

Film Tax Credit

Program Guidelines | October 2013

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Growing Pennsylvania's Film Industry

For Pennsylvania to be competitive there are many significant gaps that must be addressed. This includes post-production talent, a highly trained intellectual workforce and infrastructure development such as sound stages, music studios and post-production facilities. In addition, technical and creative individuals are needed to address the movement to digitally produced (i.e., gaming, video, etc.) and distributed content. To create a sustainable, truly indigenous industry, the Pennsylvania Film program is intended to:

- Foster economic growth and innovation in the film industry that is aligned with Pennsylvania's economic needs and goals.
 - Attract production companies to the state and increase the number of projects filming in Pennsylvania.
 - Develop new programs and funding opportunities that provide additional support and resources for local filmmakers.
- Stem the decline and loss of jobs, wages and capacity in the film and film-related industries.
 - Strengthen Pennsylvania's local talent base and facilitate outreach to diverse filmmakers and educators.
 - Prepare Pennsylvania communities for production inquiries and activities.
 - Increase the number of qualified businesses and crew listed in the online production guide via workshops, lectures, training programs, etc.
- Leverage the film tax credit program to support Pennsylvania's tourism industry.

Section I – Introduction

The Commonwealth of Pennsylvania, through the Department of Community and Economic Development (the “Department”) and the Pennsylvania Film Office (“PA Film Office), administers the Film Tax Credit Program (the “Program”) authorized by Act 55 of July 25, 2007 (the “ACT”), a copy of which is attached as Appendix A.

Applicants should read and understand the requirements of the ACT prior to submitting an application. Applicants are also strongly advised to consult with their legal and financial advisors prior to submitting an application.

Section II – Program Eligibility

Projects eligible for Film Tax Credits under the Program are: the production of a feature film, a television film, a television talk or game show series, a television commercial, a television pilot or each episode of a television series intended as programming for a national audience.

The following are NOT eligible projects: a production featuring news, current events, weather and market reports, or 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.

Section III – Program Requirements

All Film Tax Credit awards are subject to the availability of funds.

Eligibility

A project is eligible if at least 60% of the project’s Total Production Budget is used for Qualified Pennsylvania Production Expenses.

Projects already completed at the time of application are not eligible for a Film Tax Credit.

Projects with a Film Tax Credit Contract may not submit a revised or new application for additional film tax credits for the same project.

Available Tax Credits

The amount of the Film Tax Credit available for an eligible project is equal to 25% of Qualified Pennsylvania Production Expenses for the project. The term “Qualified Pennsylvania Production Expenses” includes nearly all production (including pre- and post-production) expenses incurred in Pennsylvania, subject to certain limitations and exceptions.

An eligible project may receive an additional 5% tax credit if the taxpayer films a feature film, television film or television series, which is intended as programming for a national audience and the taxpayer films the eligible project in a Qualified Production Facility that meets the minimum stage filming requirements.

If a project is scheduled to be in production for more than 12 months the applicant may, at the time of application, make a written request for the Film Tax Credit to be issued on an annual basis rather than upon completion of production. The PA Film Office may, at its discretion, grant such a request subject to the following conditions:

- The amount of the Film Tax Credit to be issued shall be limited to 25% of Qualified Pennsylvania Production Expenses actually incurred in connection with the project during the relevant 12 month period specified in the request;
- The applicant shall comply with the Financial Compliance instructions for the Program (Section X) with respect to each Film Tax Credit to be issued under this provision; and
- If accepted by the PA Film Office, the request may not be withdrawn or changed.

The PA Film Office will limit a Film Tax Credit award to an amount not greater than 20% of the aggregate amount of Film Tax Credits available in any fiscal year.

