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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 937 Session of 2015

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INTRODUCED BY AUMENT, COSTA AND RAFFERTY, JUNE 29, 2015

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REFERRED TO FINANCE, JUNE 29, 2015

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AN ACT

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

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as  
15 the Tax Reform Code of 1971, is amended by adding an article to  
16 read:

17 ARTICLE XVII-J

18 CONCERT REHEARSAL AND TOUR TAX CREDIT

19 Sec.

20 1701-J. Scope of article.

21 1702-J. Definitions.

22 1703-J. Procedure.

23 1704-J. Claim.

1 1705-J. Carryover, carryback and assignment of tax credit.

2 1706-J. Determination of Pennsylvania rehearsal and tour  
3 expenses.

4 1707-J. Limitations.

5 1708-J. Penalty.

6 1709-J. Pass-through entity.

7 1710-J. Department guidelines and regulations.

8 1711-J. Report to General Assembly.

9 Section 1701-J. Scope of article.

10 This article relates to concert rehearsal and tour tax  
11 credits.

12 Section 1702-J. Definitions.

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

16 "Class 1 venue." A stadium, arena, other structure or on  
17 property owned by a municipality at which concerts are performed  
18 and which is all of the following:

19 (1) Located in a city of the first class or a county of  
20 the second class.

21 (2) Is constructed in a manner in which the venue has a  
22 seating capacity of at least 14,000.

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

25 (1) Located outside the geographic boundaries of a city  
26 of the first class or a county of the second class.

27 (2) Is constructed in a manner in which the venue has a  
28 seating capacity of at least 6,000.

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

1           (1) Located within a neighborhood improvement zone, as  
2 defined in section 1902-B.

3           (2) Owned by or affiliated with a State-related  
4 institution, as defined in 62 Pa.C.S. § 103 (relating to  
5 definitions).

6           (3) Owned by the Commonwealth and affiliated with the  
7 State System of Higher Education.

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

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

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

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

20           (1) the purchase or rental of concert tour equipment, in  
21 an amount of at least \$1,500,000, from companies located in  
22 this Commonwealth for use on the tour;

23           (2) a rehearsal at a qualified rehearsal facility for a  
24 minimum of 10 days;

25           (3) at least one concert performed at a class 1 venue;  
26 and

27           (4) at least one concert performed at a venue which is  
28 located in a municipality other than the municipality in  
29 which the class 1 venue under paragraph (3) is located.

30          "Pass-through entity." A partnership as defined in section

1 301(n.0) or a Pennsylvania S corporation as defined in section  
2 301(n.1).

3 "Pennsylvania rehearsal and tour expenses." The sum of  
4 Pennsylvania rehearsal expenses and tour expenses.

5 "Pennsylvania rehearsal expense." A rehearsal expense which  
6 is incurred or will be incurred within this Commonwealth.

7 "Qualified rehearsal and tour expense." All Pennsylvania  
8 rehearsal and tour expenses if Pennsylvania rehearsal expenses  
9 comprise at least 60% of the total rehearsal expenses. The term  
10 shall not include more than \$5,000,000 in the aggregate of  
11 compensation paid to individuals or payment made to entities  
12 representing an individual for services provided in the tour.

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

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

18 (2) Has a permanent grid system with a capacity of  
19 1,000,000 pounds.

20 (3) Has a built-in power supply system available at a  
21 minimum of 3,200 amps without the need for any supplemental  
22 generators.

23 (4) Has a height from floor to permanent grid of a  
24 minimum of 80 feet.

25 (5) Has at least two sliding or roll-up access doors  
26 with a minimum height of 14 feet.

27 (6) Has a perimeter security system which includes 24-  
28 hour, seven-days-a-week security cameras and the use of  
29 access control identification badges.

30 (7) Has a service area with production offices, catering

1 and dressing rooms with a minimum of 5,000 square feet.

2 (8) Is located within one mile of a minimum of two  
3 companies which provide concert tour equipment for use on a  
4 tour.

