

# VIDEO GAME PRODUCTION TAX CREDIT

Program Guidelines | August 2020



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## **Section I – Introduction**

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The Commonwealth of Pennsylvania (the “commonwealth”), through the Department of Community and Economic Development (the “Department”), administers the Video Game Production Tax Credit Program (the “Program”) authorized by Article XVII-D-Subarticle D of the Tax Reform Code of 1971 (P.L. 6, No.2) (the “Act”), a copy of which is attached as Appendix A.

Applicants should read and understand the requirements of the statute 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 – Eligibility**

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Eligibility for a Video Game Production Tax Credit is restricted to Video Game production companies subject to taxation under Article III, IV, or VI of the Tax Reform Code of 1971 (the “Applicant”) that produce a Video Game, as defined in the Act. Contractors or subcontractors of a Video Game production company are not eligible to receive Tax Credits under the Program.

A Video Game that contains obscene material or performances as defined in 18 Pa.C.S. §5903(b) (relating to obscene and other sexual materials and performances) or a game designed primarily for private, political, industrial, corporate or institutional purposes is not eligible for a Video Game Production Tax Credit.

To be eligible for a Video Game Production Tax Credit, Pennsylvania Production Expenses must comprise at least 60% of a Video Game’s total Production Expenses.

### **A. Exclusions**

Projects with a Video Game Production Tax Credit Contract may not submit a revised or new application for additional Tax Credits for the same Video Game production project.

Under the Act, Video Game Production Tax Credits will not be awarded for fiscal years prior to fiscal year 2017-2018.

Approval and award of all Video Game Production Tax Credits are subject to the availability of Tax Credits in a fiscal year.



## **Section III – Marketing Requirements**

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Recipients of a Video Game Production Tax Credit are required to:

- Include and provide confirmation that the logo and official acknowledgement of the support provided by the commonwealth appear in the Video Game’s end credits. The logos and language for the official acknowledgement of Pennsylvania support are provided in Appendix J of these Guidelines and available at [filminpa.com](http://filminpa.com). The commonwealth reserves the right to refuse the use of Pennsylvania’s name in the credits of a Video Game produced in the commonwealth. Such refusal will be indicated in the Video Game Production Tax Credit Contract or in writing at a later time.
- Place the Pennsylvania logo on all packaging material and hard media, unless such placement is prohibited by licensing or other contractual obligations.
- Provide the Department one copy of the electronic press kit for the Video Game at the time it is made available to the press, if one is created.

## **Section IV – Expenses**

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The following is a list of expenses eligible for a Video Game Production Tax Credit for Video Games. The dollar amount of the Tax Credit is based on the dollar amount of Qualified Video Game Production Expenses incurred in the commonwealth. The listed expenses apply to a Video Game’s Qualified Video Game Production Expenses and the total Production Expenses used to calculate a Video Game’s eligibility for the Program.

- Compensation paid to an individual employed in the production of a Video Game.
- Compensation paid to a personal service corporation or a pass-through entity representing individual talent.
- Cost of:
  - Construction
  - Operations
  - Editing
  - Photography
  - Sound synchronization
  - Lighting
  - Wardrobe and accessories.
- Vehicle leasing.
- Transportation to or from a train station, bus depot, or airport.
- Insurance coverage.
- Food and lodging.
- Purchase of music or story rights.
- Rental of facilities and equipment.
- Development and production costs relating to Video Games.

- Production expenses incurred in Pennsylvania involving the development and manufacture of Video Game Equipment that is required for the development or functioning of a Video Game. Video Game Equipment includes the following:
  1. Integrated video and audio equipment, networking routers, switches, network cabling and any other computer-related hardware necessary to create or operate a Video Game.
  2. Software, regardless of the method of delivery, transfer or access.
  3. Computer code.
  4. Image files, music files, audio files, video files, scripts and plays.
  5. Concept mock-ups.
  6. Software tools.
  7. Testing procedures.
  8. A component part of items 2 through 8 listed above necessary and integral to create, develop, or produce a Video Game.

