

Pennsylvania Department
of Community and
Economic Development

Film Production Tax Credit

Program Guidelines

Commonwealth of Pennsylvania
Edward G. Rendell, Governor
www.state.pa.us

Department of Community and Economic Development
Dennis Yablonsky, Secretary
www.newPA.com

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pennsylvania
DEPARTMENT OF COMMUNITY
& ECONOMIC DEVELOPMENT



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Section I – General

A. Introduction

The Department of Community and Economic Development (“DCED”), through the Pennsylvania Film Office, administers the PA Film Tax Credit. The PA Film Tax Credit was established to promote film business in Pennsylvania, which can create jobs, promote tourism, and enhance the economy in the commonwealth.

B. Eligibility

In order to qualify for the Film Tax Credit, a film production company must spend in Pennsylvania at least 60% of the eligible production expenses of a qualified production. A qualified production is a feature film, a television film, a television pilot or each episode of a television series, which is intended as programming for a national audience. Qualified production expenses may include, with the approval of DCED, expenses incurred in the production of a film, such as the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories; and the cost of rental of facilities and equipment. The term does not include wages and salaries of \$1,000,000 or more per person, the cost of purchasing story rights, music rights, development costs, or marketing or advertising of the film. An applicant applies for the tax credit prior to the start date of principal photography in PA. If approved, the applicant enters into a contract with DCED and is given a tax credit certificate issued by DCED stating that provided the applicant meets the criteria stated in the legislation and in the contract with DCED, it can use the tax credit.

C. Process

1. Application:

- a. An applicant fills out an application with budgeted film production expenses for an eligible production, and submits it to DCED. DCED will not accept any application more than 90 days prior to the planned start date of principal photography.
- b. The applicant will interview with the PA Film Office (in person, or on the phone) to discuss the details of the application.
- c. Applications shall generally be reviewed by DCED in the order they are received; if two or more applications are received at substantially the same time, DCED may review these applications concurrently. If two or more applications are being reviewed at the same time, DCED will give priority consideration to the application with the earlier start date of principal photography in Pennsylvania. An application may show a planned start date of principal photography that precedes the beginning of the next period for which DCED has unallocated film production tax credits available for award to applicants. In such a case, only expenses incurred after the beginning of the new period will count toward the available tax credit. For example, an applicant may submit, and DCED will accept, on March 3, 2006, an application for a film showing a planned principal start date of June 1, 2006. However, because no tax credits for the period prior to July 1, 2006 are available, film production expenses incurred prior to July 1, 2006, even if otherwise qualified and eligible, may not be the basis for a tax credit.

- d. DCED reserves the right to require such information as it may deem necessary (including but not limited to a complete production schedule) to verify to its satisfaction that the date shown on an application as the start date of principal photography actually represents the date of principal photography and is not, for example, an isolated activity.
- e. If the application is disapproved, DCED shall provide the applicant with a notice of disapproval.

2. Contract

If DCED approves the application, DCED shall prepare and submit to the applicant for signature a contract containing the following:

- a. An itemized list of production expenses to be incurred, prepared by the applicant and submitted to DCED.
- b. An itemized list of Pennsylvania production expenses to be incurred, prepared by the applicant and submitted to DCED..
- c. A commitment by the applicant to incur the qualified film production expenses as itemized;
- d. The start date of principal photography in Pennsylvania;
- e. an agreement by the applicant to notify DCED by certified mail, or other traceable form, on the date actual production on a qualified film commences;
- f. an agreement by the applicant to submit within sixty (60) days after the completion of the production of a qualified film a final report of expenses to DCED;
- g. an agreement by the applicant to report to DCED from time to time, at intervals of not less than 90 days, until the qualified production is complete
- h. an agreement by the applicant to supply DCED with such further information as DCED shall reasonably request;
- i. for a feature film, an agreement by the applicant to include with the end credit in each print and /or electronic version of the feature film the complete logo of the Pennsylvania Film Office; and
- j. an acknowledgement by the applicant that any tax credit and tax credit certificate issued by DCED pursuant to the contract (a) shall not become effective until the qualified production is complete and (b) shall immediately become null, void and of no further effect upon any material breach by the applicant of the terms and conditions of the contract without the consent of DCED, as determined by DCED in its sole discretion.

