

## 2015 PA H 1198, Enacted - Unofficial Pamphlet Law

Pennsylvania

SUMMARY: Amends the Tax Reform Code of 1971, in corporate net income tax; provides for the filing of amended reports and the process therefor; provides for the crime of advertising that the tax will be absorbed by such person, or not added to the purchase price of personal property or will be refunded; includes sales and leases; relates to out-of-state sales and prepaid mobile telecommunications services; prohibits use of a zapper, phantomwear or sales suppression device.~SAME AS:

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

*Text Added*

~~Text Vetoed~~

Current Legislative Status

05/12/2015 FILED.

05/13/2015 INTRODUCED.

05/13/2015 To HOUSE Committee on FINANCE.

06/09/2015 From HOUSE Committee on FINANCE. Reported as amended.

06/09/2015 In HOUSE. Read first time.

06/09/2015 Rereferred to HOUSE Committee on RULES.

06/15/2015 From HOUSE Committee on RULES.

06/15/2015 In HOUSE. Read second time.

06/15/2015 Rereferred to HOUSE Committee on APPROPRIATIONS.

06/22/2015 From HOUSE Committee on APPROPRIATIONS.

06/22/2015 In HOUSE. Read third time. Passed HOUSE. \*\*\*\*\*To SENATE.

06/23/2015 To SENATE Committee on FINANCE.

06/24/2015 From SENATE Committee on FINANCE.

06/24/2015 In SENATE. Read first time.

07/13/2015 To SENATE Committee on APPROPRIATIONS.

12/07/2015 From SENATE Committee on APPROPRIATIONS.

12/07/2015 In SENATE. Read second time.

12/07/2015 Rereferred to SENATE Committee on APPROPRIATIONS.

12/18/2015 From SENATE Committee on APPROPRIATIONS. Reported as amended.

12/18/2015 In SENATE. Read third time. Passed SENATE. \*\*\*\*\*To HOUSE for concurrence.

12/19/2015 Rereferred to HOUSE Committee on RULES for concurrence.

12/19/2015 From HOUSE Committee on RULES.

12/19/2015 In HOUSE. Non-concurred in SENATE amendments. Failed to pass HOUSE.

12/19/2015 SENATE insists on amendments non-concurred in by HOUSE.

07/13/2016 In SENATE. CONFERENCE Committee members appointed. \*\*\*\*\*To CONFERENCE Committee.

07/13/2016 In SENATE. CONFERENCE Committee Report presented.

07/13/2016 CONFERENCE Committee Report adopted by SENATE.  
07/13/2016 HOUSE insists on non-concurrence in SENATE amendments. Failed to pass HOUSE.  
07/13/2016 In HOUSE. CONFERENCE Committee Report presented.  
07/13/2016 CONFERENCE Committee Report adopted by HOUSE.  
07/13/2016 \*\*\*\*\*To GOVERNOR.  
07/13/2016 Signed by GOVERNOR.  
07/13/2016 Act No. 84

~

session: Pennsylvania 199th General Assembly -- 2015-16 Regular Session

cite: 2015 PA H 1198

Enacted - Unofficial Pamphlet Law

July 13, 2016

Dunbar

Session of 2015

Act No. 2016-84

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL No. 1198

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," as follows:

**SECTIONS OMITTED**

In film production tax credit: making editorial changes; further providing for definitions and for limitations; providing for reissuance of film production tax credits, for concert rehearsal and tour; and providing for video game production.

**SECTIONS OMITTED**

Section 19. The heading of Article XVII-D of the act, added July 25, 2007 (P.L.373, No.55), is amended to read:

ARTICLE XVII-D

~~FILM~~ **ENTERTAINMENT** PRODUCTION TAX CREDIT

Section 20. Article XVII-D of the act is amended by adding a subarticle heading to read:

**SUBARTICLE A**

**PRELIMINARY PROVISIONS**

Section 21. Section 1701-D of the act, added July 25, 2007 (P.L.373, No.55), is amended to read:

Section 1701-D. Scope of article.

This article relates to ~~film~~ **entertainment** production tax credits.

Section 22. The act is amended by adding a section to read:

**Section 1702-D. Definitions.**

**The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:**

**"Department." The Department of Community and Economic Development of the Commonwealth.**

Section 23. Article XVII-D of the act is amended by adding a subarticle heading to read:

**SUBARTICLE B**

**FILM PRODUCTION**

Section 24. Sections 1702-D and 1703-D of the act, amended July 9, 2013 (P.L.270, No.52), are amended to read:

Section ~~1702-D~~ **1711-D** . Definitions.

The following words and phrases when used in this ~~article~~ **subarticle** shall have the meanings given to them in this section unless the context clearly indicates otherwise:

~~"Department." The Department of Community and Economic Development of the Commonwealth.~~

"Film." A feature film, a television film, a television talk or game show series, a television commercial or a television pilot or each episode of a television series which is intended as programming for a national audience. The term does not include a production featuring news, current events, weather and market reports, 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. Section 5903(b) (relating to obscene and other sexual materials and performances) or a production primarily for private, political, industrial, corporate or institutional purposes.

"Minimum stage filming requirements." Include:

- (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 entity." **Any of the following:**

- (1)** A partnership as defined in section 301(n.0) ~~or a~~ .
- (2) A** Pennsylvania S corporation as defined in section 301(n.1).
- (3) An unincorporated entity subject to section 307.21.**

"Pennsylvania production expense." Production expense incurred in this Commonwealth. The term includes:

- ~~(1) Compensation paid to an individual on which the tax imposed by Article III will be paid or accrued.~~  
**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 ~~–if the tax imposed by Article III will be paid or accrued by all of the partners, members or shareholders of the pass-through entity for the taxable year for which the tax imposed under Article III has been withheld and remitted under the requirements of Article III by the production company–~~ *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:

(i) The purchase is from a resident of this Commonwealth.