## A. Requirements for Certain Expenses

The following stipulations apply to certain Production Expenses in order for these expenses to be considered Qualified Video Game Production Expenses.

- Transportation must be to or from a train station, bus depot or airport located in Pennsylvania.
- Insurance coverage must be purchased from a Pennsylvania-based insurance agent.
- Music and story rights must be purchased from a Pennsylvania resident or from an entity subject to Pennsylvania taxation under Article III or IV of the Act.
- Production-related services, such as legal and accounting fees, must be paid to a Pennsylvania taxpayer and all, or substantially all, of the services performed in Pennsylvania.
- The rental cost of facilities and equipment must be from or through a Pennsylvania resident or an entity subject to Pennsylvania taxation.
- Wage and Salary Payments
  1. Only payments made to persons from which withholding of taxes under Part VII of Article III (Pennsylvania Personal Income Tax) of the Tax Reform Code of 1971 has been made.
  2. Only payments to a personal service corporation representing individual talent from which taxes imposed by Article IV will be paid or accrued on the net income of the corporation for the taxable year.
  3. Only payments to a pass-through entity representing individual talent from which withholding of taxes under Part VII or VII-A of Article III (pertaining to withholding of Pennsylvania Personal Income Tax) has been made.

**NOTE:** For questions pertaining to the state's withholding requirements, please refer to the Department of Revenue informational notice entitled, *Employer Withholding Requirements and the Video Game Production Tax Credit* that can be downloaded at: [www.revenue.pa.gov/taxcredits](http://www.revenue.pa.gov/taxcredits). More detailed information on the withholding process, in general, can be found in the *Employer Withholding Information Guide* available at: [www.revenue.pa.gov/FormsandPublications](http://www.revenue.pa.gov/FormsandPublications).

**Expenses for the development, financing, marketing, and/or advertising of a Video Game, as well as any costs incurred in connection with the sale or transfer of a Tax Credit, are explicitly excluded as eligible expenses. Also excluded is deferred, leveraged or profit participation paid or to be paid to individuals employed in the production of a Video Game or to entities representing an individual for services provided in the production of a Video Game.**

**NOTE:** There is a \$1 million cap on the aggregate amount of compensation paid to individuals or entities representing an individual for services provide in the production of a Video Game.

## Section V – How to Apply

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

- Evidence the Applicant is registered to do business in Pennsylvania prior to the start of principal production 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  
phone: 1-888-659-9962 or 717-787-1057.
- Provide proof that 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).
- Provide proof that all personal service corporations or loan-out companies that will be engaged by the Applicant are incorporated, or formed in Pennsylvania, or have registered to do business in Pennsylvania prior to the commencement of principal production in the commonwealth. 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 Video Game Production Tax Credit Application form (Appendix C).
- A completed Overall Video Game Production Budget Allocation Form (Appendix B) specifying the maximum amount of total Production Expenses and Qualified Video Game Production Expenses that will be incurred in each year of production. Under the Act, the maximum amount of Video Game Production Tax Credits that may be awarded to an Applicant is limited to a maximum of 25% of the Qualified Video Game Production Expenses to be incurred during each of the first four years that Video Game Production Expenses are incurred and 10% of expenses incurred in each subsequent year. As such, a new application is to be submitted each Production Year.  
  
**NOTE:** Per Section 1753-D (b) of the Act, the Department is required to approve or disapprove applications in the order in which they are received therefore there is no guarantee that Tax Credits will be awarded for year of production.
- A completed Production Year Budget Top Sheet listing the projected total and Qualified Video Game Production Expenses to be incurred (Appendix D).

**NOTE:** A separate Production Year Budget Top Sheet (Appendix D) is required upon completion of the Video Game Production Year listing the ACTUAL total and Qualified Video Game Production Expenses that were incurred for the Production Year.

