

PA S 321, Introduced

Pennsylvania

SUMMARY: Relates to entertainment production tax credit; provides for credit for qualified film production expenses, for film production tax credits, for carryover, carryback and assignment of credit, for determination of production expenses, for limitations, for reissuance of film production tax credits, for film production tax credit districts, for penalty, for pass-through entity and for report to General Assembly.

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

03/10/2021 INTRODUCED.

03/10/2021 To SENATE Committee on FINANCE.

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session: Pennsylvania 205th General Assembly - 2021-22 Regular Session

cite: 2021 PA S 321

Introduced March 10, 2021 Bartolotta

PRINTER'S NO. 329

THE GENERAL ASSEMBLY OF PENNSYLVANIA SENATE BILL No. 321

Session of 2021

INTRODUCED BY BARTOLOTTA, COLLETT, SCAVELLO, ROBINSON, COSTA, YUDICHAK AND STEFANO, MARCH 10, 2021

REFERRED TO FINANCE, MARCH 10, 2021

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," in entertainment production tax credit, further providing for heading of article, for scope of article, for definitions, for credit for qualified film production expenses, for film production tax credits, for carryover, carryback and assignment of credit, for determination of Pennsylvania production expenses, for limitations, for reissuance of film production tax credits, for film production tax credit districts, for penalty, for pass-through entity and for report to General Assembly.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The heading of Article XVII-D and section 1701-D of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are amended to read:

ARTICLE XVII-D

ENTERTAINMENT PRODUCTION TAX ~~CREDIT~~ **CREDITS AND INCENTIVES**

Section 1701-D. Scope of article.

This article relates to entertainment production tax credits **and incentives** .

Section 2. The definitions of "film production tax credit district," "tax credit" and "tax district capitol investment" in section 1711-D of the act, added June 28, 2019 (P.L.50, No.13), are amended and the section is amended by adding a definition to read:

Section 1711-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:

* * *

"Film ~~production tax credit~~ **industry incentive** district." A district authorized under section 1716.2-D.

"Incentive." The film industry incentive authorized under this subarticle, which may be claimed as a tax credit.

* * *

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

"Tax district capital investment." Investment within a film ~~production tax credit~~ **industry incentive** district that may consist of new construction, renovation, real property improvement and a similar investment as well as other economic development expenditures within the Commonwealth arising directly from the investment.

* * *

Section 3. Sections 1712-D and 1713-D of the act are amended to read:

Section 1712-D. Credit for qualified film production expenses.

(a) Application.--A taxpayer may apply to the department for ~~a tax credit~~ **an incentive** 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.
- (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~~ **an incentive**. Applications not approved may be reviewed and considered in subsequent application periods. The department may approve a taxpayer for ~~a tax credit~~ **an incentive** based on its evaluation of the criteria under this subsection.

- (b.1) Review and approval of applications for film ~~production tax credit~~ **industry incentive** district activity.-- For applications involving film production expenses incurred within a designated film ~~production tax credit~~ **industry incentive** district authorized under section 1716.2-D, the department shall accept applications at any time. Applications shall be reviewed by the department utilizing the criteria required under subsection (b). Upon determining the taxpayer has incurred or will incur qualified film production expenses, the department shall approve the taxpayer for ~~a tax credit~~ **an incentive** utilizing the ~~tax credits~~ **incentives** authorized under section 1716.2-D, not to exceed the amount authorized for the fiscal year.

- (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~~ **industry incentive** and issue the taxpayer a film ~~production tax credit~~ **industry incentive** certificate.

Section 1713-D. Film ~~production tax credits~~ **industry incentives** .

A taxpayer may claim ~~a tax credit~~ **an incentive** against the qualified tax liability of the taxpayer.

Section 4. Section 1714-D of the act, amended June 28, 2019 (P.L.50, No.13), is amended to read:

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

- (a) General rule.--If the taxpayer cannot use the entire amount of the ~~tax credit~~ **incentive** for the taxable year in which the ~~tax credit~~ **incentive** 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~~ **incentive** 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~~ **incentive** provided by this 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~~ **incentive** .
- (b) Application.-- ~~A tax credit~~ **An incentive** 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~~ **incentive** was approved before the ~~tax credit~~ **incentive** 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~~ **incentive** 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~~ **an incentive** 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.--Except as provided in subsections (g) and (h), the following apply:
- (1) The purchaser or assignee of all or a portion of ~~a tax credit~~ **an incentive** under subsection (e) shall immediately claim the ~~credit~~ **incentive** in the taxable year in which the purchase or assignment is made.
 - (2) The amount of the ~~tax credit~~ **incentive** 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~~ **incentive** .
 - (4) The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the ~~tax credit~~ **incentive** in compliance with procedures specified by the Department of Revenue.
- (g) Limited carry forward of ~~tax credits~~ **incentives** by a purchaser or assignee.--A purchaser or assignee may carry forward all or any unused portion of ~~a tax credit~~ **an incentive** 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.
- (h) Full utilization of ~~tax credits~~ **incentives** .-- ~~A tax credit~~ **An incentive** awarded under this article may be sold or assigned to a purchaser or assignee included in the same Federal consolidated tax return as permitted under sections 1501 and 1502 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. Sections 1501 and 1502), filed by the taxpayer under subsection (a) to reduce or eliminate the qualified tax liability to the same extent allowable for the taxpayer under subsections (a), (b) and (c). ~~Tax credits~~ **Incentives** sold or assigned under this subsection are limited to the taxable year in which the purchase or assignment is made and may only be carried forward for the remainder of the carryforward period of the original ~~credit~~ **incentive** .

