

# ENTERTAINMENT ECONOMIC ENHANCEMENT PROGRAM

Program Guidelines | October 2020



# Table of Contents

---

<b>Section I</b>	<b>Introduction</b>	1
<b>Section II</b>	<b>Eligibility</b>	1
A.	Program Restrictions	2
B.	Tax Credit Levels	2
<b>Section III</b>	<b>Marketing Requirements</b>	2
<b>Section IV</b>	<b>Expenses</b>	3
A.	Rehearsal Expenses Incurred or to be Incurred on a Tour	3
B.	Pennsylvania Rehearsal Expenses	4
C.	Tour Expenses for Concerts at Pennsylvania Venues	4
D.	Qualified Rehearsal and Tour Expenses	5
E.	Non-Qualified Rehearsal and Tour Expenses	5
<b>Section V</b>	<b>How to Apply</b>	6
<b>Section VI</b>	<b>Application Evaluation</b>	7
<b>Section VII</b>	<b>Contract</b>	8
A.	Revocation of Contract	9
B.	Penalty	9
<b>Section VIII</b>	<b>Issuance of Tax Credit Certificate</b>	9
<b>Section IX</b>	<b>Financial Compliance</b>	10
A.	Requirements for the Independent Certified Public Accountant	10
B.	Examination Engagement	10
C.	Applicant Responsibilities	11
<b>Section X</b>	<b>Use, Sale, Assignment, and Transfer of Tax Credit</b>	11
A.	Use of Tax Credit by Recipient	12
B.	Sale or Assignment of Tax Credit by Recipient	12
C.	Tax Credit Buyer	13
D.	Application Process	14
E.	Transfer of Tax Credit	14
<b>Section XI</b>	<b>Confidentiality</b>	15
<b>Section XII</b>	<b>Nondiscrimination</b>	15
<b>Section XIII</b>	<b>Definitions</b>	16
<b>Appendices</b>		
A.	Legislation	
B.	Approved Qualified Rehearsal Facilities	
C.	Entertainment Economic Enhancement Program Application	
D.	Budget Top Sheet	
E.	Instructions on Completing the Single Application	
F.	Economic Impact Report	
G.	Pennsylvania Vendor/Subcontractor Report	
H.	Final Employees Form	
I.	Acknowledgements and Logo	
J.	Assignment Application	
K.	Third Part Agent Consent Form	
L.	Qualified Rehearsal Facility Affidavit	
M.	Tax Claim Form	

## Section I – Introduction

---

The Commonwealth of Pennsylvania (the “commonwealth”), through the Department of Community and Economic Development (the “Department”), administers the **Entertainment Economic Enhancement Program** (formerly known as Concert Rehearsal and Tour Tax Credit) (the “Tax Credit”), authorized by of Article XVII-D, Subarticle E of the Tax Reform Code of 1971 (P.L. 6, No.2) (the “Act”), a copy of which is attached as Appendix A.

Prior to submitting an application, applicants should read and understand the requirements of the Act and are strongly advised to consult with their legal and financial advisors.

## Section II – Eligibility

---

Eligibility for the tax credit is restricted to 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;

For purposes of these guidelines, “Tour” pertains only to the North America leg of a Tour.

Contractors or subcontractors of a musical performer or performers or of a concert tour management company of a musical performer or performers. are not eligible to receive a Tax Credit under the provisions of the Act.

An applicant must meet the following Minimum Rehearsal and Tour Requirements during a Tour to be eligible for a Tax Credit:

1. Purchase or rent at least \$3 million in Concert Tour Equipment for use on the Tour from companies located and Maintaining a Place of Business in the commonwealth and delivered to a location within Pennsylvania.

Note: The Act defines “Maintaining a Place of Business” as follows:

- Having, maintaining or using within this commonwealth an office, warehouse or other place of business.
  - 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.
2. Rehearse for a minimum of 10 days at a Qualified Rehearsal Facility.
  3. Perform at least one Concert at a Class 1 Venue.
  4. At least one additional Concert performed at a Class 1, Class 2 or Class 3 Venue located in a municipality other than the municipality in which the Class 1 Venue is located.
  5. The taxpayer shall maintain a place of business in the commonwealth or employ a Representative for the period beginning with the start date and ending with the award of tax certificates.

In addition, the Applicant’s Pennsylvania Rehearsal Expenses must comprise at least 60% of the Applicant’s total Rehearsal Expenses to be eligible for the Tax Credit. Total Rehearsal Expenses include those incurred at locations within Pennsylvania and at locations outside the commonwealth.

