
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1432 Session of
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INTRODUCED BY CIRESI, TOMLINSON, SANCHEZ, A. DAVIS, STURLA,
LEWIS DELROSSO, SILVIS, MALAGARI, DELLOSO, D. WILLIAMS,
GALLOWAY, PISCIOTTANO, NEILSON AND BRIGGS, MAY 14, 2021

REFERRED TO COMMITTEE ON FINANCE, MAY 14, 2021

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 entertainment production tax credit, further
11 providing for heading of article, for scope of article, for
12 definitions, for credit for qualified film production
13 expenses, for film production tax credits, for carryover,
14 carryback and assignment of credit, for determination of
15 Pennsylvania production expenses, for limitations, for
16 reissuance of film production tax credits, for film
17 production tax credit districts, for penalty, for pass-
18 through entity and for report to General Assembly.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. The heading of Article XVII-D and section 1701-D
22 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
23 Reform Code of 1971, are amended to read:

24 ARTICLE XVII-D

25 ENTERTAINMENT PRODUCTION TAX [CREDIT] CREDITS

1 AND INCENTIVES

2 Section 1701-D. Scope of article.

3 This article relates to entertainment production tax credits
4 and incentives.

5 Section 2. The definitions of "film production tax credit
6 district," "tax credit" and "tax district capitol investment" in
7 section 1711-D of the act, added June 28, 2019 (P.L.50, No.13),
8 are amended and the section is amended by adding a definition to
9 read:

10 Section 1711-D. Definitions.

11 The following words and phrases when used in this subarticle
12 shall have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 * * *

15 "Film [production tax credit] industry incentive district."

16 A district authorized under section 1716.2-D.

17 "Incentive." The film industry incentive authorized under
18 this subarticle, which may be claimed as a tax credit.

19 * * *

20 ["Tax credit." The film production tax credit provided under
21 this subarticle.]

22 "Tax district capital investment." Investment within a film
23 [production tax credit] industry incentive district that may
24 consist of new construction, renovation, real property
25 improvement and a similar investment as well as other economic
26 development expenditures within the Commonwealth arising
27 directly from the investment. (Def. added June 28, 2019, P.L.50,
28 No.13)

29 * * *

30 Section 3. Sections 1712-D and 1713-D of the act are amended

1 to read:

2 Section 1712-D. Credit for qualified film production
3 expenses.

4 (a) Application.--A taxpayer may apply to the department for
5 [a tax credit] an incentive under this section. The application
6 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 includes a qualified
22 postproduction expense:

23 (i) The qualified postproduction facility where the
24 activity will occur.

25 (ii) The anticipated type of postproduction activity
26 that will be conducted.

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

30 Upon determining the taxpayer has incurred or will incur

1 qualified film production expenses, the department may approve
2 the taxpayer for [a tax credit] an incentive. Applications not
3 approved may be reviewed and considered in subsequent
4 application periods. The department may approve a taxpayer for
5 [a tax credit] an incentive based on its evaluation of the
6 criteria under this subsection.

7 (b.1) Review and approval of applications for film
8 [production tax credit] industry incentive district activity.--
9 For applications involving film production expenses incurred
10 within a designated film [production tax credit] industry
11 incentive district authorized under section 1716.2-D, the
12 department shall accept applications at any time. Applications
13 shall be reviewed by the department utilizing the criteria
14 required under subsection (b). Upon determining the taxpayer has
15 incurred or will incur qualified film production expenses, the
16 department shall approve the taxpayer for [a tax credit] an
17 incentive utilizing the [tax credits] incentives authorized
18 under section 1716.2-D, not to exceed the amount authorized for
19 the fiscal year.

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

23 (1) An itemized list of production expenses incurred or
24 to be incurred for the film.

25 (2) An itemized list of Pennsylvania production expenses
26 incurred or to be incurred for the film.

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 production expenses as itemized.

30 (4) The start date.

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

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

8 Section 1713-D. Film [production tax credits] industry
9 incentives.

10 A taxpayer may claim [a tax credit] an incentive against the
11 qualified tax liability of the taxpayer.

12 Section 4. Section 1714-D of the act, amended June 28, 2019
13 (P.L.50, No.13), is amended to read:

14 Section 1714-D. Carryover, carryback and assignment of credit.

15 (a) General rule.--If the taxpayer cannot use the entire
16 amount of the [tax credit] incentive for the taxable year in
17 which the [tax credit] incentive is first approved, then the
18 excess may be carried over to succeeding taxable years and used
19 as a credit against the qualified tax liability of the taxpayer
20 for those taxable years. Each time the [tax credit] incentive is
21 carried over to a succeeding taxable year, it shall be reduced
22 by the amount that was used as a credit during the immediately
23 preceding taxable year. The [tax credit] incentive provided by
24 this subarticle may be carried over and applied to succeeding
25 taxable years for no more than three taxable years following the
26 first taxable year for which the taxpayer was entitled to claim
27 the [credit] incentive.

