Section 1701-D. Scope of article.
This article relates to entertainment production tax credits. (1701-D amended July 13, 2016, P.L.526, No.84)

Section 1702-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. (prior 1702-D renumbered to 1711-D and amended and current 1702-D added July 13, 2016, P.L.526, No.84)

SUBARTICLE B
FILM PRODUCTION
(Subart. hdg. added July 13, 2016, P.L.526, No.84)

Section 1711-D. Definitions.
The following words and phrases when used in this subarticle shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." (Def. deleted by amendment).

"Deteriorated property." Any blighted, impoverished area containing industrial, commercial or other real property that is abandoned, unsafe, vacant, undervalued, underutilized, overgrown, defective, condemned, demolished or which contains economically undesirable land use. (Def. added Oct. 30, 2017, P.L.672, No.43)

"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.

"Film production tax credit district." A district authorized under section 1716.2-D. (Def. added Oct. 30, 2017, P.L.672, No.43)

"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." Any of the following:
   (1) A partnership as defined in section 301(n.0).
   (2) A Pennsylvania S corporation as defined in section 301(n.1).
   (3) An unincorporated entity subject to section 307.21.

"Pennsylvania production expense." Production expense incurred in this Commonwealth. The term includes:
   (1) A payment made by a taxpayer to a person upon which withholding will be made on the payment by the taxpayer as required under Part VII of Article III.
   (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 for which withholding will be made by the pass-through entity on the payment as required under Part VII or VII-A of Article III.
   (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.
   (8) A qualified postproduction expense.

"Postproduction expense." A postproduction expense of original content for a film as follows:
   (1) The term includes traditional, emerging and new work-flow techniques used in postproduction for any of the following:
      (i) Picture, sound and music editorial, rerecording and mixing.
      (ii) Visual effects.
      (iii) Graphic design.
      (iv) Original scoring.
      (v) Animation.
      (vi) Musical composition.
      (vii) Mastering.
      (viii) Dubbing.
      (ix) The purchase of music rights if the following apply:
(A) The purchase is from a resident of this Commonwealth.

(B) 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.

(2) The term does not include any of the following:
   (i) Editing previously produced content for a film.
   (ii) News or current affairs.
   (iii) Talk shows.
   (iv) Instructional videos.
   (v) Content which contains obscene material or performances as defined in 18 Pa.C.S. § 5903(b).

(Def. amended June 28, 2019, P.L.50, No.13)

"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 1714-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 postproduction expense." A postproduction expense incurred at a qualified postproduction facility.

"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.

"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, VIII, IX or XV. The term shall not include any tax withheld by an employer from an employee under Article III.

"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) For a postproduction project, a date approved by the Pennsylvania Film Office.

"Tax credit." The film production tax credit provided under this subarticle.

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

"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.

(1711-D renumbered from 1702-D and amended July 13, 2016, P.L.526, No.84)

Compiler's Note: Section 51(5)(iii) of Act 84 of 2016, which renumbered and amended section 1702-D to 1711-D, provided that the amendment of section 1711-D, renumbered from section 1702-D, shall apply to taxable years beginning after December 31, 2016.
Compiler's Note: Section 42(1.1) of Act 52 of 2013, which amended section 1702-D, provided that the amendment shall apply to tax credits awarded after June 30, 2013.

Section 1712-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) If the application includes a qualified postproduction expense:
   (i) The qualified postproduction facility where the activity will occur.
   (ii) The anticipated type of postproduction activity that will be conducted.
(8) 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.

(b.1) Review and approval of applications for film production tax credit district activity.--For applications involving film production expenses incurred within a designated film production tax credit district authorized under section 1716.2-D, the department shall accept applications at any time. Applications shall be reviewed by the department utilizing the criteria required under subsection (b). Upon determining the taxpayer has incurred or will incur qualified film production expenses, the department shall approve the taxpayer for a tax credit utilizing the tax credits authorized under section 1716.2-D, not to exceed the amount authorized for the fiscal year. ((b.1 added Oct. 30, 2017, P.L.672, No.43)

(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.
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.

(1712-D renumbered from 1703-D and amended July 13, 2016, P.L.526, No.84)

Compiler's Note: Section 51(5)(iii) of Act 84 of 2016, which renumbered and amended section 1703-D to 1712-D, provided that the amendment to section 1712-D, renumbered from 1703-D, shall apply to taxable years beginning after December 31, 2016.

Compiler's Note: Section 42(1.1) of Act 52 of 2013, which amended section 1703-D, provided that the amendment shall apply to tax credits awarded after June 30, 2013.

Compiler's Note: Section 1703-D was renumbered to 1712-D and amended July 13, 2016, P.L.526, No.84.

Section 1713-D. Film production tax credits.

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

(1713-D renumbered from 1704-D July 13, 2016, P.L.526, No.84)

Section 1714-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 subarticle 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 subarticle.