## **A. Program Restrictions**

Concert Rehearsals held and Qualified Rehearsal and Tour Expenses incurred prior to January 1, 2017 are specifically excluded from the determination of whether an Applicant has met or will meet the Minimum Rehearsal and Tour Requirements.

Tours with a Contract may not submit a revised or new application for additional Tax Credits for the same Tour.

## **B. Tax Credit Levels**

The aggregate amount of tax credits awarded in a fiscal year may not exceed \$8,000,000. In a fiscal year, at the Department's discretion, it may advance the award 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.

The advance award of tax credits will 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.

Subject to individual limitations specified in the Act, if a taxpayer's purchase or rental of concert tour equipment from companies located and maintaining a place of business in the commonwealth are within the following ranges, the maximum amount of tax credits that can be awarded are as follows:

1. Equal to \$3,000,000 or more but less than \$4,000,000, the maximum amount of tax credits that may be awarded cannot exceed \$800,000;
2. Equal to \$4,000,000 or more but less than \$8,000,000, the maximum amount of tax credits that may be awarded cannot exceed \$1,250,000;
3. Equal to \$8,000,000 or more, the maximum amount of tax credits that may be awarded cannot exceed \$2,000,000.

The following applies to individual limitation specified in the Act.

1. 25% of the Applicant's total Qualified Rehearsal and Tour Expenses for a Tour with Concerts held at two Class 1 Venues or a Class 1 Venue and a Class 2 Venue.
2. 30% of the Applicant's total Qualified Rehearsal and Tour Expenses for a Tour with Concerts held at a Class 1 Venue and a Class 3 Venue.
3. 35% of the Applicant's total Qualified Rehearsal and Tour Expenses for a Tour with Concerts held at a Class 1 Venue and a Class 3 Venue that does not serve alcohol.

Applicants may qualify for an additional Tax Credit equal to 5% of the Qualified Rehearsal and Tour Expenses for Concerts held at two or more Class 2 and/or Class 3 Venues.

## **Section III – Marketing Requirements**

---

A recipient of a Tax Credit is required to request each Pennsylvania venue at which it performs to display, either digitally or via poster, the Pennsylvania Keystone logo during its performance, unless such placement is prohibited by licensing or other contractual obligations. The logos and language of the official acknowledgement of commonwealth support are provided in Appendix I of these Guidelines and available at [dced.pa.gov](http://dced.pa.gov). The commonwealth reserves the right to refuse the use of Pennsylvania's name. Such refusal will be indicated in the Contract or in writing at a later time.

## Section IV – Expenses

---

The **amount** of an Applicant's Tax Credit is based on the amount of Qualified Rehearsal and Tour Expenses incurred or will be incurred in the commonwealth. An Applicant's **eligibility** for the Tax Credit is based solely on the expenses incurred or will be incurred during a Rehearsal in the commonwealth that are equal to at least 60% of the total Rehearsal Expenses incurred or will be incurred during the entire Tour.

The following is a list of Rehearsal Expenses on which an Applicant's **eligibility** for the Tax Credit is based.

### A. Rehearsal Expenses Incurred or to be Incurred on a Tour

1. Compensation paid or to be paid to an individual employed in the Rehearsal of the performance.
2. Payment to a personal service corporation or a pass-through entity representing individual talent.
3. Cost of:
  - a. Construction, operations, editing, photography, staging, lighting, wardrobe and accessories.
  - b. Vehicle leasing.
  - c. 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.
    - 1.) The cost of ground transportation or 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.
    - 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
  - d. 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.
  - e. Food and lodging.
  - f. Emergency or medical support services required to conduct a Rehearsal.
  - g. Renting a Rehearsal Facility located in Pennsylvania, which has a minimum of 20,000 square feet of unobstructed, column-free floor space and is not a facility where Concerts are capable of being held.
  - h. Purchase or rental of Concert Tour Equipment:
    - 1.) Automation/Automation control
    - 2.) Backline equipment
    - 3.) Cases
    - 4.) Communication devices
    - 5.) Design elements
    - 6.) Lighting
    - 7.) Power generation/distribution equipment
    - 8.) Rigging
    - 9.) Scenery
    - 10.) Set

- 11.) Sound equipment/Audio systems
- 12.) Special effects/Pyrotechnics
- 13.) Spotlights
- 14.) Stage
- 15.) Trusses
- 16.) Video equipment
- 17.) Other miscellaneous equipment or supplies used during a Rehearsal or Concert.

## **B. Pennsylvania Rehearsal Expenses**

The following stipulations apply to certain Rehearsal Expenses in order for these expenses to be considered a Pennsylvania Rehearsal and Tour Expense eligible for a Tax Credit.