- A completed “Single Application for Assistance” submitted electronically (ESA) and available at [www.esa.dced.state.pa.us](http://www.esa.dced.state.pa.us). Please refer to Appendix F for *Instructions on Completing the Single Application for Assistance* online.
  - By executing the ESA, the applicant seeking the tax credits is authorizing the Department to request access to, and review of, the company’s and its affiliates’ state tax returns and waives confidentiality under Pennsylvania law and authorizes release of this information. The ESA 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.
- A copy of the concept including game plan.
- Applicants must provide verifiable documentation that at least 70% of the financing for the Video Game production project has been secured and the remaining amount will be secured prior to the planned Start Date. Applicants must provide appropriate documentation and notify the Department of any change in financing prior to completion of the project. A Video Game Production Tax Credit Contract will NOT be issued for projects that have not secured financing and provided proof thereof.
- 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.

Completed application packages may be submitted no sooner than 180 days prior to the Start Date.

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

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

Mail Completed Applications to:

Janice Collier  
Entertainment Production Tax Credit 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, a telephone interview will be conducted with the Applicant to discuss the Video Game production project.



## **Section VI – Application Evaluation**

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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 applications will be reviewed and approved or disapproved in the order in which they are received. The Department’s review criteria in determining which Production Expenses can be considered Pennsylvania Production Expenses include:

- The Start Date of principal production.
- The location where the services are performed.
- The location where supplies are consumed.
- Other factors the Department deems appropriate.

The Department of Revenue will perform a State Tax Compliance Evaluation: All applicants must be in compliance with the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Pennsylvania 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.

## **Section VII – Video Game Production Tax Credit Contract**

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Upon approval of the Application, the Department will issue a Video Game Production Tax Credit 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:

- The production activity has commenced or will commence in Pennsylvania in accordance with the terms of the application submitted by the Applicant, the Act, and these Guidelines.
- Submission of monthly progress reports until completion of the production using the form in Appendix F. Monthly Reports are due within five business days of the end of each month following the Applicant’s acceptance of the Video Game Production Tax Credit Contract.
- Submission of an Economic Impact Report within 180 days of the end date of a Video Game’s Production Year, using the form in Appendix G. A Production Year begins on a production’s Start Date, which is the first day of principal production of a Video Game in Pennsylvania, and ends on the date immediately prior to the anniversary date of the production’s Start Date.
- Submission of an Economic Impact Report within 180 days of the production’s Completion Date (i.e., the date a completed Video Game is ready for distribution) that provides summary data and information for all Production Years, including any years the production was not awarded a Video Game Production Tax Credit Certificate, and contains an unduplicated count of employees who worked on the production, using the form in Appendix G.

- Submission of an independently audited Examination Engagement Report of total Production Expenses and Qualified Video Game Production Expenses upon completion of the Production Year, with the report prepared in accordance with the Financial Compliance instructions for the Program as stated in Section IX.
- Confirmation of the Marketing Requirements at the production's Completion Date, as outlined in Section III.
- Any other terms and conditions the Department deems appropriate.
- Submission of a request for tax clearance with the Pennsylvania Department of Revenue upon the production's Completion Date.

Applicants must return the signed, **original** Video Game Production Tax Credit Contract within 30 days of the contract's issuance date to:

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

#### **A. Revocation of Video Game Production Tax Credit Contract**

A Video Game Production Tax Credit Contract that has been issued to an Applicant **WILL BE REVOKED** for failure to:

- Return the original, signed copy of the Video Game Production Tax Credit Contract with the original signatures within 30 days of the contract date.
- Notify the Department if and when the Start Date has changed from the date indicated in the application and the Video Game Production Tax Credit Contract.
- Maintain state tax compliance during the production period.