(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 subarticle.

(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 provided in subsections (g) and (h), 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.

(5) 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 year 2014.

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

(h) Full utilization of tax credits.--A tax credit awarded under this article may be sold or assigned to a purchaser or assignee included in the same Federal consolidated tax return as permitted under sections 1501 and 1502 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §§ 1501 and 1502), filed by the taxpayer under subsection (a) to reduce or eliminate the qualified tax liability to the same extent allowable for the taxpayer under subsections (a), (b) and (c). Tax credits sold or assigned under this subsection are limited to the taxable year in which the purchase or assignment is made and may only be carried forward for the remainder of the carryforward period of the original credit.

Section 1715-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 subarticle, 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.

Section 1716-D. Limitations.

(a) Cap.--Except for tax credits reissued under section 1716.1-D, in no case shall the aggregate amount of tax credits awarded in any fiscal year under this subarticle exceed $70,000,000. 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) amended June 28, 2019, P.L.50, No.13)
(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) or (1.2), the aggregate amount of film production tax credits awarded by the department under section 1712-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.
(1.2) A qualified postproduction expense shall qualify for a 30% credit.
(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 or qualified postproduction facility, the owner of a facility shall provide evidence to the department to verify the development or facility specifications and capital investment costs incurred for the facility so that the threshold amounts set in the definitions of "qualified production facility" and "qualified postproduction facility" are satisfied, and upon verification, the facility shall be registered by the department officially as a qualified production facility or qualified postproduction 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 or postproduction expenses be comprised of Pennsylvania production expenses for a film, television film or television series that
is intended as programming for a national audience and is filmed or produced in a qualified production facility or qualified postproduction facility if the taxpayer who has Pennsylvania production expenses of at least $30,000,000 per production meets the minimum stage filming requirements.

(1716-D renumbered from 1707-D and amended July 13, 2016, P.L.526, No.84)

Compiler's Note: Section 31 of Act 13 of 2019 provided that the amendment of sections 1716-D(a), 1777-D, 1709-E, 1702-H, 1703-H, 1705-H(d) and (e) and 1706-H(a) of this act shall apply to fiscal years beginning on or after July 1, 2019.

Compiler's Note: Section 51(7) of Act 84 of 2016, which renumbered and amended section 1707-D to 1716-D, provided that the amendment of section 1716-D, renumbered from 1707-D, shall apply to fiscal years beginning after June 30, 2017.

Section 1716.1-D. Reissuance of film production tax credits.
(a) Reissuance.--In any fiscal year, the department may reissue a tax credit which meets all of the following:
(1) The tax credit was approved under section 1712-D(b).
(2) The contract was signed under section 1712-D(c).
(3) The tax credit was awarded and a certificate was issued under section 1712-D(d).
(b) Amount.--The amount of a tax credit to be reissued shall be calculated as the difference between the amounts in subsection (a)(1) and (3).
(c) Applicability.--This section shall apply to a tax credit awarded under this article in any fiscal year beginning after June 30, 2017.

(1716.1 added July 13, 2016, P.L.526, No.84)

Compiler's Note: Section 51(7) of Act 84 of 2016, which added section 1716.1-D, provided that the addition of section 1716.1-D shall apply to fiscal years beginning after June 30, 2017.

Section 1716.2-D. Film production tax credit districts.
(a) Establishment.--The department may designate not more than two film production tax credit districts for the purpose of enhancing, promoting and expanding film production opportunities and establishing a film production industry within this Commonwealth.
(b) Criteria.--A film production tax credit district shall:
(1) Be at least 55 acres in size.
(2) Be located on deteriorated property.
(3) Be comprised of a parcel that is or will be occupied by two or more qualified businesses that:
   (i) in the aggregate, make a tax district capital investment of at least $400,000,000 within eight years after the effective date of the designation of the district; and
   (ii) are dedicated to film production activity, postproduction activity or other activities that directly or indirectly support film production activity occurring within the district or within this Commonwealth.
(4) Contain at least one qualified production facility and two sound stages.
((b) amended June 28, 2019, P.L.50, No.13)
(c) Application.--The following apply:
(1) An application to designate a film production tax credit district may be made by the county or municipality in which all or part of the district will be located. The department shall review the application and, if approved, issue a designation for the film production tax credit district. The application period shall be set by the department.

(2) The application shall contain the following information:

(i) The geographic area of the proposed film production tax credit district.

(ii) A detailed map of the proposed district, including geographic boundaries, total area and present use and conditions of the land and structures.

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

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

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

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

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

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

(f) Annual tax credits.--The department may authorize a tax credit for a film production tax credit district in fiscal year 2019-2020 and in each fiscal year thereafter.

(1716.2-D added Oct. 30, 2017, P.L.672, No.43)

Section 1717-D. Penalty.

