

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 147 Session of
2003

INTRODUCED BY T. STEVENSON, BAKER, BISHOP, CAPPELLI, COSTA,
CREIGHTON, FEESE, FRANKEL, GEIST, GODSHALL, GOODMAN,
HENNESSEY, HERMAN, HERSHEY, HORSEY, HUTCHINSON, KELLER,
LAUGHLIN, LEACH, MANN, MARKOSEK, McCALL, NAILOR, PRESTON,
READSHAW, REICHLEY, ROEBUCK, SAINATO, SATHER, SEMMEL,
SOLOBAY, R. STEVENSON, THOMAS, TURZAI, WALKO, WATSON, WILT,
YOUNGBLOOD, ADOLPH, HARHAI, PICKETT, JAMES, PISTELLA, HARPER,
WASHINGTON, DAILEY AND LEWIS, FEBRUARY 6, 2003

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 17, 2003

AN ACT

1 ~~Authorizing the film enhancement tax credit; and providing for~~ <—
2 ~~the powers and duties of the Department of Community and~~
3 ~~Economic Development and the Department of Revenue.~~
4 AMENDING THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), ENTITLED "AN <—
5 ACT RELATING TO TAX REFORM AND STATE TAXATION BY CODIFYING
6 AND ENUMERATING CERTAIN SUBJECTS OF TAXATION AND IMPOSING
7 TAXES THEREON; PROVIDING PROCEDURES FOR THE PAYMENT,
8 COLLECTION, ADMINISTRATION AND ENFORCEMENT THEREOF; PROVIDING
9 FOR TAX CREDITS IN CERTAIN CASES; CONFERRING POWERS AND
10 IMPOSING DUTIES UPON THE DEPARTMENT OF REVENUE, CERTAIN
11 EMPLOYERS, FIDUCIARIES, INDIVIDUALS, PERSONS, CORPORATIONS
12 AND OTHER ENTITIES; PRESCRIBING CRIMES, OFFENSES AND
13 PENALTIES," AUTHORIZING THE FILM ENHANCEMENT TAX CREDIT; AND
14 PROVIDING FOR THE POWERS AND DUTIES OF THE DEPARTMENT OF
15 COMMUNITY AND ECONOMIC DEVELOPMENT AND THE DEPARTMENT OF
16 REVENUE.

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

19 ~~Section 1. Short title.~~ <—
20 ~~This act shall be known and may be cited as the Film~~
21 ~~Enhancement Tax Credit Act.~~

1 ~~Section 2. Definitions.~~

2 ~~The following words and phrases when used in this act shall~~
3 ~~have the meanings given to them in this section unless the~~
4 ~~context clearly indicates otherwise:~~

5 ~~"Credit." The film enhancement tax credit authorized by this~~
6 ~~act.~~

7 ~~"Department." The Department of Community and Economic~~
8 ~~Development of the Commonwealth.~~

9 ~~"Film." A single media or multimedia program which does not~~
10 ~~violate any Federal or State law, including, but not limited to,~~
11 ~~national advertising messages, fixed on film or digital video,~~
12 ~~which can be viewed or reproduced and which is exhibited in~~
13 ~~theaters, licensed for exhibition by individual television~~
14 ~~stations, groups of stations, networks, cable television~~
15 ~~stations or other means or licensed for home viewing markets.~~

16 ~~"Pennsylvania production expense." An expense incurred in~~
17 ~~this Commonwealth directly related to the production of a long-~~
18 ~~form narrative film in this Commonwealth, including, but not~~
19 ~~limited to:~~

20 ~~(1) Wages or salaries of persons who are residents of~~
21 ~~this Commonwealth and who have earned income from working on~~
22 ~~a film in this Commonwealth, including payments to personal~~
23 ~~services corporations with respect to the services of~~
24 ~~qualified performing artists, as determined under section~~
25 ~~62(a)(A) of the Internal Revenue Code of 1986 (Public Law 99-~~
26 ~~514, 26 U.S.C. § 1 et seq.).~~

27 ~~(2) The cost of construction and operations, wardrobe,~~
28 ~~accessories and related services.~~

29 ~~(3) The cost of photography, sound synchronization,~~
30 ~~lighting and related services.~~

~~(4) The cost of editing and related services.~~

~~(5) Rental of facilities and equipment.~~

~~(6) Other direct costs of producing a film.~~

~~"Qualified tax liability." The liability for taxes imposed under Article II, III, IV or VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.~~

~~"Taxpayer." An entity subject to tax under Article II, III, IV or VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, that incurs Pennsylvania production expenses.~~

