

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 565 Session of 2015

INTRODUCED BY PILEGGI, FONTANA, FARNESE, BARTOLOTTA, BLAKE, BOSCOLA, BREWSTER, COSTA, GREENLEAF, HUGHES, LEACH, MCGARRIGLE, RAFFERTY, TOMLINSON, SCHWANK, SMITH, TARTAGLIONE, WARD, WILEY, WILLIAMS AND YUDICHAK, FEBRUARY 25, 2015

REFERRED TO FINANCE, FEBRUARY 25, 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," 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.

22 The following words and phrases when used in this article

shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

"Digital interactive media." As follows:

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

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

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

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

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

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

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

(1) Integrated video and audio equipment, networking

routers, switches, network cabling and any other computer-related hardware necessary to create or operate a digital interactive media product or platform.

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

(3) Computer code.

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

(5) Concept mock-ups.

(6) Software tools.

(7) Testing procedures.

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

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

(1) is located in this Commonwealth;

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

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

\* \* \*

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

"Pennsylvania postproduction expense." A postproduction expense incurred at a qualified postproduction facility.

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

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

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

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

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

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

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

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

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

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

29           (8) A qualified postproduction expense.

30           (9) The development and manufacture of digital

1 interactive media equipment.

2 "Postproduction expense." A postproduction expense of  
3 original content for a film as follows:

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

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

9 (ii) Visual effects.

10 (iii) Graphic design.

11 (iv) Original scoring.

12 (v) Animation.

13 (vi) Musical composition.

14 (vii) Mastering.

15 (viii) Dubbing.

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

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

18 (ii) News or current affairs.

19 (iii) Talk shows.

20 (iv) Instructional videos.

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

23 "Production expense." As follows:

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

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

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

29 (iii) Payment to a pass-through entity representing  
30 individual talent.

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

(v) The cost of leasing vehicles.

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

(vii) The cost of insurance coverage.

(viii) The costs of food and lodging.

(ix) The purchase of music or story rights.

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

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

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

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

(ii) Development cost.

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

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

"Qualified digital interactive media expense." All Pennsylvania digital interactive media expenses if the Pennsylvania digital interactive media expenses comprise at least 60% of the digital interactive media expenses of the digital interactive media produced.

"Qualified digital interactive media facility." A facility where digital interactive media or digital interactive media

equipment is developed and which:

(1) is located in this Commonwealth;

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

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

\* \* \*

"Qualified postproduction expense." A Pennsylvania  
postproduction expense.

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

(1) The facility is located in this Commonwealth.

(2) The facility is approved by the department.

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

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

\* \* \*

"Start date." As follows:

(1) For a film:

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

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

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

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

\* \* \*

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

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

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

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

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

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

19 (2) The anticipated number of Pennsylvania employees.

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

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

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

26 (6) The use of studio resources.

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

30 (i) The facility where the activity occurred.

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

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

5           [(7)] (8) Other criteria that the Director of the  
6           Pennsylvania Film Office deems appropriate to ensure maximum  
7           employment and benefit within this Commonwealth.

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

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

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

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

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

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

30           (4) The start date.

(5) Any other information the department deems appropriate.

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

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

Section 1707-D. Limitations.

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

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

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

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

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

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

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

The individual limitations on the awarding of film production

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

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

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

12 (1.1) In addition to the tax credit under paragraph (1),  
13 a taxpayer is eligible for a credit in the amount of 5% of  
14 the qualified film production expenses or qualified  
15 postproduction expenses incurred by the taxpayer if the  
16 taxpayer:

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

20 (ii) either:

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

23 or

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

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

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

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

30 Section 4. The amendment of sections 1702-D, 1703-D and

1 1707-D(a) of the act shall apply to taxable years beginning  
2 after December 31, 2014.

3 Section 5. This act shall take effect immediately.