Marketing Requirements

Recipients of a Film Tax Credit will be required to do the following:

- Include with the production's end credits an acknowledgement of the support provided by the PA Film Office and any applicable regional film office(s) to include the logos of the PA Film Office and any applicable regional film office(s). The acknowledgement and logos to be used for the PA Film Office and eligible regional Film Offices may be found in Appendix B of these Guidelines and are available at filminpa.com. The PA Film Office reserves the right to refuse Pennsylvania's name in the credits of a motion picture filmed or produced in the commonwealth. This will be indicated in the Film Tax Credit Contract or at a later time in writing.
- Placement of the PA Film Office logo on all packaging material and hard media, unless such placement is prohibited by licensing or other contractual obligations.
- Placement of a 30-second "visitPA" promotional video on all optical disc formats of a film, unless such placement is prohibited by licensing or other contractual obligations, and such is indicated in writing by an officer of the production company. The 30-second promotional video shall be approved and provided by the Pennsylvania Tourism Office in consultation with the Executive Director of Tourism & Film Marketing.

Recipients of a Film Tax Credit will also be required to provide the following:

- Five different high resolution still production photos in a digital format will be provided to the PA Film Office before public distribution of the production, with rights cleared for Pennsylvania's Tourism & Film Offices' promotional use only.
- Three copies of the full-size poster for the production to the PA Film Office before public distribution of the production. If none are created, two copies of other marketing materials shall be provided.
- One copy of the electronic press kit for the production at the time it is made available to the press, if one is created.

Section IV – Qualified and Non-Qualified Production Expenses

Qualified Pennsylvania Production Expenses

- Salaries and wages earned in Pennsylvania if such amounts are subject to Pennsylvania taxation. However, there is a cap of \$15 million in aggregate payments for “above the line” services to be provided by principal actors, whether directly or through a “loan-out” company.
- Music and story rights only if the rights are acquired from a Pennsylvania resident or an entity subject to Pennsylvania taxation.
- The costs of production operations incurred in Pennsylvania such as the following:
 - Construction
 - Photography
 - Visual effects
 - Lighting, editing, sound synchronization
 - Wardrobe and accessories
 - Food and lodging
 - Fringe benefits
- The cost of rental of facilities and equipment from a Pennsylvania taxpayer.
- The cost of insurance coverage purchased through an insurance agent based in Pennsylvania.
- Costs of travel to, from and within Pennsylvania.
- Costs of shipping to, from and within Pennsylvania including overnight delivery services.
- Fees for production services (including pre- and post-production services). The PA Film Office strongly encourages that post-production occurs in Pennsylvania.
- Production-related services such as legal and accounting fees if paid to a Pennsylvania taxpayer and all or substantially all the services are actually performed in Pennsylvania.
- International costs must be included as part of the total production cost.

Non- Qualified Pennsylvania Production Expenses

- Development costs, financing costs, marketing costs and advertising costs.
- Costs incurred in connection with the sale or transfer of a tax credit.
- In order to promote jobs in Pennsylvania, the PA Film Office will not recognize the following as Qualified Pennsylvania Production Expenses:
 - Fees paid for production services performed outside of Pennsylvania, regardless of whether they were performed by a Pennsylvania taxpayer; or

- 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 Pennsylvania Film Tax Credit applicants, regardless of whether such purchases or such vendors are subject to taxation in Pennsylvania. Pass Through', defined in Section XIII, do not qualify as a production 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 there is no Pennsylvania company 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 film production expense.

Refer to Appendix C for a list of Qualifying and Non-Qualifying Expenditures.

Section V – How to Apply

Applicants must provide a complete application package to the PA Film Office in order to be considered for a Film Tax Credit. Incomplete applications will not be accepted. The application package consists of the following information and documentation:

- A completed Film Tax Credit Application as contained in Appendix D. The application is also available at <http://www.filminpa.com/filminpa/Incentives.jsp>.
- Applicants must submit the Budget Top Sheet (Appendix E) which provides a side-by-side comparison of Total Production Expenses and Qualified Pennsylvania Production Expenses. Refer to Appendix C for a list of Qualified and Non-Qualified Expenditures.
- Applicants must provide verifiable documentation that 70% of the financing for the project has been secured and the remaining 30% will be secured prior to the planned start date of principal photography in the commonwealth. Applicants must provide appropriate documentation and must notify the PA Film Office of any change in financing prior to completion of the project. A Film Tax Credit Contract will NOT be issued to projects that have not secured financing and submitted the necessary documentation.
- A copy of the script.
- A completed "Single Application" available at www.newPA.com. The "Single Application" must be submitted electronically. Refer to Appendix F for "Instructions on Completing the Single Application" online.