~~"Secretary." The Secretary of Community and Economic Development of the Commonwealth.~~

~~Section 3. Film enhancement tax credit.~~

~~(a) Tax credit authorized. A tax credit in the amount of 15% of documented Pennsylvania production expenses may be awarded to a taxpayer.~~

~~(b) Administration. The credit shall be administered by the Department of Community and Economic Development and the Department of Revenue, as provided in this act.~~

~~(c) Eligibility. To be eligible for a credit, the taxpayer incurring Pennsylvania production expenses must submit such documentation, make such reports and meet such deadlines as the secretary may require in the administration of this act.~~

~~(d) Approval. The secretary shall approve or disapprove all claims for the credit and shall notify the Department of Revenue of the name of the recipient and the amount of all credits approved.~~

~~(e) Limitations. The total amount of credits approved by the department shall not exceed \$3,000,000 in any fiscal year. If the amount of eligible claims exceeds the amount specified in~~

~~this subsection in a fiscal year, the credit shall be prorated among all eligible claims.~~

~~Section 4. Application of credits.~~

~~(a) Use of credit. The credit may be applied against a qualified tax liability of the taxpayer.~~

~~(b) Carryover of credit. If the taxpayer cannot use the entire amount of the credit for the taxable year in which the 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 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 credit provided by this act 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. A credit approved by the department 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 credit is applied against any other tax liability.~~

~~(c) Limitation on unused credits. A taxpayer may not carry back, obtain a refund of or assign an unused credit.~~

~~Section 5. Pennsylvania S corporation shareholder pass through.~~

~~(a) Pass through of credit. If a Pennsylvania S corporation does not have an eligible tax liability against which the credit may be applied, a shareholder of the Pennsylvania S corporation may receive a credit equal to the credit determined for the Pennsylvania S corporation for the taxable year multiplied by the percentage of the Pennsylvania S corporation's distributive~~

~~income to which the shareholder is entitled.~~

~~(b) Limitation. The credit provided under subsection (a) is in addition to any other credit to which a shareholder of Pennsylvania S corporation is otherwise entitled under the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971. However, a Pennsylvania S corporation and a shareholder of a Pennsylvania S corporation may not claim a credit under this act for the same Pennsylvania production expense.~~

~~Section 6. Time limitations.~~

~~A taxpayer may not receive a credit for Pennsylvania production expenses incurred after December 31, 2012.~~

~~Section 7. Applicability.~~

~~This act shall apply to taxable years commencing on or after January 1, 2003.~~

~~Section 8. Effective date.~~

~~This act shall take effect immediately.~~

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 ENHANCEMENT TAX CREDIT

SECTION 1701-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 COMMUNITY AND ECONOMIC DEVELOPMENT OF THE COMMONWEALTH.

"ELIGIBLE PRODUCTION." THE TERM INCLUDES A FEATURE FILM, TELEVISION SERIES AND TELEVISION SHOW OF 15 MINUTES OR MORE IN LENGTH, INTENDED FOR A NATIONAL AUDIENCE. THE TERM DOES NOT

1 INCLUDE A PRODUCTION FEATURING NEWS, CURRENT EVENTS, WEATHER AND
2 MARKET REPORTS, OR PUBLIC PROGRAMMING, TALK SHOW, GAME SHOW,
3 SPORTS EVENT, AWARDS SHOW OR OTHER GALA EVENT, A PRODUCTION THAT
4 SOLICITS FUNDS, A PRODUCTION CONTAINING OBSCENE MATERIAL OR
5 PERFORMANCES AS DEFINED IN 18 PA.C.S. § 5903(B) (RELATING TO
6 OBSCENE AND OTHER SEXUAL MATERIALS AND PERFORMANCES), OR A
7 PRODUCTION PRIMARILY FOR PRIVATE, INDUSTRIAL, CORPORATE OR
8 INSTITUTIONAL PURPOSES.

9 "FILM ENHANCEMENT TAX CREDIT." THE FILM ENHANCEMENT TAX
10 CREDIT AUTHORIZED BY THIS ARTICLE.

11 "PENNSYLVANIA PRODUCTION EXPENSE." AN EXPENSE INCURRED IN
12 THIS COMMONWEALTH DIRECTLY RELATED TO THE MAKING OF AN ELIGIBLE
13 PRODUCTION IN THIS COMMONWEALTH, INCLUDING, BUT NOT LIMITED TO:

14 (1) WAGES OR SALARIES OF PERSONS WHO ARE RESIDENTS OF
15 THIS COMMONWEALTH AND WHO HAVE EARNED INCOME FROM WORKING ON
16 A FILM IN THIS COMMONWEALTH, INCLUDING PAYMENTS TO PERSONAL
17 SERVICES CORPORATIONS WITH RESPECT TO THE SERVICES OF
18 QUALIFIED PERFORMING ARTISTS, AS DETERMINED UNDER SECTION
19 62(A)(A) OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-
20 514, 26 U.S.C. § 1 ET SEQ.).