A taxpayer which claims a tax credit and fails to incur the amount of qualified film production expenses agreed to in section 1712-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 subarticle for the film.

(1717-D renumbered from 1708-D and amended July 13, 2016, P.L.526, No.84)

Section 1718-D. Pass-through entity.

(a) General rule.--If a pass-through entity has any unused tax credit under section 1714-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.

(1718-D renumbered from 1709-D and amended July 13, 2016, P.L.526, No.84)

Section 1719-D. Department guidelines and regulations.

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

(1719-D renumbered from 1710-D and amended July 13, 2016, P.L.526, No.84)

Section 1720-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 subarticle. 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.

(1720-D renumbered from 1711-D and amended July 13, 2016, P.L.526, No.84)

Section 1721-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 1720-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.

(1721-D renumbered from 1712-D and amended July 13, 2016, P.L.526, No.84)

SUBARTICLE C
CONCERT REHEARSAL AND TOUR
(Subart. repealed June 22, 2017, P.L.202, No.7)

Section 1731-D. Definitions.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1732-D. Procedure.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1733-D. Claim.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1734-D. Carryover, carryback and assignment of tax credit.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1735-D. Determination of Pennsylvania rehearsal and tour expenses.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1736-D. Limitations.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1737-D. Penalty.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1738-D. Pass-through entity.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1739-D. Department guidelines and regulations.--(Repealed June 22, 2017, P.L.202, No.7)
Section 1740-D. Report to General Assembly.--(Repealed June 22, 2017, P.L.202, No.7)

SUBARTICLE D
VIDEO GAME PRODUCTION
(Subart. added July 13, 2016, P.L.526, No.84)

Compiler's Note: Section 51(6) of Act 84 of 2016, which added Subarticle D, provided that the addition of Subarticle D shall apply to fiscal years beginning after June 30, 2016.

Section 1751-D. Scope of subarticle.
This subarticle relates to video game production tax credits.
(1751-D added July 13, 2016, P.L.526, No.84)
Section 1752-D. Definitions.
The following words and phrases when used in this subarticle shall have the meanings given to them in this section unless the context clearly indicates otherwise:
"Pass-through entity." Any of the following:
(1) A partnership as defined in section 301(n.0).
(2) A Pennsylvania S corporation as defined in section 301(n.1).
An unincorporated entity subject to section 307.21. "Pennsylvania production expense." Production expense incurred in this Commonwealth. The term includes:

(1) A payment made by a taxpayer to a person upon which withholding will be made on the payment by the taxpayer as required under Part VII of Article III.

(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 withholding will be made by the pass-through entity on the payment as required under Part VII or VII-A of Article III.

(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 or IV.

(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.

(8) The development and manufacture of video game equipment.

"Production expense." As follows:

(1) The term includes all of the following:
   (i) Compensation paid to an individual employed in the production of a video game.
   (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.
   (xi) Development and production costs relating to video games.

(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 a video game or paid to entities representing an individual for services provided in the production of a video game.
   (ii) Expenses incurred in marketing or advertising a video game.
   (iii) Costs related to the sale or assignment of a video game production tax credit under section 1755-D(e).
"Qualified tax liability." The liability for taxes imposed under Article III, IV, VI, VII, VIII, IX or XV. The term does not include a tax withheld by an employer from an employee under Article III.

"Qualified video game production expense." All Pennsylvania production expenses if Pennsylvania production expenses comprise at least 60% of the video game's total production expenses. The term does not include more than $1,000,000 in the aggregate of compensation paid to individuals or payment made to entities representing an individual for services provided in the production of the video game.

"Start date." The first day of principal production of a video game in this Commonwealth.

"Tax credit." The video game production tax credit provided under this subarticle.

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

"Video game." An electronic game that involves interaction with a user interface to generate visual feedback on a video device. The term does not include a game that contains obscene material or performances as defined in 18 Pa.C.S. § 5903(b) (relating to obscene and other sexual materials and performances) or a game designed primarily for private, political, industrial, corporate or institutional purposes.

"Video game equipment." Equipment that is required for the development or functioning of a video game. 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 video game.
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 video game.

Section 1753-D. Credit for qualified video game 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 review and approve or disapprove the applications in the order in which they are received. Upon determining that the taxpayer has incurred or will incur qualified video game production expenses, the department may approve the taxpayer for a tax credit.

(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 video game.
2. An itemized list of Pennsylvania production expenses incurred or to be incurred for the video game.
(3) With respect to a contract entered into prior to completion of production, a commitment by the taxpayer to incur the qualified video game production expenses as itemized.

(4) The principal production start date.

(5) Any other information the department deems appropriate.

(c.1) Prohibition.--A tax credit may not be awarded for fiscal years prior to fiscal year 2017-2018.