Successful completion of all items listed above meets the requirements of and definition of a completed application package. Within 15 days of submitting the complete application package, the following must occur:

- An interview with the Film Tax Credit Program Manager (in person or by telephone) to discuss the application. Interested applicants should request an appointment by calling 717-720-1312. The Director of the Regional Office, will be invited to participate in the interview process for projects anticipating to film in their respective region.
- An application fee of .2% (two-tenths) of 25% of your estimated expenditures in Pennsylvania not to exceed \$10,000. The application fee is non-refundable unless your application is rejected due to a lack of funds. Any amendments to an application that was denied funding will constitute a new application; thus a new application fee is required. The application fee does not apply to projects with a total production cost of one million dollars or less. Checks must be payable to the "Commonwealth of Pennsylvania."

- Any other information or documentation deemed appropriate by the PA Film Office.
- Applications must be mailed to:

Janice Collier
Film Tax Credit Manager, Tax Credit Division
Pennsylvania Film Office
Department of Community & Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Phone: (717) 720-1312
jacollier@pa.gov

Complete application packages including an application fee may be filed no sooner than 90 days prior to the start date of principal photography in the commonwealth or an earlier date that is approved by the Pennsylvania Film Office.

Section VI – Review Process

All applications will be reviewed for completeness and compliance with the ACT and these Guidelines. Applicants will be notified by email of missing information or non-compliance with the Guidelines. Applicants will have the opportunity to correct their application submissions; however, an application will not be placed in the funding queue until all required information is received by the PA Film Office. A complete application package will be reviewed and approved or disapproved within in a 90 day period: July 1st through September 30th; October 1st through December 31st; January 1st through March 31st and April 1st through June 30th.

Section VII – Application Evaluation

The PA Film Office will determine the competitiveness of application by conducting a quantitative analysis based on the following criteria:

1. The anticipated number of production days in a qualified production facility.
2. The anticipated number of Pennsylvania employees.
3. The number of preproduction days through postproduction days in Pennsylvania.
4. The anticipated number of days spent in Pennsylvania hotels.
5. The Pennsylvania production expenses in comparison to the production budget.
6. The use of studio resources.
7. Other criteria that the Director of the Pennsylvania Film Office deems appropriate to ensure maximum employment and benefit within the Commonwealth of Pennsylvania.

Applications not approved may be reviewed and considered in subsequent application periods.

Section VIII – Film Tax Credit Contract

If an application for a Film Tax Credit is approved, the PA Film Office will prepare and send a Film Tax Credit Contract to the Applicant. The contract will specify the maximum amount of Film Tax Credits and the Applicant's obligations including, but not limited to the following:

- The Applicant has registered to do business in Pennsylvania prior to the commencement of principal photography in Pennsylvania; and
- All personal service corporations or loan-out companies engaged by the Applicant are incorporated or formed in or have registered to do business in Pennsylvania prior to the commencement of principal photography in Pennsylvania or have obtained a certificate of authority in a reasonable period of time.
- If an organization determines that it needs to register to do business in Pennsylvania, the link to the Forms section of the Department's Corporation Bureau website is www.dos.state.pa.us or call 1-888-659-9962 or 717-787-1057.
- The production has commenced or will commence in Pennsylvania (e.g., a production report) in accordance with the terms of the application submitted by the Applicant, the ACT and these Guidelines.
- Provide monthly progress reports until completion of the production using the form in Appendix G. Monthly Reports are due within five business days after the end of each month following the Applicant's acceptance of the Film Tax Credit Contract. A Final Production & Economic Impact Report must be submitted to the PA Film Office within 120 days of completion of the production using the form found in Appendix H.
- Submit an independently audited report of Total Production Expenses and all Qualified Pennsylvania Production Expenses upon completion of the project (i.e., completed film has been delivered to investors and is ready for distribution). Each expense must be verifiable by an independent CPA, including the amount and date the expense was incurred, the identification of vendors and employees paid, and the tax ID or social security number of each payment recipient. The report shall be prepared in accordance with the Financial Compliance instructions for the Program as stated in Section X.
- Adherence to the marketing requirements as outlined in Section III.
- Such other terms and conditions as the PA Film Office deems appropriate.

Acceptance of the Film Tax Credit Contract must be made by returning one original signed copy of the Film Tax Credit Contract to the PA Film Office within 30 days of the date the Film Tax Credit Contract was issued. Contracts must be returned to:

Janice Collier
Film Tax Credit Manager, Tax Credit Division
Pennsylvania Film Office
Department of Community & Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Withdrawal of Film Tax Credit

A Film Tax Credit that has been awarded to an Applicant **WILL BE REVOKED** if the Applicant:

- Fails to return an original signed copy of the Film Tax Credit Contract within 30 days of the date on the Film Tax Credit Contract.
- Fails to notify the PA Film Office that the start date of principal photography has changed from the date indicated in the application and/or Film Tax Credit Contract.

Section IX – Issuance of Film Tax Credit Certificates

Film Tax Credit Certificates will be issued by the Department upon review and approval of the following documents:

- Final Production & Economic Impact Report utilizing the form in Appendix H.
- Final Budget Top Sheet utilizing the form in Appendix E.
- Final Pennsylvania Vendor/Subcontractors Report utilizing the form in Appendix I.
- Final Cast & Crew Form in Appendix J.
- Audit. Refer to Section X for specific information on Financial Compliance.
- Receipt of all marketing materials as outlined in Section III.
- Any other information requested by the PA Film Office.

Provided the information supplied to the PA Film Office meets all requirements of the Program, a Film Tax Credit Certificate will be issued within 45 days of receipt of the information. The amount of Film Tax Credits issued may not exceed the amount requested in the application.

A Film Tax Credit Certificate can only be issued to entities that have a Pennsylvania state tax ID number. All entities not incorporated or formed within Pennsylvania must register to do business in Pennsylvania in order to obtain a state tax ID number.

Section X – Financial Compliance

The following procedures relate to the financial compliance requirements of the Pennsylvania Film Tax Credit guidelines and the Film Tax Credit Contract between the Applicant and the Department. Applicants may submit a Report on Agreed Upon Procedures for projects in receipt of a Film Tax Credit of less than \$100,000. All other projects must submit a Project Audit. The Project Audit or Report on Agreed Upon Procedures must be submitted within 120 days after completion of production unless a request by email for an extension has been submitted to and approved by the PA Film Office. Requests should be emailed to RA-audits@pa.gov.

Guidelines for a Report on Agreed Upon Procedures

This section only applies to projects approved for a Film Tax Credit of less than \$100,000.

- Selection of an Independent Certified Public Accountant
 - The Report on Agreed Upon Procedures must be performed by a Certified Public Accountant (CPA) licensed in Pennsylvania. 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.
 - All agreements for audit services must contain a statement giving the Department the right to review any work performed by the auditors and to reject any work it considers to be non-compliant with the requirements of this procedure.
 - Prior Department approval of the CPA selection is not required unless the Applicant is specifically notified in writing.
- Scope of the Agreed Upon Procedures Engagement
 - The Agreed Upon Procedures Engagement must include all funds expended on the Project under the Film Tax Credit Contract, and must encompass the entire contract period.
 - Other periods may also be specified at the discretion of the Department and the Department reserves the right to designate additional compliance factors.

