

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1528

Session of
2007

INTRODUCED BY STURLA, DeWEESE, WHEATLEY, EACHUS, GERGELY, SURRA,
D. O'BRIEN, GALLOWAY AND DALEY, JUNE 12, 2007

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 19, 2007

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," providing for a film production tax credit and
11 conferring powers and imposing duties upon the Department of
12 Community and Economic Development.

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

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

18 ARTICLE XVII-D

19 FILM PRODUCTION TAX CREDIT

20 Section 1701-D. Scope of article.

21 This article relates to film production tax credits.

22 Section 1702-D. 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.

"Film." A feature film, a television film, a television talk or game show series, a television commercial or a television pilot or each episode of a television series which is intended as programming for a national or regional audience. The term does not include a production featuring news, current events, weather and market reports, or public programming, 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, political, industrial, corporate or institutional purposes.

"Film production tax credit." The credit provided under this article.

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

"Pennsylvania production expense." A production expense incurred in this Commonwealth. ~~The AS APPLIED TO WAGES AND SALARIES,~~ THE term includes only wages and salaries on which the taxes imposed by Article III or IV will be paid or accrued.

"Production expense." An expense incurred in the production of a film. The term includes the amount of wages and salaries of individuals employed in the production of the film; the costs of construction, operations, editing, photography, sound

synchronization, lighting, wardrobe and accessories; the cost of
leasing vehicles; the cost of transportation to or from a
Pennsylvania train station, bus depot or airport; the cost of
insurance coverage if the insurance is purchased through a
Pennsylvania-based insurance agent; the costs of food and
lodging; the purchase of music or story rights if the purchase <—
price is under \$1,000,000, the rights are purchased from a
Pennsylvania resident or an entity subject to taxation in this
Commonwealth and the transaction is subject to taxation under
Article III, IV or VI; and the cost of rental of facilities and
equipment, if rented from or through a Pennsylvania resident or
an entity subject to taxation in this Commonwealth. The term
does not include:

(1) deferred, leveraged or profit participation paid or
to be paid to individuals employed in the production of the
film;

(2) development costs; or

(3) expenses incurred in marketing or advertising a
film.

"Qualified film production expense." A Pennsylvania
production expense if at least 60% of the total expenses are
Pennsylvania production expenses.

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

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

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

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

2 (a) Application.--A taxpayer may apply to the department for
3 a film production tax credit under this section. The application
4 shall be on the form required by the department.

5 (b) Review and approval.--The department shall review the
6 application. Upon determining the qualified film production
7 expense amount for the taxpayer, the department may approve the
8 taxpayer for a film production tax credit.

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

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

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

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

19 (4) The start date.

20 (5) Any other information the department deems
21 appropriate.

22 (d) Certificate.--Upon execution of the contract required by
23 subsection (c), the department shall award the taxpayer a film
24 production tax credit and issue the taxpayer a film production
25 tax credit certificate.

26 (e) Limitations.--The following limitations shall apply:

27 (1) The aggregate amount of film production tax credits
28 awarded by the department under subsection (d) to a taxpayer
29 for a film may not exceed 25% of the qualified film
30 production expenses to be incurred.

1 (2) A taxpayer with a budget for a film that is less
2 than \$2,000,000 shall not be eligible to apply for a film
3 production tax credit under this article for that film,
4 unless the taxpayer receives a written waiver of this
5 requirement from the department.

6 (3) A taxpayer has received a grant under 12 Pa.C.S. §
7 4106 (relating to approval) shall not be eligible for a film
8 production tax credit under this act for the same film.

9 (4) The aggregate amount of film production tax credits
10 claimed by a taxpayer under section 1704-D may not exceed the
11 amount awarded for the department under this section for the
12 taxpayer for that taxable year.