(ii) 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.

(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) A qualified postproduction expense.***

***”Postproduction expense.” A postproduction expense of original content for a film as follows:***

***(1) The term includes traditional, emerging and new work flow techniques used in postproduction for any of the following:***

***(i) Picture, sound and music editorial, rerecording and mixing.***

***(ii) Visual effects.***

***(iii) Graphic design.***

***(iv) Original scoring.***

***(v) Animation.***

***(vi) Musical composition.***

***(vii) Mastering.***

***(viii) Dubbing.***

***(2) The term does not include any of the following:***

***(i) Editing previously produced content for a film.***

***(ii) News or current affairs.***

***(iii) Talk shows.***

***(iv) Instructional videos.***

***(v) Content which contains obscene material or performance as defined in 18 Pa.C.S. Section 5903(b).***

***”Production expense.” As follows:***

***(1) The term includes all of the following:***

***(i) Compensation paid to an individual employed in the production of the film.***

***(ii) Payment to a personal service corporation representing individual talent.***

***(iii) Payment to a pass-through entity representing individual talent.***

***(iv) The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories.***

***(v) The cost of leasing vehicles.***

- (vi) The cost of transportation to or from a train station, bus depot or airport.
- (vii) The cost of insurance coverage.
- (viii) The costs of food and lodging.
- (ix) The purchase of music or story rights.
- (x) The cost of rental of facilities and equipment.
- (2) The term does not include any of the following:
  - (i) Deferred, leveraged or profit participation paid or to be paid to individuals employed in the production of the film or paid to entities representing an individual for services provided in the production of the film.
  - (ii) Development cost.
  - (iii) Expense incurred in marketing or advertising a film.
  - (iv) Cost related to the sale or assignment of a film production tax credit under section ~~1705-D(e)~~ 1714-D(e)

"Qualified film production expense." All Pennsylvania production expenses if Pennsylvania production expenses comprise at least 60% of the film's total production expenses. The term shall not include more than \$15,000,000 in the aggregate of compensation paid to individuals or payment made to entities representing an individual for services provided in the production of the film.

***"Qualified postproduction expense." A postproduction expense incurred at a qualified postproduction facility.***

***"Qualified postproduction facility." A permanent facility where Pennsylvania postproduction activities are conducted and expenses are incurred to which all of the following apply:***

- (1) The facility is located in this Commonwealth.***
- (2) The facility is approved by the department.***
- (3) The facility employs at least ten full-time employees who reside in this Commonwealth.***
- (4) There is at least \$500,000 of capital investment in the facility.***

"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 a 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.

"Qualified tax liability." The liability for taxes imposed under Article III, IV, VI, VII ~~or~~, VIII, IX ~~or~~ XV. The term shall not include any tax withheld by an employer from an employee under Article III.

"Start date." As follows:

(1) **For a film:**

(i) the first day of principal photography in this Commonwealth; or

(ii) **an earlier date approved by the Pennsylvania Film Office.**

(2) ~~an earlier~~ **For a postproduction project, a** date ~~than the date under subparagraph (i),~~ approved by the Pennsylvania Film Office.

"Tax credit." The film production tax credit provided under this ~~article~~ **subarticle**.

"Taxpayer." A film production company subject to tax under Article III, IV or VI. The term does not include contractors or subcontractors of a film production company.

Section ~~1703-D~~ **1712-D**. Credit for qualified film production expenses.

(a) Application.--A taxpayer may apply to the department for a tax credit under this section. The application shall be on the form required by the department.

(b) Review and approval.--The department shall establish application periods not to exceed 90 days each. All applications received during the application period shall be reviewed and evaluated by the department 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) If the application includes a qualified postproduction expense:**

**(i) The qualified postproduction facility where the activity will occur.**

**(ii) The anticipated type of postproduction activity that will be conducted.**

~~(7)~~ **(8)** Other criteria that the Director of the Pennsylvania Film Office deems appropriate to ensure maximum employment and benefit within this Commonwealth.

Upon determining the taxpayer has incurred or will incur qualified film production expenses, the department may approve the taxpayer for a tax credit. Applications not approved may be reviewed and considered in subsequent application periods. The department may approve a taxpayer for a tax credit based on its evaluation of the criteria under this subsection.

(c) Contract.--If the department approves the taxpayer's application under subsection (b), the department and the taxpayer shall enter into a contract containing the following:

(1) An itemized list of production expenses incurred or to be incurred for the film.

(2) An itemized list of Pennsylvania production expenses incurred or to be incurred for the film.

(3) With respect to a contract entered into prior to completion of production, a commitment by the taxpayer to incur the qualified film production expenses as itemized.

(4) The start date.

(5) Any other information the department deems appropriate.

(d) Certificate.--Upon execution of the contract required by subsection (c), the department shall award the

taxpayer a film production tax credit and issue the taxpayer a film production tax credit certificate.

Section 25. Section 1704-D of the act, added July 25, 2007 (P.L.373, No.55), is amended to read:

Section ~~1704-D~~ 1713-D . Film production tax credits.

A taxpayer may claim a tax credit against the qualified tax liability of the taxpayer.

Section 26. Section 1705-D of the act, amended July 2, 2012 (P.L.751, No.85) and July 9, 2013 (P.L.270, No.52), is amended to read:

Section ~~1705-D~~ 1714-D . Carryover, carryback and assignment of credit.

(a) General rule.--If the taxpayer cannot use the entire amount of the tax credit for the taxable year in which the tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time the tax credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The tax credit provided by this ~~article~~ subarticle may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) Application.--A tax credit approved by the department in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the tax credit can be applied against any tax liability under subsection (a).

(c) No carryback or refund.--A taxpayer is not entitled to carry back or obtain a refund of all or any portion of an unused tax credit granted to the taxpayer under this ~~article~~ subarticle .

(d) (Reserved).

