

No. 2017-7

AN ACT

HB 151

Amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, in Small Business First, further providing for definitions; in machinery and equipment loans, further providing for definitions and for reporting and inspection; in Pennsylvania Industrial Development Program, further providing for definitions; providing for entertainment economic enhancement program; and making a related repeal.

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

Section 1. Sections 2302 and 2902 of Title 12 of the Pennsylvania Consolidated Statutes are amended by adding definitions to read:

§ 2302. Definitions.

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

"Agent." The term includes the Department of Community and Economic Development.

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§ 2902. Definitions.

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

"Agent." The term includes the Department of Community and Economic Development.

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Section 2. Section 2908(a) of Title 12 is amended to read:

§ 2908. Reporting and inspection.

(a) Inspection.—Each business enterprise which applies for or receives assistance under this chapter, **upon reasonable request of the authority, shall permit duly authorized employees of the department or the authority] shall, upon request, permit authorized employees of the authority or its agent** to inspect the plant, books and records of the business enterprise.

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Section 3. Section 3002 of Title 12 is amended by adding a definition to read:

§ 3002. Definitions.

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

"Agent." The term includes the Department of Community and Economic Development.

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Section 4. Chapter 33 of Title 12 is amended to read:

CHAPTER 33
[ECONOMIC ENHANCEMENT
(Reserved)]

ENTERTAINMENT ECONOMIC ENHANCEMENT PROGRAM

Sec.

3301. Scope of chapter.

3302. Definitions.

3303. Procedure.

3304. Claim.

3305. Carryover, carryback and assignment of tax credit.

3306. Determination of Pennsylvania rehearsal and tour expenses.

3307. Limitations.

3308. Penalty.

3309. Pass-through entity.

3310. Department guidelines and regulations.

3311. Report to General Assembly.

§ 3301. Scope of chapter.

This chapter relates to the Entertainment Economic Enhancement Program.

§ 3302. Definitions.

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

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

"Class 1 venue." A stadium, arena, other structure or property owned by a municipality or an authority formed under 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) 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) 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 of the Tax Reform Code.

(2) *Owned by or affiliated with a State-related institution as defined in 62 Pa.C.S. § 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, spotlights, 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.

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

"Maintained a place of business" or "maintaining a place of business." All of the following:

(1) *Having, maintaining or using within this Commonwealth an office, warehouse or other place of business.*

(2) *Regularly engaging in an activity as a business within this Commonwealth in connection with the lease, sale or delivery of tangible personal property or the performance of a service for residents of this Commonwealth.*

"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.*

(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) of the Tax Reform Code.*

(2) *A Pennsylvania S corporation as defined in section 301(n.1) of the Tax Reform Code.*

(3) *An unincorporated entity subject to section 307.21 of the Tax Reform Code.*

"Pennsylvania rehearsal and tour expenses." The sum of Pennsylvania rehearsal expenses and tour expenses. The term includes Pennsylvania rehearsal expenses and tour expenses paid prior to or during a rehearsal or tour.

"Pennsylvania rehearsal expense." A rehearsal expense which is incurred or will be incurred within this Commonwealth. The term includes:

(1) *A payment which is made or will be made by a recipient to a person upon which withholding will be made on the payment by the*

recipient as required under Part VII of Article III of the Tax Reform Code or a payment which is made or will be made to a person who is required to make estimated payments under Part VIII of Article III of the Tax Reform Code.

(2) A payment which is made or will be made to a personal service corporation representing individual talent if the tax imposed by Article IV of the Tax Reform Code will be paid or accrued on the net income of the corporation for the taxable year.

(3) A payment which is made or will be made 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 of the Tax Reform Code.

"Qualified rehearsal and tour expense." All Pennsylvania rehearsal and tour expenses if Pennsylvania rehearsal expenses comprise or will 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 or to be paid to individuals or payment made or to be 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 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, VI, VII or IX of the Tax Reform Code. The term does not include tax withheld by an employer from an employee under Article III of the Tax Reform Code.

"Recipient." An applicant that has been awarded a tax credit under section 3303(e) (relating to procedure).

"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 or to be paid to an individual employed in the rehearsal of the performance.*

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

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

(4) *The costs of construction, operations, editing, photography, staging, lighting, wardrobe and accessories.*

(5) *The cost of leasing vehicles.*

(6) *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.*

(7) *The cost of insurance coverage.*

(8) *The cost of food and lodging.*

(9) *The cost of purchase or rental of concert tour equipment.*

(10) *The cost of renting a rehearsal facility.*

(11) *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 as provided under this chapter.

"Tax Reform Code." The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

"Tour." A series of concerts performed or to be performed by a musical performer in more than one location. The term includes at least one rehearsal.

"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 which is made or will be made by a recipient to a person upon which withholding will be made on the payment by the recipient as required under Part VII of Article III of the Tax Reform Code or a payment which is made or will be made to a person who is required to make estimated payments under Part VIII of Article III of the Tax Reform Code.*

(ii) *The cost of transportation of people or concert touring equipment which is incurred or will be 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 which is incurred or will be*

incurred for transportation provided by a company which is subject to the tax imposed under Article III or IV of the Tax Reform Code.

(iii) The cost of leasing vehicles upon which the tax imposed by Article II of the Tax Reform Code will be paid or accrued.

