Appendix A

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

*** Pa.C.S. documents are current through 2013 Regular Session Act 72, Enacted July 18, 2013. *
P.S. documents are current through 2013 Regular Session Act 72, Enacted July 18, 2013.
* Annotations current through August 29, 2013 ***

PENNSYLVANIA STATUTES
TITLE 72. TAXATION AND FISCAL AFFAIRS
CHAPTER 5. TAX REFORM CODE OF 1971
ARTICLE XVII-D. FILM PRODUCTION TAX CREDIT

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72 P.S. § 8701-D (2013)

§ 8701-D. Scope of article

This article relates to film production tax credits.

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately.

§ 8702-D. Definitions

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:

"Department." The Department of Community and Economic Development of the Commonwealth.

"Film." A feature film, a television film, a television talk or game show series, a television commercial or a television pilot or each episode of a television series which is intended as programming for a national audience. The term does not include a production featuring news, current events, weather and market reports, public programming, sports events, awards shows or other gala events, a production that solicits funds, a production containing obscene material or performances as defined in *18 PA.C.S. § 5903(b)* (relating to obscene and other sexual materials and performances) or a production primarily for private, political, industrial, corporate or institutional purposes.

"Minimum Stage Filming Requirements." Include:

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

(i) Build at least one set at a qualified production facility;

(ii) Shoot for a minimum of ten days at a qualified production facility; and

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

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

(i) Build at least two sets at a qualified production facility;

(ii) Shoot for a minimum of 15 days at a qualified production facility; and

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

"Pass-Through Entity." A partnership as defined in section 301(n.0) or a Pennsylvania S corporation as defined in section 301(n. 1).

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

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

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

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

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

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

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

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

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

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

"Production Expense." As follows:

(1) The term includes all of the following:

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

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

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

(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 Film Production Expense." All Pennsylvania production expenses if Pennsylvania production expenses comprise at least 60% of the film's total production expenses. The term shall not include more than $ 15,000,000 in the aggregate of compensation paid to individuals or payment made to entities representing an individual for services provided in the production of the film.

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

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

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

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

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

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

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

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

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

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

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

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

"Qualified Tax Liability." The liability for taxes imposed under article III, IV, VI, VII or IX. The term shall not include any tax withheld by an employer from an employee under article III.

"Start Date." As follows:

(1) The first day of principal photography in this Commonwealth; or

(2) An earlier date than the date under subparagraph (i), approved by the Pennsylvania Film Office.

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

"Taxpayer." A film production company subject to tax under article III, IV or VI. The term does not include contractors or subcontractors of a film production company.

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately; Act 2012-85 (H.B. 761), P.L. 751, § 15, approved July 2, 2012, eff. immediately.

§ 8703-D. Credit for qualified film production expenses

(a) APPLICATION.-- A taxpayer may apply to the department for a tax credit under this section. The application shall be on the form required by the department.

(b) REVIEW AND APPROVAL.-- The department shall establish application periods not to exceed 90 days each. All applications received during the application period shall be reviewed and evaluated by the department based on the following criteria:

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

(2) The anticipated number of Pennsylvania employees.

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

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

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

(6) The use of studio resources.

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

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

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

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

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

(3) With respect to a contract entered into prior to completion of production, a commitment by the taxpayer to incur the qualified film production expenses as itemized.

(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.

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately; Act 2012-85 (H.B. 761), P.L. 751, § 15.1, approved July 2, 2012, eff. immediately.

§ 8704-D. Film production tax credits

A taxpayer may claim a tax credit against the qualified tax liability of the taxpayer.

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately.

§ 8705-D. Carryover, carryback and assignment of credit

(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 provided by this article 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 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 credit was approved before the tax credit can be applied against any tax liability under subsection (a).

(c) NO CARRYBACK OR REFUND.-- A taxpayer is not entitled to carry back or obtain a refund of all or any portion of an unused tax credit granted to the taxpayer under this article.

(d) (Reserved).

(e) 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 determined at settlement, assessment or determination by the Department of Revenue.

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

(f) PURCHASERS AND ASSIGNEES.-- Except as set forth in subsection (g), the following apply:

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

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

(3) The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit.

(4) The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the tax credit in compliance with procedures specified by the Department of Revenue.