(e) Sale or assignment.--The following shall apply:

(1) A taxpayer, upon application to and approval by the department, may sell or assign, in whole or in part, a tax credit granted to the taxpayer under this ~~article~~ subarticle .

(2) The department and the Department of Revenue shall jointly promulgate regulations for the approval of applications under this subsection.

(3) Before an application is approved, the Department of Revenue must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined at settlement, assessment or determination by the Department of Revenue.

(4) Notwithstanding any other provision of law, the Department of Revenue shall settle, assess or determine the tax of an applicant under this subsection within 90 days of the filing of all required final returns or reports in accordance with section 806.1(a)(5) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(f) Purchasers and assignees.--Except as set forth in subsection (g), the following apply:

(1) The purchaser or assignee of all or a portion of a tax credit under subsection (e) shall immediately claim the credit in the taxable year in which the purchase or assignment is made.

(2) The amount of the tax credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year.

(3) The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit.

(4) The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the tax credit in compliance with procedures specified by the Department of Revenue.

(g) 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 purchased 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.

Section 27. Section 1706-D of the act, added July 25, 2007 (P.L.373, No.55), is amended to read:

Section ~~1706-D~~ **1715-D** . Determination of Pennsylvania production expenses.

In prescribing standards for determining which production expenses are considered Pennsylvania production expenses for purposes of computing the credit provided by this ~~article~~ **subarticle** , the department shall consider:

- (1) The location where services are performed.
- (2) The location where supplies are consumed.
- (3) Other factors the department determines are relevant.

Section 28. Section 1707-D of the act, amended July 2, 2012 (P.L.751, No.85), is amended to read:

Section ~~1707-D~~ **1716-D** . Limitations.

(a) Cap.-- ~~In~~ **Except for tax credits reissued under section 1761.1-D, in** no case shall the aggregate amount of tax credits awarded in any fiscal year under this ~~article~~ **subarticle** exceed ~~-\$60,000,000-~~ **\$65,000,000** . The department may, in its discretion, award in one fiscal year up to:

- (1) Thirty percent of the dollar amount of film production tax credits available to be awarded in the next succeeding fiscal year.
- (2) Twenty percent of the dollar amount of film production tax credits available to be awarded in the second successive fiscal year.
- (3) Ten percent of the dollar amount of film production tax credits available to be awarded in the third successive fiscal year.

(a.1) Advance award of credits.--The advance award of film tax credits under subsection (a) shall:

- (1) count against the total dollar amount of credits that the department may award in that next succeeding fiscal year; and
- (2) reduce the dollar amount of credits that the department may award in that next succeeding fiscal year.

The individual limitations on the awarding of film production tax credits apply to an advance award of film production tax credits under subsection (a) and to a combination of film production tax credits awarded against the current fiscal year cap and against the next succeeding fiscal year's cap.

(b) Individual limitations.--The following shall apply:

(1) Except as set forth in paragraph (1.1) **or (1.2)** , the aggregate amount of film production tax credits awarded by the department under section ~~1703-D(d)~~ **1712-D(d)** to a taxpayer for a film may not exceed 25% of the qualified film production expenses to be incurred.

(1.1) In addition to the tax credit under paragraph (1), a taxpayer is eligible for a credit in the amount of 5% of the qualified film production expenses incurred by the taxpayer if the taxpayer:

- (i) films a feature film, television film or television series, which is intended as programming for a national audience; and
- (ii) films in a qualified production facility which meets the minimum stage filming requirements.

**(1.2) A qualified postproduction expense shall qualify for a 30% credit.**

(2) A taxpayer that has received a grant under 12 Pa.C.S. Section 4106 (relating to approval) shall not be eligible for a film production tax credit under this act for the same film.

(c) Qualified production facility.--To be considered a qualified production facility ~~under subsection (b)(1.1)~~ **or qualified postproduction facility** , the owner of a facility shall provide evidence to the department to verify the development or facility specifications and capital ~~improvement~~ **investment** costs incurred for the facility so that the threshold amounts set in the ~~definition~~ **definitions** of "qualified production facility" , " ~~under section 1702-D~~ **and "qualified postproduction facility"** are satisfied, and upon verification, the



facility shall be registered by the department officially as a qualified production facility **or qualified postproduction facility** .

(d) Waiver.--The department may make a determination that the financial benefit to this Commonwealth resulting from the direct investment in or payments made to Pennsylvania facilities outweighs the benefit of maintaining the 60% requirement contained in the definition of "qualified film production expense." If such determination is made, the department may waive the requirement that 60% of a film's total production **or postproduction** expenses be comprised of Pennsylvania production expenses for a ~~feature~~ film, television film or television series that is intended as programming for a national audience and is filmed **or produced** in a qualified production facility **or qualified postproduction facility** if the taxpayer who has Pennsylvania production expenses of at least \$30,000,000 per production meets the minimum stage filming requirements.

Section 28.1. The act is amended by adding a section to read:

**Section 1716.1-D. Reissuance of film production tax credits.**

**(a) Reissuance.--In any fiscal year, the department may reissue a tax credit which meets all of the following:**

**(1) The tax credit was approved under section 1712-D(b).**

**(2) The contract was signed under section 1712-D(c).**

**(3) The tax credit was awarded and a certificate was issued under section 1712-D(d).**

**(b) Amount.--The amount of a tax credit to be reissued shall be calculated as the difference between the amounts in subsection (a)(1) and (3).**

**(c) Applicability.--This section shall apply to a tax credit awarded under this article in any fiscal year beginning after June 30, 2017.**

Section 29. Sections 1708-D, 1709-D, 1710-D, 1711-D and 1712-D of the act, added July 25, 2007 (P.L.373, No.55), are amended to read:

Section ~~1708-D~~ **1717-D** . Penalty.