21 (2) THE COST OF CONSTRUCTION AND OPERATIONS, WARDROBE,
22 ACCESSORIES AND RELATED SERVICES.

23 (3) THE COST OF PHOTOGRAPHY, SOUND SYNCHRONIZATION,
24 LIGHTING AND RELATED SERVICES.

25 (4) THE COST OF EDITING AND RELATED SERVICES.

26 (5) RENTAL OF FACILITIES AND EQUIPMENT.

27 (6) OTHER DIRECT COSTS OF PRODUCING A FILM.

28 "QUALIFIED TAX LIABILITY." THE LIABILITY FOR TAXES IMPOSED
29 UNDER ARTICLE II, III, IV OR VI.

30 "SECRETARY." THE SECRETARY OF COMMUNITY AND ECONOMIC

1 DEVELOPMENT OF THE COMMONWEALTH.

2 "TAXPAYER." AN ENTITY SUBJECT TO TAX UNDER ARTICLE II, III,
3 IV OR VI THAT INCURS PENNSYLVANIA PRODUCTION EXPENSES.

4 SECTION 1702-C. FILM ENHANCEMENT TAX CREDIT.

5 (A) TAX CREDIT AUTHORIZED.--A TAX CREDIT IN THE AMOUNT OF
6 15% OF THE FIRST \$10,000,000 AND A TAX CREDIT OF 20% FOR
7 ELIGIBLE PRODUCTIONS WITH A TOTAL AGGREGATE PRODUCTION EXPENSE
8 THAT EXCEEDS \$10,000,000 MAY BE AWARDED TO A TAXPAYER.

9 (B) ADMINISTRATION.--THE CREDIT SHALL BE ADMINISTERED BY THE
10 DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT AND THE
11 DEPARTMENT OF REVENUE, AS PROVIDED IN THIS ARTICLE.

12 (C) ELIGIBILITY.--TO BE ELIGIBLE FOR A CREDIT, THE TAXPAYER
13 INCURRING PENNSYLVANIA PRODUCTION EXPENSES MUST MEET THE
14 FOLLOWING REQUIREMENTS:

15 (1) SUBMIT A BUDGET FOR PRODUCING THE ELIGIBLE
16 PRODUCTION INDICATING THE TIME, MATERIALS, LABOR AND ANY
17 OTHER ASSOCIATED COSTS ASSOCIATED WITH THE MAKING OF THE
18 ELIGIBLE PRODUCTION IN PENNSYLVANIA.

19 (2) SUBMIT A BUDGET FOR PRODUCING THE SAME ELIGIBLE
20 PRODUCTION INDICATING THE TIME, MATERIALS, LABOR AND ANY
21 OTHER ASSOCIATED COSTS THAT WOULD HAVE BEEN INCURRED IF THE
22 PRODUCTION WAS CONDUCTED IN ANOTHER LOCATION.

23 (3) AT LEAST 50% OF THE BELOW-LINE HIRES ARE RESIDENTS
24 OF THIS COMMONWEALTH.

25 (4) AT LEAST 50% OF THE TOTAL PRODUCTION BUDGET IS SPENT
26 IN THIS COMMONWEALTH IN MAKING OF THE ELIGIBLE PRODUCTION OR
27 AT LEAST 50% OF THE DAYS DEDICATED TO THE FILMING OF THE
28 ELIGIBLE PRODUCTION BE HELD IN THIS COMMONWEALTH.

29 (D) APPROVAL.--THE SECRETARY SHALL APPROVE OR DISAPPROVE ALL
30 CLAIMS FOR THE CREDIT AND SHALL NOTIFY THE DEPARTMENT OF REVENUE

1 OF THE NAME OF THE RECIPIENT AND THE AMOUNT OF ALL CREDITS
2 APPROVED.

3 (E) LIMITATIONS.--THE TOTAL AMOUNT OF CREDITS APPROVED BY
4 THE DEPARTMENT SHALL NOT EXCEED \$10,000,000 IN ANY FISCAL YEAR.
5 IF THE AMOUNT OF ELIGIBLE CLAIMS EXCEEDS THE AMOUNT SPECIFIED IN
6 THIS SUBSECTION IN A FISCAL YEAR, THE CREDIT SHALL BE PRORATED
7 AMONG ALL ELIGIBLE CLAIMS.

