

Film Tax Credit

Program Guidelines | September 2008

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I. Introduction

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

Applicants should read and understand the requirements of Act 55 prior to submitting an application. Applicants are also strongly advised to consult with their legal and financial advisors prior to submitting an application.

II. Program Allocation and Project Eligibility

The aggregate amount of tax credits available for the fiscal year beginning July 1, 2008 and ending June 30, 2009 is \$75 Million.

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

The following are NOT eligible projects: a production featuring news, current events, weather and market reports, or public programming, sports events, awards shows or other gala event, a production that solicits funds, a production containing obscene material or performances as defined in 18 PA.C.S. § 5903(b) (relating to obscene and other sexual materials and performances) or a production primarily for private, political, industrial, corporate or institutional purposes.

III. Program Requirements

A project is eligible if at least 60% of the project’s total production budget is used for Qualified Pennsylvania production expenses.

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

The following costs ARE considered Qualified Pennsylvania production expenses:

- Salaries, wages and fringe benefits earned in Pennsylvania if such amounts are subject to Pennsylvania taxation. However, there is a cap of

\$15 million in aggregate payments for above the line services to be provided by performing artists, whether directly or through a “loan-out” company.

- Music and story rights only if the rights are acquired from a Pennsylvania resident or an entity subject to Pennsylvania taxation.
- The costs of production operations incurred in Pennsylvania such as:
 - construction;
 - photography, visual effects, editing, sound synchronization;
 - lighting;
 - wardrobe and accessories; and
 - food and lodging.
- The cost of rental of facilities and equipment from a Pennsylvania taxpayer.
- The cost of insurance coverage purchased through an insurance agent based in Pennsylvania.
- Costs of travel and transportation to, from and within Pennsylvania, including overnight delivery services.

Fees for production services (including pre and post-production services) and production-related services such as legal and accounting fees are Qualified Pennsylvania production expenses only if such fees are paid to a Pennsylvania taxpayer and all or substantially all the services are actually performed in Pennsylvania. In order to promote and protect jobs in Pennsylvania, the Pennsylvania Film Office will not recognize production services performed outside Pennsylvania as Qualified Pennsylvania production expenses regardless of whether they were performed by a Pennsylvania taxpayer.

Salaries, wages and fringe benefits paid to residents of jurisdictions with which Pennsylvania has a reciprocal taxation agreement MAY be Qualified Pennsylvania production expenses; applicants should seek guidance on this issue from their legal and accounting advisors prior to submitting an application.

The following costs are NOT considered Qualified Pennsylvania production expenses:

- Development costs, financing costs, marketing costs and advertising costs.
- Costs incurred in connection with the sale or transfer of a tax credit.
- Fees paid for services performed outside the Commonwealth.

IV. How to Apply

Applications may be filed no sooner than 90 days prior to the start date of principal photography in the Commonwealth.

Applicants must provide the following information and documentation to the Film Office:

- A completed Film Tax Credit Application as contained in Appendix B. The application is also available at <http://www.filminpa.com/filminpa/econIncentives.jsp>.
- A completed "Single Application" available at www.newPA.com. The "Single Application" must be submitted electronically. Refer to Appendix C for instructions on completing the "Single Application" online.
- A "budget top sheet" for the project which reflects total production expenses and Qualified Pennsylvania production expenses. Expenses not included in the budget will not be eligible for the award of tax credits.
- A statement indicating whether financing for the project has been secured or will be secured prior to the planned start date of principal photography in the Commonwealth. If financing is/will be in place, applicants must provide appropriate documentation and must notify the Pennsylvania Film Office of any change in financing prior to completion of the project.
- An interview is required with the Director of the Pennsylvania Film Office (in person or by telephone) to discuss the application prior to its submission. Interested applicants should request an appointment by calling 717-783-FILM.
- Any other information or documentation deemed appropriate by the Pennsylvania Film Office.
- Applications must be mailed, faxed or sent via email to:

Janice Collier
Director of Grants & Finance
Pennsylvania Film Office
Department of Community & Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
Phone: (717) 720-1312
Fax: (717) 787-0687
jacollier@state.pa.us

V. Special Circumstances

The Pennsylvania Film Office recognizes the dynamic nature of the entertainment industry and, to the extent permitted by Act 55, will endeavor to address special circumstances as they arise. All tax credit awards are subject to the availability of funds.

