

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1008 Session of
2007

INTRODUCED BY FERLO, COSTA, ORIE, LAVALLE, FONTANA, RAFFERTY,
MUSTO, TARTAGLIONE, STACK, KITCHEN, WASHINGTON, LOGAN,
WONDERLING, O'PAKE, BROWNE AND PIPPY, JUNE 26, 2007

REFERRED TO FINANCE, JUNE 26, 2007

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," providing for a film production tax credit and
11 conferring powers and imposing duties upon the Department of
12 Community and Economic Development.

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

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

18 ARTICLE XVII-D

19 FILM PRODUCTION TAX CREDIT

20 Section 1701-D. Scope of article.

21 This article relates to film production tax credits.

22 Section 1702-D. Definitions.

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

4 "Department." The Department of Community and Economic
5 Development of the Commonwealth.

6 "Film." A feature film, a television film, a television talk
7 or game show series, a television commercial or a television
8 pilot or each episode of a television series which is intended
9 as programming for a national or regional audience. The term
10 does not include a production featuring news, current events,
11 weather and market reports, or public programming, sports event,
12 awards show or other gala event, a production that solicits
13 funds, a production containing obscene material or performances
14 as defined in 18 Pa.C.S. § 5903(b) (relating to obscene and
15 other sexual materials and performances) or a production
16 primarily for private, political, industrial, corporate or
17 institutional purposes.

18 "Film production tax credit." The credit provided under this
19 article.

20 "Pass-through entity." A partnership as defined in section
21 301(n.0) or a Pennsylvania S corporation as defined in section
22 301(n.1).

23 "Pennsylvania production expense." A production expense
24 incurred in this Commonwealth. The term includes only wages and
25 salaries on which the taxes imposed by Article III or IV will be
26 paid or accrued.

27 "Production expense." An expense incurred in the production
28 of a film. The term includes the amount of wages and salaries of
29 individuals employed in the production of the film; the costs of
30 construction, operations, editing, photography, sound

1 synchronization, lighting, wardrobe and accessories; the cost of
2 leasing vehicles; the cost of transportation to or from a
3 Pennsylvania train station, bus depot or airport; the cost of
4 insurance coverage if the insurance is purchased through a
5 Pennsylvania-based insurance agent; the costs of food and
6 lodging; the purchase of music or story rights if the purchase
7 price is under \$1,000,000, the rights are purchased from a
8 Pennsylvania resident or an entity subject to taxation in this
9 Commonwealth and the transaction is subject to taxation under
10 Article III, IV or VI; and the cost of rental of facilities and
11 equipment, if rented from or through a Pennsylvania resident or
12 an entity subject to taxation in this Commonwealth. The term
13 does not include:

14 (1) deferred, leveraged or profit participation paid or
15 to be paid to individuals employed in the production of the
16 film;

17 (2) development costs; or

18 (3) expenses incurred in marketing or advertising a
19 film.

20 "Qualified film production expense." A Pennsylvania
21 production expense if at least 60% of the total expenses are
22 Pennsylvania production expenses.

23 "Qualified tax liability." The liability for taxes imposed
24 under Article III, IV or VI. The term shall not include any tax
25 withheld by an employer from an employee under Article III.

26 "Start date." The first day of principal photography in this
27 Commonwealth.

28 "Taxpayer." A film production company subject to tax under
29 Article III, IV or VI. The term does not include contractors or
30 subcontractors of a film production company.

1 Section 1703-D. Credit for qualified film production expenses.

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

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

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

12 (1) An itemized list of production expenses incurred or
13 to be incurred.

14 (2) An itemized list of Pennsylvania production expenses
15 incurred or to be incurred.

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

19 (4) The start date.

20 (5) Any other information the department deems
21 appropriate.

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

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

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

1 (b) Application.--A film production tax credit approved by
2 the department in a taxable year first shall be applied against
3 the taxpayer's qualified tax liability for the current taxable
4 year as of the date on which the credit was approved before the
5 film production tax credit can be applied against any tax
6 liability under subsection (a).

7 (c) No carryback.--A taxpayer is not entitled to carry back
8 all or any portion of an unused film production tax credit
9 granted to the taxpayer under this article.

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

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

22 (1) A taxpayer, upon application to and approval by the
23 department, may sell or assign, in whole or in part, a film
24 production tax credit granted to the taxpayer under this
25 article.

26 (2) The department and the Department of Revenue shall
27 jointly promulgate regulations for the approval of
28 applications under this subsection.

29 (3) Before an application is approved, the Department of
30 Revenue must make a finding that the applicant has filed all

1 required State tax reports and returns for all applicable
2 taxable years and paid any balance of State tax due as
3 determined at settlement, assessment or determination by the
4 Department of Revenue.

5 (4) Notwithstanding any other provision of law, the
6 Department of Revenue shall settle, assess or determine the
7 tax of an applicant under this subsection within 90 days of
8 the filing of all required final returns or reports in
9 accordance with section 806.1(a)(5) of the act of April 9,
10 1929 (P.L.343, No.176), known as The Fiscal Code.

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

23 Section 1706-D. Determination of qualified film production
24 expenses.

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

29 (1) The location where services are performed.

30 (2) The residence or business location of the person or

1 persons performing the service.

2 (3) The location where supplies are consumed.

3 (4) Other factors the department determines are
4 relevant.

5 Section 1707-D. Penalty.

6 A taxpayer which claims a film production tax credit and
7 fails to incur the amount of qualified film production expenses
8 agreed to in section 1703-D(c)(3) for a film in that taxable
9 year shall repay to the Commonwealth the amount of the film
10 production tax credit claimed under this article for the film,
11 including any sums refunded to the taxpayer under section 1705-
12 D(d).

13 Section 1708-D. Pass-through entity.

14 (a) General rule.--If a pass-through entity has any unused
15 tax credit under section 1705-D, it may elect in writing,
16 according to procedures established by the Department of
17 Revenue, to transfer all or a portion of the credit to
18 shareholders, members or partners in proportion to the share of
19 distributive income to which the shareholder, member or partner
20 is entitled.

21 (b) Limitation.--The credit provided under subsection (a)
22 cannot be claimed under this article for the same qualified film
23 production expense by pass-through entity and a shareholder,
24 member or partner of a pass-through entity.

25 (c) Application.--A shareholder, member or partner of a
26 pass-through entity to whom a credit is transferred under
27 subsection (a) shall immediately claim the credit in the taxable
28 year in which the transfer is made. The shareholder, member or
29 partner may not carry forward, carry back, obtain a refund of or
30 sell or assign the credit.

1 Section 1709-D. Department guidelines.

2 The department shall develop written guidelines for the
3 implementation of the provisions of this article.

4 Section 2. The addition of Article XVII-D of the act shall
5 apply to:

6 (1) qualified film production expenses incurred after
7 December 31, 2006; and

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

9 Section 3. This act shall take effect immediately.