(g) Limited carry forward of tax credits by a purchaser or assignee.--A purchaser or assignee may carry forward all or any unused portion of a tax credit purchased or assigned in :

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

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

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

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately; Act 2012-85 (H.B. 761), P.L. 751, § 16, approved July 2, 2012, eff. immediately.

§ 8706-D. Determination of Pennsylvania production expenses

In prescribing standards for determining which production expenses are considered Pennsylvania production expenses for purposes of computing the credit provided by this article, the department shall consider:

(1) The location where services are performed.

(2) The location where supplies are consumed.

(3) Other factors the department determines are relevant.

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately.

§ 8707-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 tax credits apply to an advance award of film production tax credits under subsection (a), and to a combination of film production tax credits awarded against the current fiscal year cap and against the next succeeding fiscal year's cap.

(b) INDIVIDUAL LIMITATIONS.-- The following shall apply:

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

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

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

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

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

(c) QUALIFIED PRODUCTION FACILITY.-- To be considered a qualified production facility under subsection (b)(1.1), the owner of a facility shall provide evidence to the department to verify the development or facility specifications and capital improvement costs incurred for the facility so that the threshold amounts set in the definition of "qualified production facility" under section 1702-D are satisfied, and upon verification, the facility shall be registered by the department officially as a qualified production facility.

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

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately; Act 2012-85 (H.B. 761), P.L. 751, § 16, approved July 2, 2012, eff. immediately.

§ 8708-D. Penalty

A taxpayer which claims a tax credit and fails to incur the amount of qualified film production expenses agreed to in section 1703-D(c)(3) for a film in that taxable year shall repay to the Commonwealth the amount of the film production tax credit claimed under this article for the film.

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately.

§ 8709-D. Pass-through entity

(a) GENERAL RULE.-- If a pass-through entity has any unused tax credit under section 1705-D, it may elect in writing, according to procedures established by the Department of Revenue, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

(b) LIMITATION.-- A pass-through entity and a shareholder, member or partner of a pass-through entity shall not claim the credit under subsection (a) for the same qualified film production expense.

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

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately.

§ 8710-D. Department guidelines and regulations

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

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately.

§ 8711-D. Report to General Assembly

(a) GENERAL RULE.-- No later than June 1, 2008, and September 1 of each year thereafter, the Secretary of Community and Economic Development shall submit a report to the General Assembly summarizing the effectiveness of the tax credit provided by this article. The report shall include the name of the film produced, the names of all taxpayers utilizing the credit as of the date of the report and the amount of credits approved for, utilized by or sold or assigned by

each taxpayer. The report may also include any recommendations for changes in the calculation or administration of the tax credit. The report shall be submitted to the chairman and minority chairman of the Appropriations and Finance Committees of the Senate and the chairman and minority chairman of the Appropriations and Finance Committees of the House of Representatives. In addition to the information set forth above, the report shall include the following information, which shall be separated by geographic location within this Commonwealth:

(1) The amount of credits claimed during the fiscal year by film.

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

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

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

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

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately.

§ 8712-D. Film Advisory Board

(a) COMPOSITION.-- A Film Advisory Board is established. The board shall work with the Pennsylvania Film Office and the regional film offices to promote the film industry throughout this Commonwealth and to examine and file a written report on the effectiveness of the tax credit and grant programs. The report shall be included in the department's report required under section 1711-D. The board shall consist of the following members:

(1) The Secretary of Community and Economic Development, or a designee.

(2) A member appointed by the Governor.

(3) A member appointed by the President pro tempore of the Senate.

(4) A member appointed by the Minority Leader of the Senate.

(5) A member appointed by the Majority Leader of the House of Representatives.

(6) A member appointed by the Minority Leader of the House of Representatives.

(b) COMPENSATION.-- Members of the board shall not be compensated for their service as board members, but shall be compensated for their reasonable expenses. The department shall provide administrative support for the board.

(c) MEETINGS.-- The board shall meet no less than twice each year.

(d) CHAIRMAN.-- The members of the board shall elect the chairman.

HISTORY: Act 2007-55 (S.B. 97), P.L. 373, § 7, approved July 25, 2007, eff. immediately.