- Applications may be filed no sooner than 90 days prior to the start date of principal photography in the Commonwealth. In a visual effects intensive project i.e., where more than 30% of the total production budget is designated for costs associated with visual effects, the “date of commencement of principal photography in Pennsylvania” will be deemed to be the date upon which the production company:
 - has established a physical presence in the Commonwealth and
 - has incurred at least \$10,000 in Qualified Pennsylvania production expenses for the project.
- If a project is scheduled to be in production for more than 12 months the applicant may, at the time of application, make a written request that a film tax credit be issued on an annual basis rather than upon completion of production. The Pennsylvania Film Office may in its discretion grant such a request, subject to the following conditions:
 - The amount of the film tax credit to be issued shall be limited to 25% of Qualified Pennsylvania production expenses actually incurred in connection with the project during the relevant 12 month period specified in the request;
 - The applicant shall comply with the Financial Compliance Instructions for the Program with respect to **each** tax credit to be issued under this provision; and
 - The applicant shall deliver to the Department a completion bond or guarantee issued by an entity acceptable to the Department, in its sole discretion, in an amount equal to 100% of the aggregate amount of the tax credit specified in the application; such bond or guarantee must insure that 60% of the project’s overall budget will be Qualified Pennsylvania production expenses.
 - If accepted by the Film Office, the request may not be withdrawn or changed.
- An applicant may submit a single application for a “slate” of projects, i.e., three or more film and television projects to be completed over a period of more than twelve months. Approval of such an application would be subject to the availability of funding at the time of commencement of principal photography in Pennsylvania for each

project and other terms and conditions as may be specified in the contract between the Department and the applicant.

- The Pennsylvania Film Office reserves the right to limit a tax credit award to an amount not greater than 20% of the aggregate amount of tax credits available in any fiscal year, i.e., \$15 Million for the Fiscal Year ending June 30, 2009. The Film Office will defer the excess amount to the next Fiscal Year, subject always to the availability of the tax credits and the 20% maximum. For example, a project with \$100 Million in Qualified Pennsylvania production expenses in Year 1 could receive \$15 Million in Year 1 and \$10 Million in Year 2.

VI. Review Process

Applications will be considered in the order in which they are received. All applications will be reviewed for completeness and compliance with the law and these Guidelines. The Pennsylvania Film Office may consider the following criteria in its review of applications:

- the amount of Qualifying Pennsylvania production expenses to be incurred;
- the number of days of shooting in Pennsylvania;
- whether the project is or will be fully financed prior to the commencement of principal photography in Pennsylvania;
- whether distribution for the project has been secured;
- the number of jobs to be created by the project;
- the number of job training opportunities to be generated by the project;
- whether post production activity will take place in Pennsylvania;
- whether the project will tend to foster a positive image of Pennsylvania; and
- such other factors as it may deem appropriate.

The Pennsylvania Film Office will endeavor to respond to applications within 30 days after receipt of the required information.

VII. The Tax Credit Contract

If an application for a tax credit is approved, the Pennsylvania Film Office will prepare and send a contract to the applicant. The contract will specify the maximum amount of eligible tax credits and the applicant's obligations including but not limited to the following:

- Provide evidence that:
 - the applicant has registered to do business in Pennsylvania prior to the commencement of principal photography in Pennsylvania; and
 - all personal service corporations or loan-out companies engaged by the applicant are incorporated in or have registered to do business in Pennsylvania prior to the commencement of principal photography in Pennsylvania or the date on which such company was engaged, whichever is later.

If an organization determines that it needs to register to do business in Pennsylvania, the link to the Forms section of the Department's Corporation Bureau website is

<http://www.dos.state.pa.us/corps/cwp/view.asp?a=1093&Q=431210&corpNav=1>

- Provide evidence that production has commenced or will commence in Pennsylvania (e.g. a production report) in accordance with the terms of the application submitted by the applicant, Act 55 and these Guidelines.

In situations where the applicant is able to demonstrate to the satisfaction of the Pennsylvania Film Office that exigent circumstances have caused an unavoidable delay in the commencement of production, in its sole discretion, the Pennsylvania Film Office may agree to extend the start date by up to an additional 120 days upon receipt of satisfactory evidence that the production will commence within the time of the extension.

