
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1035 Session of
2013

INTRODUCED BY PILEGGI, FONTANA, ERICKSON, FERLO, STACK,
WASHINGTON, WOZNIAK, BAKER, GREENLEAF, WARD, HUGHES,
BREWSTER, SOLOBAY, YUDICHAK, WHITE, ARGALL, McILHINNEY,
BROWNE, COSTA, SCARNATI, RAFFERTY, LEACH, WILLIAMS, SMITH,
MENSCH, TOMLINSON AND CORMAN, JUNE 20, 2013

REFERRED TO FINANCE, JUNE 20, 2013

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 film production tax credit, further providing
11 for definitions, for credit for qualified film production
12 expenses and for limitations.

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

15 Section 1. Sections 1702-D and 1703-D of the act of March 4,
16 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,
17 amended or added July 25, 2007 (P.L.373, No.55) and July 2, 2012
18 (P.L.751, No.85), are amended to read:

19 Section 1702-D. Definitions.

20 The following words and phrases when used in this article
21 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 "Digital interactive media." As follows:

5 (1) Interactive software that meets all of the
6 following:

7 (i) Is produced at a digital interactive media
8 facility.

9 (ii) Is produced for distribution on or accessed via
10 electronic media, including software accessed via or
11 downloaded from the Internet or a mobile network and
12 software distributed on optical media or embedded in or
13 downloadable to an electronic device, including a mobile
14 phone, game system, computer, tablet and personal digital
15 assistant or other handheld electronic device.

16 (iii) Allows a user to interact with the interactive
17 software via an electronic device, including a computer,
18 a game system, a mobile phone, a personal digital
19 assistant or other handheld electronic device.

20 (iv) Includes an appreciable quantity of text,
21 sound, fixed images, animated images or 3-D geometry.

22 (2) The term includes digital interactive media
23 equipment.

24 (3) The term does not include media that is obscene.

25 "Digital interactive media equipment." Equipment that is
26 required for the development or functioning of a digital
27 interactive media product or service. The term includes:

28 (1) Integrated video and audio equipment, networking
29 routers, switches, network cabling and any other computer-
30 related hardware necessary to create or operate a digital

1 interactive media product or platform.

2 (2) Software, notwithstanding the method of delivery,
3 transfer or access.

4 (3) Computer code.

5 (4) Image files, music files, audio files, video files,
6 scripts and plays.

7 (5) Concept mock-ups.

8 (6) Software tools.

9 (7) Testing procedures.

10 (8) A component part of an item listed under paragraph
11 (2), (3), (4), (5), (6) or (7) necessary and integral to
12 create, develop or produce a digital interactive media
13 product or service.

14 "Digital interactive media facility." A facility where
15 digital interactive media or digital interactive media equipment
16 is developed and which:

17 (1) is located in this Commonwealth;

18 (2) employs at least ten full-time employees who reside
19 in this Commonwealth; and

20 (3) has a capital investment of at least \$500,000.

21 "Film." A feature film, a television film, a television talk
22 or game show series, a television commercial or a television
23 pilot or each episode of a television series which is intended
24 as programming for a national audience. The term does not
25 include a production featuring news, current events, weather and
26 market reports, public programming, sports events, awards shows
27 or other gala events, a production that solicits funds, a
28 production containing obscene material or performances as
29 defined in 18 Pa.C.S. § 5903(b) (relating to obscene and other
30 sexual materials and performances) or a production primarily for

1 private, political, industrial, corporate or institutional
2 purposes.

3 "Minimum stage filming requirements." Include:

4 (1) Taxpayers with a Pennsylvania production expense of
5 less than \$30,000,000 per production must:

6 (i) build at least one set at a qualified production
7 facility;

8 (ii) shoot for a minimum of ten days at a qualified
9 production facility; and

10 (iii) spend or incur a minimum of \$1,500,000 in
11 direct expenditures relating to the use or rental of
12 tangible property or for performance of services provided
13 by a qualified production facility.

14 (2) Taxpayers with a Pennsylvania production expense of
15 at least \$30,000,000 per production must:

16 (i) build at least two sets at a qualified
17 production facility;

18 (ii) shoot for a minimum of 15 days at a qualified
19 production facility; and

20 (iii) spend or incur a minimum of \$5,000,000 in
21 direct expenditures relating to the use or rental of
22 tangible property at or for performance of services
23 provided by a qualified production facility.

24 "Pass-through entity." A partnership as defined in section
25 301(n.0) or a Pennsylvania S corporation as defined in section
26 301(n.1).

27 "Pennsylvania postproduction expense." A qualified
28 postproduction expense incurred at a qualified postproduction
29 facility.