(iv) The cost of insurance coverage which is purchased or will be 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 which is incurred or will be incurred from a facility located in this Commonwealth.

(vii) Expenses which are incurred or will be incurred in marketing or advertising a tour at venues located within this Commonwealth.

(viii) The cost of merchandise which is purchased or will be purchased from a company located within this Commonwealth and used on the tour.

(ix) A payment which is made or will be made to a personal service corporation representing individual talent if the tax imposed by Article IV of the Tax Reform Code will be paid or accrued on the net income of the corporation for the taxable year.

(x) A payment which is made or will be made 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 of the Tax Reform Code.

(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.

§ 3303. Procedure.

(a) Application.—An applicant 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 anticipated amount of Pennsylvania rehearsal expenses in comparison to the anticipated aggregate amount of rehearsal expenses.

(vi) The anticipated amount of the tour expenses.

(vii) The anticipated amount of the concert tour equipment expenses which are or will be purchased or rented from a company

located and maintaining a place of business 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) Except as provided in subsection (c) and upon determining that the applicant has paid the applicable application fee not to exceed \$300, has met or will meet the minimum rehearsal and tour requirements and has incurred or will incur qualified rehearsal and tour expenses, the department may approve the applicant for a tax credit. Applications not approved may be reviewed and considered in subsequent application periods. The department may approve an applicant for a tax credit based on its evaluation of the criteria under this subsection.

(c) Restriction.—The department may only consider rehearsals held or to be held, and qualified rehearsal and tour expenses incurred or to be incurred, after January 1, 2017, in determining whether an applicant has met or will meet the minimum rehearsal and tour requirements.

(d) Contract.—If the department approves the applicant's application under subsection (b), the department and the applicant 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 applicant 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 applicant 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 applicant 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 applicant 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.

(e) Certificate.—Upon execution of the contract required by subsection (d), the department shall award the applicant a concert rehearsal and tour tax credit and issue the recipient a tax credit certificate.

§ 3304. Claim.

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

§ 3305. Carryover, carryback and assignment of tax credit.

(a) *General rule.*—If a recipient 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 recipient 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 recipient 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 recipient'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 tax liability under subsection (a).

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

(d) *Sale or assignment.*—The following shall apply:

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

(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 recipient 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 30 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.

(e) *Purchasers and assignees.*—The following apply:

(1) The purchaser or assignee of all or a portion of a tax credit under subsection (d) shall immediately claim the tax 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 one qualified tax liability may not exceed 50% of the 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.

§ 3306. 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 chapter, 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.*

§ 3307. Limitations.

(a) Cap.—Except as provided in this subsection, the department may not award tax credits for qualified rehearsal and tour expenses incurred or to be incurred related to more than five tours in a fiscal year. In a fiscal year, the department may, in the department's discretion, advance the award of tax credits for qualified rehearsal and tour expenses incurred or to be incurred related to a maximum of two additional tours.

(b) Advance award of credits.—The advance award of tax credits under subsection (a) shall:

(1) count against the total number of tours that the department may award tax credits for qualified rehearsal and tour expenses incurred or to be incurred related to a tour in that next succeeding fiscal year; and

(2) reduce the number of tours that the department may award tax credits for qualified rehearsal and tour expenses incurred or to be incurred related to a tour in that next succeeding fiscal year.

(c) Individual limitations.—The following shall apply:

(1) An applicant 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 3303(e) (relating to procedure) to an applicant 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 3303(e) to an applicant 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 3303(e) to an applicant 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), an applicant 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 applicant if the applicant 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 chapter, 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 3302 (relating to definitions) 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" under section 3302. If the determination is made, the department may waive the requirement that 60% of a tour's aggregate rehearsal expenses be comprised of Pennsylvania rehearsal expenses.

§ 3308. Penalty.

A recipient which claims a tax credit and fails to incur the amount of qualified rehearsal and tour expenses agreed to under section 3303(d)(4) (relating to procedure) 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 under section 3303(d)(4) and the amount of qualified rehearsal and tour expenses actually incurred by the recipient. The penalty shall be assessed and collected under Article II of the Tax Reform Code.

§ 3309. Pass-through entity.

(a) General rule.—If a pass-through entity has any unused tax credits under section 3305 (relating to carryover, carryback and assignment of tax credit), the pass-through entity 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 each shareholder, member or partner is entitled.

(b) Limitation.—A pass-through entity and a shareholder, member or partner of a pass-through entity may 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.

§ 3310. Department guidelines and regulations.

The department shall develop written guidelines for the implementation of this chapter. The guidelines shall be in effect until the department promulgates regulations for the implementation of this chapter.

§ 3311. 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 chapter. The report shall include the name of the tours which rehearsed in this Commonwealth, the names of all recipients

awarded a tax credit as of the date of the report and the amount of tax credits approved for each recipient. The report may also include recommendations for changes in the calculation or administration of the tax credits provided under this chapter. The report shall be submitted to the chairperson and minority chairperson of the Appropriations Committee of the Senate, the chairperson and minority chairperson of the Finance Committee of the Senate, 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. 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.

Section 5. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of Chapter 33 of Title 12.

(2) Subarticle C of Article XVII-D of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is repealed.

Section 6. This act shall take effect immediately.

APPROVED—The 22nd day of June, A.D. 2017

TOM WOLF