

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 147 Session of
2003

INTRODUCED BY T. STEVENSON, BAKER, BISHOP, CAPPELLI, COSTA,
CREIGHTON, FEESE, FRANKEL, GEIST, GODSHALL, GOODMAN,
HENNESSEY, HERMAN, HERSHEY, HORSEY, HUTCHINSON, KELLER,
LAUGHLIN, LEACH, MANN, MARKOSEK, McCALL, NAILOR, PRESTON,
READSHAW, REICHLEY, ROEBUCK, SAINATO, SATHER, SEMMEL,
SOLOBAY, R. STEVENSON, THOMAS, TURZAI, WALKO, WATSON, WILT,
YOUNGBLOOD, ADOLPH, HARHAI, PICKETT, JAMES, PISTELLA, HARPER,
WASHINGTON, DAILEY AND LEWIS, FEBRUARY 6, 2003

SENATOR THOMPSON, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, JUNE 22, 2004

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," authorizing ~~the film enhancement~~ A FILM <—
11 PRODUCTION tax credit; and providing for the powers and
12 duties of the Department of Community and Economic
13 Development and the Department of Revenue.

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

16 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
17 the Tax Reform Code of 1971, is amended by adding an article to
18 read:

19 ARTICLE XVII C <—

~~FILM ENHANCEMENT TAX CREDIT~~

~~Section 1701 C. Definitions.~~

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

~~"Department." The Department of Community and Economic Development of the Commonwealth.~~

~~"Eligible production." The term includes a feature film, television series and television show of 15 minutes or more in length, intended for a national audience. The term does not include a production featuring news, current events, weather and market reports, or public programming, talk show, game show, sports event, awards show or other gala event, a production that solicits funds, a production containing obscene material or performances as defined in 18 Pa.C.S. § 5903(b) (relating to obscene and other sexual materials and performances), or a production primarily for private, industrial, corporate or institutional purposes.~~

~~"Film enhancement tax credit." The film enhancement tax credit authorized by this article.~~

~~"Pennsylvania production expense." An expense incurred in this Commonwealth directly related to the making of an eligible production in this Commonwealth, including, but not limited to:~~

~~(1) Wages or salaries of persons who are residents of this Commonwealth and who have earned income from working on a film in this Commonwealth, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under section 62(a)(A) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).~~

~~(2) The cost of construction and operations, wardrobe, accessories and related services.~~

~~(3) The cost of photography, sound synchronization, lighting and related services.~~

~~(4) The cost of editing and related services.~~

~~(5) Rental of facilities and equipment.~~

~~(6) Other direct costs of producing a film.~~

~~"Qualified tax liability." The liability for taxes imposed under Article II, III, IV or VI.~~

~~"Secretary." The Secretary of Community and Economic Development of the Commonwealth.~~

~~"Taxpayer." An entity subject to tax under Article II, III, IV or VI that incurs Pennsylvania production expenses. Section 1702 C. Film enhancement tax credit.~~

~~(a) Tax credit authorized. A tax credit in the amount of 15% of the first \$10,000,000 and a tax credit of 20% for eligible productions with a total aggregate production expense that exceeds \$10,000,000 may be awarded to a taxpayer.~~

~~(b) Administration. The credit shall be administered by the Department of Community and Economic Development and the Department of Revenue, as provided in this article.~~

~~(c) Eligibility. To be eligible for a credit, the taxpayer incurring Pennsylvania production expenses must meet the following requirements:~~

~~(1) Submit a budget for producing the eligible production indicating the time, materials, labor and any other associated costs associated with the making of the eligible production in Pennsylvania.~~

~~(2) Submit a budget for producing the same eligible production indicating the time, materials, labor and any~~

~~other associated costs that would have been incurred if the production was conducted in another location.~~

~~(3) At least 50% of the below line hires are residents of this Commonwealth.~~

~~(4) At least 50% of the total production budget is spent in this Commonwealth in making of the eligible production or at least 50% of the days dedicated to the filming of the eligible production be held in this Commonwealth.~~