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

(1753-D added July 13, 2016, P.L.526, No.84)

Section 1754-D. Video game production tax credits.

Beginning July 1, 2017, a taxpayer may claim a tax credit against the qualified tax liability of the taxpayer.

(1754-D added July 13, 2016, P.L.526, No.84)

Section 1755-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, 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 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 subarticle.

(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 subarticle.

(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.--The purchaser or assignee of all or a portion of a tax credit under subsection (e) shall immediately claim the tax credit in the taxable year in which
the purchase or assignment is made. 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. The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit. 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.

(1755-D added July 13, 2016, P.L.526, No.84)
Section 1756-D. Determination of Pennsylvania production expenses.

In prescribing standards for determining which production expenses are considered Pennsylvania production expenses for purposes of computing the tax credit, 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.

(1756-D added July 13, 2016, P.L.526, No.84)
Section 1757-D. Limitations.

(a) Cap.--In no case shall the aggregate amount of tax credits awarded in a fiscal year under this subarticle exceed $1,000,000.

(b) Individual limitations.--The aggregate amount of video game production tax credits awarded by the department under section 1753-D(d) to a taxpayer for a video game may not exceed 25% of the qualified video game production expenses to be incurred during each of the first four years that the video game production expenses are incurred and 10% for each year thereafter that the video game production expenses are incurred.

(1757-D added July 13, 2016, P.L.526, No.84)
Section 1758-D. Penalty.

A taxpayer which claims a tax credit and fails to incur the amount of qualified video game production expenses agreed to in section 1753-D(c)(3) for a video game in that taxable year shall repay to the Commonwealth the amount of the video game production tax credit claimed under this subarticle for the video game.

(1758-D added July 13, 2016, P.L.526, No.84)
Section 1759-D. Pass-through entity.

(a) General rule.--If a pass-through entity has an unused tax credit under section 1755-D, it may elect in writing, according to procedures established by the Department of Revenue, to transfer all or a portion of the tax 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 tax credit under subsection (a) for the same qualified video game production expense.

(c) Application.--A shareholder, member or partner of a pass-through entity to whom a tax credit is transferred under subsection (a) shall immediately claim the tax 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 tax credit.

(1759-D added July 13, 2016, P.L.526, No.84)
Section 1760-D. Department guidelines and regulations.
The department shall develop written guidelines for the implementation of the provisions of this subarticle. The guidelines shall be in effect until such time as the department promulgates regulations for the implementation of the provisions of this subarticle. The department shall promulgate regulations for the implementation of this subarticle within two years of the effective date of this section.

(1760-D added July 13, 2016, P.L.526, No.84)

Section 1761-D. Report to General Assembly.

(a) General rule.—No later than June 1 of the second year that commences after the effective date of this section, 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. The report shall include the name of the video game produced, the names of all taxpayers utilizing the tax credit as of the date of the report and the amount of tax credits approved for, utilized by or sold or assigned by each taxpayer. The report may also include recommendations for changes in the calculation or administration of the tax credit. The report shall be submitted to the chairperson and minority chairperson of the Appropriations Committee of the Senate and the chairperson and minority chairperson of the Finance Committee of the Senate and the chairperson and minority chairperson of the House of Representatives and the chairperson and minority chairperson of the Finance Committee of the House of Representatives. In addition to the information stated in this section, the report shall include the following information which shall be separated by geographic location within this Commonwealth:

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

(2) The total amount spent on video game production in this Commonwealth during the fiscal year.

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

(4) The total number of jobs created by taxpayers during the fiscal year, 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 publicly accessible Internet website.

(1761-D added July 13, 2016, P.L.526, No.84)

SUBARTICLE E

ENTERTAINMENT ECONOMIC ENHANCEMENT PROGRAM

(Subart. added Oct. 30, 2017, P.L.672, No.43)

Section 1771-D. Scope of subarticle.

This subarticle relates to the Entertainment Economic Enhancement Program.

(1771-D added Oct. 30, 2017, P.L.672, No.43)

Section 1772-D. Definitions.

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

"Class 1 venue." A stadium, arena, other structure or property owned by a municipality or an authority formed under Article XXV-A of the act of July 28, 1953 (P.L.723, No.230),
known as the Second Class County Code, at which concerts are performed and which is all of the following:

(1) Located in a city of the first class or a county of the second class.

(2) Constructed in a manner in which the venue has a seating capacity of at least 14,000.

"Class 2 venue." A stadium, arena or other structure at which concerts are performed and which is all of the following:

(1) Located outside the geographic boundaries of a city of the first class or a county of the second class.

(2) Constructed in a manner in which the venue has a seating capacity of at least 6,000.

"Class 3 venue." A stadium, arena or other structure which is any of the following:

(1) Located within a neighborhood improvement zone, as defined in section 1902-B.

(2) Owned by or affiliated with a State-related institution as defined in 62 Pa.C.S. § 103 (relating to definitions).