## Section VIII – Issuance of Video Game Production Tax Credit Certificate

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The Department will issue a Video Game Production Tax Credit Certificate for a Production Year upon review and approval of the following documents:

- Economic Impact Report (Appendix G).
- Production Year Budget Top Sheet report listing the actual total Production Expenses and Qualified Video Game Production Expenses incurred (Appendix D).
- Pennsylvania Vendor/Subcontractors Report (Appendix H).
- Employees Form (Appendix I).
- Examination Engagement Report. Please refer to the following section (Section IX) for specific information on the Financial Compliance requirements.

Applicants will also be required to submit the following documents with the combined totals for all years of production following the final year of production in order to receive a Video Game Production Tax Credit Certificate for the final Production Year:

- Employees Form upon completion of the entire production (Appendix I) listing all employees who worked on the production in any and all Production Years.
- Economic Impact Report upon completion of the entire production (Appendix G) with the combined totals for all Production Years.
- Budget Top Sheet report with the combined totals for the actual total Production Expenses and Qualified Video Game Production Expenses incurred during all years of production upon completion of the entire production (Appendix D). Please refer to Section VII for a more detailed explanation of this requirement.
- All marketing materials as outlined in Section III.
- Any other information requested by the Department.
- Confirmation of state tax compliance requirements from the Pennsylvania Department of Revenue.

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

The Department will issue a Video Game Production 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 Video Game Production Tax Credits awarded will **not** exceed the amount stated in the Video Game Production Tax Credit Contract, but may be less if the audited Qualified Video Game Production Expenses are below the amount indicated in the Application.

## Section IX – Financial Compliance

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The following procedures pertain to the financial compliance requirements of the Pennsylvania Video Game Production Tax Credit program and the Video Game Production Tax Credit Contract issued between the Applicant and the Department.

Applicants for a Video Game Production Tax Credit must submit an **Examination Engagement Report** within 180 days of the end date of a Production Year, as specified in Section VII of these guidelines.

**NOTE:** Applicants will be required to submit an audited Examination Report for each year a Video Game Production Tax Credit Certificate is to be awarded. For example, if an application is submitted and approved each year for a Video Game production that takes five years to complete, the Applicant must submit an audited Examination Report for the Qualified Video Game Production Expenses incurred during the year for each and every year of production.

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

The Examination Report 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 Total Production Expenses, Qualified Video Game Production Expenses, and Non-Qualified Video Game Production Expenses. [See Sample Schedule in Appendix D.]
- b. Computation of the Video Game Production Tax Credit.

#### Criteria:

- a. The Eligibility Criteria in Section II of the Pennsylvania Department of Economic Development Video Game Production Tax Credit Program Guidelines
- b. The Expense Guidance in Section IV of the Pennsylvania Department of Economic Development Video Game Production Tax Credit Program Guidelines
- c. The Video Game Production Tax Credit Contract
- d. Article XVII-D-Subarticle D 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 Engagement Report, engagement letter and Video Game Production Tax Credit Contract, and also report the Pennsylvania Sales Tax and total Pennsylvania individual gross income tax withheld related to the Video Game production to the Department within 180 days of the Video Game's completion of a Production Year to:

Janice Collier  
Entertainment Production Tax Credit 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 report should be directed to the Compliance Monitoring Division at 717-346-9023 or ra-audits@pa.gov.

## Section X – Use, Sale, Assignment, and Transfer of Video Game Production Tax Credits

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Recipients of a Video Game Production 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 Video Game Production 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 Video Game Production Tax Credit can be used, sold, assigned or transferred.

Video Game Production Tax Credits 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, VIII, IX or XV of the Tax Reform Code of 1971.