~~(d) Approval. The secretary shall approve or disapprove all claims for the credit and shall notify the Department of Revenue of the name of the recipient and the amount of all credits approved.~~

~~(e) Limitations. The total amount of credits approved by the department shall not exceed \$10,000,000 in any fiscal year. If the amount of eligible claims exceeds the amount specified in this subsection in a fiscal year, the credit shall be prorated among all eligible claims.~~

~~Section 1703 C. Application of credits.~~

~~(a) Use of credit. The credit may be applied against a qualified tax liability of the taxpayer.~~

~~(b) Carryover of credit. If the taxpayer cannot use the entire amount of the credit for the taxable year in which the 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 that the 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 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. A 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
credit is applied against any other tax liability.~~

~~(c) Limitation on unused credits. A taxpayer may not carry
back, obtain a refund of or assign an unused credit.~~

~~Section 1704 C. Pennsylvania S corporation shareholder pass-
through.~~

~~(a) Pass through of credit. If a Pennsylvania S corporation
does not have an eligible tax liability against which the credit
may be applied, a shareholder of the Pennsylvania S corporation
may receive a credit equal to the credit determined for the
Pennsylvania S corporation for the taxable year multiplied by
the percentage of the Pennsylvania S corporation's distributive
income to which the shareholder is entitled.~~

~~(b) Limitation. The credit provided under subsection (a) is
in addition to any other credit to which a shareholder of
Pennsylvania S corporation is otherwise entitled under this act.
However, a Pennsylvania S corporation and a shareholder of a
Pennsylvania S corporation may not claim a credit under this
article for the same Pennsylvania production expense.~~

~~Section 1705 C. Time limitations.~~

~~A taxpayer may not receive a credit for Pennsylvania
production expenses incurred after December 31, 2012.~~

ARTICLE XVII-C

FILM PRODUCTION TAX CREDIT

SECTION 1701-C. SCOPE OF ARTICLE.

THIS ARTICLE RELATES TO FILM PRODUCTION TAX CREDITS.

1 SECTION 1702-C. DEFINITIONS.

2 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ARTICLE
3 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
4 CONTEXT CLEARLY INDICATES OTHERWISE:

5 "DEPARTMENT." THE DEPARTMENT OF REVENUE OF THE COMMONWEALTH.

6 "FILM." THE TERM INCLUDES A FEATURE FILM, A TELEVISION
7 SERIES AND A TELEVISION SHOW OF 15 MINUTES OR MORE IN LENGTH,
8 INTENDED FOR A NATIONAL AUDIENCE. THE TERM DOES NOT INCLUDE A
9 PRODUCTION FEATURING NEWS, CURRENT EVENTS, WEATHER AND MARKET
10 REPORTS, OR PUBLIC PROGRAMMING, TALK SHOW, GAME SHOW, SPORTS
11 EVENT, AWARDS SHOW OR OTHER GALA EVENT, A PRODUCTION THAT
12 SOLICITS FUNDS, A PRODUCTION THAT PRIMARILY MARKETS A PRODUCT OR
13 SERVICE, A PRODUCTION CONTAINING OBSCENE MATERIAL OR
14 PERFORMANCES AS DEFINED IN 18 PA.C.S. § 5903(B) (RELATING TO
15 OBSCENE AND OTHER SEXUAL MATERIALS AND PERFORMANCES), OR A
16 PRODUCTION PRIMARILY FOR PRIVATE, INDUSTRIAL, CORPORATE OR
17 INSTITUTIONAL PURPOSES.

18 "FILM PRODUCTION TAX CREDIT." THE CREDIT PROVIDED UNDER THIS
19 ARTICLE.

20 "PENNSYLVANIA PRODUCTION EXPENSE." A PRODUCTION EXPENSE
21 INCURRED IN THIS COMMONWEALTH.