- Components of the Agreed Upon Procedures Engagement

The Agreed Upon Procedures Engagement must be done in accordance with the attestation standards established by the American Institute of Certified Public Accountants, and must include, at a minimum, the following:

- Accountant's Report on Agreed Upon Procedures
 1. The CPA will read the ACT and Guidelines in effect as of the approval date of the Film Tax Credit and any other material provided by the PA Film Office.
 2. The CPA will test, on a sample basis, payments to individuals (payroll), whether the payments were made to an individual or a loan-out company, and verify the agreement of: the date the expense was incurred, the vendor/individual and the amount of the expense. The CPA will also inspect the invoice/documentation for evidence of the expense being incurred in Pennsylvania if such invoice has been included in the report as a Qualified Pennsylvania Production Expense in accordance with the ACT and Guidelines. The criteria for determining the sample size for this procedure will be as follows: The CPA will select all individuals whose total earnings were in excess of \$10,000 and sample 50% of the additional individuals whose total earnings were less than or equal to \$10,000.
 3. The CPA will verify that all loan-out companies for which the Applicant has recorded payments as qualified are (a) incorporated or formed in the commonwealth; or (b) authorized to do business in the commonwealth and have obtained a certificate of authority in a reasonable period of time not to exceed one year from the date services were provided. The CPA must confirm that Pennsylvania personal income tax must also be withheld from compensation of nonresident employees for services performed within Pennsylvania.

4. The CPA will test, on a sample basis, all expenses other than payments to individuals (non-payroll) and compare to the supporting invoices and proof of payment verifying the agreement of: the date the expense was incurred, the vendor and the amount of the expense. The CPA will also inspect the invoice/documentation for evidence of the expense being incurred in Pennsylvania if such invoice has been included in the report as a Qualified Pennsylvania Production Expense in accordance with the ACT and Guidelines. The criteria for determining the sample size for this procedure will be as follows: The CPA will select all expenditures in excess of \$5,000 and sample 50% of the additional items from the remaining population.
 5. If the extrapolated error for all sample strata is equal to or greater than the greater of \$10,000 or 5% of Total Production Expenses submitted, the Applicant will have the option to submit the expense classification again and the CPA will perform the testing process again or as an alternative, the Applicant can elect to accept the results of the initial testing and accept the resulting Film Tax Credit reduction adjustments as calculated by the CPA as a result of extrapolating the errors initially identified. To the extent that errors of non-compliance are found that are not subject to a reclassification as discussed above, the errors found in each sample strata will be extrapolated to arrive at a revised amount.
 6. The CPA will calculate the amount of the credit at 25% of the Qualified Pennsylvania Production Expenses, as adjusted for the finding noted in procedure (5) above.
- Statement of Total Qualifying Production Expenses and Total Production Expenses and computation of the Film Tax Credit.
 1. Obtain documentation of all production expenses for the project and total principal photography days for the qualified period.
 2. Verify that Pennsylvania's Production Expenses exceeded 60% of all production costs during the qualified period.
 - Report of Estimated Pennsylvania Sales Tax and total Pennsylvania individual gross income taxes withheld related to the project.
 1. The CPA will inspect categories of expenses and payroll reports and prepare an estimate of sales taxes and individual gross income taxes related to the Project. Report containing an attestation that the Applicant has met the conditions set forth in the Act and the Film Tax Credit Contract.
 - Submission of the Report of Agreed Upon Procedures
 - Two copies of the report, engagement letter and Film Tax Credit Contract are required to be submitted to the PA Film Office within 120 days after the completion of the production. Submit these documents to:

Janice Collier
Film Tax Credit Manager, Tax Credit Division
Pennsylvania Film Office
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 Report on Agreed Upon Procedures can be answered by the Audits & Compliance Office within the Department at 717-346-9023.

