

TAX REFORM CODE OF 1971 - FILM PRODUCTION TAX CREDIT
Act of Jul. 20, 2004, P.L. 801, No. 95
Session of 2004
No. 2004-95

Cl. 72

HB 147

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," authorizing a film production tax credit; and providing for the powers and duties of the Department of Community and Economic Development and the Department of Revenue.

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

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

ARTICLE XVII-C
FILM PRODUCTION TAX CREDIT

Section 1701-C. Scope of article.

This article relates to film production tax credits.

Section 1702-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 Revenue of the Commonwealth.

"Film." The term includes a feature film, a television series and a 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 that primarily markets a product or service, 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 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.

"Production expense." An expense incurred in the production of a film. The term includes wages and salaries of individuals employed in the production of a film on which the taxes imposed by Article III or IV have been paid or accrued; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories; and the cost of rental of facilities and equipment. The term does not include expenses incurred in marketing or advertising a film.

"Qualified film production expense." A Pennsylvania production expense if at least 60% of the total production 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 employe under Article III.

"Taxpayer." An entity subject to tax under Article III, IV or VI.

Section 1703-C. Credit for qualified film production expenses.

(a) General rule.--A taxpayer who incurs a qualified film production expense in a taxable year may apply for a film production tax credit as provided in this article. A taxpayer seeking a credit under this article must submit an application to the department by February 15 for qualified film production expenses incurred in the taxable year that ended in the prior calendar year.

(b) Amount of credit.--A taxpayer that is qualified under subsection (a) shall receive a film production tax credit for the taxable year in the amount of 20% of the qualified film production expenses.

(c) Notification.--By August 15 of the calendar year following the close of the taxable year during which the qualified film production expense was incurred, the department shall notify the taxpayer of the amount of the taxpayer's film production tax credit approved by the department.

Section 1704-C. Carryover, carryback, refund and assignment of credit.

(a) General rule.--If the taxpayer cannot use the entire amount of the film production tax credit for the taxable year in which the film production tax 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 film production tax 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 film production tax 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.

(b) Application.--A film production tax credit approved by the Department of Revenue for qualified film production expenses 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 film production tax credit can be applied against any tax liability under subsection (a).

(c) No carryback.--A taxpayer is not entitled to carry back or obtain a refund of an unused film production tax credit.

(d) Sale or assignment.--

(1) A taxpayer, upon application to and approval by the Department of Community and Economic Development, may sell or assign, in whole or in part, a film production tax credit granted to the taxpayer under this article.

(2) The Department of Community and Economic Development and the department shall jointly promulgate regulations for the approval of applications under this subsection.

(3) Before an application is approved, the department must make a finding that the applicant has filed required State tax reports for the taxable year for which the qualified expenses were approved and paid any balance of State tax due as determined at settlement, assessment or determination by the department.

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

(e) Purchasers and assignees.--The purchaser or assignee of a portion of a film production tax credit under subsection (d) shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The amount of the film production credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year. The purchaser or assignee may not carry over, carry back, obtain a refund of or assign the film production tax credit. The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the film production tax credit in compliance with procedures specified by the Department of Revenue.

Section 1705-C. Determination of qualified film production expenses.

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

(1) The location where the services are performed.

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

(3) The location where qualified film production supplies are consumed.

(4) Other factors established in regulation by the department which are necessary for determination.

Section 1706-C. Time limitations.

A taxpayer is not entitled to a film production tax credit for qualified film production expenses incurred in taxable years ending after December 31, 2012.

Section 1707-C. Limitation on credits.

(a) General rule.--The total amount of credits approved by the department shall not exceed \$10,000,000 in any fiscal year.

(b) Exception.--If the total amount of film production tax credits applied for by all taxpayers exceeds the amount allocated for those credits, then the film production tax credit to be received by each applicant shall be the product of the allocated amount multiplied by the quotient of the film production tax credit applied for by the applicant divided by the total of all film production credits applied for by all applicants, the algebraic equivalent of which is:

$$\text{taxpayer's film production tax credit} = \text{amount allocated for those credits} \times \left(\frac{\text{film production tax credit applied for by the applicant}}{\text{total of all film production tax credits applied for by all applicants}} \right).$$

Section 1708-C. Pass-through entity.

(a) General rule.--If a pass-through entity has any unused tax credit under section 1704-C, it may elect in writing, according to procedures established by the department, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of its distributive income to which the shareholder, member or partner is entitled.

(b) Limitation.--The credit provided under subsection (a) is in addition to any film production tax credit to which a shareholder, member or partner of a pass-through entity is otherwise entitled under this article. However, a pass-through entity and a shareholder, member or partner of a pass-through entity may not claim a credit under this article for the same qualified film production expense.

(c) Application.--A shareholder, member or partner of a pass-through entity to whom a credit is transferred under subsection (a) shall immediately claim the credit in the taxable year in which the transfer is made. A credit transferred to a natural person may be applied only against the income referred to under section 303(a)(2). The shareholder, member or partner may not carry back, obtain a refund of or assign the credit.

Section 1709-C. Report to General Assembly.

The secretary shall submit an annual report to the General Assembly indicating the effectiveness of the film production tax credit provided by this article no later than April 1 following the year in which the credits were approved. The report shall include the names of all taxpayers utilizing the credit as of the date of the report and the amount of credits approved and utilized by each taxpayer. Notwithstanding any law providing for the confidentiality of tax records, the information contained in the report shall be public information. The report may also include any recommendations for changes in the calculation or administration of the credit.

Section 1710-C. Termination.

The department shall not approve a film production tax credit under this article for taxable years ending after December 31, 2012.

Section 1711-C. Regulations.

The department shall promulgate regulations necessary for the implementation and administration of this article.

Section 2. The addition of Article XVII-C of the act shall apply to:

(1) qualified film production expenses incurred after June 30, 2004; and

(2) taxable years commencing after December 31, 2003.

Section 3. This act shall take effect immediately.

APPROVED--The 20th day of July, A. D. 2004.

EDWARD G. RENDELL