Section 5. Section 1715-D of the act is amended to read:

Section 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~~ **incentive** provided by this 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 6. Section 1716-D of the act, amended June 28, 2019 (P.L.50, No.13), is amended to read:

Section 1716-D. Limitations.

(a) Cap.--Except for ~~tax credits~~ **incentives** reissued under section 1716.1-D, in no case shall the aggregate amount of ~~tax credits~~ **incentives** awarded in any fiscal year under this subarticle exceed ~~\$70,000,000~~ **\$125,000,000** . 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~~ **industry incentives** available to be awarded in the next succeeding fiscal year.
- (2) Twenty percent of the dollar amount of film ~~production tax credits~~ **industry incentives** available to be awarded in the second successive fiscal year.
- (3) Ten percent of the dollar amount of film ~~production tax credits~~ **industry incentives** available to be awarded in the third successive fiscal year.

(a.1) Advance award of credits.--The advance award of film ~~tax credits~~ **industry incentives** under subsection

(a) shall:

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

The individual limitations on the awarding of film ~~production tax credits~~ **industry incentives** apply to an advance award of film ~~production tax credits~~ **industry incentives** under subsection (a) and to a combination of film ~~production tax credits~~ **industry incentives** 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~~ **industry incentives** awarded by the department under section 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~~ **incentive** under paragraph (1), a taxpayer is eligible for ~~a credit~~ **an incentive** 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~~ **incentive** .

(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~~ **industry incentive** under this act for the same film.

- (c) Qualified production facility.--To be considered a qualified production facility or qualified postproduction facility, the owner of a facility shall provide evidence to the department to verify the development or facility specifications and capital investment costs incurred for the facility so that the threshold amounts set in the definitions of "qualified production facility" 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 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 7. Section 1716.1-D of the act is amended to read:

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

- (a) Reissuance.--In any fiscal year, the department may reissue ~~a tax credit~~ *an incentive* which meets all of the following:
 - (1) The ~~tax credit~~ *incentive* was approved under section 1712-D(b).
 - (2) The contract was signed under section 1712-D(c).
 - (3) The ~~tax credit~~ *incentive* was awarded and a certificate was issued under section 1712-D(d).
- (b) Amount.--The amount of ~~a tax credit~~ *an incentive* 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~~ *an incentive* awarded under this article in any fiscal year beginning after June 30, 2017.

Section 8. Section 1716.2-D of the act, amended June 28, 2019, (P.L.50, No.13), is amended to read:

Section 1716.2-D. Film ~~production tax credit~~ *industry incentive* districts.

- (a) Establishment.--The department may designate not more than two film ~~production tax credit~~ *industry incentive* districts for the purpose of enhancing, promoting and expanding film production opportunities and establishing a film production industry within this Commonwealth.
- (b) Criteria.--A film ~~production tax credit~~ *industry incentive* district shall:
 - (1) Be at least 55 acres in size.
 - (2) Be located on deteriorated property.

- (3) Be comprised of a parcel that is or will be occupied by two or more qualified businesses that:
 - (i) in the aggregate, make a tax district capital investment of at least \$400,000,000 within eight years after the effective date of the designation of the district; and
 - (ii) are dedicated to film production activity, postproduction activity or other activities that directly or indirectly support film production activity occurring within the district or within this Commonwealth.
 - (4) Contain at least one qualified production facility and two sound stages.
- (c) Application.--The following apply:
- (1) An application to designate a film ~~production tax credit~~ **industry incentive** district may be made by the county or municipality in which all or part of the district will be located. The department shall review the application and, if approved, issue a designation for the film ~~production tax credit~~ **industry incentive** district. The application period shall be set by the department.
 - (2) The application shall contain the following information:
 - (i) The geographic area of the proposed film ~~production tax credit~~ **industry incentive** district.
 - (ii) A detailed map of the proposed district, including geographic boundaries, total area and present use and conditions of the land and structures.
 - (iii) A description of the current social, economic and demographic characteristics of the proposed district and anticipated improvements in education, health, human services, public safety and employment that will result from designation of the district.
 - (iv) A description of anticipated film production activity and ancillary activities in the proposed district.
 - (v) Evidence of potential private and public investment in the proposed district.
 - (vi) The role of the proposed district in regional economic and community development.
- (d) Designation period.--A district designated under subsection (c) shall expire 15 years after the effective date of the designation.
- (e) Construction.--The ~~tax credits incentives~~ authorized under this section are in addition to the ~~tax credits incentives~~ under section 1716-D(a) and are available exclusively for activities occurring within the designated district.
- (f) Annual ~~tax credits incentives~~ .--The department may authorize ~~a tax credit an incentive~~ for a film ~~production tax credit~~ **industry incentive** district in fiscal year 2019-2020 and in each fiscal year thereafter.

Section 9. Sections 1717-D, 1718-D and 1720-D of the act are amended to read:

Section 1717-D. Penalty.

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

Section 1718-D. Pass-through entity.

- (a) General rule.--If a pass-through entity has any unused ~~tax credit~~ **incentive** under section 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~~ **incentive** 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~~ **incentive** 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~~ **an incentive** is transferred under subsection (a) shall immediately claim the ~~credit~~ **incentive** 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 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~~ **incentive** provided by this subarticle. The report shall include the name of the film produced, the names of all taxpayers utilizing the ~~credit~~ **incentive** as of the date of the report and the amount of ~~credits~~ **incentives** 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~~ **incentive**. 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~~ **incentives** 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 10. A reference to the former film production tax credit in law or regulation shall be a reference to

the film industry incentive.

Section 11. The amendment of section 1716-D(a) of the act shall apply to fiscal years beginning on or after July 1, 2021.

Section 12. This act shall take effect immediately.