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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1448 Session of  
2015

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INTRODUCED BY P. COSTA, BARRAR, BROWNLEE, BURNS, COHEN,  
D. COSTA, DAVIS, DeLUCA, DONATUCCI, DRISCOLL, GIBBONS,  
HARHAI, HARKINS, KIRKLAND, LONGIETTI, MAHONEY, McNEILL, MURT,  
O'BRIEN, READSHAW, SCHREIBER, SCHWEYER, STURLA, THOMAS AND  
YOUNGBLOOD, JULY 16, 2015

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REFERRED TO COMMITTEE ON FINANCE, JULY 16, 2015

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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," 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. The definitions of "Pennsylvania production  
16 expense," "production expense," "start date" and "taxpayer" in  
17 section 1702-D of the act of March 4, 1971 (P.L.6, No.2), known  
18 as the Tax Reform Code of 1971, amended July 9, 2013 (P.L.270,  
19 No.52), are amended and the section is amended by adding  
20 definitions to read:

21 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 \* \* \*

5 "Digital interactive media." As follows:

6 (1) The term includes an expense incurred in the  
7 development of interactive software that meets all of the  
8 following:

9 (i) Is produced at a digital interactive media  
10 facility.

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

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

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

24 (2) The term does not include media that contains  
25 obscene material or performance as defined in 18 Pa.C.S. §  
26 5903(b) (relating to obscene and other sexual materials and  
27 performances).

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

1       (1) Integrated video and audio equipment, networking  
2       routers, switches, network cabling and any other computer-  
3       related hardware necessary to create or operate a digital  
4       interactive media product or platform.

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

7       (3) Computer code.

8       (4) Image files, music files, audio files, video files,  
9       scripts and plays.

10       (5) Concept mock-ups.

11       (6) Software tools.

12       (7) Testing procedures.

13       (8) A component part of an item listed under paragraph  
14       (2), (3), (4), (5), (6) or (7) necessary and integral to  
15       create, develop or produce a digital interactive media  
16       product or service.

17       "Digital interactive media facility." A facility where  
18       digital interactive media or digital interactive media equipment  
19       is developed and which:

20       (1) is located in this Commonwealth;

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

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

24       \* \* \*

25       "Pennsylvania digital interactive media expense." A digital  
26       interactive media expense incurred at a qualified digital  
27       interactive media facility.

28       "Pennsylvania postproduction expense." A postproduction  
29       expense incurred at a qualified postproduction 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           "Postproduction expense." A postproduction expense of  
4           original content for a film as follows:

5           (1) The term includes traditional, emerging and new work  
6           flow techniques used in postproduction for any of the  
7           following:

8                   (i) Picture, sound and music editorial, rerecording  
9                   and mixing.

10                   (ii) Visual effects.

11                   (iii) Graphic design.

12                   (iv) Original scoring.

13                   (v) Animation.

14                   (vi) Musical composition.

15                   (vii) Mastering.

16                   (viii) Dubbing.

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

18                   (i) Editing previously produced content for a film.

19                   (ii) News or current affairs.

20                   (iii) Talk shows.

21                   (iv) Instructional videos.

22                   (v) Content which contains obscene material or  
23           performance as defined in 18 Pa.C.S. § 5903(b).

24           "Production expense." As follows:

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

26                           (i) Compensation paid to an individual employed in  
27                   the production of the film.

28                           (ii) Payment to a personal service corporation  
29                   representing individual talent.

30                           (iii) Payment to a pass-through entity representing

1 individual talent.

2 (iv) The costs of construction, operations, editing,  
3 photography, sound synchronization, lighting, wardrobe  
4 and accessories.

5 (v) The cost of leasing vehicles.

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

8 (vii) The cost of insurance coverage.

9 (viii) The costs of food and lodging.

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

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

12 (xi) Development and production costs relating to  
13 digital interactive media.