A taxpayer which claims a tax credit and fails to incur the amount of qualified film production expenses agreed to in section ~~1703-D(c)(3)~~ **1712-D(c)(3)** for a film in that taxable year shall repay to the Commonwealth the amount of the film production tax credit claimed under this ~~article~~ **subarticle** for the film.

Section ~~1709-D~~ **1718-D** . Pass-through entity.

(a) General rule.--If a pass-through entity has any unused tax credit under section ~~1705-D~~ **1714-D** , it may elect in writing, according to procedures established by the Department of Revenue, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

(b) Limitation.--A pass-through entity and a shareholder, member or partner of a pass-through entity shall not claim the credit under subsection (a) for the same qualified film production expense.

(c) Application.--A shareholder, member or partner of a pass-through entity to whom a credit is transferred under subsection (a) shall immediately claim the credit in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the credit.

Section ~~1710-D~~ **1719-D** . Department guidelines and regulations.

The department shall develop written guidelines for the implementation of the provisions of this ~~article~~ **subarticle** . The guidelines shall be in effect until such time as the department promulgates regulations for the implementation of the provisions of this ~~article~~ **subarticle** . The department shall promulgate regulations for the implementation of this ~~article~~ **subarticle** within two years of the effective date of this section.

Section ~~1711-D~~ **1720-D** . Report to General Assembly.

(a) General rule.--No later than June 1, 2008, and September 1 of each year thereafter, the Secretary of Community and Economic Development shall submit a report to the General Assembly summarizing the

effectiveness of the tax credit provided by this ~~article~~ **subarticle** . The report shall include the name of the film produced, the names of all taxpayers utilizing the credit as of the date of the report and the amount of credits approved for, utilized by or sold or assigned by each taxpayer. The report may also include any recommendations for changes in the calculation or administration of the tax credit. The report shall be submitted to the chairman and minority chairman of the Appropriations and Finance Committees of the Senate and the chairman and minority chairman of the Appropriations and Finance Committees of the House of Representatives. In addition to the information set forth above, the report shall include the following information, which shall be separated by geographic location within this Commonwealth:

- (1) The amount of credits claimed during the fiscal year by film.
  - (2) The total amount spent in this Commonwealth during the fiscal year by film.
  - (3) The total amount of tax revenues generated by this Commonwealth during the fiscal year by film.
  - (4) The total number of jobs created during the fiscal year by film, including the duration of the jobs.
- (b) Public information.--Notwithstanding any law providing for the confidentiality of tax records, the information in the report shall be public information, and all report information shall be posted on the department's Internet website.

Section ~~1712-D~~ **1721-D** . Film Advisory Board.

(a) Composition.--A Film Advisory Board is established. The board shall work with the Pennsylvania Film Office and the regional film offices to promote the film industry throughout this Commonwealth and to examine and file a written report on the effectiveness of the tax credit and grant programs. The report shall be included in the department's report required under section ~~1711-D~~ **1720-D** . The board shall consist of the following members:

- (1) The Secretary of Community and Economic Development, or a designee.
- (2) A member appointed by the Governor.
- (3) A member appointed by the President pro tempore of the Senate.
- (4) A member appointed by the Minority Leader of the Senate.
- (5) A member appointed by the Majority Leader of the House of Representatives.
- (6) A member appointed by the Minority Leader of the House of Representatives.

(b) Compensation.--Members of the board shall not be compensated for their service as board members, but shall be compensated for their reasonable expenses. The department shall provide administrative support for the board.

(c) Meetings.--The board shall meet no less than twice each year.

(d) Chairman.--The members of the board shall elect the chairman.

Section 30. Article XVII-D of the act is amended by adding subarticles to read:

### **SUBARTICLE C**

#### **CONCERT REHEARSAL AND TOUR**

##### **Section 1731-D. Definitions.**

***The following words and phrases when used in this subarticle shall have the meanings given to them in this section unless the context clearly indicates otherwise:***

***"Class 1 venue." A stadium, arena, other structure or on property owned by a municipality or an authority formed pursuant to Article XXV-A of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, at which concerts are performed and which is all of the following:***

- (1) Located in a city of the first class or a county of the second class.***
- (2) Is constructed in a manner in which the venue has a seating capacity of at least 14,000.***

**"Class 2 venue."** A stadium, arena or other structure at which concerts are performed and which is all of the following:

- (1) Located outside the geographic boundaries of a city of the first class or a county of the second class.
- (2) Is constructed in a manner in which the venue has a seating capacity of at least 6,000.

**"Class 3 venue."** A stadium, arena or other structure which is any of the following:

- (1) Located within a neighborhood improvement zone, as defined in section 1902-B.
- (2) Owned by or affiliated with a State-related institution, as defined in 62 Pa.C.S. Section 103 (relating to definitions).
- (3) Owned by the Commonwealth and affiliated with the State System of Higher Education.

**"Concert."** A live performance of music in the presence of individuals who view the performance.

**"Concert tour equipment."** Includes stage, set, scenery, design elements, automation, rigging, trusses, spot lights, lighting, sound equipment, video equipment, special effects, cases, communication devices, power distribution equipment, backline and other miscellaneous equipment or supplies used during a concert or rehearsal.

**"Minimum rehearsal and tour requirements."** During a tour, all of the following must occur:

- (1) the purchase or rental of concert tour equipment delivered to a location in this Commonwealth, in an amount of at least \$3,000,000, from companies located and maintaining a place of business in this Commonwealth for use on the tour;
- (2) a rehearsal at a qualified rehearsal facility for a minimum of 10 days;
- (3) at least one concert performed at a class 1 venue; and
- (4) at least one concert performed at a venue which is located in a municipality other than the municipality in which the class 1 venue under paragraph (3) is located.

**"Pass-through entity."** Any of the following:

- (1) A partnership as defined in section 301(n.0).
- (2) A Pennsylvania S corporation as defined in section 301(n.1).
- (3) An unincorporated entity subject to section 307.21.