28 (b) Application.--[A tax credit] An incentive approved by
29 the department in a taxable year first shall be applied against
30 the taxpayer's qualified tax liability for the current taxable

1 year as of the date on which the [credit] incentive was approved
2 before the [tax credit] incentive can be applied against any tax
3 liability under subsection (a).

4 (c) No carryback or refund.--A taxpayer is not entitled to
5 carry back or obtain a refund of all or any portion of an unused
6 [tax credit] incentive granted to the taxpayer under this
7 subarticle.

8 (d) (Reserved).

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

10 (1) A taxpayer, upon application to and approval by the
11 department, may sell or assign, in whole or in part, [a tax
12 credit] an incentive granted to the taxpayer under this
13 subarticle.

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

17 (3) Before an application is approved, the Department of
18 Revenue must make a finding that the applicant has filed all
19 required State tax reports and returns for all applicable
20 taxable years and paid any balance of State tax due as
21 determined at settlement, assessment or determination by the
22 Department of Revenue.

23 (4) Notwithstanding any other provision of law, the
24 Department of Revenue shall settle, assess or determine the
25 tax of an applicant under this subsection within 90 days of
26 the filing of all required final returns or reports in
27 accordance with section 806.1(a)(5) of the act of April 9,
28 1929 (P.L.343, No.176), known as The Fiscal Code.

29 (f) Purchasers and assignees.--Except as provided in
30 subsections (g) and (h), the following apply:

1 (1) The purchaser or assignee of all or a portion of [a
2 tax credit] an incentive under subsection (e) shall
3 immediately claim the [credit] incentive in the taxable year
4 in which the purchase or assignment is made.

5 (2) The amount of the [tax credit] incentive that a
6 purchaser or assignee may use against any one qualified tax
7 liability may not exceed 50% of such qualified tax liability
8 for the taxable year.

9 (3) The purchaser or assignee may not carry forward,
10 carry back or obtain a refund of or sell or assign the [tax
11 credit] incentive .

12 (4) The purchaser or assignee shall notify the
13 Department of Revenue of the seller or assignor of the [tax
14 credit] incentive in compliance with procedures specified by
15 the Department of Revenue.

16 (g) Limited carry forward of [tax credits] incentives by a
17 purchaser or assignee.--A purchaser or assignee may carry
18 forward all or any unused portion of [a tax credit] an incentive
19 purchased or assigned in:

20 (1) Calendar year 2010 against qualified tax liabilities
21 incurred in taxable years 2011 and 2012.

22 (2) Calendar year 2013 against qualified tax liabilities
23 incurred in taxable year 2014.

24 (3) Calendar year 2014 against qualified tax liabilities
25 incurred in taxable year 2015.

26 (h) Full utilization of [tax credits] incentives.--[A tax
27 credit] An incentive awarded under this article may be sold or
28 assigned to a purchaser or assignee included in the same Federal
29 consolidated tax return as permitted under sections 1501 and
30 1502 of the Internal Revenue Code of 1986 (Public Law 99-514, 26

1 U.S.C. §§ 1501 and 1502), filed by the taxpayer under subsection
2 (a) to reduce or eliminate the qualified tax liability to the
3 same extent allowable for the taxpayer under subsections (a),
4 (b) and (c). [Tax credits] Incentives sold or assigned under
5 this subsection are limited to the taxable year in which the
6 purchase or assignment is made and may only be carried forward
7 for the remainder of the carryforward period of the original
8 [credit] incentive.

9 Section 5. Section 1715-D of the act is amended to read:
10 Section 1715-D. Determination of Pennsylvania production
11 expenses.

12 In prescribing standards for determining which production
13 expenses are considered Pennsylvania production expenses for
14 purposes of computing the [credit] incentive provided by this
15 subarticle, the department shall consider:

- 16 (1) The location where services are performed.
- 17 (2) The location where supplies are consumed.
- 18 (3) Other factors the department determines are
19 relevant.

20 Section 6. Section 1716-D of the act, amended June 28, 2019
21 (P.L.50, No.13), is amended to read:
22 Section 1716-D. Limitations.

