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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2397 Session of  
2014

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INTRODUCED BY MIRANDA, BISHOP, V. BROWN, THOMAS, KIRKLAND,  
BRIGGS, M. DALEY AND MCGEEHAN, JULY 1, 2014

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REFERRED TO COMMITTEE ON FINANCE, JULY 1, 2014

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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 video game production tax credit.

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

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

16 ARTICLE XVII-J

17 VIDEO GAME PRODUCTION TAX CREDIT

18 Section 1701-J. Scope of article.

19 This article relates to video game production tax credits.

20 Section 1702-J. Definitions.

21 The following words and phrases when used in this article

22 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Department." The Department of Community and Economic  
3 Development of the Commonwealth.

4 "Pass-through entity." A partnership as defined in section  
5 301(n.0) or a Pennsylvania S corporation as defined in section  
6 301(n.1).

7 "Pennsylvania production expense." Production expense  
8 incurred in this Commonwealth. The term includes:

9 (1) Compensation paid to an individual on which the tax  
10 imposed by Article III will be paid or accrued.

11 (2) Payment to a personal service corporation  
12 representing individual talent if the tax imposed by Article  
13 IV will be paid or accrued on the net income of the  
14 corporation for the taxable year.

15 (3) Payment to a pass-through entity representing  
16 individual talent if the tax imposed by Article III will be  
17 paid or accrued by all of the partners, members or  
18 shareholders of the pass-through entity for the taxable year.

19 (4) The cost of transportation incurred while  
20 transporting to or from a train station, bus depot or  
21 airport, located in this Commonwealth.

22 (5) The cost of insurance coverage purchased through an  
23 insurance agent based in this Commonwealth.

24 (6) The purchase of music or story rights if any of the  
25 following subparagraphs apply:

26 (i) The purchase is from a resident of this  
27 Commonwealth.

28 (ii) The purchase is from an entity subject to  
29 taxation in this Commonwealth, and the transaction is  
30 subject to taxation under Article III, IV or VI.

1           (7) The cost of rental of facilities and equipment  
2 rented from or through a resident of this Commonwealth or an  
3 entity subject to taxation in this Commonwealth.

4 "Production expense." As follows:

5           (1) The term includes all of the following:

6           (i) Compensation paid to an individual employed in  
7 the production of a video game.

8           (ii) Payment to a personal service corporation  
9 representing individual talent.

10           (iii) Payment to a pass-through entity representing  
11 individual talent.

12           (iv) The costs of construction, operations, editing,  
13 photography, sound synchronization, lighting, wardrobe  
14 and accessories.

15           (v) The cost of leasing vehicles.

16           (vi) The cost of transportation to or from a train  
17 station, bus depot or airport.

18           (vii) The cost of insurance coverage.

19           (viii) The costs of food and lodging.

20           (ix) The purchase of music or story rights.

21           (x) The cost of rental of facilities and equipment.

22           (2) The term does not include any of the following:

23           (i) Deferred, leveraged or profit participation paid  
24 or to be paid to individuals employed in the production  
25 of a video game or paid to entities representing an  
26 individual for services provided in the production of a  
27 video game.

28           (ii) Development cost.

29           (iii) Expense incurred in marketing or advertising a  
30 video game.

1           (iv) Cost related to the sale or assignment of a  
2           video game production tax credit under section 1705-J(e).  
3           "Qualified tax liability." The liability for taxes imposed  
4           under Article III, IV or VI. The term shall not include any tax  
5           withheld by an employer from an employee under Article III.

6           "Qualified video game production expense." All Pennsylvania  
7           production expenses if Pennsylvania production expenses comprise  
8           at least 60% of the video game's total production expenses. The  
9           term shall not include more than \$1,000,000 in the aggregate of  
10           compensation paid to individuals or payment made to entities  
11           representing an individual for services provided in the  
12           production of the video game.

13           "Start date." The first day of principal production of a  
14           video game in this Commonwealth.

15           "Tax credit." The video game production tax credit provided  
16           under this article.

17           "Taxpayer." A video game production company subject to tax  
18           under Article III, IV or VI. The term does not include  
19           contractors or subcontractors of a video game production  
20           company.

21           "Video game." An electronic game that involves interaction  
22           with a user interface to generate visual feedback on a video  
23           device. The term does not include a game that contains obscene  
24           material or performances as defined in 18 Pa.C.S. § 5903(b)  
25           (relating to obscene and other sexual materials and  
26           performances) or a game designed primarily for private,  
27           political, industrial, corporate or institutional purposes.  
28           Section 1703-J. Credit for qualified video game production  
29           expenses.

30           (a) Application.--A taxpayer may apply to the department for

1 a tax credit under this section. The application shall be on the  
2 form required by the department.

3 (b) Review and approval.--The department shall review and  
4 approve or disapprove the applications in the order in which  
5 they are received. Upon determining the taxpayer has incurred or  
6 will incur qualified video game production expenses, the  
7 department may approve the taxpayer for a tax credit.

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

11 (1) An itemized list of production expenses incurred or  
12 to be incurred for the video game.

13 (2) An itemized list of Pennsylvania production expenses  
14 incurred or to be incurred for the video game.

15 (3) With respect to a contract entered into prior to  
16 completion of production, a commitment by the taxpayer to  
17 incur the qualified video game production expenses as  
18 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 video  
24 game production tax credit and issue the taxpayer a video game  
25 production tax credit certificate.