22 "PRODUCTION EXPENSE." AN EXPENSE INCURRED IN THE PRODUCTION
23 OF A FILM. THE TERM INCLUDES WAGES AND SALARIES OF INDIVIDUALS
24 EMPLOYED IN THE PRODUCTION OF A FILM; THE COSTS OF CONSTRUCTION,
25 OPERATIONS, EDITING, PHOTOGRAPHY, SOUND SYNCHRONIZATION,
26 LIGHTING, WARDROBE AND ACCESSORIES AND THE COST OF RENTAL OF
27 FACILITIES AND EQUIPMENT. THE TERM DOES NOT INCLUDE EXPENSES
28 INCURRED IN MARKETING OR ADVERTISING A FILM.

29 "QUALIFIED FILM PRODUCTION EXPENSE." A PENNSYLVANIA
30 PRODUCTION EXPENSE IF AT LEAST 60% OF THE PRODUCTION EXPENSES

1 ARE PENNSYLVANIA PRODUCTION EXPENSES.

2 "QUALIFIED TAX LIABILITY." THE LIABILITY FOR TAXES IMPOSED
3 UNDER ARTICLE II, III, IV OR VI. THE TERM SHALL INCLUDE THE
4 LIABILITY FOR TAXES IMPOSED UNDER ARTICLE III ON A SHAREHOLDER
5 OF A PENNSYLVANIA S CORPORATION.

6 "TAXPAYER." AN ENTITY SUBJECT TO TAX UNDER ARTICLE II, III,
7 IV OR VI. THE TERM SHALL INCLUDE THE SHAREHOLDER OF A
8 PENNSYLVANIA S CORPORATION THAT RECEIVES A FILM PRODUCTION TAX
9 CREDIT.

10 SECTION 1703-C. CREDIT FOR QUALIFIED FILM PRODUCTION EXPENSES.

11 (A) GENERAL RULE.--A TAXPAYER WHO INCURS A QUALIFIED FILM
12 PRODUCTION EXPENSE IN A TAXABLE YEAR MAY APPLY FOR A FILM
13 PRODUCTION TAX CREDIT AS PROVIDED IN THIS ARTICLE. A TAXPAYER
14 SEEKING A CREDIT UNDER THIS ARTICLE MUST SUBMIT AN APPLICATION
15 TO THE DEPARTMENT BY SEPTEMBER 15 FOR QUALIFIED FILM PRODUCTION
16 EXPENSES INCURRED IN THE TAXABLE YEAR THAT ENDED IN THE PRIOR
17 CALENDAR YEAR.

18 (B) AMOUNT OF CREDIT.--A TAXPAYER THAT IS QUALIFIED UNDER
19 SUBSECTION (A) SHALL RECEIVE A FILM PRODUCTION TAX CREDIT FOR
20 THE TAXABLE YEAR IN THE AMOUNT IN ACCORDANCE WITH THE FOLLOWING:

21 (1) IF THE QUALIFIED FILM PRODUCTION EXPENSES ARE
22 \$10,000,000 OR LESS, THE CREDIT SHALL BE 15% OF THE QUALIFIED
23 FILM PRODUCTION EXPENSES.

24 (2) IF THE QUALIFIED FILM PRODUCTION EXPENSES ARE MORE
25 THAN \$10,000,000, THE CREDIT SHALL BE EQUAL TO THE SUM OF
26 \$1,500,000 AND 20% OF THE QUALIFIED FILM PRODUCTION EXPENSES
27 WHICH ARE IN EXCESS OF \$10,000,000.