3. Tax Credit Certificate

Upon execution and delivery of the contract, DCED shall issue a tax credit certificate. The tax credit certificate which shall provide that the tax credit evidenced by the certificate (a) shall not become effective until the qualified production is complete and (b) shall immediately become null, void and of no further effect upon any material breach by the applicant of the terms and conditions of the contract between the applicant and DCED, without the consent of DCED, as determined by DCED in its sole discretion.

DCED shall provide a copy of each certificate to the Department of Revenue, and also will notify the Department of Revenue if any tax credit becomes void by reason of breach by the applicant of its contract with DCED, as described above.

D. Limitations

1. The total amount of tax credits will be limited to the availability of the \$10 million annual appropriation.
2. Applications will generally be considered on a first-come, first served basis, provided that if two or more applications have been received at substantially the same time, DCED may review these applications concurrently. If two or more applications are being reviewed at the same time, DCED will give priority consideration to the application with the earlier start date of principal photography in Pennsylvania.
3. The tax credit will not exceed 20% of qualified expenses and will never be higher than is stated on the application
4. Film production tax credits will remain effective only for so long as applicable law continues to provide for such credits. This law may be altered or repealed by the General Assembly at any time.

E. Carryforward

If the taxpayer cannot use the entire amount of the film production tax credit for the taxable year in which the film production 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 that the film production 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 film production tax credit provided by this article may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

F. Assignment

1. Introduction

The Film Production Tax Credit (“FPTC”) is a key component in creating film business in the commonwealth, and thus creating jobs and adding productivity to the economy. Because film production companies may not have substantial tax liabilities against which a tax credit may be applied, the Film Production Tax Credit program permits film production companies to sell their tax credits to third parties, under the terms and conditions described below.

Film Production Tax Credits must first be applied against a taxpayer’s qualified tax liability for the current taxable year within which the credit was first approved. Film Production Tax Credits not used by the business to which the credits were initially issued, and not assigned to a buyer, may be carried forward for a maximum of three (3) taxable years. Businesses that have not used all or part of their issued Film Production Tax Credits may apply to DCED for approval to assign their eligible FPTCs to a buyer that can then use the tax credits to offset up to 50% of its own tax liability with the purchased credits. FPTCs may be assigned to a buyer upon approval from DCED, on the terms and conditions described, from the date of initial approval of the credit until the three-year carry-forward period expires.

2. Eligibility

In order to be eligible to assign FPTCs a business must demonstrate the following:

- a. The seller business must possess unused FPTCs issued by the PA DoR or DCED* prior to the date of the proposed assignment. The first FPTCs eligible for approval to be assigned under this program are those approved by the Department of Revenue on August 15, 2005, for expenditures prior to January 1, 2005. DCED will begin awarding FPTCs for expenditures made prior to January 1, 2005. A taxpayer may apply to DCED to sell or assign a credit awarded to it immediately upon receiving an award. *An assigned credit must be used by the buyer within the tax year of the approval of the assignment. Credits may be assigned only once. A buyer may not apply to assign the credits again.* Any FPTCs not used to offset state tax liability by the business to which the credits were issued within the three-year maximum lifetime of the credits, or by a buyer within the tax year of the approval of the assignment by DCED, expire and no longer exist.
- b. A business requesting approval to assign its FPTCs may only apply to assign FPTCs that have not already been used, and are still within their three-year maximum lifetime as explained above.
- c. A business that has used a FPTC to offset a tax liability that is later subject to a ruling or agreement by the PA DoR reducing that tax liability, may have some or all of its original FPTCs reinstated. If such reinstated FPTCs are verified by PA DoR, and the credits are still within their three-year maximum lifetime, they may be eligible for application to be assigned the same as if they had never been used.
- d. Questions about the existence or status of FPTCs awarded by PA DoR for expenses incurred prior to January 1, 2005 should be directed to the PA DoR. Questions about the existence or status of FPTCs awarded by PA DCED for expenses incurred on and after January 1, 2005 or about the eligibility of any specific FPTC to be approved for assignment should be directed to DCED, Film Office.
- e. If the company holding the FPTC is a Pass Through Entity (as defined by 72 P.S. §872-C) and does not have sufficient tax liability to use the FPTC, it may elect in writing, according to procedures established by the department, to transfer all or a portion of the credit to shareholders, member, partners or partners in proportion to the share of its distributive income to which the shareholder, member or partner is entitled. This FPTC for the shareholder or member is in addition to any FPTC to which the shareholder is otherwise entitled, but the pass-through entity and a shareholder or member of that pass-through entity may not claim a credit under this article for the same qualified film production expense. For credits awarded on or before August 15, 2005, the FPTC passed through to a shareholder or member may be carried forward for a maximum of three taxable years. For credits awarded after August 15, 2005, the FPTC passed through to a shareholder or member must be used in the tax year in which it is passed through.

* FPTCs are issued or approved by the Pennsylvania Department of Revenue (PA DoR) for expenditures made prior to January 1, 2005. FPTCs are issued or approved by the Pennsylvania Department of Community and Economic Development (DCED) for expenditures made on or after January 1, 2005.

3. Tax Credit Buyers

- a. A buyer may use a FPTC, purchased after proper approval, to offset or use against any qualified tax liability up to a maximum of 50% of that qualified tax liability for the taxable year in which the application for approval is received by DCED. Qualified tax liabilities are those covered in Articles III, IV, and VI of the Tax Reform Code including:
 - 1) Personal Income Tax
 - 2) Corporate Net Income Tax
 - 3) Capital Stock / Franchise Tax
- b. A buyer may not carry over, carry back, obtain a refund of, or assign the Film Production Tax Credit. The buyer must claim the credit in the taxable year in which the approval to assign the FPTC is made.

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Film Tax Credit Assignment Program

Application to Assign Film Tax Credit

Application Number: _____

Date Received: _____
(To be filled in by DCED)

Note: This date may be used to determine in which taxable year the assigned tax credit may be claimed by the buyer.

1. Prospective Seller or Assignor:

Company Name: _____

Company Address: _____

EIN for which Employer withholding tax is being reported: _____

Other Contact Information:

Telephone: _____ (_____)

FAX: _____ (_____)

E-mail Address or other: _____

Please use the same name and address as is on record with the PA Department of Revenue unless that on-file information has been changed and is no longer valid.

Taxpayer Identification (SSN or Box Number): _____

Date of Issue or Approval of Tax Credits to be Transferred or Assigned: _____

Amount of Approved Film Tax Credit to be Transferred or Assigned from the listed Issue or approval Date: \$ _____

Signature and Business Title of Prospective Assignor:

Signature: _____

Printed Name: _____

Printed Title or Affiliation to the Business: _____

2. Prospective Film Tax Credit Buyer or Assignee:

Name: _____

Address: _____

Other Contact Information:

Telephone: () _____

FAX: () _____

E-mail Address or other: _____

Please use the same name and address as is on record with the PA Department of Revenue unless that on-file information has been changed and is no longer valid.

Taxpayer Identification (SSN or Box Number): _____

3. Information on the Film Tax Credit Assignment:

Dollar Amount agreed upon to complete the transfer or assignment: \$ _____

Were the services of any agent(s) or facilitator(s) used to arrange this prospective Film Tax Credit Transfer? _____

If the services of any agent(s) or facilitator(s) were used, please identify the agent(s) or facilitator(s):

What, if any, fee or commission was, or is being, paid to each agent(s) or facilitator(s) listed above?

4. Definitions