- A Rehearsal Expense incurred or will be incurred within the commonwealth.
- A payment made or will be made by a Recipient to a person from which withholding of taxes will be made on the payment by the Recipient as required under Part VII of Article III (Pennsylvania Personal Income Tax) of the Tax Reform Code 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 of the Tax Reform Code.

*Note: "Recipient" is defined in the Act as, "A taxpayer that has been awarded a tax credit under Section 1773-D(e) [of the Act - pertaining to procedure]."*

- A payment made or will be made to a personal service corporation representing individual talent if the tax imposed by Article IV of the Tax Reform Code (i.e., Corporate Net Income Tax) will be paid or accrued on the net income of the corporation for the taxable year.
- A payment 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 (pertaining to withholding of Pennsylvania Personal Income Tax) of the Tax Reform Code.

## **C. Tour Expenses for Concerts at Pennsylvania Venues**

The following is a list of Tour Expenses on which an Applicant's **eligibility** for the Tax Credit is based for costs incurred or will be incurred during a Tour for Venues located in Pennsylvania:

1. Payment by a Recipient to a person from which withholding of taxes will be made by the Recipient as required under Part VII of Article III (Pennsylvania Personal Income Tax) of the Tax Reform Code or a payment to a person who is required to make estimated payments under Part VIII of Article III of the Tax Reform Code.
2. Payment to a personal service corporation representing individual talent if the tax imposed by Article IV of the Tax Reform Code (i.e., Corporate Net Income Tax) 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 (pertaining to withholding of Pennsylvania Personal Income Tax) of the Tax Reform Code.
4. Food and lodging from a facility located in Pennsylvania.

5. Leasing vehicles upon which Pennsylvania Sales and Use Tax (Article II) will be paid or accrued.
6. Merchandise purchased or will be purchased from a company located in Pennsylvania and used on the Tour.
7. Purchasing or renting facilities and equipment from or through a Pennsylvania resident or an entity subject to taxation in Pennsylvania.
8. Expenses to market or advertise a Tour, including the cost for ticketing, at Venues located in Pennsylvania.
9. Transportation of people to or from a train station, bus depot, airport or other transportation facility or directly from a residence or business entity located in Pennsylvania or provided by a company subject to Pennsylvania's Personal Income Tax (Article III) or Corporate Net Income Tax (Article IV) of the Tax Reform Code.

Development costs, including those for the writing of music or lyrics, are explicitly excluded as a Tour Expense.

#### **D. Qualified Rehearsal and Tour Expenses**

Qualified Rehearsal and Tour Expenses are the total amount of Pennsylvania Rehearsal and Tour Expenses provided Pennsylvania Rehearsal Expenses comprise or will comprise at least 60% of a Tour's total Rehearsal Expenses and **with the aggregate amount of compensation paid or to be paid to individuals or to entities representing an individual for services provided in the Tour limited to \$2 million.**

#### **E. Non-Qualified Rehearsal and Tour Expenses**

In order to promote jobs in Pennsylvania, the Department does not recognize the following as Qualified Concert Rehearsal and Tour Expenses:

- Fees paid for Concert Rehearsal and Tour production services performed outside of Pennsylvania, regardless of whether they are performed by a Pennsylvania taxpayer.
- Purchases of products or services made through a person or entity not routinely engaged in the business of providing such products or services to businesses other than Applicants, regardless of whether such purchases or such vendors are subject to taxation in Pennsylvania.

A Pass-Through Expense, defined in Section XIII, is not recognized as a Qualified Rehearsal and Tour Expense. A company established to exist as a Pass-Through will be required to provide documentation that all vendors utilized are Pennsylvania companies unless documentation is provided that shows no Pennsylvania company is available. Goods ordered from companies in the business of purchasing from out of state that do not operate a rental or sales business and do not maintain inventory, will not qualify as a Qualified Rehearsal and Tour Expense.

## Section V – How to Apply

---

Applicants for a Tax Credit must provide a complete application package consisting of the following to the Department.

