

Section IX – Financial Compliance

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

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 and select the menu for general tax information followed by selection of the incentives, credits and programs option. For specific questions, please contact 717-772-3896 or 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 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.

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 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 Department of Revenue to process. **The new Assignment Application will begin a new 60-day review period.**
- **Assignment Applications marked non-compliant will require the Department to contact the parties involved in transaction and notify the parties that the Assignment Application has been rejected by the Department of Revenue and will require the non-compliant issue to be resolved prior to resubmitting a new application for sale.** 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 Department of Revenue that have been marked Non-Compliant.
- When the **new Assignment Application** is submitted for review, the Department of Revenue will be going off of the new 60-day period from the new date of submission.

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

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

C. 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 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 complete and accurate, the Department will forward the Assignment Application to the Department of Revenue for review and processing.

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

All other forms required by the 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 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 Department of Revenue.

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

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

Section XI – Confidentiality

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

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

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

Section XII – Nondiscrimination

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

Section XIII – Definitions

Applicant – A 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 Subarticle D.

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.