**"Pennsylvania rehearsal and tour expenses."** The sum of Pennsylvania rehearsal expenses and tour expenses.

**"Pennsylvania rehearsal expense."** A rehearsal expense which is incurred or will be incurred within 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.

**"Qualified rehearsal and tour expense."** All Pennsylvania rehearsal and tour expenses if Pennsylvania rehearsal expenses comprise at least 60% of the total rehearsal expenses. The term shall not include more than \$2,000,000 in the aggregate of compensation paid to individuals or payment made to entities representing an individual for services provided in the tour.

**"Qualified rehearsal facility."** A rehearsal facility which meets at least six of the following criteria:

- (1) Has had a minimum of \$8,000,000 invested in the rehearsal facility in land or structure, or a combination of land and structure.

- (2) Has a permanent grid system with a capacity of 1,000,000 pounds.
- (3) Has a built-in power supply system available at a minimum of 3,200 amps without the need for any supplemental generators.
- (4) Has a height from floor to permanent grid of a minimum of 80 feet.
- (5) Has at least two sliding or roll-up access doors with a minimum height of 14 feet.
- (6) Has a perimeter security system which includes 24-hour, seven-days-a-week security cameras and the use of access control identification badges.
- (7) Has a service area with production offices, catering and dressing rooms with a minimum of 5,000 square feet.
- (8) Is located within one mile of a minimum of two companies which provide concert tour equipment for use on a tour.

**"Qualified tax liability."** The liability for taxes imposed under Article III, IV or VI. The term shall not include any tax withheld by an employer from an employee under Article III.

**"Rehearsal."** An event or series of events which occur in preparation for a tour prior to the start of the tour or during a tour when additional preparation may be needed.

**"Rehearsal expense."** All of the following when incurred or will be incurred during a rehearsal:

- (1) Compensation paid to an individual employed in the rehearsal of the performance.
  - (1.1) Payment to a personal service corporation representing individual talent.
  - (1.2) Payment to a pass-through entity representing individual talent.
- (2) The costs of construction, operations, editing, photography, staging, lighting, wardrobe and accessories.
- (3) The cost of leasing vehicles.
- (4) The cost of transportation of people or concert tour equipment to or from a train station, bus depot, airport or other transportation facility or directly from a residence or business entity.
- (5) The cost of insurance coverage.
- (6) The cost of food and lodging.
- (7) The cost of purchase or rental of concert tour equipment.
- (8) The cost of renting a rehearsal facility.
- (9) The cost of emergency or medical support services required to conduct a rehearsal.

**"Rehearsal facility."** As follows:

- (1) A facility primarily used for rehearsals which is all of the following:
  - (i) Located within this Commonwealth.
  - (ii) Has a minimum of 25,000 square feet of column-free, unobstructed floor space.
- (2) The term does not include a facility at which concerts are capable of being held.

**"Start date."** The date the first set of concert tour equipment arrives or is expected to arrive at a qualified rehearsal facility.

**"Tax credit."** The concert rehearsal and tour tax credit provided under this subarticle.

**"Taxpayer."** A concert tour promotion company, concert tour management company or other concert management company subject to tax under Article III, IV or VI. The term does not include contractors or subcontractors of a concert tour promotion company, concert tour management or other concert management company.

**"Tour."** A series of concerts performed by a musical performer in more than one location.

*"Tour expense." As follows:*

*(1) Costs incurred or which will be incurred during a tour for venues located in this Commonwealth. The term includes all of the following:*

- (i) 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.*
  - (ii) The cost of transportation of people or concert touring equipment incurred while transporting to or from a train station, bus depot, airport or other transportation facility or while transporting directly from a residence or business entity, located in this Commonwealth or incurred for transportation provided by a company which is subject to the tax imposed under Article III or IV.*
  - (iii) The cost of leasing vehicles upon which the tax imposed by Article II will be paid or accrued.*
  - (iv) The cost of insurance coverage purchased through an insurance agent based in this Commonwealth.*
  - (v) The cost of purchasing or renting facilities and equipment from or through a resident of this Commonwealth or an entity subject to taxation in this Commonwealth.*
  - (vi) The cost of food and lodging incurred from a facility located in this Commonwealth.*
  - (vii) Expenses incurred in marketing or advertising a tour at venues located within this Commonwealth.*
  - (viii) The cost of merchandise purchased from a company located within this Commonwealth and used on the tour.*
- (2) The term does not include development cost, including the writing of music or lyrics.*

*"Venue." A class 1, class 2 or class 3 venue.*

*Section 1732-D. Procedure.*

*(a) Application.--A taxpayer may apply to the department for a tax credit under this section. The application shall be on the form required by the department.*

*(b) Review and approval.--*

*(1) The department shall establish application periods not to exceed 30 days. All applications received during an application period shall be reviewed and evaluated by the department based on the following criteria:*

- (i) The anticipated number of rehearsal days in a qualified rehearsal facility.*
- (ii) The anticipated number of concerts at class 1 venues.*
- (iii) The anticipated number of concerts at class 2 venues.*
- (iv) The anticipated number of concerts at class 3 venues.*
- (v) The amount of Pennsylvania rehearsal expenses in comparison to the aggregate amount of rehearsal expenses.*
- (vi) The anticipated tour expenses.*
- (vii) The anticipated concert tour equipment expenses which are or will be purchased or rented from a company located in this Commonwealth and which will be used on the tour.*
- (viii) The anticipated number of days spent in Commonwealth hotels.*
- (ix) Other criteria that the department deems appropriate to ensure maximum employment opportunities and entertainment benefits for the residents of this Commonwealth.*

*(2) Upon determining that the taxpayer has paid the applicable application fee, not to exceed \$300, has met the minimum rehearsal and tour requirements and has incurred or will incur qualified rehearsal and tour expenses, the department may approve the taxpayer for a tax credit. Applications not approved may be reviewed and considered in subsequent application periods. The department may approve a taxpayer*



for a tax credit based on its evaluation of the criteria under this subsection.