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

15 (i) Deferred, leveraged or profit participation paid  
16 or to be paid to individuals employed in the production  
17 of the film or paid to entities representing an  
18 individual for services provided in the production of the  
19 film.

20 (ii) Development cost.

21 (iii) Expense incurred in marketing or advertising a  
22 film.

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

25 "Qualified digital interactive media expense." All  
26 Pennsylvania digital interactive media expenses if the  
27 Pennsylvania digital interactive media expenses comprise at  
28 least 60% of the digital interactive media expenses of the  
29 digital interactive media produced.

30 "Qualified digital interactive media facility." A facility

1 where digital interactive media or digital interactive media  
2 equipment is developed and which:

3 (1) is located in this Commonwealth;

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

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

7 \* \* \*

8 "Qualified postproduction expense." A Pennsylvania  
9 postproduction expense.

10 "Qualified postproduction facility." A permanent facility  
11 where Pennsylvania postproduction activities are conducted and  
12 expenses are incurred to which all of the following apply:

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

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

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

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

19 \* \* \*

20 "Start date." As follows:

21 (1) For a film:

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

24 (ii) an earlier date approved by the Pennsylvania  
25 Film Office.

26 (2) [an earlier] For a postproduction project, a date  
27 [than the date under subparagraph (i),] approved by the  
28 Pennsylvania Film Office.

29 (3) For digital interactive media, a date approved by  
30 the Pennsylvania Film Office.

1 \* \* \*

2 "Taxpayer." A film production or digital interactive media  
3 company subject to tax under Article III, IV or VI. The term  
4 does not include contractors or subcontractors of a film  
5 production company.

6 Section 2. Section 1703-D of the act, amended July 9, 2013  
7 (P.L.270, No.52), is amended to read:

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

9 (a) Application.--A taxpayer may apply to the department for  
10 a tax credit under this section. If a film qualifies for a  
11 qualified film production expense, any postproduction work done  
12 in this Commonwealth shall qualify for a 30% credit. The  
13 application shall be on the form required by the department.

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

18 (1) The anticipated number of production days in a  
19 qualified production facility.

20 (2) The anticipated number of Pennsylvania employees.

21 (3) The number of preproduction days through  
22 postproduction days in Pennsylvania.

23 (4) The anticipated number of days spent in Pennsylvania  
24 hotels.

25 (5) The Pennsylvania production expenses in comparison  
26 to the production budget.

27 (6) The use of studio resources.

28 (7) If the application is for a qualified postproduction  
29 expense or a qualified digital interactive media expense, the  
30 following criteria shall be reviewed and evaluated:



1           (i) The facility where the activity occurred.

2           (ii) The type of postproduction or digital  
3           interactive media activity conducted.

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

6           [(7)] (8) Other criteria that the Director of the  
7           Pennsylvania Film Office deems appropriate to ensure maximum  
8           employment and benefit within this Commonwealth.

9           Upon determining the taxpayer has incurred or will incur  
10          qualified film production expenses, qualified postproduction  
11          expenses and qualified digital interactive media expenses, the  
12          department may approve the taxpayer for a tax credit.

13          Applications not approved may be reviewed and considered in  
14          subsequent application periods. The department may approve a  
15          taxpayer for a tax credit based on its evaluation of the  
16          criteria under this subsection.

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

20                (1) An itemized list of production or development  
21                expenses incurred or to be incurred for the film and  
22                software.

23                (2) An itemized list of Pennsylvania production,   
24                Pennsylvania postproduction and Pennsylvania digital  
25                interactive media expenses incurred or to be incurred for the  
26                film and software.

27                (3) With respect to a contract entered into prior to  
28                completion of production, a commitment by the taxpayer to  
29                incur the qualified film or digital interactive media  
30                production or qualified postproduction expenses as itemized.

1 (4) The start date.

2 (5) Any other information the department deems  
3 appropriate.