Guidelines for Project Audits

This section applies to all projects approved for a Film Tax Credit of \$100,000 or greater or as stipulated in the Film Tax Credit Contract.

- Selection of an Independent CPA
 - The Audit must be performed by a CPA licensed in Pennsylvania. 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.
 - The independent auditor must be qualified to meet the standards of the Government Auditing Standards (GAS).
 - All agreements for audit services must contain a statement giving the Department the right to review any work performed by the auditors and to reject any work it considers to be in non-compliance with the requirements of this procedure.
 - Prior Department approval of the CPA selection is not required unless the Applicant is specifically notified in writing.
- Scope of the Project Audit
 - The Project Audit must include Total Qualifying Pennsylvania Expenses and Total Production Expenses for the Project and must encompass the entire contract period which is stated in the Film Tax Credit Contract. (Note: If using an accrual basis, it may be necessary for the Applicant to request an extension to the 120 days in order to review all expenditures adequately. Once a Project Audit is submitted, there is no ability to make adjustments.)
 - Other periods may also be specified at the discretion of the Department.
 - The Department reserves the right to designate additional compliance factors.
- Components of the Project Audit
 - The Project Audit must be done in accordance with the standards set forth in the Government Auditing Standards (GAS), and its current revisions, and must include, at a minimum, the following:
 1. Accountant's Report
 2. Financial Statements, including:
 - Statement of Total Qualifying Pennsylvania Expenses and Total Production Expenses
 - Notes to the Statement of Total Qualifying Pennsylvania Expenses and Total Production Expenses including Pennsylvania compensation.
 - Report of all findings regardless of materiality. The Film Tax Credit will be reduced based upon errors found.
 3. Report of Estimated Pennsylvania Sales Tax and total Pennsylvania individual gross income taxes withheld related to the Project.
 4. The CPA will calculate the amount of the credit at 25% of the Qualified Pennsylvania Production Expenses.
 5. Report on internal control over financial reporting and on compliance and other matters.

6. Report on compliance with requirements that could have a direct and material effect on the applicants Film Tax Credit: including all findings (e.g., instances of non-compliance or deficiencies in the internal control structure), along with all attendant costs.
 7. Applicant Response and Corrective Action Plan: The Applicant's response must include a plan of corrective action to address all material findings of non-compliance or internal control weaknesses disclosed in the audit report, and must be signed by an appropriate official of the contracting entity. For each finding noted, the Corrective Action Plan must include:
 - A description of the finding. If there is a finding that has re-occurred from the year before this must be noted. It is the auditor's responsibility to inspect the prior project reports.
 - The specific steps to be taken to correct the situation or specific reasons why corrective action is not necessary.
 - A timetable for the implementation of the corrective action steps. The deadline for implementation of corrective action is no longer than six months after the submission of the report.
 - A description of monitoring to be performed to ensure that the steps are taken.
 8. To the extent it is applicable, the CPA will verify through documentation of expenses that the Applicant has spent or incurred the minimum direct expenditures relating to the use or rental of tangible property or performance of services provided by a qualified production facility using the procedures noted above and as set forth in the Act and Guidelines.
- Submission of the Project Audit Report
 - Two copies of the following: the audit, engagement letter and Film Tax Credit Contract are required to be submitted to the PA Film Office within 120 days after the completion of the production. Submit these documents to:

Janice Collier
Film Tax Credit Manager, Tax Credit Division
Pennsylvania Film Office
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 Project Audit can be answered by the Audits & Compliance Office within the Department at 717-346-9023.