- Provide monthly progress reports and/or final report to the Pennsylvania Film Office until completion of the production using the forms attached hereto as Appendix D & E. Projects with a duration of more than three months must submit a monthly report in addition to a final report. Projects of less than three months' duration only need to submit a final report.
- Provide a final report, including payroll, economic impact and other information as requested by the Pennsylvania Film Office within 60 days of completion of the production using the form attached hereto as Appendix E.
- Submit an independently audited report of all production expenses and all Qualifying Pennsylvania production expenses upon completion of the project i.e., delivery of the completed film to investors and ready for distribution. Each expense must be verifiable by an independent CPA, including the amount and date the expense was incurred, the identification of vendors and employees paid, and the tax ID or social security number of each payment recipient. The report shall be prepared in accordance

with the Financial Compliance Instructions for the Program attached as Appendix F.

- Include with the end credits, in each print and electronic version of the project, an acknowledgment of the support provided by the Pennsylvania Film Office and the logo of the Pennsylvania Film Office. The acknowledgement to be used is contained in Appendix G of these guidelines and is available at www.filminpa.com.
- Such other terms and conditions as the Pennsylvania Film Office deems appropriate.

Acceptance of the contract must be made by returning an original signed copy of the contract to the Pennsylvania Film Office within 14 days of the date it is issued by certified mail or other traceable form.

Contracts must be returned to:

Janice Collier
Director of Grants & Finance
Pennsylvania Film Office
Department of Community & Economic Development
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

VIII. Issuance of Tax Credit Certificates

Tax credit certificates will be issued by the Department upon review and approval of the audit and other required information by the Pennsylvania Film Office. Provided the information supplied to the Film Office meets the financial reporting requirements of the Program, a tax credit certificate will be issued within 45 days of receipt of the information.

The amount of film tax credits issued may not exceed the amount requested in the application.

Film tax credits can only be issued to entities that have a Pennsylvania state tax ID number. All entities not incorporated in the Commonwealth of Pennsylvania must register to do business in Pennsylvania in order to obtain a state tax ID number.

IX. Use and Transfer of Tax Credits

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

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

In addition to the information provided in these Guidelines, sellers and buyers of tax credits are encouraged to review Corporation Tax Bulletin 2008-02 issued by the Department of Revenue, available at http://www.revenue.state.pa.us/revenue/lib/revenue/ct_2008_02.pdf.

Tax Credit Applicant

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

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

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

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

After submitting an application to transfer a Film Tax Credit, an applicant may no longer use that portion of the tax credit to offset an eligible tax liability unless the application is denied by the Pennsylvania Film Office or withdrawn by the applicant.

Transferring Tax Credits

Subject to the statutory requirements relating to the payment of all outstanding tax liability for the year in which the tax credit is issued, an applicant may transfer unused tax credits. The effective taxable year for the transferred tax credits will be the date of approval of the application for transfer by the Department of Revenue, the tax report filing date or the date the seller becomes compliant, whichever is latest.

The amount of the tax credit that a transferee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year. A transferee may not carry back or obtain a refund of any unused Film Tax Credits. Instructions on how to complete the application to obtain approval of the sale or assignment of tax credits may be found in Appendix H or at www.filminpa.com/assignment.

Film tax credits can only be sold or assigned to entities that have a Pennsylvania state tax ID number. All entities not incorporated in the Commonwealth of Pennsylvania must register to do business in Pennsylvania in order to obtain a state tax ID number.

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

The Department of Revenue may take up to 60 days to review the application and confirm compliance with all conditions before posting the transfer to the transferor and transferee's respective accounts with the Department of Revenue. Neither DCED nor the Department of Revenue issues written confirmation of the transfer. Transferors and transferees of tax credits may each confirm the completion of all transfers by calling 1-888-728-2937 (Option 1, 2, 5) with the Corporate Tax Account ID number in hand.

X. Confidentiality

Materials submitted to the Pennsylvania Film Office and the Department of Community and Economic Development may be subject to public release under the Pennsylvania Right to Know Law, 65 P.S. § 67.101 et seq. Safeguards provided by this and other Pennsylvania laws will protect applicants from disclosure of:

- Confidential proprietary information
- Financial statements
- Business plans
- Marketing information

- Intellectual property

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

If an applicant believes a document or a specific piece of information in the documents should be confidential, the Pennsylvania Film Office advises that the applicant stamp or otherwise make the material "CONFIDENTIAL."

If the Department receives a request for information under the Right to Know Law, the applicant will be notified. The applicant will have five business days from the receipt of the notification to provide an opinion regarding the request to the Department. Whether or not the applicant has responded, the Department will respond to the record request within 10 days of the request and will notify the applicant of its decision.

Applicants should consult with their legal advisors on the terms of and applicability of the Right to Know Law and the Public Record Exception to the Right to Know Law that protects "financial statements, business plans and marketing information" before submitting an application or other materials to the Department.

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