28 (C) NOTIFICATION.--BY DECEMBER 15 OF THE CALENDAR YEAR
29 FOLLOWING THE CLOSE OF THE TAXABLE YEAR DURING WHICH THE
30 QUALIFIED FILM PRODUCTION EXPENSE WAS INCURRED, THE DEPARTMENT

1 SHALL NOTIFY THE TAXPAYER OF THE AMOUNT OF THE TAXPAYER'S FILM
2 PRODUCTION TAX CREDIT APPROVED BY THE DEPARTMENT.

3 SECTION 1704-C. CARRYOVER, CARRYBACK, REFUND AND ASSIGNMENT OF
4 CREDIT.

5 (A) GENERAL RULE.--IF THE TAXPAYER CANNOT USE THE ENTIRE
6 AMOUNT OF THE FILM PRODUCTION TAX CREDIT FOR THE TAXABLE YEAR IN
7 WHICH THE FILM PRODUCTION TAX CREDIT IS FIRST APPROVED, THEN THE
8 EXCESS MAY BE CARRIED OVER TO SUCCEEDING TAXABLE YEARS AND USED
9 AS A CREDIT AGAINST THE QUALIFIED TAX LIABILITY OF THE TAXPAYER
10 FOR THOSE TAXABLE YEARS. EACH TIME THAT THE FILM PRODUCTION TAX
11 CREDIT IS CARRIED OVER TO A SUCCEEDING TAXABLE YEAR, IT SHALL BE
12 REDUCED BY THE AMOUNT THAT WAS USED AS A CREDIT DURING THE
13 IMMEDIATELY PRECEDING TAXABLE YEAR. THE FILM PRODUCTION TAX
14 CREDIT PROVIDED BY THIS ARTICLE MAY BE CARRIED OVER AND APPLIED
15 TO SUCCEEDING TAXABLE YEARS FOR NO MORE THAN THREE TAXABLE YEARS
16 FOLLOWING THE FIRST TAXABLE YEAR FOR WHICH THE TAXPAYER WAS
17 ENTITLED TO CLAIM THE CREDIT.

18 (B) APPLICATION.--A FILM PRODUCTION TAX CREDIT APPROVED BY
19 THE DEPARTMENT OF REVENUE FOR QUALIFIED FILM PRODUCTION EXPENSES
20 IN A TAXABLE YEAR FIRST SHALL BE APPLIED AGAINST THE TAXPAYER'S
21 QUALIFIED TAX LIABILITY FOR THE CURRENT TAXABLE YEAR AS OF THE
22 DATE ON WHICH THE CREDIT WAS APPROVED BEFORE THE FILM PRODUCTION
23 TAX CREDIT CAN BE APPLIED AGAINST ANY TAX LIABILITY UNDER
24 SUBSECTION (A).

25 (C) NO CARRYBACK.--A TAXPAYER IS NOT ENTITLED TO CARRY BACK
26 OR OBTAIN A REFUND OF AN UNUSED FILM PRODUCTION TAX CREDIT.

27 (D) SALE OR ASSIGNMENT.--A TAXPAYER, UPON APPLICATION TO AND
28 APPROVAL BY THE DEPARTMENT OF COMMUNITY AND ECONOMIC
29 DEVELOPMENT, MAY SELL OR ASSIGN, IN WHOLE OR IN PART, A FILM
30 PRODUCTION TAX CREDIT GRANTED TO THE TAXPAYER UNDER THIS ARTICLE

1 IF NO CLAIM FOR ALLOWANCE OF THE CREDIT IS FILED WITHIN ONE YEAR
2 FROM THE DATE THE CREDIT IS APPROVED BY THE DEPARTMENT OF
3 REVENUE UNDER SECTION 1703-C. THE DEPARTMENT OF COMMUNITY AND
4 ECONOMIC DEVELOPMENT SHALL ESTABLISH GUIDELINES FOR THE APPROVAL
5 OF APPLICATIONS UNDER THIS SUBSECTION.

