

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 321 Session of 2021

INTRODUCED BY BARTOLOTTA, COLLETT, SCAVELLO, ROBINSON, COSTA,  
YUDICHAK AND STEFANO, MARCH 10, 2021

REFERRED TO FINANCE, MARCH 10, 2021

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 heading of article, for scope of article, for  
12 definitions, for credit for qualified film production  
13 expenses, for film production tax credits, for carryover,  
14 carryback and assignment of credit, for determination of  
15 Pennsylvania production expenses, for limitations, for  
16 reissuance of film production tax credits, for film  
17 production tax credit districts, for penalty, for pass-  
18 through entity and for report to General Assembly.

19 The General Assembly of the Commonwealth of Pennsylvania  
20 hereby enacts as follows:

21 Section 1. The heading of Article XVII-D and section 1701-D  
22 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax  
23 Reform Code of 1971, are amended to read:

24 ARTICLE XVII-D

25 ENTERTAINMENT PRODUCTION TAX [CREDIT] CREDITS

26 AND INCENTIVES

1 Section 1701-D. Scope of article.

2 This article relates to entertainment production tax credits  
3 and incentives.

4 Section 2. The definitions of "film production tax credit  
5 district," "tax credit" and "tax district capitol investment" in  
6 section 1711-D of the act, added June 28, 2019 (P.L.50, No.13),  
7 are amended and the section is amended by adding a definition to  
8 read:

9 Section 1711-D. Definitions.

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

13 \* \* \*

14 "Film [production tax credit] industry incentive district."

15 A district authorized under section 1716.2-D.

16 "Incentive." The film industry incentive authorized under  
17 this subarticle, which may be claimed as a tax credit.

18 \* \* \*

19 ["Tax credit." The film production tax credit provided under  
20 this subarticle.]

21 "Tax district capital investment." Investment within a film  
22 [production tax credit] industry incentive district that may  
23 consist of new construction, renovation, real property  
24 improvement and a similar investment as well as other economic  
25 development expenditures within the Commonwealth arising  
26 directly from the investment.

27 \* \* \*

28 Section 3. Sections 1712-D and 1713-D of the act are amended  
29 to read:

30 Section 1712-D. Credit for qualified film production

1 expenses.

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

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

9 (1) The anticipated number of production days in a  
10 qualified production facility.

11 (2) The anticipated number of Pennsylvania employees.

12 (3) The number of preproduction days through  
13 postproduction days in Pennsylvania.

14 (4) The anticipated number of days spent in Pennsylvania  
15 hotels.

16 (5) The Pennsylvania production expenses in comparison  
17 to the production budget.

18 (6) The use of studio resources.

19 (7) If the application includes a qualified  
20 postproduction expense:

21 (i) The qualified postproduction facility where the  
22 activity will occur.

23 (ii) The anticipated type of postproduction activity  
24 that will be conducted.

25 (8) Other criteria that the Director of the Pennsylvania  
26 Film Office deems appropriate to ensure maximum employment  
27 and benefit within this Commonwealth.

28 Upon determining the taxpayer has incurred or will incur  
29 qualified film production expenses, the department may approve  
30 the taxpayer for [a tax credit] an incentive. Applications not

1 approved may be reviewed and considered in subsequent  
2 application periods. The department may approve a taxpayer for  
3 [a tax credit] an incentive based on its evaluation of the  
4 criteria under this subsection.

5 (b.1) Review and approval of applications for film  
6 [production tax credit] industry incentive district activity.--  
7 For applications involving film production expenses incurred  
8 within a designated film [production tax credit] industry  
9 incentive district authorized under section 1716.2-D, the  
10 department shall accept applications at any time. Applications  
11 shall be reviewed by the department utilizing the criteria  
12 required under subsection (b). Upon determining the taxpayer has  
13 incurred or will incur qualified film production expenses, the  
14 department shall approve the taxpayer for [a tax credit] an  
15 incentive utilizing the [tax credits] incentives authorized  
16 under section 1716.2-D, not to exceed the amount authorized for  
17 the fiscal year.

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

21 (1) An itemized list of production expenses incurred or  
22 to be incurred for the film.

23 (2) An itemized list of Pennsylvania production expenses  
24 incurred or to be incurred for the film.

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

28 (4) The start date.

29 (5) Any other information the department deems  
30 appropriate.

1 (d) Certificate.--Upon execution of the contract required by  
2 subsection (c), the department shall award the taxpayer a film  
3 [production tax credit] industry incentive and issue the  
4 taxpayer a film [production tax credit] industry incentive  
5 certificate.