- A \$300.00 non-refundable application fee. Payment must be in the form of a check made payable to the “Commonwealth of Pennsylvania.” Amendments to an application otherwise denied constitute a new application and require a new application fee. The application fee may be refunded for applications denied solely due to the lack of available Tax Credits.
- Provide proof the Applicant is registered to do business in Pennsylvania prior to the commencement of Concert Rehearsals in the commonwealth. Out-of-state applicants are required to file a *Foreign Registration Statement* with the Pennsylvania Department of State, Bureau of Corporations and Charitable Organizations. For more information, please see [www.dos.pa.gov/corps](http://www.dos.pa.gov/corps) or contact: email: RA-corps@pa.gov or Phone: 1-888-659-9962 or 717-787-1057.
- Provide proof the Applicant has a valid state tax ID number. Applicants may obtain a state tax ID number by submitting a *Pennsylvania Enterprise Registration Form* (PA-100) to the Department of Revenue. Information on completing the form online can be found at: [www.pa100.state.pa.us/about\\_Online\\_pa100.htm](http://www.pa100.state.pa.us/about_Online_pa100.htm)
- Evidence that all personal service corporations or pass-through entity representing individual talent that will be engaged by the Applicant are incorporated, or formed in Pennsylvania, or have registered to do business in Pennsylvania prior to the Start Date (i.e., the date the first set of Concert Rehearsal Tour Equipment arrives or is expected to arrive at a Qualified Rehearsal Facility), or are in the process of obtaining a *Foreign Registration Statement*. For more information, please see: [www.dos.pa.gov/BusinessCharities/Business/Resources/Pages/Foreign-Business-Corporations-.aspx](http://www.dos.pa.gov/BusinessCharities/Business/Resources/Pages/Foreign-Business-Corporations-.aspx)
- A completed Application form (Appendix C).
- A completed Budget Top Sheet form listing the projected Concert Rehearsal and Tour Expenses (Appendix D). Note: A separate Budget Top Sheet report is required upon completion of the Tour listing the audited Concert Rehearsal and Tour Expenses incurred.
- A completed “Single Application for Assistance” submitted electronically and available at [www.esa.dced.state.pa.us/Login.aspx](http://www.esa.dced.state.pa.us/Login.aspx). Please refer to Appendix E for *Instructions on Completing the Single Application for Assistance* online.
- A copy of the official planned Concert Tour itinerary and/or official routing schedule.
- Applicants are required to complete the online tax compliance form with the Pennsylvania Department of Revenue available at: [www.revenue.pa.gov/taxcredits](http://www.revenue.pa.gov/taxcredits).
  - Entities seeking a tax credit must obtain a state tax compliance clearance in accordance to the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Pennsylvania Department of Revenue.
  - Notification of Non-Compliance: Applications identified by the Pennsylvania Department of Revenue as non-compliant will be ineligible for a tax credit, unless the applicant resolves the non-compliant issues in the determination period set by the Pennsylvania Department of Revenue and communicated to the applicant.
- Any other documentation deemed necessary by the Department.

Completion and submission of the items listed above constitute a completed application package. Incomplete applications will be rejected and the application fee retained by the commonwealth.

Completed application packages may be submitted no sooner than 180 days prior to the start date of Concert Rehearsals in the commonwealth.

For questions pertaining to the application or application process, contact Janice Collier by phone or email.

Phone: (717) 720-1312

Email: [jacollier@pa.gov](mailto:jacollier@pa.gov)

Mail Completed Applications to:

Janice Collier  
Entertainment Production Tax Credit Program Manager  
Department of Community & Economic Development  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

Within 15 business days of submitting a completed application package, the Entertainment Production Tax Credit Program Manager will conduct a telephone interview with the Applicant to discuss the Concert Rehearsal and Tour.

## **Section VI – Application Evaluation**

---

All applications will be reviewed for completeness and compliance with the Act and these Guidelines. Applicants will be notified by email of missing information and/or non-compliance with the Act or these Guidelines. An Applicant will have the opportunity to correct the application; however, the application will not be considered until all required information is received by the Department.

Completed application packages will be accepted during one of the following 30-day periods: January 1-10, April 1-10, July 1-10 and October 1-10.

Applications are evaluated based on the following criteria as specified in the Act.

1. The anticipated number of Rehearsal days in a Qualified Rehearsal Facility.
2. The anticipated number of Concerts at Class 1 Venues.
3. The anticipated number of Concerts at Class 2 Venues.
4. The anticipated number of Concerts at Class 3 Venues.
5. The anticipated amount of Pennsylvania Rehearsal Expenses in comparison to the anticipated aggregate amount of Rehearsal Expenses for the entire Tour.
6. The anticipated amount of the Tour Expenses incurred or will be incurred during a Tour for Venues located in Pennsylvania.
7. The anticipated amount of the Concert Tour Equipment expenses that are or will be purchased or rented from a company located and Maintaining a Place of Business in Pennsylvania and that will be used on the Tour.

8. The anticipated number of days spent in Pennsylvania hotels.
9. Other criteria the Department deems appropriate to ensure maximum employment opportunities and entertainment benefits for Pennsylvania residents.
10. State Tax Compliance: All applicants must be in compliance with the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Department of Revenue. Should an applicant be found to be out of compliance, notices will be sent to the applicant with instructions on how to rectify any compliance issues. The applicant must cure compliance issues within the required time period in order to be eligible for the program.