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

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

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

13 (1) Compensation paid to an individual employed in the  
14 rehearsal of the performance.

15 (2) The costs of construction, operations, editing,  
16 photography, staging, lighting, wardrobe and accessories.

17 (3) The cost of leasing vehicles.

18 (4) The cost of transportation of people or concert tour  
19 equipment to or from a train station, bus depot, airport or  
20 other transportation facility or directly from a residence or  
21 business entity.

22 (5) The cost of insurance coverage.

23 (6) The cost of food and lodging.

24 (7) The cost of purchase or rental of concert tour  
25 equipment.

26 (8) The cost of renting a rehearsal facility.

27 (9) The cost of emergency or medical support services  
28 required to conduct a rehearsal.

29 "Rehearsal facility." As follows:

30 (1) A facility primarily used for rehearsals which is

1 all of the following:

2 (i) Located within this Commonwealth.

3 (ii) Has a minimum of 25,000 square feet of column-  
4 free, unobstructed floor space.

5 (2) The term does not include a facility at which  
6 concerts are capable of being held.

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

10 "Tax credit." The concert rehearsal and tour tax credit  
11 provided under this article.

12 "Taxpayer." A concert tour promotion company, concert tour  
13 management company or other concert management company subject  
14 to tax under Article III or IV. The term does not include  
15 contractors or subcontractors of a concert tour promotion  
16 company, concert tour management or other concert management  
17 company.

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

20 "Tour expense." As follows:

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

24 (i) Compensation paid to an individual on which the  
25 tax imposed by Article III will be paid or accrued.

26 (ii) The cost of transportation of people or concert  
27 touring equipment incurred while transporting to or from  
28 a train station, bus depot, airport or other  
29 transportation facility or while transporting directly  
30 from a residence or business entity, located in this

1 Commonwealth or incurred for transportation provided by a  
2 company which is subject to the tax imposed under Article  
3 III or IV.

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

6 (iv) The cost of insurance coverage purchased  
7 through an insurance agent based in this Commonwealth.

8 (v) The cost of purchasing or renting facilities and  
9 equipment from or through a resident of this Commonwealth  
10 or an entity subject to taxation in this Commonwealth.

11 (vi) The cost of food and lodging incurred from a  
12 facility located in this Commonwealth.

13 (vii) Expenses incurred in marketing or advertising  
14 a tour at venues located within this Commonwealth.

15 (viii) The cost of merchandise purchased from a  
16 company located within this Commonwealth and used on the  
17 tour.

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

19 (i) Development cost, including the writing of music  
20 or lyrics.

21 (ii) Cost related to the sale or assignment of a  
22 concert rehearsal and tour tax credit under section 1705-  
23 J(d).

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

25 Section 1703-J. Procedure.

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

29 (b) Review and approval.--

30 (1) The department shall establish application periods

1 not to exceed 30 days. All applications received during an  
2 application period shall be reviewed and evaluated by the  
3 department based on the following criteria:

4 (i) The anticipated number of rehearsal days in a  
5 qualified rehearsal facility.

6 (ii) The anticipated number of concerts at class 1  
7 venues.

8 (iii) The anticipated number of concerts at class 2  
9 venues.

10 (iv) The anticipated number of concerts at class 3  
11 venues.

12 (v) The amount of Pennsylvania rehearsal expenses in  
13 comparison to the aggregate amount of rehearsal expenses.

14 (vi) The anticipated Pennsylvania tour expenses.

15 (vii) The anticipated tour equipment expenses which  
16 are or will be purchased or rented from a company located  
17 in this Commonwealth and which will be used on the tour.

18 (viii) The anticipated number of days spent in  
19 Commonwealth hotels.

20 (ix) Other criteria that the department deems  
21 appropriate to ensure maximum employment opportunities  
22 and entertainment benefits for the residents of this  
23 Commonwealth.