6 Section 1713-D. Film [production tax credits] industry  
7 incentives.

8 A taxpayer may claim [a tax credit] an incentive against the  
9 qualified tax liability of the taxpayer.

10 Section 4. Section 1714-D of the act, amended June 28, 2019  
11 (P.L.50, No.13), is amended to read:

12 Section 1714-D. Carryover, carryback and assignment of credit.

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

26 (b) Application.--[A tax credit] An incentive approved by  
27 the department in a taxable year first shall be applied against  
28 the taxpayer's qualified tax liability for the current taxable  
29 year as of the date on which the [credit] incentive was approved  
30 before the [tax credit] incentive can be applied against any tax

1 liability under subsection (a).

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

6 (d) (Reserved).

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

8 (1) A taxpayer, upon application to and approval by the  
9 department, may sell or assign, in whole or in part, [a tax  
10 credit] an incentive granted to the taxpayer under this  
11 subarticle.

12 (2) The department and the Department of Revenue shall  
13 jointly promulgate regulations for the approval of  
14 applications under this subsection.

15 (3) Before an application is approved, the Department of  
16 Revenue must make a finding that the applicant has filed all  
17 required State tax reports and returns for all applicable  
18 taxable years and paid any balance of State tax due as  
19 determined at settlement, assessment or determination by the  
20 Department of Revenue.

21 (4) Notwithstanding any other provision of law, the  
22 Department of Revenue shall settle, assess or determine the  
23 tax of an applicant under this subsection within 90 days of  
24 the filing of all required final returns or reports in  
25 accordance with section 806.1(a)(5) of the act of April 9,  
26 1929 (P.L.343, No.176), known as The Fiscal Code.

27 (f) Purchasers and assignees.--Except as provided in  
28 subsections (g) and (h), the following apply:

29 (1) The purchaser or assignee of all or a portion of [a  
30 tax credit] an incentive under subsection (e) shall

1 immediately claim the [credit] incentive in the taxable year  
2 in which the purchase or assignment is made.

3 (2) The amount of the [tax credit] incentive that a  
4 purchaser or assignee may use against any one qualified tax  
5 liability may not exceed 50% of such qualified tax liability  
6 for the taxable year.

7 (3) The purchaser or assignee may not carry forward,  
8 carry back or obtain a refund of or sell or assign the [tax  
9 credit] incentive.

10 (4) The purchaser or assignee shall notify the  
11 Department of Revenue of the seller or assignor of the [tax  
12 credit] incentive in compliance with procedures specified by  
13 the Department of Revenue.

14 (g) Limited carry forward of [tax credits] incentives by a  
15 purchaser or assignee.--A purchaser or assignee may carry  
16 forward all or any unused portion of [a tax credit] an incentive  
17 purchased or assigned in:

18 (1) Calendar year 2010 against qualified tax liabilities  
19 incurred in taxable years 2011 and 2012.

20 (2) Calendar year 2013 against qualified tax liabilities  
21 incurred in taxable year 2014.

22 (3) Calendar year 2014 against qualified tax liabilities  
23 incurred in taxable year 2015.

24 (h) Full utilization of [tax credits] incentives.--[A tax  
25 credit] An incentive awarded under this article may be sold or  
26 assigned to a purchaser or assignee included in the same Federal  
27 consolidated tax return as permitted under sections 1501 and  
28 1502 of the Internal Revenue Code of 1986 (Public Law 99-514, 26  
29 U.S.C. §§ 1501 and 1502), filed by the taxpayer under subsection

30 (a) to reduce or eliminate the qualified tax liability to the

1 same extent allowable for the taxpayer under subsections (a),  
2 (b) and (c). [Tax credits] Incentives sold or assigned under  
3 this subsection are limited to the taxable year in which the  
4 purchase or assignment is made and may only be carried forward  
5 for the remainder of the carryforward period of the original  
6 [credit] incentive.

7 Section 5. Section 1715-D of the act is amended to read:  
8 Section 1715-D. Determination of Pennsylvania production  
9 expenses.

10 In prescribing standards for determining which production  
11 expenses are considered Pennsylvania production expenses for  
12 purposes of computing the [credit] incentive provided by this  
13 subarticle, the department shall consider:

- 14 (1) The location where services are performed.
- 15 (2) The location where supplies are consumed.
- 16 (3) Other factors the department determines are  
17 relevant.

18 Section 6. Section 1716-D of the act, amended June 28, 2019  
19 (P.L.50, No.13), is amended to read:

20 Section 1716-D. Limitations.

21 (a) Cap.--Except for [tax credits] incentives reissued under  
22 section 1716.1-D, in no case shall the aggregate amount of [tax  
23 credits] incentives awarded in any fiscal year under this  
24 subarticle exceed [\$70,000,000] \$125,000,000. The department  
25 may, in its discretion, award in one fiscal year up to:

26 (1) Thirty percent of the dollar amount of film  
27 [production tax credits] industry incentives available to be  
28 awarded in the next succeeding fiscal year.

