

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1698 Session of
2007

INTRODUCED BY STURLA, JULY 6, 2007

REFERRED TO COMMITTEE ON FINANCE, JULY 6, 2007

AN ACT

1 Providing for a film production tax credit and conferring powers
2 and imposing duties upon the Department of Community and
3 Economic Development and the Department of Revenue.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Film
8 Production Tax Credit Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Department." The Department of Community and Economic
14 Development of the Commonwealth.

15 "Film." A feature film, a television film, a television talk
16 or game show series, a television commercial or a television
17 pilot or each episode of a television series which is intended
18 as programming for a national or regional audience. The term

1 does not include a production featuring news, current events,
2 weather and market reports, or public programming, sports event,
3 awards show or other gala event, a production that solicits
4 funds, a production containing obscene material or performances
5 as defined in 18 Pa.C.S. § 5903(b) (relating to obscene and
6 other sexual materials and performances) or a production
7 primarily for private, political, industrial, corporate or
8 institutional purposes.

9 "Film production tax credit." The credit provided under this
10 act.

11 "Pass-through entity." A partnership as defined in section
12 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
13 Tax Reform Code of 1971, or a Pennsylvania S corporation as
14 defined in section 301(n.1) of the Tax Reform Code of 1971.

15 "Pennsylvania production expense." A production expense
16 incurred in this Commonwealth. As applied to wages and salaries,
17 the term includes only wages and salaries on which the taxes
18 imposed by Article III or IV of the act of March 4, 1971 (P.L.6,
19 No.2), known as the Tax Reform Code of 1971, will be paid or
20 accrued.

21 "Production expense." An expense incurred in the production
22 of a film. The term includes the amount of wages and salaries of
23 individuals employed in the production of the film; the costs of
24 construction, operations, editing, photography, sound
25 synchronization, lighting, wardrobe and accessories; the cost of
26 leasing vehicles; the cost of transportation to or from a
27 Pennsylvania train station, bus depot or airport; the cost of
28 insurance coverage if the insurance is purchased through a
29 Pennsylvania-based insurance agent; the costs of food and
30 lodging; the purchase of music or story rights if the rights are

1 purchased from a Pennsylvania resident or an entity subject to
2 taxation in this Commonwealth and the transaction is subject to
3 taxation under Article III, IV or VI of the act of March 4, 1971
4 (P.L.6, No.2), known as the Tax Reform Code of 1971; and the
5 cost of rental of facilities and equipment, if rented from or
6 through a Pennsylvania resident or an entity subject to taxation
7 in this Commonwealth. The term does not include:

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

11 (2) development costs; or

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

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

17 "Qualified tax liability." The liability for taxes imposed
18 under Article III, IV or VI of the act of March 4, 1971 (P.L.6,
19 No.2), known as the Tax Reform Code of 1971. The term shall not
20 include any tax withheld by an employer from an employee under
21 Article III of the Tax Reform Code of 1971.

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

24 "Taxpayer." A film production company subject to tax under
25 Article III, IV or VI of the act of March 4, 1971 (P.L.6, No.2),
26 known as the Tax Reform Code of 1971. The term does not include
27 contractors or subcontractors of a film production company.

28 Section 3. Credit for qualified film production expenses.

29 (a) Application.--A taxpayer may apply to the department for
30 a film production tax credit under this section. The application

1 shall be on the form required by the department.

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

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

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

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

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

16 (4) The start date.

17 (5) Any other information the department deems
18 appropriate.

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

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

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

28 (2) A taxpayer with a budget for a film that is less
29 than \$2,000,000 shall not be eligible to apply for a film
30 production tax credit under this act for that film, unless

1 the taxpayer receives a written waiver of this requirement
2 from the department.

3 (3) A taxpayer has received a grant under 12 Pa.C.S. §
4 4106 (relating to approval) shall not be eligible for a film
5 production tax credit under this act for the same film.

6 (4) The aggregate amount of film production tax credits
7 claimed by a taxpayer under section 4 may not exceed the
8 amount awarded for the department under this section for the
9 taxpayer for that taxable year.

10 Section 4. Film production tax credits.

11 A taxpayer may claim a film production tax credit against the
12 qualified tax liability of the taxpayer.

13 Section 5. Carryover, carryback, refund and assignment of
14 credit.

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

28 (b) Application.--A film production tax credit approved by
29 the department in a taxable year first shall be applied against
30 the taxpayer's qualified tax liability for the current taxable

1 year as of the date on which the credit was approved before the
2 film production tax credit can be applied against any tax
3 liability under subsection (a).

4 (c) No carryback.--A taxpayer is not entitled to carry back
5 all or any portion of an unused film production tax credit
6 granted to the taxpayer under this act.

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

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

19 (1) A taxpayer, upon application to and approval by the
20 department, may sell or assign, in whole or in part, a film
21 production tax credit granted to the taxpayer under this act.

22 (2) The department and the Department of Revenue shall
23 jointly promulgate regulations for the approval of
24 applications under this subsection.

25 (3) Before an application is approved, the Department of
26 Revenue must make a finding that the applicant has filed all
27 required State tax reports and returns for all applicable
28 taxable years and paid any balance of State tax due as
29 determined at settlement, assessment or determination by the
30 Department of Revenue.

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

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

19 Section 6. Determination of qualified film production 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 act, the
23 department shall consider:

24 (1) The location where services are performed.

25 (2) The residence or business location of the person or
26 persons performing the service.

27 (3) The location where supplies are consumed.

28 (4) Other factors the department determines are
29 relevant.

30 Section 7. Penalty.

1 A taxpayer which claims a film production tax credit and
2 fails to incur the amount of qualified film production expenses
3 agreed to in section 3(c)(3) for a film in that taxable year
4 shall repay to the Commonwealth the amount of the film
5 production tax credit claimed under this act for the film,
6 including any sums refunded to the taxpayer under section 5(d).
7 Section 8. Pass-through entity.

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

14 (b) Limitation.--The credit provided under subsection (a)
15 cannot be claimed under this act for the same qualified film
16 production expense by pass-through entity and a shareholder,
17 member or partner of a pass-through entity.

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

24 Section 9. Department guidelines.

25 The department shall develop written guidelines for the
26 implementation of the provisions of this act.

27 Section 10. Report to General Assembly.

28 The Secretary of Community and Economic Development shall
29 submit an annual report to the General Assembly indicating the
30 effectiveness of the credit provided by this act no later than

1 March 15 following the year in which the credits were approved.
2 The report shall include the names of all taxpayers utilizing
3 the credit as of the date of the report and the amount of
4 credits approved and utilized by each taxpayer. Notwithstanding
5 any law providing for the confidentiality of tax records, the
6 information contained in the report shall be public information.
7 The report may also include any recommendations for changes in
8 the calculation or administration of the credit.

9 Section 11. Applicability.

10 This act shall apply to:

11 (1) qualified film production expenses incurred after
12 December 31, 2006; and

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

14 Section 12. Effective date.

15 This act shall take effect immediately. ed