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



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

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

6 (1) An itemized list of rehearsal expenses incurred or  
7 to be incurred for the tour.

8 (2) An itemized list of Pennsylvania rehearsal expenses  
9 incurred or to be incurred for the tour.

10 (3) With respect to a contract entered into prior to  
11 completion of a tour, a commitment by the taxpayer to incur  
12 the Pennsylvania rehearsal expenses as itemized.

13 (4) An itemized list of the qualified rehearsal and tour  
14 expenses incurred or to be incurred for the tour.

15 (5) With respect to a contract entered into prior to  
16 completion of a tour, a commitment by the taxpayer to incur  
17 the qualified rehearsal and tour expenses as itemized.

18 (6) With respect to a contract entered into prior to  
19 completion of a tour, a commitment by the taxpayer to hold at  
20 least one concert at a class 1 venue.

21 (7) With respect to a contract entered into prior to  
22 completion of a tour, a commitment by the taxpayer to hold at  
23 least one concert at a venue located in a municipality other  
24 than the municipality in which the class 1 venue under  
25 paragraph (6) is located.

26 (8) The start date or the expected start date.

27 (9) Any other information the department deems  
28 appropriate.

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

1 concert rehearsal and tour tax credit and issue the taxpayer a  
2 tax credit certificate.

3 Section 1704-J. Claim.

4 A taxpayer may claim a concert rehearsal and tour tax credit  
5 against the qualified tax liability of the taxpayer.

6 Section 1705-J. Carryover, carryback and assignment of tax  
7 credit.

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

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

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

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

30 (1) A taxpayer, upon application to and approval by the

1 department, may sell or assign, in whole or in part, a tax  
2 credit granted to the taxpayer under this article.

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

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

12 (4) Notwithstanding any other provision of law, the  
13 Department of Revenue shall settle, assess or determine the  
14 tax of an applicant under this subsection within 90 days of  
15 the filing of all required final returns or reports in  
16 accordance with section 806.1(a)(5) of the act of April 9,  
17 1929 (P.L.343, No.176), known as The Fiscal Code.

18 (e) Purchasers and assignees.--Except as provided under  
19 subsection (f), the following apply:

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

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

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

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

5           (f) Limited carry forward of tax credit by a purchaser or  
6           assignee.--A purchaser or assignee may carry forward all or any  
7           unused portion of a tax credit purchased or assigned in:

8                   (1) Calendar year 2015 against qualified tax liabilities  
9                   incurred in taxable year 2016 or 2017.

10                   (2) Calendar year 2016 against qualified tax liabilities  
11                   incurred in taxable year 2017.

12           Section 1706-J. Determination of Pennsylvania rehearsal and  
13                   tour expenses.

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

18                   (1) The location where services are performed.

19                   (2) The location where tour equipment is purchased,  
20                   rented, delivered and used.

21                   (3) The location where performances are held.

22                   (4) Other factors the department determines are  
23                   relevant.

24           Section 1707-J. Limitations.

25           (a) Cap.--The aggregate amount of tax credits awarded in any  
26           fiscal year under this article may not exceed \$10,000,000. The  
27           department may, in the department's discretion, award in one  
28           fiscal year up to 50% of the dollar amount of tax credits  
29           available to be awarded in the next succeeding fiscal year.

30           (b) Advance award of credits.--

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

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

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

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

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

15           (1) A taxpayer may not be awarded more than \$3,000,000  
16 of tax credits for a tour.

17           (2) Except as provided under paragraph (5), the  
18 aggregate amount of tax credits awarded by the department  
19 under section 1703-J(d) to a taxpayer for a tour with  
20 concerts at a class 1 venue and a class 2 venue may not  
21 exceed 25% of the qualified rehearsal and tour expenses  
22 incurred or to be incurred.

23           (3) Except as provided under paragraph (5), the  
24 aggregate amount of tax credits awarded by the department  
25 under section 1703-J(d) to a taxpayer for a tour with  
26 concerts at a class 1 venue and a class 3 venue may not  
27 exceed 30% of the qualified rehearsal and tour expenses  
28 incurred or to be incurred.