29 (2) Twenty percent of the dollar amount of film  
30 [production tax credits] industry incentives available to be



1 awarded in the second successive fiscal year.

2 (3) Ten percent of the dollar amount of film [production  
3 tax credits] industry incentives available to be awarded in  
4 the third successive fiscal year.

5 (a.1) Advance award of credits.--The advance award of film  
6 [tax credits] industry incentives under subsection (a) shall:

7 (1) count against the total dollar amount of [credits]  
8 incentives that the department may award in that next  
9 succeeding fiscal year; and

10 (2) reduce the dollar amount of [credits] incentives  
11 that the department may award in that next succeeding fiscal  
12 year.

13 The individual limitations on the awarding of film [production  
14 tax credits] industry incentives apply to an advance award of  
15 film [production tax credits] industry incentives under  
16 subsection (a) and to a combination of film [production tax  
17 credits] industry incentives awarded against the current fiscal  
18 year cap and against the next succeeding fiscal year's cap.

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

20 (1) Except as set forth in paragraph (1.1) or (1.2), the  
21 aggregate amount of film [production tax credits] industry  
22 incentives awarded by the department under section 1712-D(d)  
23 to a taxpayer for a film may not exceed 25% of the qualified  
24 film production expenses to be incurred.

25 (1.1) In addition to the [tax credit] incentive under  
26 paragraph (1), a taxpayer is eligible for [a credit] an  
27 incentive in the amount of 5% of the qualified film  
28 production expenses incurred by the taxpayer if the taxpayer:

29 (i) films a feature film, television film or  
30 television series, which is intended as programming for a

1 national audience; and

2 (ii) films in a qualified production facility which  
3 meets the minimum stage filming requirements.

4 (1.2) A qualified postproduction expense shall qualify  
5 for a 30% [credit] incentive.

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

10 (c) Qualified production facility.--To be considered a  
11 qualified production facility or qualified postproduction  
12 facility, the owner of a facility shall provide evidence to the  
13 department to verify the development or facility specifications  
14 and capital investment costs incurred for the facility so that  
15 the threshold amounts set in the definitions of "qualified  
16 production facility" and "qualified postproduction facility" are  
17 satisfied, and upon verification, the facility shall be  
18 registered by the department officially as a qualified  
19 production facility or qualified postproduction facility.

20 (d) Waiver.--The department may make a determination that  
21 the financial benefit to this Commonwealth resulting from the  
22 direct investment in or payments made to Pennsylvania facilities  
23 outweighs the benefit of maintaining the 60% requirement  
24 contained in the definition of "qualified film production  
25 expense." If such determination is made, the department may  
26 waive the requirement that 60% of a film's total production or  
27 postproduction expenses be comprised of Pennsylvania production  
28 expenses for a film, television film or television series that  
29 is intended as programming for a national audience and is filmed  
30 or produced in a qualified production facility or qualified

1 postproduction facility if the taxpayer who has Pennsylvania  
2 production expenses of at least \$30,000,000 per production meets  
3 the minimum stage filming requirements.

4 Section 7. Section 1716.1-D of the act is amended to read:  
5 Section 1716.1-D. Reissuance of film [production tax credits]  
6 industry incentives.

7 (a) Reissuance.--In any fiscal year, the department may  
8 reissue [a tax credit] an incentive which meets all of the  
9 following:

10 (1) The [tax credit] incentive was approved under  
11 section 1712-D(b).

12 (2) The contract was signed under section 1712-D(c).

13 (3) The [tax credit] incentive was awarded and a  
14 certificate was issued under section 1712-D(d).

15 (b) Amount.--The amount of [a tax credit] an incentive to be  
16 reissued shall be calculated as the difference between the  
17 amounts in subsection (a) (1) and (3).

18 (c) Applicability.--This section shall apply to [a tax  
19 credit] an incentive awarded under this article in any fiscal  
20 year beginning after June 30, 2017.

21 Section 8. Section 1716.2-D of the act, amended June 28,  
22 2019, (P.L.50, No.13), is amended to read:

23 Section 1716.2-D. Film [production tax credit] industry  
24 incentive districts.

25 (a) Establishment.--The department may designate not more  
26 than two film [production tax credit] industry incentive  
27 districts for the purpose of enhancing, promoting and expanding  
28 film production opportunities and establishing a film production  
29 industry within this Commonwealth.

30 (b) Criteria.--A film [production tax credit] industry

1 incentive district shall:

2 (1) Be at least 55 acres in size.

3 (2) Be located on deteriorated property.