30 "Pennsylvania production expense." Production expense

1 incurred in this Commonwealth. The term includes:

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

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

8 (3) Payment to a pass-through entity representing
9 individual talent if the tax imposed by Article III will be
10 paid or accrued by all of the partners, members or
11 shareholders of the pass-through entity for the taxable year
12 for which the tax imposed under Article III has been withheld
13 and remitted under the requirements of Article III by the
14 production company.

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

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

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

22 (i) The purchase is from a resident of this
23 Commonwealth.

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

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

30 (8) A qualified postproduction expense.

1 (9) The development and manufacture of digital
2 interactive media equipment.

3 "Production expense." As follows:

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

5 (i) Compensation paid to an individual employed in
6 the production of the film.

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

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

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

14 (v) The cost of leasing vehicles.

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

17 (vii) The cost of insurance coverage.

18 (viii) The costs of food and lodging.

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

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

21 (xi) Development and production costs relating to
22 digital interactive media.

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

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

29 (ii) Development cost.

30 (iii) Expense incurred in marketing or advertising a

1 film.

2 (iv) Cost related to the sale or assignment of a
3 film production tax credit under section 1705-D(e).

4 "Qualified film production expense." All Pennsylvania
5 production expenses if Pennsylvania production expenses comprise
6 at least 60% of the film's total production expenses. The term
7 shall not include more than \$15,000,000 in the aggregate of
8 compensation paid to individuals or payment made to entities
9 representing an individual for services provided in the
10 production of the film.

11 "Qualified postproduction expense." A Pennsylvania
12 postproduction expense of original content for a qualified film
13 produced at a qualified postproduction facility if at least 60%
14 of all postproduction work related to the film is conducted at a
15 qualified postproduction facility.

16 (1) The term includes traditional, emerging and new work
17 flow techniques used in postproduction for any of the
18 following:

19 (i) Picture, sound and music editorial, rerecording
20 and mixing.

21 (ii) Visual effects.

22 (iii) Graphic design.

23 (iv) Original scoring.

24 (v) Animation.

25 (vi) Musical composition.

26 (vii) Mastering.

27 (viii) Dubbing.

28 (2) The term does not include:

29 (i) Editing previously produced content for a
30 qualified film.

1 (ii) News or current affairs.

2 (iii) Talk shows.

3 (iv) Instructional videos.

4 (v) Media which is obscene.

5 "Qualified postproduction facility." A permanent facility
6 where Pennsylvania postproduction activities are conducted and
7 to which all of the following apply:

8 (1) The facility is located in this Commonwealth.

9 (2) The facility is approved by the department.

10 (3) The facility employs at least ten full-time
11 employees who reside in this Commonwealth.

12 (4) There is at least \$500,000 of capital investment in
13 the facility.

14 "Qualified production facility." A film production facility
15 located within this Commonwealth that contains at least one
16 sound stage with a column-free, unobstructed floor space and
17 meets either of the following criteria:

18 (1) Has had a minimum of \$10,000,000 invested in the
19 film production facility in land or a structure purchased or
20 ground-up, purpose-built new construction or renovation of
21 existing improvement.

22 (2) Meets at least three of the following criteria:

23 (i) A sound stage having an industry standard noise
24 criteria rating of 25 or better.

25 (ii) A permanent grid with a minimum point load
26 capacity of no less than 1,000 pounds at a minimum of 25
27 points.

28 (iii) Built-in power supply available at a minimum
29 of 4,000 amps per sound stage without the need for
30 supplemental generators.

1 (iv) A height from sound stage floor to permanent
2 grid of a minimum of 20 feet.

3 (v) A sound stage with a sliding or roll-up access
4 door with a minimum height of 14 feet.

5 (vi) A built-in HVAC capacity during shoot days with
6 a minimum of 50 tons of cooling capacity available per
7 sound stage.

8 (vii) Perimeter security that includes a 24-hour,
9 seven-days-a-week security presence and use of access
10 control identification badges.

11 (viii) On-site lighting and grip department with an
12 available inventory stored at the film production
13 facility with a minimum cost of investment of \$500,000.

14 (ix) A sound stage with contiguous production
15 offices with a minimum of 5,000 square feet per sound
16 stage.

17 "Qualified tax liability." The liability for taxes imposed
18 under Article III, IV, VI, VII or IX. The term shall not include
19 any tax withheld by an employer from an employee under Article
20 III.

21 "Start date." [The] Either:

22 (1) the first day of principal photography in this
23 Commonwealth; or

24 (2) an earlier date approved in writing by the Director
25 of the Pennsylvania Film Office.

26 "Tax credit." The film production tax credit provided under
27 this article.

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 tax credit under this section. If a film qualifies for a
4 qualified film production expense, any postproduction work done
5 in this Commonwealth shall qualify for a 30% credit. The
6 application shall be on the form required by the department.