**(c) Contract.**--If the department approves the taxpayer's application under subsection (b), the department and the taxpayer shall enter into a contract containing the following:

- (1) An itemized list of rehearsal expenses incurred or to be incurred for the tour.**
- (2) An itemized list of Pennsylvania rehearsal expenses incurred or to be incurred for the tour.**
- (3) With respect to a contract entered into prior to completion of a tour, a commitment by the taxpayer to incur the Pennsylvania rehearsal expenses as itemized.**
- (4) An itemized list of the qualified rehearsal and tour expenses incurred or to be incurred for the tour.**
- (5) With respect to a contract entered into prior to completion of a tour, a commitment by the taxpayer to incur the qualified rehearsal and tour expenses as itemized.**
- (6) With respect to a contract entered into prior to completion of a tour, a commitment by the taxpayer to hold at least one concert at a class 1 venue.**
- (7) With respect to a contract entered into prior to completion of a tour, a commitment by the taxpayer to hold at least one concert at a venue located in a municipality other than the municipality in which the class 1 venue under paragraph (6) is located.**
- (8) The start date or the expected start date.**
- (9) Any other information the department deems appropriate.**

**(c.1) Prohibition.**--A tax credit may not be awarded for fiscal years prior to fiscal year 2017-2018.

**(d) Certificate.**--Upon execution of the contract required by subsection (c), the department shall award the taxpayer a concert rehearsal and tour tax credit and issue the taxpayer a tax credit certificate.

#### **Section 1733-D. Claim.**

**Beginning July 1, 2017, a taxpayer may claim a concert rehearsal and tour tax credit against the qualified tax liability of the taxpayer.**

#### **Section 1734-D. Carryover, carryback and assignment of tax credit.**

**(a) General rule.**--If a taxpayer cannot use the entire amount of a tax credit for the taxable year in which the tax credit is first approved, the excess may be carried over to succeeding taxable years and used as a tax credit against the qualified tax liability of the taxpayer for those taxable years. Each time the tax credit is carried over to a succeeding taxable year, the tax credit shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The tax credit may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer was entitled to claim the tax credit.

**(b) Application.**--A tax credit approved by the department in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the tax credit was approved before the tax credit can be applied against any tax liability under subsection (a).

**(c) No carryback or refund.**--A taxpayer shall not be entitled to carry back or obtain a refund of all or any portion of an unused tax credit granted to the taxpayer under this subarticle.

#### **Section 1735-D. Determination of Pennsylvania rehearsal and tour expenses.**

**When prescribing standards for determining which rehearsal or tour expenses are considered Pennsylvania rehearsal and tour expenses for purposes of computing the tax credit provided by this subarticle, the department shall consider:**

- (1) The location where services are performed.**
- (2) The location where concert tour equipment is purchased, rented, delivered and used.**
- (3) The location where rehearsals or concerts are held.**
- (4) Other factors the department determines are relevant.**

**Section 1736-D. Limitations.**

**(a) Cap.--**The aggregate amount of tax credits awarded in any fiscal year under this subarticle may not exceed \$4,000,000. The department may, in the department's discretion, award in one fiscal year up to 50% of the dollar amount of tax credits available to be awarded in the next succeeding fiscal year.

**(b) Advance award of credits.--**

**(1) The advance award of tax credits under subsection (a) shall:**

**(i) count against the total dollar amount of tax credits that the department may award in that next succeeding fiscal year; and**

**(ii) reduce the dollar amount of tax credits that the department may award in that next succeeding fiscal year.**

**(2) The individual limitations under subsection (c) on the awarding of tax credits apply to an advance award of tax credits under subsection (a) and to a combination of tax credits awarded against the current fiscal year's cap and against the next succeeding fiscal year's cap.**

**(c) Individual limitations.--**The following shall apply:

**(1) A taxpayer may not be awarded more than \$800,000 of tax credits for a tour.**

**(2) Except as provided under paragraph (5), the aggregate amount of tax credits awarded by the department under section 1732-D(d) to a taxpayer for a tour with concerts at two class 1 venues or a class 1 venue and a class 2 venue may not exceed 25% of the qualified rehearsal and tour expenses incurred or to be incurred.**

**(3) Except as provided under paragraph (5), the aggregate amount of tax credits awarded by the department under section 1732-D(d) to a taxpayer for a tour with concerts at a class 1 venue and a class 3 venue may not exceed 30% of the qualified rehearsal and tour expenses incurred or to be incurred.**

**(4) Except as provided under paragraph (5), the aggregate amount of tax credits awarded by the department under section 1732-D(d) to a taxpayer for a tour with concerts at a class 1 venue and a class 3 venue which does not serve alcohol may not exceed 35% of the qualified rehearsal and tour expenses incurred or to be incurred.**

**(5) In addition to the tax credits under paragraph (2), (3) or (4), a taxpayer is eligible for a tax credit in the amount of 5% of the qualified rehearsal and tour expenses incurred or to be incurred by the taxpayer if the taxpayer holds concerts at a total of two or more class 2 venues or class 3 venues.**

**(d) Qualified rehearsal facility.--**To be considered a qualified rehearsal facility under this subarticle, the owner of a rehearsal facility shall provide evidence to the department to verify the development or facility specifications and capital improvement costs incurred for the rehearsal facility so that the threshold amounts set in the definition of "qualified rehearsal facility" under section 1731-D are satisfied, and upon verification, the rehearsal facility shall be registered by the department officially as a qualified rehearsal facility.

**(e) Waiver.--**The department may make a determination that the financial benefit to this Commonwealth resulting from the direct investment in or payments made to Pennsylvania rehearsal and concert facilities outweighs the benefit of maintaining the 60% Pennsylvania rehearsal expenses requirement contained in the definition of qualified rehearsal and tour expense. If such determination is made, the department may waive the requirement that 60% of a tour's aggregate rehearsal expenses be comprised of Pennsylvania rehearsal expenses.