4 (3) Be comprised of a parcel that is or will be occupied  
5 by two or more qualified businesses that:

6 (i) in the aggregate, make a tax district capital  
7 investment of at least \$400,000,000 within eight years  
8 after the effective date of the designation of the  
9 district; and

10 (ii) are dedicated to film production activity,  
11 postproduction activity or other activities that directly  
12 or indirectly support film production activity occurring  
13 within the district or within this Commonwealth.

14 (4) Contain at least one qualified production facility  
15 and two sound stages.

16 (c) Application.--The following apply:

17 (1) An application to designate a film [production tax  
18 credit] industry incentive district may be made by the county  
19 or municipality in which all or part of the district will be  
20 located. The department shall review the application and, if  
21 approved, issue a designation for the film [production tax  
22 credit] industry incentive district. The application period  
23 shall be set by the department.

24 (2) The application shall contain the following  
25 information:

26 (i) The geographic area of the proposed film  
27 [production tax credit] industry incentive district.

28 (ii) A detailed map of the proposed district,  
29 including geographic boundaries, total area and present  
30 use and conditions of the land and structures.

1 (iii) A description of the current social, economic  
2 and demographic characteristics of the proposed district  
3 and anticipated improvements in education, health, human  
4 services, public safety and employment that will result  
5 from designation of the district.

6 (iv) A description of anticipated film production  
7 activity and ancillary activities in the proposed  
8 district.

9 (v) Evidence of potential private and public  
10 investment in the proposed district.

11 (vi) The role of the proposed district in regional  
12 economic and community development.

13 (d) Designation period.--A district designated under  
14 subsection (c) shall expire 15 years after the effective date of  
15 the designation.

16 (e) Construction.--The [tax credits] incentives authorized  
17 under this section are in addition to the [tax credits]  
18 incentives under section 1716-D(a) and are available exclusively  
19 for activities occurring within the designated district.

20 (f) Annual [tax credits] incentives.--The department may  
21 authorize [a tax credit] an incentive for a film [production tax  
22 credit] industry incentive district in fiscal year 2019-2020 and  
23 in each fiscal year thereafter.

24 Section 9. Sections 1717-D, 1718-D and 1720-D of the act are  
25 amended to read:

26 Section 1717-D. Penalty.

27 A taxpayer which claims [a tax credit] an incentive and fails  
28 to incur the amount of qualified film production expenses agreed  
29 to in section 1712-D(c) (3) for a film in that taxable year shall  
30 repay to the Commonwealth the amount of the film [production tax

1 credit] industry incentive claimed under this subarticle for the  
2 film.

3 Section 1718-D. Pass-through entity.

4 (a) General rule.--If a pass-through entity has any unused  
5 [tax credit] incentive under section 1714-D, it may elect in  
6 writing, according to procedures established by the Department  
7 of Revenue, to transfer all or a portion of the [credit]  
8 incentive to shareholders, members or partners in proportion to  
9 the share of the entity's distributive income to which the  
10 shareholder, 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] incentive under subsection (a) for the same qualified  
14 film production expense.

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

21 Section 1720-D. Report to General Assembly.

22 (a) General rule.--No later than June 1, 2008, and September  
23 1 of each year thereafter, the Secretary of Community and  
24 Economic Development shall submit a report to the General  
25 Assembly summarizing the effectiveness of the [tax credit]  
26 incentive provided by this subarticle. The report shall include  
27 the name of the film produced, the names of all taxpayers  
28 utilizing the [credit] incentive as of the date of the report  
29 and the amount of [credits] incentives approved for, utilized by  
30 or sold or assigned by each taxpayer. The report may also

1 include any recommendations for changes in the calculation or  
2 administration of the [tax credit] incentive. The report shall  
3 be submitted to the chairman and minority chairman of the  
4 Appropriations and Finance Committees of the Senate and the  
5 chairman and minority chairman of the Appropriations and Finance  
6 Committees of the House of Representatives. In addition to the  
7 information set forth above, the report shall include the  
8 following information, which shall be separated by geographic  
9 location within this Commonwealth:

10 (1) The amount of [credits] incentives claimed during  
11 the fiscal year by film.

12 (2) The total amount spent in this Commonwealth during  
13 the fiscal year by film.

14 (3) The total amount of tax revenues generated by this  
15 Commonwealth during the fiscal year by film.

16 (4) The total number of jobs created during the fiscal  
17 year by film, including the duration of the jobs.

18 (b) Public information.--Notwithstanding any law providing  
19 for the confidentiality of tax records, the information in the  
20 report shall be public information, and all report information  
21 shall be posted on the department's Internet website.

22 Section 10. A reference to the former film production tax  
23 credit in law or regulation shall be a reference to the film  
24 industry incentive.

25 Section 11. The amendment of section 1716-D(a) of the act  
26 shall apply to fiscal years beginning on or after July 1, 2021.

27 Section 12. This act shall take effect immediately.