8 SECTION 1703-C. APPLICATION OF CREDITS.

9 (A) USE OF CREDIT.--THE CREDIT MAY BE APPLIED AGAINST A
10 QUALIFIED TAX LIABILITY OF THE TAXPAYER.

11 (B) CARRYOVER OF CREDIT.--IF THE TAXPAYER CANNOT USE THE
12 ENTIRE AMOUNT OF THE CREDIT FOR THE TAXABLE YEAR IN WHICH THE
13 CREDIT IS FIRST APPROVED, THEN THE EXCESS MAY BE CARRIED OVER TO
14 SUCCEEDING TAXABLE YEARS AND USED AS A CREDIT AGAINST THE
15 QUALIFIED TAX LIABILITY OF THE TAXPAYER FOR THOSE TAXABLE YEARS.
16 EACH TIME THAT THE CREDIT IS CARRIED OVER TO A SUCCEEDING
17 TAXABLE YEAR, IT SHALL BE REDUCED BY THE AMOUNT THAT WAS USED AS
18 A CREDIT DURING THE IMMEDIATELY PRECEDING TAXABLE YEAR. THE
19 CREDIT PROVIDED BY THIS ARTICLE MAY BE CARRIED OVER AND APPLIED
20 TO SUCCEEDING TAXABLE YEARS FOR NO MORE THAN THREE TAXABLE YEARS
21 FOLLOWING THE FIRST TAXABLE YEAR FOR WHICH THE TAXPAYER WAS
22 ENTITLED TO CLAIM THE CREDIT. A CREDIT APPROVED BY THE
23 DEPARTMENT IN A TAXABLE YEAR FIRST SHALL BE APPLIED AGAINST THE
24 TAXPAYER'S QUALIFIED TAX LIABILITY FOR THE CURRENT TAXABLE YEAR
25 AS OF THE DATE ON WHICH THE CREDIT WAS APPROVED BEFORE THE
26 CREDIT IS APPLIED AGAINST ANY OTHER TAX LIABILITY.

27 (C) LIMITATION ON UNUSED CREDITS.--A TAXPAYER MAY NOT CARRY
28 BACK, OBTAIN A REFUND OF OR ASSIGN AN UNUSED CREDIT.

29 SECTION 1704-C. PENNSYLVANIA S CORPORATION SHAREHOLDER PASS-
30 THROUGH.

1 (A) PASS-THROUGH OF CREDIT.--IF A PENNSYLVANIA S CORPORATION
2 DOES NOT HAVE AN ELIGIBLE TAX LIABILITY AGAINST WHICH THE CREDIT
3 MAY BE APPLIED, A SHAREHOLDER OF THE PENNSYLVANIA S CORPORATION
4 MAY RECEIVE A CREDIT EQUAL TO THE CREDIT DETERMINED FOR THE
5 PENNSYLVANIA S CORPORATION FOR THE TAXABLE YEAR MULTIPLIED BY
6 THE PERCENTAGE OF THE PENNSYLVANIA S CORPORATION'S DISTRIBUTIVE
7 INCOME TO WHICH THE SHAREHOLDER IS ENTITLED.

8 (B) LIMITATION.--THE CREDIT PROVIDED UNDER SUBSECTION (A) IS
9 IN ADDITION TO ANY OTHER CREDIT TO WHICH A SHAREHOLDER OF
10 PENNSYLVANIA S CORPORATION IS OTHERWISE ENTITLED UNDER THIS ACT.
11 HOWEVER, A PENNSYLVANIA S CORPORATION AND A SHAREHOLDER OF A
12 PENNSYLVANIA S CORPORATION MAY NOT CLAIM A CREDIT UNDER THIS
13 ARTICLE FOR THE SAME PENNSYLVANIA PRODUCTION EXPENSE.

14 SECTION 1705-C. TIME LIMITATIONS.

15 A TAXPAYER MAY NOT RECEIVE A CREDIT FOR PENNSYLVANIA
16 PRODUCTION EXPENSES INCURRED AFTER DECEMBER 31, 2012.

17 SECTION 2. THIS ACT SHALL APPLY TO PENNSYLVANIA PRODUCTION
18 EXPENSE INCURRED AFTER DECEMBER 31, 2003, AND TAXABLE YEARS
19 COMMENCING ON OR AFTER JANUARY 1, 2004.

20 SECTION 3. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.