Section XI – Use and Transfer of Film Tax Credits

Use or Sale of the Film Tax Credit

Film Tax Credits may be applied against tax liability under the following Pennsylvania taxes (under Articles III, IV, VI, VII or IX of the Tax Reform Code of 1971):

- Personal Income Tax (but not tax withheld by an employer from an employee)
- Corporate Net Income Tax
- Capital Stock and Franchise Tax
- Bank Shares Tax
- Insurance Premiums Tax

The Film Tax Credit must first be applied to the Applicant's tax liability for the Applicant's tax year in which the Film Tax Credit is issued and cannot be applied against such liability until the return for such year has been filed. If the Applicant's tax liability is less than the Film Tax Credit issued to it, the Applicant:

- May carry forward the unused portion of the Film Tax Credit for a period not to exceed three additional taxable years and may use the Film Tax Credit to offset eligible tax liabilities during those years; or
- May apply to the PA Film Office for approval for the sale, transfer or assignment of all or a portion of the Film Tax Credit to another entity having such tax liabilities using the Assignment Application attached as Appendix K.

An applicant may not carry back or obtain a refund of any unused Film Tax Credits.

An applicant must file all required state tax reports and returns for the years up to and including the date of the issuance of the Film Tax Credit Certificate and pay any balance of state tax due as determined at settlement, assessment or determination by the Pennsylvania Department of Revenue before the Film Tax Credit can be used and before an application for sale or assignment will be approved.

After submitting an Assignment Application to sell the Film Tax Credit, an applicant may no longer use that portion of the Film Tax Credit to offset an eligible tax liability unless the application is denied by the PA Film Office or withdrawn by the Applicant.

The Applicant must identify the buyer company or individual, and the buyer must sign the application to sell the Film Tax Credit.

Film Tax Credit Buyer

The buyer must be identified in the application for the sale of the Film Tax Credits submitted by the Applicant. A separate application must be submitted for each buyer. The buyer must claim the full amount of the purchased Film Tax Credit in the taxable year in which the application for the sale of the Film Tax Credit is approved by the PA Film Office. The purchased or assigned Film Tax Credits may be used against tax liability under the following Pennsylvania taxes (Articles III, IV, VI, VII or IX of the Tax Reform Code of 1971):

- Personal Income Tax (but not tax withheld by an employer from an employee)
- Corporate Net Income Tax
- Capital Stock and Franchise Tax
- Bank Shares Tax
- Insurance Premiums Tax

Any portion of the Film Tax Credit not used by the buyer in the year of the purchase is lost and may not be used in any other tax year. The amount of the purchased credit may not be used to offset more than 50% of the buyer's tax liability in that taxable year. The buyer may not carry forward, carry back, obtain a refund of, or assign the Film Tax Credit. Film Tax Credits may be sold only once.

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 purchase 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.

The Transfer of Film Tax Credits

Tax Credits will be closely coordinated between the PA Film Office and the Pennsylvania Department of Revenue.

Film Tax Credits can only be sold or assigned to entities that have a Pennsylvania state tax ID number. All entities not incorporated or formed within Pennsylvania must register to do business in Pennsylvania in order to obtain a state tax ID number.

Applications for the transfer of all or a portion of the Film Tax Credit submitted to the PA Film Office will be reviewed within 15 days of receipt by the PA Film Office. If the application is complete in all respects, the PA Film Office will forward the application to the Pennsylvania Department of Revenue for review and processing.

The Pennsylvania Department of Revenue may take up to 60 days to review the application and confirm compliance with all conditions before posting the transfer to the seller's and buyer's respective accounts with the Pennsylvania Department of Revenue. The Pennsylvania Department of Revenue will issue a written confirmation of the transfer to both the seller and buyer. Sellers and buyers of Film Tax Credits may each confirm the completion of all transfers by calling 1-888-728-2937 (Option 1, 2, 5) with the Corporate Tax Account ID number in hand.

Application

Prospective applicants must submit applications on the Assignment Application included in Appendix K. Completed applications, including a copy of the Film Tax Credit Certificate along with all required signatures and attachments, must be submitted to:

Janice Collier
Film Tax Credit Manager, Tax Credit Division
Pennsylvania Film Office
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.