- Personal Income Tax (Article III) - (excluding any tax withheld from a person employed on a film production and/or postproduction project)
- Corporate Net Income Tax (Article IV)
- Capital Stock - Franchise Tax (Article VI)
- Bank & Trust Company Shares Tax (Article VII)
- Title Insurance Companies Shares Tax (Article VIII)
- Insurance Premiums Tax (Article IX)
- Mutual Thrift Institution Tax (Article XV)

**NOTE: Video Game Production Tax Credits cannot be carried back or used to obtain a refund of any unused tax credits by the recipient, buyer, assignee, or transferee.**



Effective immediately, 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 Video Game Production Tax Credit by Recipient

Recipients who elect to use the Video Game Production 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 Video Game Production Tax Credit by Recipient

Recipients of a Video Game Production 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 Video Game Production Tax Credit to another entity by submitting an official Assignment Application (Appendix K), 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 Video Game Production Tax Credit 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:** Video Game Production Tax Credits 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 Video Game Production 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 Pennsylvania 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 K) by the buyer and seller for the Pennsylvania 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 Pennsylvania Department of Revenue and will require the non-compliant issue to be resolved prior to resubmitting a new application for sale.** When the Assignment Application is rejected, the Department can instruct the applicant or broker (if they have POA), to contact the Compliance Unit at 717-787-3911 option 5, to resolve the issue, prior to submitting the new Assignment Application.
- No Assignment Applications will be processed by the Pennsylvania Department of Revenue that have been marked Non-Compliant.
- When the **new Assignment Application** is submitted for review, the Pennsylvania Department of Revenue will be using 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. Video Game Production Tax Credit Buyer

A buyer of a Video Game Production Tax Credit must be identified in the Assignment Application for the sale of the Video Game Production Tax Credits 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 Video Game Production 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 Video Game Production 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 Video Game Production Tax Credits is closely coordinated between the Department and the Pennsylvania Department of Revenue.

Assignment Applications submitted to the Department for the sale or assignment of all or a portion of a Video Game Production Tax Credit will be reviewed within 15 business days of receipt by the Department. If the Assignment Application is determined to be complete and accurate, the Department will forward the Assignment 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 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 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 Video Game Production Tax Credits can 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.

## D. Application Process

The Pennsylvania Department of Revenue encourages Applicants to adhere to the following steps to ensure processing of the use or sale of the Video Game Production 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 Video Game Production Tax Credits must be compliant across all taxes for which the entity is subject to. Forms and instructions are available on the Pennsylvania Department of Revenue website at [revenue.pa.gov](http://revenue.pa.gov).
- All other forms required by the Pennsylvania Department of Revenue to complete the posting of the Video Game Production Tax Credits.

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

**NOTE: The Third Party Agent Consent Form, is not a substitute for the Pennsylvania 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 Video Game Production Tax Credits

The transfer of unused Video Game Production Tax Credits 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 Pennsylvania Department of Revenue.

A shareholder, member, or partner can only use the tax 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 tax credit for the same Qualified Film Production Expense.

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

## **Section XI – Confidentiality**

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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**

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No assistance shall be awarded to a Qualified Applicant under this program unless the Qualified Applicant certifies that the Qualified Applicant 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

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**Applicant** – A business entity or individual that is principally engaged in the production and has control of a Video Game during pre-production, production and postproduction. The Applicant is the qualified Taxpayer that upon final approval will receive the Video Game Production Tax Credit Certificate.

**Completion Date** – The date that production of a Video Game is completed and the Video Game is ready for distribution.

**Department** – The Department of Community and Economic Development (DCED) responsible for administering the Video Game Production Tax Credit program.

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

1. A partnership as defined in section 301 (n.0) of the Tax Reform Code of 1971.
2. A Pennsylvania S corporation as defined in section 301 (n.1).
3. An unincorporated entity subject to section 307.21 of the Tax Reform Code of 1971.