Completed applications that qualify for the Tax Credit but are not approved for a tax credit during the initial application period may be reviewed and considered in a subsequent period.

## **Section VII – Contract**

---

Upon approval of the Application, the Department will issue a contract to the Applicant specifying the maximum amount of Tax Credit the Applicant may receive upon completion of the contract terms and the Applicant's obligations including, but not limited to, the following:

- Confirmation the Concert Rehearsal has commenced or will commence in Pennsylvania in accordance with the terms of the Act, these Guidelines, and the application submitted by the Applicant.
- Submission of a final Concert Rehearsal and Tour Economic Impact Report within 180 days of the Tour's final Concert using the form in Appendix G.
- Submission of an independently audited Examination Report of total Rehearsal Expenses, Pennsylvania Rehearsal Expenses, and Qualified Rehearsal and Tour Expenses upon completion of the entire Tour, with the report prepared in accordance with the Financial Compliance instructions for the Program as stated in Section IX.
- Confirmation of the marketing requirements as outlined in Section III.
- Any other terms and conditions the Department deems appropriate.
- Submission of a request for tax clearance with the Department of Revenue upon completion of the entire Tour.

By executing the contract, the company seeking the credits is authorizing the Pennsylvania Department of Community and Economic Development to request access to, and review of, the company's and its affiliates' state tax returns and waives confidentiality under Pennsylvania law and authorize release of this information. The contract authorizes the Pennsylvania Department of Revenue to release the tax returns and tax return information by any means possible, including but not limited to by phone discussions, mail, facsimile, e-mail or other electronic means.

Applicants must return the signed, original Entertainment Economic Enhancement Program Contract within 30 days of the contract's issuance date to:

Janice Collier  
Entertainment Production Tax Credit Program Manager  
Department of Community & Economic Development  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

## **A. Revocation of Contract**

A Contract that has been issued to an Applicant **WILL BE REVOKED** for failure to:

- Return the original, signed copy of the Contract with the original signatures within 30 days of the contract date.
- Notify the Department if and when the Concert Rehearsal Start Date has changed from the date indicated in the application and the Contract.
- Maintain state tax compliance during the entire Tour.

## **B. Penalty**

Per Section 1778-D of the Act, a Recipient of a Tax Credit who “claims a tax credit and fails to incur the amount of Qualified Rehearsal and Tour Expenses agreed to under Section 1773-D(d)(4) (relating to procedure) 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.”

# **Section VIII – Issuance of Tax Credit Certificate**

---

The Department will issue a Tax Credit Certificate upon review and approval of the following documents.

- Final Concert Rehearsal & Tour Economic Impact Report (Appendix F).
- Final Budget Top Sheet report listing the actual Pennsylvania Rehearsal Expenses, total Rehearsal Expenses, and the Qualified Concert Rehearsal and Tour Expenses incurred (Appendix D).
- Final Pennsylvania Vendor/Subcontractor Report (Appendix G).
- Final Employees Form (Appendix H).
- Examination Report. Please refer to the following section (Section IX) for specific information on the Financial Compliance requirements.
- All marketing materials as outlined in Section III.
- Any other information requested by the Department.
- Confirmation of state tax compliance requirements from the Department of Revenue

*Note: Reports on forms other than the official state forms will be rejected and the Applicant required to resubmit the data and information on the official form(s) before a Tax Credit Certificate will be issued.*

The Department will issue a Tax Credit Certificate to the Applicant within 45 days of the receipt of the finalized, complete and accurate forms and reports with the required data and information.

The amount of Tax Credit awarded will **not** exceed the amount offered in the contract, but may be less if the audited Qualified Rehearsal and Tour Expenses are below the amount stated in the Application.

## Section IX – Financial Compliance

---

The following procedures pertain to the financial compliance requirements for the Tax Credit and the Contract issued between the Applicant and the Department.

Applicants for a Tax Credit must submit an **Examination Report** within 180 days of the end date of the Tour.

### A. Requirements for the Independent Certified Public Accountant

The Examination must be performed by a Certified Public Accountant (CPA) licensed in Pennsylvania or a reciprocal CPA qualified to perform audits or Examinations in the commonwealth. The Department encourages a competitive bidding process in selecting an independent auditor and the use of small audit firms, as well as those owned and controlled by socially and economically disadvantaged individuals.

Prior Department approval of the CPA selection is not required unless the Applicant is specifically notified in writing.