(3) Owned by the Commonwealth and affiliated with the State System of Higher Education.

"Concert." A live performance of music in the presence of individuals who view the performance.

"Concert tour equipment." Includes stage, set, scenery, design elements, automation, rigging, trusses, spotlights, lighting, sound equipment, video equipment, special effects, cases, communication devices, power distribution equipment, backline and other miscellaneous equipment or supplies used during a concert or rehearsal.

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

"Maintained a place of business" or "maintaining a place of business." All of the following:

(1) Having, maintaining or using within this Commonwealth an office, warehouse or other place of business.

(2) Regularly engaging in an activity as a business within this Commonwealth in connection with the lease, sale or delivery of tangible personal property or the performance of a service for residents of this Commonwealth.

"Minimum rehearsal and tour requirements." During a tour, all of the following must occur:

(1) The purchase or rental of concert tour equipment delivered to a location in this Commonwealth, in an amount of at least $3,000,000, from companies located and maintaining a place of business in this Commonwealth for use on the tour.

(2) A rehearsal at a qualified rehearsal facility for a minimum of 10 days.

(3) At least one concert performed at a class 1 venue.

(4) At least one concert performed at a venue which is located in a municipality other than the municipality in which the class 1 venue under paragraph (3) is located.

(5) The taxpayer shall maintain a place of business in this Commonwealth or employ a representative for the period beginning with the start date and ending with the award of tax certificates under section 1773-D(e).

(Def. amended June 28, 2019, P.L.50, No.13)

"Pass-through entity." Any of the following:

(1) A partnership as defined in section 301(n.0).

(2) A Pennsylvania S corporation as defined in section 301(n.1).

(3) An unincorporated entity subject to section 307.21.
"Pennsylvania rehearsal and tour expenses." The sum of Pennsylvania rehearsal expenses and tour expenses. The term includes Pennsylvania rehearsal expenses and tour expenses paid prior to or during a rehearsal or tour.

"Pennsylvania rehearsal expense." A rehearsal expense which is incurred or will be incurred within this Commonwealth. The term includes:

1. A payment which is made or will be made by a recipient to a person upon which withholding will be made on the payment by the recipient as required under Part VII of Article III or a payment which is made or will be made to a person who is required to make estimated payments under Part VIII of Article III.
2. A payment which is made or will be made 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. A payment which is made or will be made to a pass-through entity representing individual talent for which withholding will be made by the pass-through entity on the payment as required under Part VII or VII-A of Article III.

"Qualified rehearsal and tour expense." All Pennsylvania rehearsal and tour expenses if Pennsylvania rehearsal expenses comprise or will comprise at least 60% of the total rehearsal expenses. The term shall not include more than $2,000,000 in the aggregate of compensation paid or to be paid to individuals or payment made or to be made to entities representing an individual for services provided on a tour.

"Qualified rehearsal facility." A rehearsal facility which meets at least six of the following criteria:

1. Has had a minimum of $8,000,000 invested in the rehearsal facility in land or structure, or a combination of land and structure.
2. Has a permanent grid system with a capacity of 1,000,000 pounds.
3. Has a built-in power supply system available at a minimum of 3,200 amps without the need for supplemental generators.
4. Has a height from floor to permanent grid of a minimum of 80 feet.
5. Has at least two sliding or roll-up access doors with a minimum height of 14 feet.
6. Has a perimeter security system which includes 24-hour, seven-days-a-week security cameras and the use of access control identification badges.
7. Has a service area with production offices, catering and dressing rooms with a minimum of 5,000 square feet.
8. Is located within one mile of a minimum of two companies which provide concert tour equipment for use on a tour.

"Qualified tax liability." The liability for taxes imposed under Article III, IV, VI, VII or IX. The term does not include tax withheld by an employer from an employee under Article III.

"Recipient." A taxpayer that has been awarded a tax credit under section 1773-D(e).

"Rehearsal." An event or series of events which occur in preparation for a tour prior to the start of the tour or during a tour when additional preparation may be needed.

"Rehearsal expense." All of the following when incurred or will be incurred during a rehearsal:

1. Compensation paid or to be paid to an individual employed in the rehearsal of the performance.
(2) Payment to a personal service corporation representing individual talent.
(3) Payment to a pass-through entity representing individual talent.
(4) The costs of construction, operations, editing, photography, staging, lighting, wardrobe and accessories.
(5) The cost of leasing vehicles.
(6) The cost of transportation of people or concert tour equipment to or from a train station, bus depot, airport or other transportation facility or directly from a residence or business entity.
(6.1) The cost of ground transportation of individuals for an entire tour if the ground transportation is purchased or will be purchased from a transportation company maintaining a place of business in this Commonwealth and is provided or will be provided by a resident of this Commonwealth.
(6.2) The cost of ground transportation of concert tour equipment for an entire tour if the ground transportation is purchased or will be purchased from a transportation company maintaining a place of business in this Commonwealth and is provided or will be provided by a resident of this Commonwealth.
(7) The cost of insurance coverage for an entire tour if the insurance coverage is purchased or will be purchased through an insurance agent maintaining a place of business in this Commonwealth.
(8) The cost of food and lodging.
(9) The cost of purchase or rental of concert tour equipment.
(10) The cost of renting a rehearsal facility.
(11) The cost of emergency or medical support services required to conduct a rehearsal.
(Def. amended June 28, 2019, P.L.50, No.13)
"Rehearsal facility." As follows:
(1) A facility primarily used for rehearsals which is all of the following:
   (i) Located within this Commonwealth.
   (ii) Has a minimum of 20,000 square feet of column-free, unobstructed floor space.
(2) The term does not include a facility at which concerts are capable of being held.
(Def. amended June 28, 2019, P.L.50, No.13)
"Representative." A person that meets all of the following criteria:
(1) Is authorized to communicate with the department on behalf of a taxpayer regarding an application submitted under section 1773-D(e).
(2) Maintains a place of business in this Commonwealth.
(3) Has substantial experience working with the Pennsylvania live events industry.
(Def. added June 28, 2019, P.L.50, No.13)
"Start date." The date the first set of concert tour equipment arrives or is expected to arrive at a qualified rehearsal facility.
"Tax credit." The concert rehearsal and tour tax credit as provided under this subarticle.
"Taxpayer." A musical performer or performers or a concert tour management company of a musical performer or performers subject to tax under Article III, IV or VI. The term does not include contractors or subcontractors of a musical performer or performers or of a concert tour management company of a
musical performer or performers. (Def. amended June 28, 2019, P.L.50, No.13)

"Tour." A series of concerts performed or to be performed by a musical performer in more than one location. The term includes at least one rehearsal.

"Tour expense." As follows:

(1) Costs incurred or which will be incurred during a tour for venues located in this Commonwealth. The term includes all of the following:

(i) A payment which is made or will be made by a recipient to a person upon which withholding will be made on the payment by the recipient as required under Part VII of Article III or a payment which is made or will be made to a person who is required to make estimated payments under Part VIII of Article III.

(ii) The cost of transportation of people which is incurred or will be incurred while transporting to or from a train station, bus depot, airport or other transportation facility or while transporting directly from a residence or business entity located in this Commonwealth, or which is incurred or will be incurred for transportation provided by a company which is subject to the tax imposed under Article III or IV.

(iii) The cost of leasing vehicles upon which the tax imposed by Article II will be paid or accrued.

(iv) The cost of purchasing or renting facilities and equipment from or through a resident of this Commonwealth or an entity subject to taxation in this Commonwealth.

(v) The cost of food and lodging which is incurred or will be incurred from a facility located in this Commonwealth.

(vi) Expenses which are incurred or will be incurred in marketing or advertising a tour at venues located within this Commonwealth.

(vii) The cost of merchandise which is purchased or will be purchased from a company located within this Commonwealth and used on the tour.

(ix) A payment which is made or will be made 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.

(x) A payment which is made or will be made to a pass-through entity representing individual talent for which withholding will be made by the pass-through entity on the payment as required under Part VII or VII-A of Article III.

(2) The term does not include development cost, including the writing of music or lyrics.

"Venue." A class 1, class 2 or class 3 venue.

(1772-D added Oct. 30, 2017, P.L.672, No.43)
application period shall be reviewed and evaluated by the department based on the following criteria:

(i) The anticipated number of rehearsal days in a qualified rehearsal facility.
(ii) The anticipated number of concerts at class 1 venues.
(iii) The anticipated number of concerts at class 2 venues.
(iv) The anticipated number of concerts at class 3 venues.
(v) The anticipated amount of Pennsylvania rehearsal expenses in comparison to the anticipated aggregate amount of rehearsal expenses.
(vi) The anticipated amount of the tour expenses.
(vii) The anticipated amount of the concert tour equipment expenses which are or will be purchased or rented from a company located and maintaining a place of business in this Commonwealth and which will be used on the tour.
(viii) The anticipated number of days spent in Commonwealth hotels.
(ix) Other criteria that the department deems appropriate to ensure maximum employment opportunities and entertainment benefits for the residents of this Commonwealth.

(2) Except as provided in subsection (c) and upon determining that the taxpayer has paid the applicable application fee not to exceed $300, has met or will meet the minimum rehearsal and tour requirements and has incurred or will incur qualified rehearsal and tour 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) Restriction.--The department may only consider rehearsals held or to be held, and qualified rehearsal and tour expenses incurred or to be incurred, after January 1, 2017, in determining whether a taxpayer has met or will meet the minimum rehearsal and tour requirements.