4 (d) Certificate.--Upon execution of the contract required by  
5 subsection (c), the department shall award the taxpayer a film  
6 production tax credit and issue the taxpayer a film production  
7 tax credit certificate.

8 Section 3. Section 1707-D of the act, amended July 2, 2012  
9 (P.L.751, No.85), is amended to read:

10 Section 1707-D. Limitations.

11 (a) [Cap.--In no case shall the aggregate amount of tax  
12 credits awarded in any fiscal year under this article exceed  
13 \$60,000,000.] The department may, in its discretion, award in  
14 one fiscal year up to:

15 (1) Thirty percent of the dollar amount of film  
16 production tax credits available to be awarded in the next  
17 succeeding fiscal year.

18 (2) Twenty percent of the dollar amount of film  
19 production tax credits available to be awarded in the second  
20 successive fiscal year.

21 (3) Ten percent of the dollar amount of film production  
22 tax credits available to be awarded in the third successive  
23 fiscal year.

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

26 (1) count against the total dollar amount of credits  
27 that the department may award in that next succeeding fiscal  
28 year; and

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

1 The individual limitations on the awarding of film production  
2 tax credits apply to an advance award of film production tax  
3 credits under subsection (a) and to a combination of film  
4 production tax credits awarded against the current fiscal year  
5 cap and against the next succeeding fiscal year's cap.

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

7 (1) Except as set forth in paragraph (1.1), the  
8 aggregate amount of film production, postproduction or  
9 digital interactive media tax credits awarded by the  
10 department under section 1703-D(d) to a taxpayer for a film  
11 may not exceed 25% of the qualified [film production]  
12 expenses to be incurred.

13 (1.1) In addition to the tax credit under paragraph (1),  
14 a taxpayer is eligible for a credit in the amount of 5% of  
15 the qualified film production expenses or qualified  
16 postproduction expenses incurred by the taxpayer if the  
17 taxpayer:

18 (i) films a feature film, television film or  
19 television series, which is intended as programming for a  
20 national audience; and

21 (ii) either:

22 (A) films in a qualified production facility  
23 which meets the minimum stage filming requirements;  
24 or

25 (B) conducts at least 50% of all qualified  
26 postproduction expenses at a qualified postproduction  
27 facility.

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

1 film.

2 (c) Qualified production facility.--To be considered a  
3 qualified production facility [under subsection (b)(1.1)],  
4 qualified postproduction facility or qualified digital  
5 interactive media facility, the owner of a facility shall  
6 provide evidence to the department to verify the development or  
7 facility specifications and capital [improvement] investment  
8 costs incurred for the facility so that the threshold amounts  
9 set in the definition of "qualified production facility,"  
10 [under section 1702-D] "qualified production facility" or  
11 "qualified digital interactive media facility" are satisfied,  
12 and upon verification, the facility shall be registered by the  
13 department officially as a qualified production facility,  
14 qualified postproduction facility or qualified digital  
15 interactive media facility.

16 (d) Waiver.--The department may make a determination that  
17 the financial benefit to this Commonwealth resulting from the  
18 direct investment in or payments made to Pennsylvania facilities  
19 outweighs the benefit of maintaining the 60% requirement  
20 contained in the definition of "qualified film production  
21 expense" or "qualified postproduction expense." If such  
22 determination is made, the department may waive the requirement  
23 that 60% of a film's total production or postproduction expenses  
24 be comprised of Pennsylvania production or Pennsylvania  
25 postproduction expenses for a [feature] film, television film or  
26 television series that is intended as programming for a national  
27 audience and is filmed or produced in a qualified production  
28 facility or qualified postproduction facility if the taxpayer  
29 who has Pennsylvania production expenses of at least \$30,000,000  
30 per production meets the minimum stage filming requirements.

1       Section 4. The amendment of sections 1702-D, 1703-D and  
2 1707-D(a) of the act shall apply to taxable years beginning  
3 after December 31, 2014.

4       Section 5. This act shall take effect immediately.