
4 may not exceed 25% of the qualified [film production]
5 expenses to be incurred.

6 (1.1) In addition to the tax credit under paragraph (1),
7 a taxpayer is eligible for a credit in the amount of 5% of
8 the qualified film production expenses or qualified
9 postproduction expenses incurred by the taxpayer if the
10 taxpayer:

11 (i) films a feature film, television film or
12 television series, which is intended as programming for a
13 national audience; and

14 (ii) either:

15 (A) films in a qualified production facility
16 which meets the minimum stage filming
17 requirements[.]; or

18 (B) conducts at least 50% of all qualified
19 postproduction expenses at a qualified postproduction
20 facility.

21 (1.2) A qualified postproduction expense shall qualify
22 for a 30% credit.

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

27 (c) Qualified production facility.--To be considered a
28 qualified production facility [or], qualified postproduction
29 facility or qualified digital interactive media facility, the
30 owner of a facility shall provide evidence to the department to

1 verify the development or facility specifications and capital
2 investment costs incurred for the facility so that the threshold
3 amounts set in the definitions of "qualified production
4 facility" [and], "qualified postproduction facility" or
5 "qualified digital interactive media facility" are satisfied,
6 and upon verification, the facility shall be registered by the
7 department officially as a qualified production facility [or],
8 qualified postproduction facility or qualified digital
9 interactive media facility.

10 (d) Waiver.--The department may make a determination that
11 the financial benefit to this Commonwealth resulting from the
12 direct investment in or payments made to Pennsylvania facilities
13 outweighs the benefit of maintaining the 60% requirement
14 contained in the definition of "qualified film production
15 expense." If such determination is made, the department may
16 waive the requirement that 60% of a film's total production or
17 postproduction expenses be comprised of Pennsylvania production
18 expenses for a film, television film or television series that
19 is intended as programming for a national audience and is filmed
20 or produced in a qualified production facility or qualified
21 postproduction facility if the taxpayer who has Pennsylvania
22 production expenses of at least \$30,000,000 per production meets
23 the minimum stage filming requirements.

24 Section 3. The amendment of sections 1711-D, 1712-D and
25 1716-D of the act shall apply to taxable years beginning after
26 December 31, 2017.

27 Section 4. This act shall take effect immediately.