(d) 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 rehearsal expenses incurred or to be incurred for the tour.
(2) An itemized list of Pennsylvania rehearsal expenses incurred or to be incurred for the tour.
(3) With respect to a contract entered into prior to completion of a tour, a commitment by the taxpayer to incur the Pennsylvania rehearsal expenses as itemized.
(4) An itemized list of the qualified rehearsal and tour expenses incurred or to be incurred for the tour.
(5) With respect to a contract entered into prior to completion of a tour, a commitment by the taxpayer to incur the qualified rehearsal and tour expenses as itemized.
(6) With respect to a contract entered into prior to completion of a tour, a commitment by the taxpayer to hold at least one concert at a class 1 venue.
(7) With respect to a contract entered into prior to completion of a tour, a commitment by the taxpayer to hold at least one concert at a venue located in a municipality
other than the municipality in which the class 1 venue under paragraph (6) is located.

(8) The start date or the expected start date.

(9) Any other information the department deems appropriate.

(e) Certificate.--Upon execution of the contract required by subsection (d), the department shall award the taxpayer a concert rehearsal and tour tax credit and issue the recipient a tax credit certificate.

(1773-D added Oct. 30, 2017, P.L.672, No.43)

Section 1774-D. Claim.

Beginning July 1, 2017, a recipient may claim a concert rehearsal and tour tax credit against the qualified tax liability of the recipient.

(1774-D added Oct. 30, 2017, P.L.672, No.43)

Section 1775-D. Carryover, carryback and assignment of tax credit.

(a) General rule.--If a recipient cannot use the entire amount of a tax credit for the taxable year in which the tax credit is first approved, the excess may be carried over to succeeding taxable years and used as a tax credit against the qualified tax liability of the recipient for those taxable years. Each time the tax credit is carried over to a succeeding taxable year, the tax credit 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 recipient 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 recipient'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 tax liability under subsection (a).

(c) No carryback or refund.--A recipient shall not be entitled to carry back or obtain a refund of any portion of an unused tax credit granted to the recipient under this subarticle.

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

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

(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 recipient 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 a taxpayer under this subsection within 60 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.

(e) Purchasers and assignees.--The following apply:

(1) The purchaser or assignee of all or a portion of a tax credit under subsection (d) shall immediately claim the tax credit in the taxable year in which the purchase or assignment is made.
The amount of the tax credit that a purchaser or assignee may use against one qualified tax liability may not exceed 50% of the qualified tax liability for the taxable year.

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

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.

Exception.--Notwithstanding any other provision of law to the contrary, a recipient which held a rehearsal after January 1, 2017, but before October 1, 2018, may use the tax credit granted to the recipient under this subarticle against the recipient's 2018 qualified tax liability or may sell or assign the tax credit granted to the recipient under this subarticle upon satisfaction of the recipient's 2018 qualified tax liability.

Section 1776-D. Determination of Pennsylvania rehearsal and tour expenses.

When prescribing standards for determining which rehearsal or tour expenses are considered Pennsylvania rehearsal and tour expenses for purposes of computing the tax credit provided by this subarticle, the department shall consider:

(1) The location where services are performed.

(2) The location where concert tour equipment is purchased, rented, delivered and used.

(3) The location where rehearsals or concerts are held.

(4) Other factors the department determines are relevant.

Section 1777-D. Limitations.

(a) Cap.--The aggregate amount of tax credits awarded in a fiscal year under this subarticle may not exceed $8,000,000. In a fiscal year, the department may, in the department's discretion, advance the award of tax credits for qualified rehearsal and tour expenses incurred or to be incurred equal to $2,000,000 of the tax credits available to be awarded in the succeeding fiscal year.

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

(1) count against the total amount of tax credits that the department may award for qualified rehearsal and tour expenses incurred or to be incurred related to a tour in that next succeeding fiscal year; and

(2) reduce the total amount of tax credits that the department may award for qualified rehearsal and tour expenses incurred or to be incurred related to a tour in that next succeeding fiscal year.

(c) Individual limitations.--The following shall apply:

(1) If a taxpayer's purchase or rental of concert tour equipment from companies located and maintaining a place of business in this Commonwealth for use on a tour is at least $3,000,000 but less than $4,000,000, the taxpayer may not be awarded more than $800,000 of tax credits for the tour.

(1.1) If a taxpayer's purchase or rental of concert tour equipment from companies located and maintaining a place of business in this Commonwealth for use on a tour is at least $4,000,000 but less than $8,000,000, the taxpayer may
not be awarded more than $1,250,000 of tax credits for the tour.

(1.2) If a taxpayer's purchase or rental of concert tour equipment from companies located and maintaining a place of business in this Commonwealth for use on a tour is at least $8,000,000, the taxpayer may not be awarded more than $2,000,000 of tax credits for the tour.