**Section 1737-D. Penalty.**

**A taxpayer which claims a tax credit and fails to incur the amount of qualified rehearsal and tour expenses agreed to in section 1732-D(c)(4) for a tour in that taxable year shall repay to the Commonwealth an amount equal to 110% of the difference between the amount agreed to in section 1732-D(c)(4) and the amount of qualified rehearsal and tour expenses actually incurred by the taxpayer. The penalty shall be assessed and collected under Article II.**



**Section 1738-D. Pass-through entity.**

**(a) General rule.**--If a pass-through entity has any unused tax credits under section 1734-D, it may elect in writing, according to procedures established by the Department of Revenue, to transfer all or a portion of the tax credits to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

**(b) Limitation.**--A pass-through entity and a shareholder, member or partner of a pass-through entity shall not claim the tax credit under subsection (a) for the same qualified rehearsal and tour expense.

**(c) Application.**--A shareholder, member or partner of a pass-through entity to whom a tax credit is transferred under subsection (a) shall immediately claim the tax credit in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the tax credit.

**Section 1739-D. Department guidelines and regulations.**

The department shall develop written guidelines for the implementation of the provisions of this subarticle. The guidelines shall be in effect until such time as the department promulgates regulations for the implementation of the provisions of this subarticle. The department shall promulgate regulations for the implementation of this subarticle within two years of the effective date of this section.

**Section 1740-D. Report to General Assembly.**

No later than June 1, 2018, and September 1 of each year thereafter, the Secretary of Community and Economic Development shall submit a report to the General Assembly summarizing the effectiveness of the tax credits provided by this subarticle. The report shall include the name of the tours which rehearsed in this Commonwealth, the names of all taxpayers utilizing the tax credit as of the date of the report and the amount of tax credits approved for each taxpayer. The report may also include any recommendations for changes in the calculation or administration of the tax credits provided by this subarticle. The report shall be submitted to the chairman and minority chairman of the Appropriations Committee of the Senate, the chairman and minority chairman of the Finance Committee of the Senate, the chairman and minority chairman of the Appropriations Committee of the House of Representatives and the chairman and minority chairman of the Finance Committee of the House of Representatives. In addition to the information set forth above, the report shall include the following information, which shall be separated by geographic location within this Commonwealth:

**(1) The amount of tax credits claimed during the fiscal year by tour.**

**(2) The total amount spent in this Commonwealth during the fiscal year by tours and concert tour promotion companies for services and supplies.**

**(3) The total amount of tax revenues, both directly and indirectly, generated for the Commonwealth during the fiscal year by the concert rehearsal and tour industry.**

**SUBARTICLE D**

**VIDEO GAME PRODUCTION**

**Section 1751-D. Scope of subarticle.**

This subarticle relates to video game production tax credits.

**Section 1752-D. Definitions.**

The following words and phrases when used in this subarticle shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Pass-through entity." Any of the following:

**(1) A partnership as defined in section 301(n.0).**

**(2) A Pennsylvania S corporation as defined in section 301(n.1).**

**(3) An unincorporated entity subject to section 307.21.**

***"Pennsylvania production expense." 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 if 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:***
  - (i) The purchase is from a resident of this Commonwealth.***
  - (ii) The purchase is from an entity subject to taxation in this Commonwealth, and the transaction is subject to taxation under Article III or IV.***
- (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:***
  - (i) Compensation paid to an individual employed in the production of a video game.***
  - (ii) Payment to a personal service corporation representing individual talent.***
  - (iii) Payment to a pass-through entity representing individual talent.***
  - (iv) The costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories.***
  - (v) The cost of leasing vehicles.***
  - (vi) The cost of transportation to or from a train station, bus depot or airport.***
  - (vii) The cost of insurance coverage.***
  - (viii) The costs of food and lodging.***
  - (ix) The purchase of music or story rights.***
  - (x) The cost of rental of facilities and equipment.***
  - (xi) Development and production costs relating to video games.***
- (2) The term does not include any of the following:***
  - (i) Deferred, leveraged or profit participation paid or to be paid to individuals employed in the production of a video game or paid to entities representing an individual for services provided in the production of a video game.***
  - (ii) Expense incurred in marketing or advertising a video game.***
  - (iii) Cost related to the sale or assignment of a video game production tax credit under section 1755-D(e).***

***"Qualified tax liability." The liability for taxes imposed under Article III, IV, VI, VII, VIII, IX or XV. The term does not include a tax withheld by an employer from an employee under Article III.***

***"Qualified video game production expense." All Pennsylvania production expenses if Pennsylvania production expenses comprise at least 60% of the video game's total production expenses. The term***

*does not include more than \$1,000,000 in the aggregate of compensation paid to individuals or payment made to entities representing an individual for services provided in the production of the video game.*

*"Start date." The first day of principal production of a video game in this Commonwealth.*

*"Tax credit." The video game production tax credit provided under this subarticle.*

*"Taxpayer." A video game production company subject to tax under Article III, IV or VI. The term does not include contractors or subcontractors of a video game production company.*

*"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. Section 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 the 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.*

*Section 1753-D. Credit for qualified video game production expenses.*

*(a) Application.--A taxpayer may apply to the department for a tax credit under this section. The application shall be on the form required by the department.*

*(b) Review and approval.--The department shall review and approve or disapprove the applications in the order in which they are received. Upon determining the taxpayer has incurred or will incur qualified video game production expenses, the department may approve the taxpayer for a tax credit.*

*(c) Contract.--If the department approves the taxpayer's application under subsection (b), the department and the taxpayer shall enter into a contract containing the following:*

*(1) An itemized list of production expenses incurred or to be incurred for the video game.*

*(2) An itemized list of Pennsylvania production expenses incurred or to be incurred for the video game.*

*(3) With respect to a contract entered into prior to completion of production, a commitment by the taxpayer to incur the qualified video game production expenses as itemized.*

*(4) The principal production start date.*

*(5) Any other information the department deems appropriate.*

*(c.1) Prohibition.--A tax credit may not be awarded for fiscal years prior to fiscal year 2017-2018.*

*(d) Certificate.--Upon execution of the contract required by subsection (c), the department shall award the taxpayer a video game production tax credit and issue the taxpayer a video game production tax credit certificate.*

*Section 1754-D. Video game production tax credits.*

*Beginning July 1, 2017, a taxpayer may claim a tax credit against the qualified tax liability of the*

taxpayer.