23 (a) Cap.--Except for [tax credits] incentives reissued under
24 section 1716.1-D, in no case shall the aggregate amount of [tax
25 credits] incentives awarded in any fiscal year under this
26 subarticle exceed [\$70,000,000] \$125,000,000. The department
27 may, in its discretion, award in one fiscal year up to:

- 28 (1) Thirty percent of the dollar amount of film
29 [production tax credits] industry incentives available to be
30 awarded in the next succeeding fiscal year.

1 (2) Twenty percent of the dollar amount of film
2 [production tax credits] industry incentives available to be
3 awarded in the second successive fiscal year.

4 (3) Ten percent of the dollar amount of film [production
5 tax credits] industry incentives available to be awarded in
6 the third successive fiscal year.

7 (a.1) Advance award of credits.--The advance award of film
8 [tax credits] industry incentives under subsection (a) shall:

9 (1) count against the total dollar amount of [credits]
10 incentives that the department may award in that next
11 succeeding fiscal year; and

12 (2) reduce the dollar amount of [credits] incentives
13 that the department may award in that next succeeding fiscal
14 year.

15 The individual limitations on the awarding of film [production
16 tax credits] industry incentives apply to an advance award of
17 film [production tax credits] industry incentives under
18 subsection (a) and to a combination of film [production tax
19 credits] industry incentives awarded against the current fiscal
20 year cap and against the next succeeding fiscal year's cap.

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

22 (1) Except as set forth in paragraph (1.1) or (1.2), the
23 aggregate amount of film [production tax credits] industry
24 incentives awarded by the department under section 1712-D(d)
25 to a taxpayer for a film may not exceed 25% of the qualified
26 film production expenses to be incurred.

27 (1.1) In addition to the [tax credit] incentive under
28 paragraph (1), a taxpayer is eligible for [a credit] an
29 incentive in the amount of 5% of the qualified film
30 production expenses incurred by the taxpayer if the taxpayer:

1 (i) films a feature film, television film or
2 television series, which is intended as programming for a
3 national audience; and

4 (ii) films in a qualified production facility which
5 meets the minimum stage filming requirements.

6 (1.2) A qualified postproduction expense shall qualify
7 for a 30% [credit] incentive.

8 (2) A taxpayer that has received a grant under 12
9 Pa.C.S. § 4106 (relating to approval) shall not be eligible
10 for a film [production tax credit] industry incentive under
11 this act for the same film.

12 (c) Qualified production facility.--To be considered a
13 qualified production facility or qualified postproduction
14 facility, the owner of a facility shall provide evidence to the
15 department to verify the development or facility specifications
16 and capital investment costs incurred for the facility so that
17 the threshold amounts set in the definitions of "qualified
18 production facility" and "qualified postproduction facility" are
19 satisfied, and upon verification, the facility shall be
20 registered by the department officially as a qualified
21 production facility or qualified postproduction facility.

22 (d) Waiver.--The department may make a determination that
23 the financial benefit to this Commonwealth resulting from the
24 direct investment in or payments made to Pennsylvania facilities
25 outweighs the benefit of maintaining the 60% requirement
26 contained in the definition of "qualified film production
27 expense." If such determination is made, the department may
28 waive the requirement that 60% of a film's total production or
29 postproduction expenses be comprised of Pennsylvania production
30 expenses for a film, television film or television series that

1 is intended as programming for a national audience and is filmed
2 or produced in a qualified production facility or qualified
3 postproduction facility if the taxpayer who has Pennsylvania
4 production expenses of at least \$30,000,000 per production meets
5 the minimum stage filming requirements.

6 Section 7. Sections 1716.1-D of the act is amended to read:
7 Section 1716.1-D. Reissuance of film [production tax credits]
8 industry incentives.

9 (a) Reissuance.--In any fiscal year, the department may
10 reissue [a tax credit] an incentive which meets all of the
11 following:

12 (1) The [tax credit] incentive was approved under
13 section 1712-D(b).

14 (2) The contract was signed under section 1712-D(c).

15 (3) The [tax credit] incentive was awarded and a
16 certificate was issued under section 1712-D(d).

17 (b) Amount.--The amount of [a tax credit] an incentive to be
18 reissued shall be calculated as the difference between the
19 amounts in subsection (a)(1) and (3).

20 (c) Applicability.--This section shall apply to [a tax
21 credit] an incentive awarded under this article in any fiscal
22 year beginning after June 30, 2017.

23 Section 8. Section 1716.2-D of the act, amended June 28,
24 2019, (P.L.50, No.13), is amended to read:

25 Section 1716.2-D. Film [production tax credit] industry
26 incentive districts.

27 (a) Establishment.--The department may designate not more
28 than two film [production tax credit] industry incentive
29 districts for the purpose of enhancing, promoting and expanding
30 film production opportunities and establishing a film production

1 industry within this Commonwealth.