Expediting the Application Process

The PA Department of Revenue encourages Applicants to adhere to the following steps to ensure expeditious processing on the use of or sell of the Film 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).
- Provide an accurate and complete breakdown of production expenses.
- Sellers of Film Tax Credits must be compliant across all taxes for which the entity is subject. Forms and instructions are available on the Pennsylvania Department of Revenue web site at www.revenue.pa.us.
- Adhere to the requirements of selling Film Tax Credits. (See Corporation Tax Bulletin 2011-03)

Agents or facilitators engaged to assist an Applicant in the use or sale of Film Tax Credits must complete and sign a Third Party Agent Consent Form in Appendix L and submit along with the Film Tax Credit Assignment Application.

Section XII – Confidentiality

Materials submitted to the PA Film Office and 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 will protect applicants from disclosure of:

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

Under the Right to Know Law all applications received by the Department will become available to the public upon request from the time of their receipt.

The PA Film Office may share information with the Applicant's regional film office to help the Applicant forge local connections and to enhance the quality of services offered to the Applicant.

Section XIII – Definitions

Affiliate – a qualified taxpayer’s affiliated corporation that has been assigned any portion of the Film Tax Credit amount by the qualified taxpayer.

Applicant – any corporation, partnership, limited partnership, limited liability company (LLC) or other entity or individual that is principally engaged in the production of the “qualified motion picture” and that controls the film or television program during pre-production, production and post-production. The Applicant is the qualified taxpayer that upon final approval will receive the Film Tax Credit Certificate.

Completed Film – a film is considered complete when the film is ready to be delivered to the distributor.

Department – the Department of Community and Economic Development responsible for administering the Film Tax Credit program.

Film Tax Credit Certificate – the certificate issued by the PA Film Office upon completion of the qualified motion picture reflecting the Film Tax Credit amount allocated after Qualified Pennsylvania Expenditures have been verified.

Film Tax Credit Contract – the document issued by the PA Film Office awarding an amount of Film Tax Credits to an Applicant having a “qualified motion picture” based on an estimate of “Qualified Pennsylvania Production Expenditures.”

Minimum Stage Filming Requirements:

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 – companies that provide products or services to a production company of which they are not regularly engaged in that business. 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 an inventory, will not qualify as a qualified film production expense. For example: A production company contracts with a Pennsylvania food services company to provide audio post-production services to a film. While the company is a Pennsylvania taxpayer, this expenditure would be deemed a pass through transaction and would not qualify since the company is not in the business of, nor has the capability of, providing audio post-production services to the film.

Post-production – activities in a qualified motion picture’s production, including but not limited to editing, foley recording, ADR, sound editing, negative cutting, color correction, sound mixing and visual effects.

Pre-production – the process of preparation for actual physical production which begins after a qualified motion picture has received a firm agreement of financial commitment. Customarily includes, but is not limited to, activities such as location scouting, hiring of key crew members, and establishment of a dedicated production office.

Principal Photography – the phase of production during which the motion picture is actually shot, as distinguished from pre-production and post-production. Principal photography days refer to the number of days shot by the principal unit with the director and lead actors usually present.

Qualified Pennsylvania Production Expenditures – amounts paid or incurred to purchase or lease tangible personal property used within the state in the production of a qualified motion picture. It includes payments, including qualified wages, for services performed within the state in the production of same. Refer to the Act (Section 8702-D. Definitions) for further details on eligible expenditures.

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 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.

Total Production Budget – the budget used by the Applicant that shall include but is not limited to “above the line” costs including wages, and “below the line” costs including post-production, insurance, rights and music and clip licensing fees. Total Production Budget shall include wages, goods, and services performed and incurred within and outside of Pennsylvania. It does not include costs which are not directly associated with the preproduction, production or post-production of the project, such as: distribution prints and advertising, marketing, film festival participation, financing or distribution costs such as theater rentals and DVD manufacturing.

Vendor – a person selling goods or services that has a physical presence in Pennsylvania and is subject to gross receipts tax or income tax.