### B. Examination Engagement

The Examination Engagement must be performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants (AT-C Section 205, Examination Engagements). The Department must be listed as a specified party in the engagement letter and specifically granted access to any work performed by the auditor.

The Examination Engagement subject matter and criteria are as follows:

#### Subject Matter:

- a. Statement of Pennsylvania Rehearsal Expenses, Total Rehearsal Expenses, Pennsylvania Tour Expenses, Pennsylvania Rehearsal and Tour Expenses, and Qualified Rehearsal and Tour Expenses. [See Sample Schedule in Appendix D.]
- b. Computation of the Tax Credit.

#### Criteria:

- a. The Eligibility Criteria in Section II of these Guidelines
- b. The Expense Guidance in Section IV of these Guidelines
- c. The Contract
- d. Article XVII-D Subarticle B of the Tax Reform Code of 1971 (P.L. 6, No.2) (the “Act”), a copy of which is attached as Appendix A.

## C. Applicant Responsibilities

The Applicant will submit two copies of the examination report, engagement letter and the Contract, and a Report of the Pennsylvania Sales Tax and total Pennsylvania individual gross income tax withheld related to the Tour to the Department within 180 days of the Tour's completion date to:

Janice Collier  
Entertainment Production Tax Credit Program Manager  
Department of Community & Economic Development  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

Questions regarding the performance or submission of the examination engagement should be directed to the Compliance Monitoring Division at 717-346-9023 or [ra-audits@pa.gov](mailto:ra-audits@pa.gov).

## Section X – Use, Sale, Assignment, and Transfer of Tax Credit

---

Recipients of a Tax Credit may use the tax credit to offset their Pennsylvania state tax liability or sell, assign or transfer the credits to another entity.

Recipients must file all required state tax reports and returns for the tax years up to and including that of the issuance date of the Tax Credit Certificate and must pay any balance of state taxes owed as determined at settlement, assessment or determination by the Pennsylvania Department of Revenue before the Tax Credit can be used, sold, assigned or transferred.

Tax Credit may be applied by the recipient or by an entity to whom the tax credit has been sold, assigned or transferred, against the tax liability for the following Pennsylvania taxes under Articles III, IV, VI, VII, or IX of the Tax Reform Code of 1971.

- Personal Income Tax (Article III) - (excluding any tax withheld from a person employed on a project)
- Corporate Net Income Tax (Article IV)
- Capital Stock - Franchise Tax (Article VI)
- Bank & Trust Company Shares Tax (Article VII)
- Insurance Premiums Tax (Article IX)

***Note: A Tax Credit cannot be carried back or used to obtain a refund of any unused tax credits by the recipient, buyer, assignee, or transferee.***

Entities that are no longer subject to filing the RCT-101 Corporate Tax Report as per the phase out of the Capital Stock & Foreign Franchise Tax are required to file the PA- 20S/PA-65, S Corporation/Partnership Information return prior to selling a restricted credit. Every domestic or foreign PA S corporation (72 P.S. § 7330.1), partnership (72 P.S. § 7335(c)), or entity formed as a limited liability company that is classified as a partnership

or S corporation for federal income tax purposes, must file the PA- 20S/PA-65 Information Return. **Single Member Limited Liability Companies with an individual, partnership or corporation as the single member are required to file the specified returns: An individual as the single member, must file a PA-40 Individual Tax Return. If the single member is a corporation or partnership the return of the owner (RCT-101 Corporate Tax Report or PA 20S/65 Information Return) must be filed.**

For education and outreach on this topic, please see the Department of Revenue tax credit webpage: [www.revenue.pa.gov/taxcredits](http://www.revenue.pa.gov/taxcredits). For specific questions, please contact 717-772-3896 or [ra-btftrevkoz@pa.gov](mailto:ra-btftrevkoz@pa.gov).

## **A. Use of Tax Credit by Recipient**

Recipients who elect to use the Tax Credit to offset their Pennsylvania state tax liability must first apply the credit to the Pennsylvania state taxes owed by the recipient for the tax year in which the tax credit is issued. If a recipient's tax liability is less than the amount of tax credits awarded, the recipient may carry forward any or all of the unused portion of the credit to offset the recipient's tax liability for up to three additional tax years.

*Note: The tax credits cannot be applied against a recipient's tax liability until the tax return for the applicable tax year has been filed with the Pennsylvania Department of Revenue.*

## **B. Sale or Assignment of Tax Credit by Recipient**

Recipients of a Tax Credit with no Pennsylvania tax liability or with unused tax credits may sell or assign all or a portion of the tax credit to one or more entities at any time in the initial tax year or in the three subsequent tax years.

