

## 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

1 AND INCENTIVES

2 Section 1701-D. Scope of article.

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

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

10 Section 1711-D. Definitions.

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

14 \* \* \*

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

16 A district authorized under section 1716.2-D.

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

19 \* \* \*

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

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

28 \* \* \*

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

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

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

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

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

12 (2) The anticipated number of Pennsylvania employees.

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

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

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

19 (6) The use of studio resources.

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

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

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

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

29 Upon determining the taxpayer has incurred or will incur  
30 qualified film production expenses, the department may approve

1 the taxpayer for [a tax credit] an incentive. Applications not  
2 approved may be reviewed and considered in subsequent  
3 application periods. The department may approve a taxpayer for  
4 [a tax credit] an incentive based on its evaluation of the  
5 criteria under this subsection.

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

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

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

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

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

29 (4) The start date.

30 (5) Any other information the department deems

1 appropriate.

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

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

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

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

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

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

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

1 before the [tax credit] incentive can be applied against any tax  
2 liability under subsection (a).

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

7 (d) (Reserved).

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

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

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

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

22 (4) Notwithstanding any other provision of law, the  
23 Department of Revenue shall settle, assess or determine the  
24 tax of an applicant under this subsection within 90 days of  
25 the filing of all required final returns or reports in  
26 accordance with section 806.1(a)(5) of the act of April 9,  
27 1929 (P.L.343, No.176), known as The Fiscal Code.

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

30 (1) The purchaser or assignee of all or a portion of [a

1 [tax credit] an incentive under subsection (e) shall  
2 immediately claim the [credit] incentive in the taxable year  
3 in which the purchase or assignment is made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 [production tax credits] industry incentives available to be  
2 awarded in the second successive fiscal year.

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

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

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

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

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

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

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

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

30 (i) films a feature film, television film or

1 television series, which is intended as programming for a  
2 national audience; and

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

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

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

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

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

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

5 Section 7. Sections 1716.1-D of the act is amended to read:

6 Section 1716.1-D. Reissuance of film [production tax credits]  
7 industry incentives.

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

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

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

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

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

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

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

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

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

1 (b) Criteria.--A film [production tax credit] industry  
2 incentive district shall:

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

4 (2) Be located on deteriorated property.

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

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

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

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

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

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

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

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

29 (ii) A detailed map of the proposed district,  
30 including geographic boundaries, total area and present

1 use and conditions of the land and structures.

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

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

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

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

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

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

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

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

27 Section 1717-D. Penalty.

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

1 repay to the Commonwealth the amount of the film [production tax  
2 credit] industry incentive claimed under this subarticle for the  
3 film.

4 Section 1718-D. Pass-through entity.

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

12 (b) Limitation.--A pass-through entity and a shareholder,  
13 member or partner of a pass-through entity shall not claim the  
14 [credit] incentive under subsection (a) for the same qualified  
15 film production expense.

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

22 Section 1720-D. Report to General Assembly.

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

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

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

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

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

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

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

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

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

28 Section 12. This act shall take effect immediately.