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

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

13 (2) The anticipated number of Pennsylvania employees.

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

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

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

20 (6) The use of studio resources.

21 (7) If the application is for a qualified postproduction
22 expense, the following criteria shall be reviewed and
23 evaluated:

24 (i) The facility where the postproduction occurred.

25 (ii) The type of postproduction activity conducted.

26 (iii) The percentage of the total postproduction
27 activity conducted for a film in this Commonwealth.

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

1 Upon determining the taxpayer has incurred or will incur
2 qualified film production expenses or qualified postproduction
3 expenses, the department may approve the taxpayer for a tax
4 credit. Applications not approved may be reviewed and considered
5 in subsequent application periods. The department may approve a
6 taxpayer for a tax credit based on its evaluation of the
7 criteria under this subsection.

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 qualified production or
12 postproduction expenses incurred or to be incurred for the
13 film.

14 (2) An itemized list of Pennsylvania production or
15 postproduction expenses incurred or to be incurred for the
16 film or digital interactive media.

17 (3) With respect to a contract entered into prior to
18 completion of production, a commitment by the taxpayer to
19 incur the qualified film or digital interactive media
20 production or qualified postproduction expenses as itemized.

21 (4) The start date.

22 (5) Any other information the department deems
23 appropriate.

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

28 Section 2. Section 1707-D of the act, amended July 2, 2012
29 (P.L.751, No.85), is amended to read:
30 Section 1707-D. Limitations.

1 (a) [Cap.--In no case shall the aggregate amount of tax
2 credits awarded in any fiscal year under this article exceed
3 \$60,000,000. The department may, in its discretion,] Amount.--
4 The department may award in one fiscal year up to:

5 (1) Thirty percent of the dollar amount of film
6 production tax credits available to be awarded in the next
7 succeeding fiscal year.

8 (2) Twenty percent of the dollar amount of film
9 production tax credits available to be awarded in the second
10 successive fiscal year.

11 (3) Ten percent of the dollar amount of film production
12 tax credits available to be awarded in the third successive
13 fiscal year.

14 (a.1) Advance award of credits.--The advance award of film
15 tax credits under subsection (a) shall:

16 (1) count against the total dollar amount of credits
17 that the department may award in that next succeeding fiscal
18 year; and

19 (2) reduce the dollar amount of credits that the
20 department may award in that next succeeding fiscal year.

21 The individual limitations on the awarding of film production
22 tax credits apply to an advance award of film production tax
23 credits under subsection (a) and to a combination of film
24 production tax credits awarded against the current fiscal year
25 cap and against the next succeeding fiscal year's cap.

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

27 (1) Except as set forth in paragraph (1.1), the
28 aggregate amount of film production tax credits awarded by
29 the department under section 1703-D(d) to a taxpayer for a
30 film may not exceed 25% of the qualified film production

1 expenses to be incurred.

2 (1.1) In addition to the tax credit under paragraph (1),
3 a taxpayer is eligible for a credit in the amount of 5% of
4 the qualified film production expenses or qualified
5 postproduction expenses incurred by the taxpayer if the
6 taxpayer:

7 (i) films a feature film, television film or
8 television series, which is intended as programming for a
9 national audience; and

10 (ii) Either:

11 (A) films in a qualified production facility
12 which meets the minimum stage filming requirements;

13 or

14 (B) conducts at least \$500,000 of postproduction
15 activities at a qualified postproduction facility.

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

20 (c) Qualified production facility.--To be considered a
21 qualified production facility or qualified postproduction
22 facility under subsection (b) (1.1), the owner of a facility
23 shall provide evidence to the department to verify the
24 development or facility specifications and capital [improvement]
25 investment costs incurred for the facility so that the threshold
26 amounts set in the definition of "qualified production facility"
27 or "qualified postproduction facility" under section 1702-D are
28 satisfied, and upon verification, the facility shall be
29 registered by the department officially as a qualified
30 production facility or qualified postproduction facility.

1 (d) Waiver.--The department may make a determination that
2 the financial benefit to this Commonwealth resulting from the
3 direct investment in or payments made to Pennsylvania facilities
4 outweighs the benefit of maintaining the 60% requirement
5 contained in the definition of "qualified film production
6 expense." If such determination is made, the department may
7 waive the requirement that 60% of a film's total production
8 expenses be comprised of Pennsylvania production expenses for a
9 feature film, television film or television series that is
10 intended as programming for a national audience and is filmed in
11 a qualified production facility if the taxpayer who has
12 Pennsylvania production expenses of at least \$30,000,000 per
13 production meets the minimum stage filming requirements.

14 Section 3. The amendment of sections 1702-D, 1703-D and
15 1707-D(a) of the act shall apply to taxable years beginning
16 after December 31, 2012.

17 Section 4. This act shall take effect immediately.