26 Section 1704-J. Video game production tax credits.

27 A taxpayer may claim a tax credit against the qualified tax  
28 liability of the taxpayer.

29 Section 1705-J. Carryover, carryback and assignment of credit.

30 (a) General rule.--If the taxpayer cannot use the entire

1 amount of the tax credit for the taxable year in which the tax  
2 credit is first approved, then the excess may be carried over to  
3 succeeding taxable years and used as a credit against the  
4 qualified tax liability of the taxpayer for those taxable years.  
5 Each time the tax credit is carried over to a succeeding taxable  
6 year, it shall be reduced by the amount that was used as a  
7 credit during the immediately preceding taxable year. The tax  
8 credit may be carried over and applied to succeeding taxable  
9 years for no more than three taxable years following the first  
10 taxable year for which the taxpayer was entitled to claim the  
11 tax credit.

12 (b) Application.--A tax credit approved by the department in  
13 a taxable year first shall be applied against the taxpayer's  
14 qualified tax liability for the current taxable year as of the  
15 date on which the tax credit was approved before the tax credit  
16 can be applied against any tax liability under subsection (a).

17 (c) No carryback or refund.--A taxpayer is not entitled to  
18 carry back or obtain a refund of all or any portion of an unused  
19 tax credit granted to the taxpayer under this article.

20 (d) (Reserved).

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 tax  
24 credit granted to the taxpayer under this article.

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

28 (3) Before an application is approved, the Department of  
29 Revenue must make a finding that the applicant has filed all  
30 required State tax reports and returns for all applicable

1 taxable years and paid any balance of State tax due as  
2 determined at settlement, assessment or determination by the  
3 Department of Revenue.

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

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

22 Section 1706-J. Determination of Pennsylvania production  
23 expenses.

24 In prescribing standards for determining which production  
25 expenses are considered Pennsylvania production expenses for  
26 purposes of computing the tax credit, the department shall  
27 consider:

28 (1) The location where services are performed.

29 (2) The location where supplies are consumed.

30 (3) Other factors the department determines are

1 relevant.

2 Section 1707-J. Limitations.

3 (a) Cap.--In no case shall the aggregate amount of tax  
4 credits awarded in any fiscal year under this article exceed  
5 \$20,000,000.

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

7 (1) The aggregate amount of video game production tax  
8 credits awarded by the department under section 1703-J(d) to  
9 a taxpayer for a video game may not exceed 25% of the  
10 qualified video game production expenses to be incurred  
11 during each of the first four years that the video game  
12 production expenses are incurred and 10% for each year  
13 thereafter that the video game production expenses are  
14 incurred.

15 (2) A taxpayer that has received a grant under 12  
16 Pa.C.S. § 4106 (relating to approval) shall not be eligible  
17 for a video game production tax credit for the same video  
18 game.

19 Section 1708-J. Penalty.

20 A taxpayer which claims a tax credit and fails to incur the  
21 amount of qualified video game production expenses agreed to in  
22 section 1703-J(c)(3) for a video game in that taxable year shall  
23 repay to the Commonwealth the amount of the video game  
24 production tax credit claimed under this article for the video  
25 game.

26 Section 1709-J. Pass-through entity.

27 (a) General rule.--If a pass-through entity has any unused  
28 tax credit under section 1705-J, it may elect in writing,  
29 according to procedures established by the Department of  
30 Revenue, to transfer all or a portion of the tax credit to



1 shareholders, members or partners in proportion to the share of  
2 the entity's distributive income to which the shareholder,  
3 member or partner is entitled.

4 (b) Limitation.--A pass-through entity and a shareholder,  
5 member or partner of a pass-through entity shall not claim the  
6 tax credit under subsection (a) for the same qualified video  
7 game production expense.

8 (c) Application.--A shareholder, member or partner of a  
9 pass-through entity to whom a tax credit is transferred under  
10 subsection (a) shall immediately claim the tax credit in the  
11 taxable year in which the transfer is made. The shareholder,  
12 member or partner may not carry forward, carry back, obtain a  
13 refund of or sell or assign the tax credit.

14 Section 1710-J. Department guidelines and regulations.

15 The department shall develop written guidelines for the  
16 implementation of the provisions of this article. The guidelines  
17 shall be in effect until such time as the department promulgates  
18 regulations for the implementation of the provisions of this  
19 article. The department shall promulgate regulations for the  
20 implementation of this article within two years of the effective  
21 date of this section.

22 Section 1711-J. Report to General Assembly.

23 (a) General rule.--No later than June 1 of the second year  
24 that commences after the effective date of this section, and  
25 September 1 of each year thereafter, the Secretary of Community  
26 and Economic Development shall submit a report to the General  
27 Assembly summarizing the effectiveness of the tax credit. The  
28 report shall include the name of the video game produced, the  
29 names of all taxpayers utilizing the tax credit as of the date  
30 of the report and the amount of tax credits approved for,

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

13 (1) The amount of tax credits claimed by taxpayers  
14 during the fiscal year.

15 (2) The total amount spent on video games in this  
16 Commonwealth during the fiscal year.

17 (3) The total amount of tax revenues collected from the  
18 sale of video games in this Commonwealth during the fiscal  
19 year.

20 (4) The total number of jobs created by taxpayers during  
21 the fiscal year, including the duration of the jobs.

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

26 Section 2. This act shall take effect in 60 days.