

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1324 Session of 2015

INTRODUCED BY BRIGGS, V. BROWN, SCHWEYER, O'BRIEN, LONGIETTI,
McNEILL, COHEN, GIBBONS, MURT AND DONATUCCI, JUNE 12, 2015

REFERRED TO COMMITTEE ON FINANCE, JUNE 12, 2015

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(d).
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

amount of the tax credit for the taxable year in which the 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 the 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 tax credit 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 tax credit.

(b) Application.--A tax 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 tax credit was approved before the tax credit can be applied against any tax liability under subsection (a).

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

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

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

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

(3) Before an application is approved, the Department of Revenue must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as

1 determined at settlement, assessment or determination by the
2 Department of Revenue.

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

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

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

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

- 27 (1) The location where services are performed.
28 (2) The location where supplies are consumed.
29 (3) Other factors the department determines are
30 relevant.

1 Section 1707-J. Limitations.

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

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

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

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

18 Section 1708-J. Penalty.

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

25 Section 1709-J. Pass-through entity.

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

1 the entity's distributive income to which the shareholder,
2 member or partner is entitled.

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

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

13 Section 1710-J. Department guidelines and regulations.

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

21 Section 1711-J. Report to General Assembly.

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

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

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

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

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

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

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

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