29           (4) Except as provided under paragraph (5), the  
30 aggregate amount of tax credits awarded by the department

1 under section 1703-J(d) to a taxpayer for a tour with  
2 concerts at a class 1 venue and a class 3 venue which does  
3 not serve alcohol may not exceed 35% of the qualified  
4 rehearsal and tour expenses incurred or to be incurred.

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

11 (d) Qualified rehearsal facility.--To be considered a  
12 qualified rehearsal facility under this article, the owner of a  
13 rehearsal facility shall provide evidence to the department to  
14 verify the development or facility specifications and capital  
15 improvement costs incurred for the rehearsal facility so that  
16 the threshold amounts set in the definition of "qualified  
17 rehearsal facility" under section 1702-J are satisfied, and upon  
18 verification, the rehearsal facility shall be registered by the  
19 department officially as a qualified rehearsal facility.

20 (e) Waiver.--The department may make a determination that  
21 the financial benefit to this Commonwealth resulting from the  
22 direct investment in or payments made to Pennsylvania rehearsal  
23 and concert facilities outweighs the benefit of maintaining the  
24 60% Pennsylvania rehearsal expenses requirement contained in the  
25 definition of qualified rehearsal and tour expense. If such  
26 determination is made, the department may waive the requirement  
27 that 60% of a tour's aggregate rehearsal expenses be comprised  
28 of Pennsylvania rehearsal expenses.

29 Section 1708-J. Penalty.

30 A taxpayer which claims a tax credit and fails to incur the

1 amount of qualified rehearsal and tour expenses agreed to in  
2 section 1703-J(c) (4) for a tour in that taxable year shall repay  
3 to the Commonwealth an amount equal to 110% of the difference  
4 between the amount agreed to in section 1703-J(c) (4) and the  
5 amount of qualified rehearsal and tour expenses actually  
6 incurred by the taxpayer.

7 Section 1709-J. Pass-through entity.

8 (a) General rule.--If a pass-through entity has any unused  
9 tax credits under section 1705-J, it may elect in writing,  
10 according to procedures established by the Department of  
11 Revenue, to transfer all or a portion of the tax credits to  
12 shareholders, members or partners in proportion to the share of  
13 the entity's distributive income to which the shareholder,  
14 member or partner is entitled.

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

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

25 Section 1710-J. Department guidelines and regulations.

26 The department shall develop written guidelines for the  
27 implementation of the provisions of this article. The guidelines  
28 shall be in effect until such time as the department promulgates  
29 regulations for the implementation of the provisions of this  
30 article. The department shall promulgate regulations for the

1 implementation of this article within two years of the effective  
2 date of this section.

3 Section 1711-J. Report to General Assembly.

4 No later than June 1, 2016, and September 1 of each year  
5 thereafter, the Secretary of Community and Economic Development  
6 shall submit a report to the General Assembly summarizing the  
7 effectiveness of the tax credits provided by this article. The  
8 report shall include the name of the tours which rehearsed in  
9 this Commonwealth, the names of all taxpayers utilizing the tax  
10 credit as of the date of the report and the amount of tax  
11 credits approved for each taxpayer. The report may also include  
12 any recommendations for changes in the calculation or  
13 administration of the tax credits provided by this article. The  
14 report shall be submitted to the chairman and minority chairman  
15 of the Appropriations Committee of the Senate, the chairman and  
16 minority chairman of the Finance Committee of the Senate, the  
17 chairman and minority chairman of the Appropriations Committee  
18 of the House of Representatives and the chairman and minority  
19 chairman of the Finance Committee of the House of  
20 Representatives. In addition to the information set forth above,  
21 the report shall include the following information, which shall  
22 be separated by geographic location within this Commonwealth:

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

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

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



1 Section 2. This act shall take effect in 60 days.