2 (b) Criteria.--A film [production tax credit] industry
3 incentive district shall:

4 (1) Be at least 55 acres in size.

5 (2) Be located on deteriorated property.

6 (3) Be comprised of a parcel that is or will be occupied
7 by two or more qualified businesses that:

8 (i) in the aggregate, make a tax district capital
9 investment of at least \$400,000,000 within eight years
10 after the effective date of the designation of the
11 district; and

12 (ii) are dedicated to film production activity,
13 postproduction activity or other activities that directly
14 or indirectly support film production activity occurring
15 within the district or within this Commonwealth.

16 (4) Contain at least one qualified production facility
17 and two sound stages.

18 (c) Application.--The following apply:

19 (1) An application to designate a film [production tax
20 credit] industry incentive district may be made by the county
21 or municipality in which all or part of the district will be
22 located. The department shall review the application and, if
23 approved, issue a designation for the film [production tax
24 credit] industry incentive district. The application period
25 shall be set by the department.

26 (2) The application shall contain the following
27 information:

28 (i) The geographic area of the proposed film
29 [production tax credit] industry incentive district.

30 (ii) A detailed map of the proposed district,

1 including geographic boundaries, total area and present
2 use and conditions of the land and structures.

3 (iii) A description of the current social, economic
4 and demographic characteristics of the proposed district
5 and anticipated improvements in education, health, human
6 services, public safety and employment that will result
7 from designation of the district.

8 (iv) A description of anticipated film production
9 activity and ancillary activities in the proposed
10 district.

11 (v) Evidence of potential private and public
12 investment in the proposed district.

13 (vi) The role of the proposed district in regional
14 economic and community development.

15 (d) Designation period.--A district designated under
16 subsection (c) shall expire 15 years after the effective date of
17 the designation.

18 (e) Construction.--The tax [credits] incentives authorized
19 under this section are in addition to the tax [credits]
20 incentives under section 1716-D(a) and are available exclusively
21 for activities occurring within the designated district.

22 (f) Annual tax [credits] incentives.--The department may
23 authorize [a tax credit] an incentive for a film [production tax
24 credit] industry incentive district in fiscal year 2019-2020 and
25 in each fiscal year thereafter.

26 Section 9. Sections 1717-D, 1718-D and 1720-D of the act are
27 amended to read:

28 Section 1717-D. Penalty.

29 A taxpayer which claims [a tax credit] an incentive and fails
30 to incur the amount of qualified film production expenses agreed

1 to in section 1712-D(c) (3) for a film in that taxable year shall
2 repay to the Commonwealth the amount of the film [production tax
3 credit] industry incentive claimed under this subarticle for the
4 film.

5 Section 1718-D. Pass-through entity.

6 (a) General rule.--If a pass-through entity has any unused
7 [tax credit] incentive under section 1714-D, it may elect in
8 writing, according to procedures established by the Department
9 of Revenue, to transfer all or a portion of the [credit]
10 incentive to shareholders, members or partners in proportion to
11 the share of the entity's distributive income to which the
12 shareholder, member or partner is entitled.

13 (b) Limitation.--A pass-through entity and a shareholder,
14 member or partner of a pass-through entity shall not claim the
15 [credit] incentive under subsection (a) for the same qualified
16 film production expense.

17 (c) Application.--A shareholder, member or partner of a
18 pass-through entity to whom [a credit] an incentive is
19 transferred under subsection (a) shall immediately claim the
20 [credit] incentive in the taxable year in which the transfer is
21 made. The shareholder, member or partner may not carry forward,
22 carry back, obtain a refund of or sell or assign the credit.

23 Section 1720-D. Report to General Assembly.

24 (a) General rule.--No later than June 1, 2008, and September
25 1 of each year thereafter, the Secretary of Community and
26 Economic Development shall submit a report to the General
27 Assembly summarizing the effectiveness of the [tax credit]
28 incentive provided by this subarticle. The report shall include
29 the name of the film produced, the names of all taxpayers
30 utilizing the [credit] incentive as of the date of the report

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

12 (1) The amount of [credits] incentives claimed during
13 the fiscal year by film.

14 (2) The total amount spent in this Commonwealth during
15 the fiscal year by film.

16 (3) The total amount of tax revenues generated by this
17 Commonwealth during the fiscal year by film.

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

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

24 Section 10. A reference to the former film production tax
25 credit in law or regulation shall be a reference to the film
26 industry incentive.

27 Section 11. The amendment of section 1716-D(a) of the act
28 shall apply to fiscal years beginning on or after July 1, 2021.

29 Section 12. This act shall take effect immediately.