(2) Except as provided under paragraph (5), the aggregate amount of tax credits awarded by the department under section 1773-D(e) to a taxpayer for a tour with concerts at two class 1 venues or a class 1 venue and a class 2 venue may not exceed 25% of the qualified rehearsal and tour expenses incurred or to be incurred.

(3) Except as provided under paragraph (5), the aggregate amount of tax credits awarded by the department under section 1773-D(e) to a taxpayer for a tour with concerts at a class 1 venue and a class 3 venue may not exceed 30% of the qualified rehearsal and tour expenses incurred or to be incurred.

(4) Except as provided under paragraph (5), the aggregate amount of tax credits awarded by the department under section 1773-D(e) to a taxpayer for a tour with concerts at a class 1 venue and a class 3 venue which does not serve alcohol may not exceed 35% of the qualified rehearsal and tour expenses incurred or to be incurred.

(5) In addition to the tax credits under paragraph (2), (3) or (4), a taxpayer is eligible for a tax credit in the amount of 5% of the qualified rehearsal and tour expenses incurred or to be incurred by the taxpayer if the taxpayer holds concerts at a total of two or more class 2 venues or class 3 venues.

(d) Qualified rehearsal facility.--To be considered a qualified rehearsal facility under this subarticle, the owner of a rehearsal facility shall provide evidence to the department to verify the development or facility specifications and capital improvement costs incurred for the rehearsal facility so that the threshold amounts set in the definition of qualified rehearsal facility under section 1772-D are satisfied, and, upon verification, the rehearsal facility shall be registered by the department officially as a qualified rehearsal facility.

(e) 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 rehearsal and concert facilities outweighs the benefit of maintaining the 60% Pennsylvania rehearsal expenses requirement contained in the definition of qualified rehearsal and tour expense under section 1772-D. If the determination is made, the department may waive the requirement that 60% of a tour's aggregate rehearsal expenses be comprised of Pennsylvania rehearsal expenses.

(1777-D amended June 28, 2019, P.L.50, No.13)

Compiler's Note: Section 31 of Act 13 of 2019 provided that the amendment of sections 1716-D(a), 1777-D, 1709-E, 1702-H, 1703-H, 1705-H(d) and (e) and 1706-H(a) of this act shall apply to fiscal years beginning on or after July 1, 2019.

Section 1778-D. Penalty.
A recipient which claims a tax credit and fails to incur the amount of qualified rehearsal and tour expenses agreed to under section 1773-D(d)(4) for a tour in that taxable year shall repay
to the Commonwealth an amount equal to 110% of the difference between the amount agreed to under section 1773-D(d)(4) and the amount of qualified rehearsal and tour expenses actually incurred by the recipient. The penalty shall be assessed and collected under Article II.

(1778-D added Oct. 30, 2017, P.L.672, No.43)

Section 1779-D. Pass-through entity.

(a) General rule.--If a pass-through entity has any unused tax credits under section 1775-D, the pass-through entity may elect in writing, according to procedures established by the Department of Revenue, to transfer all or a portion of the tax credits to shareholders, members or partners in proportion to the share of the entity's distributive income to which each shareholder, member or partner is entitled.

(b) Limitation.--A pass-through entity and a shareholder, member or partner of a pass-through entity may not claim the tax credit under subsection (a) for the same qualified rehearsal and tour expense.

(c) Application.--A shareholder, member or partner of a pass-through entity to whom a tax credit is transferred under subsection (a) shall immediately claim the tax 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 tax credit.

(1779-D added Oct. 30, 2017, P.L.672, No.43)

Section 1780-D. Department guidelines and regulations.

The department shall develop written guidelines for the implementation of this subarticle. The guidelines shall be in effect until the department promulgates regulations for the implementation of this subarticle.

(1780-D added Oct. 30, 2017, P.L.672, No.43)

Section 1781-D. Report to General Assembly.

No later than June 1, 2018, 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 credits provided by this subarticle. The report shall include the name of the tours which rehearsed in this Commonwealth, the names of all recipients awarded a tax credit as of the date of the report and the amount of tax credits approved for each recipient. The report may also include recommendations for changes in the calculation or administration of the tax credits provided under this subarticle. The report shall be submitted to the chairperson and minority chairperson of the Appropriations Committee of the Senate, the chairperson and minority chairperson of the Finance Committee of the Senate, the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives and the chairperson and minority chairperson of the Finance Committee of the House of Representatives. The report shall include the following information, which shall be separated by geographic location within this Commonwealth:

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

(2) The total amount spent in this Commonwealth during the fiscal year by tours and concert tour promotion companies for services and supplies.

(3) The total amount of tax revenues, both directly and indirectly, generated for the Commonwealth during the fiscal year by the concert rehearsal and tour industry.

(1781-D added Oct. 30, 2017, P.L.672, No.43)