6 (E) PURCHASERS AND ASSIGNEES.--THE PURCHASER OR ASSIGNEE OF
7 A PORTION OF A FILM PRODUCTION TAX CREDIT UNDER SUBSECTION (D)
8 SHALL IMMEDIATELY CLAIM THE CREDIT IN THE TAXABLE YEAR IN WHICH
9 THE PURCHASE OR ASSIGNMENT IS MADE. THE AMOUNT OF THE FILM
10 PRODUCTION CREDIT THAT A PURCHASER OR ASSIGNEE MAY USE AGAINST
11 ANY ONE QUALIFIED TAX LIABILITY MAY NOT EXCEED 50% OF SUCH
12 QUALIFIED TAX LIABILITY FOR THE TAXABLE YEAR. THE PURCHASER OR
13 ASSIGNEE MAY NOT CARRY OVER, CARRY BACK, OBTAIN A REFUND OF OR
14 ASSIGN THE FILM PRODUCTION TAX CREDIT. THE PURCHASER OR ASSIGNEE
15 SHALL NOTIFY THE DEPARTMENT OF REVENUE OF THE SELLER OR ASSIGNOR
16 OF THE FILM PRODUCTION TAX CREDIT IN COMPLIANCE WITH PROCEDURES
17 SPECIFIED BY THE DEPARTMENT OF REVENUE.

18 SECTION 1705-C. DETERMINATION OF QUALIFIED FILM PRODUCTION
19 EXPENSES.

20 IN PRESCRIBING STANDARDS FOR DETERMINING WHICH PRODUCTION
21 EXPENSES ARE CONSIDERED QUALIFIED FILM PRODUCTION EXPENSES FOR
22 PURPOSES OF COMPUTING THE CREDIT PROVIDED BY THIS ARTICLE, THE
23 DEPARTMENT SHALL CONSIDER:

24 (1) THE LOCATION WHERE THE SERVICES ARE PERFORMED.

25 (2) THE RESIDENCE OR BUSINESS LOCATION OF THE PERSON OR
26 PERSONS PERFORMING THE SERVICE.

27 (3) THE LOCATION WHERE QUALIFIED FILM PRODUCTION
28 SUPPLIES ARE CONSUMED.

29 (4) OTHER FACTORS ESTABLISHED IN REGULATION BY THE
30 DEPARTMENT WHICH ARE NECESSARY FOR DETERMINATION.

1 SECTION 1706-C. TIME LIMITATIONS.

2 A TAXPAYER IS NOT ENTITLED TO A FILM PRODUCTION TAX CREDIT
3 FOR QUALIFIED FILM PRODUCTION EXPENSES INCURRED IN TAXABLE YEARS
4 ENDING AFTER DECEMBER 31, 2012.

5 SECTION 1707-C. LIMITATION ON CREDITS.

6 (A) GENERAL RULE.--THE TOTAL AMOUNT OF CREDITS APPROVED BY
7 THE DEPARTMENT SHALL NOT EXCEED \$10,000,000 IN ANY FISCAL YEAR.

8 (B) EXCEPTION.--IF THE TOTAL AMOUNT OF FILM PRODUCTION TAX
9 CREDITS APPLIED FOR BY ALL TAXPAYERS EXCEEDS THE AMOUNT
10 ALLOCATED FOR THOSE CREDITS, THEN THE FILM PRODUCTION TAX CREDIT
11 TO BE RECEIVED BY EACH APPLICANT SHALL BE THE PRODUCT OF THE
12 ALLOCATED AMOUNT MULTIPLIED BY THE QUOTIENT OF THE FILM
13 PRODUCTION TAX CREDIT APPLIED FOR BY THE APPLICANT DIVIDED BY
14 THE TOTAL OF ALL FILM PRODUCTION CREDITS APPLIED FOR BY ALL
15 APPLICANTS, THE ALGEBRAIC EQUIVALENT OF WHICH IS:

16 TAXPAYER'S FILM PRODUCTION TAX CREDIT = AMOUNT ALLOCATED
17 FOR THOSE CREDITS X (FILM PRODUCTION TAX CREDIT APPLIED
18 FOR BY THE APPLICANT/TOTAL OF ALL FILM PRODUCTION TAX
19 CREDITS APPLIED FOR BY ALL APPLICANTS).