13 Section 1704-D. Film production tax credits.

14 A taxpayer may claim a film production tax credit against the
15 qualified tax liability of the taxpayer.

16 Section 1705-D. Carryover, carryback, refund and assignment of
17 credit.

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

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

7 (c) No carryback.--A taxpayer is not entitled to carry back
8 all or any portion of an unused film production tax credit
9 granted to the taxpayer under this article.

10 (d) Refund.--If the amount of the film production tax credit
11 granted to a taxpayer under this article exceeds the taxpayer's
12 qualified tax liability for the taxable year in which the credit
13 is being claimed and if the taxpayer has not sold or assigned
14 all or any portion of the film production tax credit pursuant to
15 subsection (e), the excess shall be refunded to the taxpayer
16 provided that the Department of Revenue has made a finding that
17 the taxpayer has filed all required State tax reports and
18 returns for all applicable taxable years and paid any balance of
19 State tax due as determined at settlement, assessment or
20 determination by the Department of Revenue.

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

22 (1) A taxpayer, upon application to and approval by the
23 department, may sell or assign, in whole or in part, a film
24 production tax credit granted to the taxpayer under this
25 article.

26 (2) The department and the Department of Revenue shall
27 jointly promulgate regulations for the approval of
28 applications under this subsection.

29 (3) Before an application is approved, the Department of
30 Revenue must make a finding that the applicant has filed all

1 required State tax reports and returns for all applicable
2 taxable years and paid any balance of State tax due as
3 determined at settlement, assessment or determination by the
4 Department of Revenue.

5 (4) Notwithstanding any other provision of law, the
6 Department of Revenue shall settle, assess or determine the
7 tax of an applicant under this subsection within 90 days of
8 the filing of all required final returns or reports in
9 accordance with section 806.1(a)(5) of the act of April 9,
10 1929 (P.L.343, No.176), known as The Fiscal Code.

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

23 Section 1706-D. Determination of qualified film production
24 expenses.

25 In prescribing standards for determining which production
26 expenses are considered qualified film production expenses for
27 purposes of computing the credit provided by this article, the
28 department shall consider:

29 (1) The location where services are performed.

30 (2) The residence or business location of the person or

1 persons performing the service.

2 (3) The location where supplies are consumed.

3 (4) Other factors the department determines are
4 relevant.

5 Section 1707-D. Penalty.

6 A taxpayer which claims a film production tax credit and
7 fails to incur the amount of qualified film production expenses
8 agreed to in section 1703-D(c)(3) for a film in that taxable
9 year shall repay to the Commonwealth the amount of the film
10 production tax credit claimed under this article for the film,
11 including any sums refunded to the taxpayer under section 1705-
12 D(d).

13 Section 1708-D. Pass-through entity.

14 (a) General rule.--If a pass-through entity has any unused
15 tax credit under section 1705-D, it may elect in writing,
16 according to procedures established by the Department of
17 Revenue, to transfer all or a portion of the credit to
18 shareholders, members or partners in proportion to the share of
19 distributive income to which the shareholder, member or partner
20 is entitled.

21 (b) Limitation.--The credit provided under subsection (a)
22 cannot be claimed under this article for the same qualified film
23 production expense by pass-through entity and a shareholder,
24 member or partner of a pass-through entity.

25 (c) Application.--A shareholder, member or partner of a
26 pass-through entity to whom a credit is transferred under
27 subsection (a) shall immediately claim the credit in the taxable
28 year in which the transfer is made. The shareholder, member or
29 partner may not carry forward, carry back, obtain a refund of or
30 sell or assign the credit.

1 Section 1709-D. Department guidelines.

2 The department shall develop written guidelines for the
3 implementation of the provisions of this article.

4 SECTION 1710-D. REPORT TO GENERAL ASSEMBLY.

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

16 Section 2. The addition of Article XVII-D of the act shall
17 apply to:

18 (1) qualified film production expenses incurred after
19 December 31, 2006; and

20 (2) taxable years commencing after December 31, 2006.

21 Section 3. This act shall take effect immediately.