**Section 1755-D. Carryover, carryback and assignment of credit.**

**(a) General rule.--If the taxpayer cannot use the entire amount of the tax credit for the taxable year in which the tax credit is first approved, the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time the tax credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The tax credit may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer was entitled to claim the tax credit.**

**(b) Application.--A tax credit approved by the department in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the tax credit was approved before the tax credit can be applied against any tax liability under subsection (a).**

**(c) No carryback or refund.--A taxpayer is not entitled to carry back or obtain a refund of all or any portion of an unused tax credit granted to the taxpayer under this subarticle.**

**(d) (Reserved).**

**(e) Sale or assignment.--The following shall apply:**

**(1) A taxpayer, upon application to and approval by the department, may sell or assign, in whole or in part, a tax credit granted to the taxpayer under this subarticle.**

**(2) The department and the Department of Revenue shall jointly promulgate regulations for the approval of applications under this subsection.**

**(3) Before an application is approved, the Department of Revenue must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined at settlement, assessment or determination by the Department of Revenue.**

**(4) Notwithstanding any other provision of law, the Department of Revenue shall settle, assess or determine the tax of an applicant under this subsection within 90 days of the filing of all required final returns or reports in accordance with section 806.1(a)(5) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.**

**(f) Purchasers and assignees.--The purchaser or assignee of all or a portion of a tax credit under subsection (e) shall immediately claim the tax credit in the taxable year in which the purchase or assignment is made. The amount of the tax credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year. The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit. The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the tax credit in compliance with procedures specified by the Department of Revenue.**

**Section 1756-D. Determination of Pennsylvania production expenses.**

**In prescribing standards for determining which production expenses are considered Pennsylvania production expenses for purposes of computing the tax credit, the department shall consider:**

**(1) The location where services are performed.**

**(2) The location where supplies are consumed.**

**(3) Other factors the department determines are relevant.**

**Section 1757-D. Limitations.**

**(a) Cap.--In no case shall the aggregate amount of tax credits awarded in a fiscal year under this subarticle exceed \$1,000,000.**

**(b) Individual limitations.--The aggregate amount of video game production tax credits awarded by the department under section 1753-D(d) to a taxpayer for a video game may not exceed 25% of the qualified**

*video game production expenses to be incurred during each of the first four years that the video game production expenses are incurred and 10% for each year thereafter that the video game production expenses are incurred.*

***Section 1758-D. Penalty.***

*A taxpayer which claims a tax credit and fails to incur the amount of qualified video game production expenses agreed to in section 1753-D(c)(3) for a video game in that taxable year shall repay to the Commonwealth the amount of the video game production tax credit claimed under this subarticle for the video game.*

***Section 1759-D. Pass-through entity.***

*(a) General rule.--If a pass-through entity has an unused tax credit under section 1755-D, it may elect in writing, according to procedures established by the Department of Revenue, to transfer all or a portion of the tax credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.*

*(b) Limitation.--A pass-through entity and a shareholder, member or partner of a pass-through entity shall not claim the tax credit under subsection (a) for the same qualified video game production expense.*

*(c) Application.--A shareholder, member or partner of a pass-through entity to whom a tax credit is transferred under subsection (a) shall immediately claim the tax credit in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the tax credit.*

***Section 1760-D. Department guidelines and regulations.***

*The department shall develop written guidelines for the implementation of the provisions of this subarticle. The guidelines shall be in effect until such time as the department promulgates regulations for the implementation of the provisions of this subarticle. The department shall promulgate regulations for the implementation of this subarticle within two years of the effective date of this section.*

***Section 1761-D. Report to General Assembly.***

*(a) General rule.--No later than June 1 of the second year that commences after the effective date of this section, and September 1 of each year thereafter, the Secretary of Community and Economic Development shall submit a report to the General Assembly summarizing the effectiveness of the tax credit. The report shall include the name of the video game produced, the names of all taxpayers utilizing the tax credit as of the date of the report and the amount of tax credits approved for, utilized by or sold or assigned by each taxpayer. The report may also include recommendations for changes in the calculation or administration of the tax credit. The report shall be submitted to the chairperson and minority chairperson of the Appropriations Committee of the Senate and the chairperson and minority chairperson of the Finance Committee of the Senate and the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives and the chairperson and minority chairperson of the Finance Committee of the House of Representatives. In addition to the information stated in this section, the report shall include the following information which shall be separated by geographic location within this Commonwealth:*

*(1) The amount of tax credits claimed by taxpayers during the fiscal year.*

*(2) The total amount spent on video game production in this Commonwealth during the fiscal year.*

*(3) The total amount of tax revenues collected from the production of video games in this Commonwealth during the fiscal year.*

*(4) The total number of jobs created by taxpayers during the fiscal year, including the duration of the jobs.*



***(b) Public information.--Notwithstanding any law providing for the confidentiality of tax records, the information in the report shall be public information, and all report information shall be posted on the department's publicly accessible Internet website.***

**SECTIONS OMITTED**

Section 54. This act shall take effect as follows:

**SECTIONS OMITTED**

(8) The remainder of this act shall take effect immediately.

**SECTIONS NOT PERTAINING TO THE FILM INCENTIVE HAVE BEEN OMITTED**