20 SECTION 1708-C. PENNSYLVANIA S CORPORATION SHAREHOLDER PASS-
21 THROUGH.

22 (A) GENERAL RULE.--IF A PENNSYLVANIA S CORPORATION DOES NOT
23 HAVE AN ELIGIBLE TAX LIABILITY AGAINST WHICH THE FILM PRODUCTION
24 TAX CREDIT MAY BE APPLIED, A SHAREHOLDER OF THE PENNSYLVANIA S
25 CORPORATION IS ENTITLED TO A FILM PRODUCTION TAX CREDIT EQUAL TO
26 THE FILM PRODUCTION TAX CREDIT DETERMINED FOR THE PENNSYLVANIA S
27 CORPORATION FOR THE TAXABLE YEAR MULTIPLIED BY THE PERCENTAGE OF
28 THE PENNSYLVANIA S CORPORATION'S DISTRIBUTIVE INCOME TO WHICH
29 THE SHAREHOLDER IS ENTITLED.

30 (B) LIMITATION.--THE CREDIT PROVIDED UNDER SUBSECTION (A) IS

1 IN ADDITION TO ANY FILM PRODUCTION TAX CREDIT TO WHICH A
2 SHAREHOLDER OF A PENNSYLVANIA S CORPORATION IS OTHERWISE
3 ENTITLED UNDER THIS ARTICLE. HOWEVER, A PENNSYLVANIA S
4 CORPORATION AND A SHAREHOLDER OF A PENNSYLVANIA S CORPORATION
5 MAY NOT CLAIM A CREDIT UNDER THIS ARTICLE FOR THE SAME QUALIFIED
6 FILM PRODUCTION EXPENSE.

7 SECTION 1709-C. REPORT TO GENERAL ASSEMBLY.

8 THE SECRETARY SHALL SUBMIT AN ANNUAL REPORT TO THE GENERAL
9 ASSEMBLY INDICATING THE EFFECTIVENESS OF THE FILM PRODUCTION TAX
10 CREDIT PROVIDED BY THIS ARTICLE NO LATER THAN MARCH 15 FOLLOWING
11 THE YEAR IN WHICH THE CREDITS WERE APPROVED. THE REPORT SHALL
12 INCLUDE THE NAMES OF ALL TAXPAYERS UTILIZING THE CREDIT AS OF
13 THE DATE OF THE REPORT AND THE AMOUNT OF CREDITS APPROVED AND
14 UTILIZED BY EACH TAXPAYER. NOTWITHSTANDING ANY LAW PROVIDING FOR
15 THE CONFIDENTIALITY OF TAX RECORDS, THE INFORMATION CONTAINED IN
16 THE REPORT SHALL BE PUBLIC INFORMATION. THE REPORT MAY ALSO
17 INCLUDE ANY RECOMMENDATIONS FOR CHANGES IN THE CALCULATION OR
18 ADMINISTRATION OF THE CREDIT.

19 SECTION 1710-C. TERMINATION.

20 THE DEPARTMENT SHALL NOT APPROVE A FILM PRODUCTION TAX CREDIT
21 UNDER THIS ARTICLE FOR TAXABLE YEARS ENDING AFTER DECEMBER 31,
22 2012.

23 SECTION 1711-C. REGULATIONS.

24 THE DEPARTMENT SHALL PROMULGATE REGULATIONS NECESSARY FOR THE
25 IMPLEMENTATION AND ADMINISTRATION OF THIS ARTICLE.

26 Section 2. This act shall apply to ~~Pennsylvania production~~ <—
27 ~~expense~~ QUALIFIED FILM PRODUCTION EXPENSES incurred after <—
28 December 31, 2003, and taxable years commencing on or after
29 January 1, 2004.

30 Section 3. This act shall take effect immediately.