The recipient must apply to the Department for approval of the sale or assignment of all or a portion of the recipient's Tax Credit to another entity by submitting an official Assignment Application (Appendix J), identifying the buyer company or individual and signed by both the seller and buyer of the tax credit(s).

*Note: A separate Assignment Application must be submitted for each buyer.*

Prospective sellers and buyers must submit the completed Assignment Application with all required signatures, a copy of the Certificate, and any attachments to:

Janice Collier  
Entertainment Production Tax Credit Program Manager  
Department of Community & Economic Development  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

For specific questions, please contact Janice Collier at 717-720-1312 or [jacollier@pa.gov](mailto:jacollier@pa.gov).

*Note: A Tax Credit can only be sold or assigned to entities with a valid Pennsylvania state tax ID number. Entities not incorporated or formed within Pennsylvania must first register to do business in Pennsylvania and obtain a valid state tax ID number.*

Upon submission of an Assignment Application, a recipient may no longer use that portion of the Tax Credit to offset any qualifying tax liability unless the Assignment Application is denied by the Department or withdrawn by the recipient.

Effective immediately:

- All sales and assignment transactions that are rejected by the Department of Revenue for State Tax Non-Compliance issues or Corporation Tax Non-Compliance issues will require the submission of a new Assignment Application (Appendix J) by the buyer and seller for the Department of Revenue to process. **The new Assignment Application will begin a new 60-day review period.**
- **Assignment Applications marked non-compliant will require the Department to contact the parties involved in transaction and notify the parties that the Assignment Application has been rejected by the Department of Revenue and will require the non-compliant issue to be resolved prior to resubmitting a new application for sale.**
- No Assignment Applications will be processed by the Department of Revenue that have been marked Non-Compliant.
- When the **new Assignment Application** is submitted for review, the Department of Revenue will be going off of the new 60-day period from the new date of submission.

*Note: This Assignment Application is considered closed and will not receive a Compliant as of (date) on any Assignment Application which has been rejected. These Assignment Applications are effectively dead.*

The Department of Revenue will not be providing early clearances to ensure a sale and all Assignment Applications will be worked on first in, first out.

## C. Tax Credit Buyer

A buyer of a Tax Credit must be identified in the Assignment Application for the sale of the Tax Credit submitted by the recipient. The buyer must claim the full amount of the purchased tax credits in the taxable year in which the Assignment Application for the sale of the Tax Credit is approved by the Department. The amount of the purchased tax credit may be used to offset no more than 50 percent of the buyer's tax liability for that taxable year.

Any portion of a purchased Tax Credit that is not used by a buyer in the year of purchase is forfeited and may not be used in any other tax year.

The process for the sale and assignment of a Tax Credit is closely coordinated between the Department and the Department of Revenue.

Assignment Applications submitted to the Department for the sale or assignment of all or a portion of an Tax Credit will be reviewed within 15 business days of receipt by the Department. If the Assignment Application is determined complete and accurate, the Department will forward the Assignment Application to the Department of Revenue for review and processing.

The Department of Revenue may take up to 60 days to review the Assignment Application and confirm compliance with the Act, these Guidelines, and all conditions before posting the transfer to the sellers' and buyers' respective accounts with the Department of Revenue.

## D. Application Process

The Department of Revenue encourages Applicants to adhere to the following steps to ensure processing of the use or sale of the Tax Credit:

- Properly complete the Corporate Tax Report (including authorized signatures).
- Provide all required supporting documentation. (See pages 1-3 of CT-1 Rev 1200 Corporate Tax Booklet for more details).
- Accurately identify the federal forms included with the corporate tax return (See page 1 of the RCT-101).
- Sellers of the Tax Credit must be compliant across all taxes for which the entity is subject to and adhere to the requirements of selling the Tax Credit.
- All other forms required by the Department of Revenue to complete the posting of the Tax Credit.

**Agents or facilitators engaged to assist in the use or sale of the Tax Credit must complete, sign and submit a Third Party Agent Consent Form (Appendix K) with the Tax Credit Assignment Application.**

**Please note, the Third Party Agent Consent Form, is not a substitute for the Department of Revenue Power of Attorney and Declaration of Representative Form. Agents or facilitators must obtain a completed REV-677 form from the seller to obtain confidential tax information regarding the sale or assignment of the credit.**

## E. Transfer of Tax Credit

The transfer of unused Tax Credit is authorized only for pass-through entities (as defined in the Act), which may transfer all or a portion of unused credits to shareholders, members, or partners. The amount of tax credit each individual may receive is based on the proportionate share of the entity's distributive income to which the individual is entitled. The transfer must be authorized in writing by the pass-through entity according to procedures established by the Department of Revenue.