**Pennsylvania Production Expense** – A Production Expense incurred in this commonwealth. The term includes:

1. A payment made by a taxpayer to a person upon which withholding will be made on the payment by the taxpayer as required under Part VII of Article III.
2. Payment to a personal service corporation representing individual talent if the tax imposed by Article IV will be paid or accrued on the net income of the corporation for the taxable year.
3. Payment to a pass-through entity representing individual talent for which withholding will be made by the pass-through entity on the payment as required under Part VII or VII-A of Article III.
4. The cost of transportation incurred while transporting to or from a train station, bus depot or airport, located in this commonwealth.
5. The cost of insurance coverage purchased through an insurance agent based in this commonwealth.
6. The purchase of music or story rights if any of the following subparagraphs apply:
  - a. The purchase is from a resident of this commonwealth.
  - b. The purchase is from an entity subject to taxation in this commonwealth, and the transaction is subject to taxation under Article III, IV or VI of the Tax Reform Code of 1971.
7. The cost of rental of facilities and equipment rented from or through a resident of this commonwealth or an entity subject to taxation in this commonwealth.
8. The development and manufacture of Video Game Equipment.

**Production Expense** – As follows:

1. The term includes all of the following;
  - a. Compensation paid to an individual employed in the production of the Video Game.
  - b. Payment to a personal service corporation representing individual talent.
  - c. Payment to a pass-through entity representing individual talent.



- d. The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories.
  - e. The cost of leasing vehicles.
  - f. The cost of transportation to or from a train station, bus depot or airport.
  - h. The cost of insurance coverage.
  - i. The costs of food and lodging.
  - j. The purchase of music or story rights.
  - k. The cost of rental of facilities and equipment.
  - l. Development and production costs relating to Video Games.
2. The term does not include any of the following:
- a. Deferred, leveraged or profit participation paid to be paid to individuals employed in the production of the Video Game or paid to entities representing an individual for services provided in the production of the Video Game.
  - b. Expense incurred in marketing or advertising a Video Game.
  - c. Cost related to the sale or assignment of the Video Game Production Tax Credit under section 1755-D (e).

**Production Year** – A consecutive 12-month period beginning on the Start Date of production (example: October 15, 2017 through October 14, 2018).

**Qualified Video Game Production Expense** – All Pennsylvania Production Expenses if Pennsylvania Production Expenses comprise at least 60% of a Video Game’s total Production Expenses, with the aggregate amount of compensation paid to individuals or payment made to entities representing an individual for services provided in the production of the Video Game capped at \$1,000,000.

**Qualified Tax Liability** – The liability for taxes imposed under Article III, IV, VI, VII, VIII, IV or XVA of the Tax Reform Code of 1971. The term does not include any tax withheld by an employer from an employee under Article III.

**Start Date** – The first day of principal production in this commonwealth.

**Tax Credit** – The Video Game Production Tax Credit provided under Article XVII-D-Subarticle D of the Tax Reform Code of 1971.

**Taxpayer** – A Video Game production company subject to tax under Article III, IV or VI of the Tax Reform Code of 1971. The term does not include contractors or subcontractors of a Video Game production company.

**Total Expenses** – The total Video Game Production Expenses for wages, goods, and services incurred or to be incurred at all locations, including locations outside Pennsylvania.

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

**Video Game Equipment** – Equipment that is required for this development or functioning of a Video Game.  
The term includes:

1. Integrated video and audio equipment, networking routers, switches, network cabling and any other computer-related hardware necessary to create or operate a video game.
2. Software, notwithstanding the method of delivery, transfer or access.
3. Computer code.
4. Image files, music files, audio files, video files, scripts and plays.
5. Concept mock-ups.
6. Software tools.
7. Testing procedures.
8. A component part of an item listed under paragraph (2), (3), (4), (5), (6) or (7), necessary and integral to create, develop or produce a video game.

**Video Game Production Tax Credit Certificate** –The certificate issued by the Department upon completion of a Video Game stating the Video Game Production Tax Credit amount awarded after the Qualified Video Game Production Expenses have been verified and approved.

**Video Game Production Tax Credit Contract** –The document entered into between the Department and the Applicant indicating the maximum amount of Video Game Production Tax Credits an Applicant may receive for a Video Game based on the Applicant’s estimate of Qualified Video Game Production Expenses.