A shareholder, member, or partner can only use the credit in the taxable year in which the transfer is made. A pass-through entity and the individual(s) to whom the tax credit is transferred may NOT claim the credit for the same Qualified Rehearsal and Tour Expenses.

Transferred credits cannot be carried forward, carried back, sold, assigned, and/or used to obtain a refund of the credit.

## **Section XI – Confidentiality**

---

Materials submitted to the Department are subject to the Pennsylvania Right to Know Law (65 P.S. § 67.101 et seq.). Safeguards provided by this and other Pennsylvania laws protect from disclosure:

- Confidential proprietary information;
- Financial statements;
- Business plans;
- Intellectual property.

Under the Right to Know Law, all Applications received by the Department at the date of receipt will become available to the public upon request.

## **Section XII – Nondiscrimination**

---

No assistance shall be awarded to a qualified Taxpayer under this program unless the qualified Taxpayer certifies that the qualified Taxpayer shall not discriminate against any employee or against any person seeking employment by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act, which prohibits discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, or in violation of any applicable federal laws.

## Section XIII – Definitions

---

**Applicant.** A Concert Tour promotion company, Concert Tour management company or other Concert management company subject to tax under Article III, IV or VI of the Tax Reform Code. The term does not include contractors or subcontractors of a Concert Tour promotion company, Concert Tour management company or other Concert management company.

**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 of the Tax Reform Code of 1971.
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 Venues 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 the 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).

**Pass Through Expense.** An expense for products or services provided to an Applicant by a company that does not regularly provide those types of goods or services and is not regularly engaged in that business. Goods ordered from companies in the business of purchasing from out-of-state vendors and that do not operate a rental or sales business and do not maintain an inventory do not qualify as a Qualified Rehearsal and Tour Expense. For example: A Tour company contracts with a Pennsylvania food services company to provide audio services for a Concert Rehearsal/Tour. While the company is a Pennsylvania taxpayer, this expense would be deemed a pass through expense and would not qualify since the company is not in the business of, nor has the capability of, providing audio services to the Concert Rehearsal/Tour.

**Pass-Through Entity.** Any of the following:

1. A Partnership as defined in section 301(n.0) of the Tax Reform Code.
2. A Pennsylvania S Corporation as defined in section 301(n.1) of the Tax Reform Code.
3. An unincorporated entity subject to section 307.21 of the Tax Reform Code.

**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 of the Tax Reform Code 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 of the Tax Reform Code.
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 of the Tax Reform Code 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 of the Tax Reform Code.

**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 in the 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 of the Tax Reform Code. The term does not include tax withheld by an employer from an employee under Article III of the Tax Reform Code.

**Recipient.** A Taxpayer that has been awarded a tax credit under section 1773-D(e) (relating to procedure).

**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.
  - a. 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.
  - b. 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.

**Rehearsal Facility.** As follows:

1. A facility primarily used for Rehearsals which is all of the following:
  - a. Located within this commonwealth.
  - b. 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.

**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.
2. Maintains a place of business in this commonwealth.
3. Has substantial experience working with the Pennsylvania live events industry.

**Start Date.** The date the first set of Concert Tour Equipment arrives or is expected to arrive at a Qualified Rehearsal Facility.

**Taxpayer.** A Musical Performer of Performers or a Concert tour management company of a musical performer or performers subject to tax under Article III, IV or VI of the Tax Reform Code. 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.

**Tax Reform Code.** The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

**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:
  - a. 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 of the Tax Reform Code 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 of the Tax Reform Code.
  - b. The cost of transportation of people or Concert Tour Equipment 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 of the Tax Reform Code.
  - c. The cost of leasing vehicles upon which the tax imposed by Article II of the Tax Reform Code will be paid or accrued.
  - d. 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.
  - e. 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.
  - f. The cost of food and lodging which is incurred or will be incurred from a facility located in this commonwealth.
  - g. Expenses which are incurred or will be incurred in marketing or advertising a Tour at Venues located within this commonwealth.
  - h. The cost of merchandise which is purchased or will be purchased from a company located within this commonwealth and used on the Tour.

- i. A payment which is made or will be made to a personal service corporation representing individual talent if the tax imposed by Article IV of the Tax Reform Code will be paid or accrued on the net income of the corporation for the taxable year.
  - j. 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 of the Tax Reform Code.
2. The term does not include development cost, including the writing of music or lyrics.

**Venue.** Class 1, Class 2 or Class 3 Venue.