

Employer Withholding Requirements and the Film Production Tax Credit

As it relates to Film Production Tax Credits, a “Pennsylvania production expense” is defined to include: 1) A payment made by a taxpayer (a film production company, excluding contractors or subcontractors of a film production company) to a person upon which withholding will be made on the payment by the taxpayer as required under Part VII of Article III; and 2) payment to a pass-through entity representing individual talent for which withholding will be made by the pass-through entity on the payment as required under Part VII or VII-A of Article III.

Part VII of Article III requires every Pennsylvania employer that makes payments of compensation to either a resident individual, or a nonresident individual taxpayer performing services on behalf of the employer within this Commonwealth, to withhold personal income tax on the payments. 72 P.S. § 7316. Part VII-A requires a partnership or Pennsylvania S-corporation to withhold tax when it receives income from sources within this Commonwealth and any portion of that income is allocable to a nonresident partner or nonresident shareholder. Id. § 7324(a).

Therefore, a Pennsylvania film production company is required to withhold Pennsylvania Personal Income Tax from the compensation it pays to its resident employees and its nonresident employees who perform services for the production company in this Commonwealth. If a production company makes payment to a pass-through entity representing individual talent, then the pass-through entity is similarly required to withhold tax from the compensation it pays to its resident employees and its nonresident employees who perform services for the pass-through entity in this Commonwealth. In addition, the pass-through entity is required to withhold on its distributions of Pennsylvania sourced income to its nonresident partners or nonresident shareholders. This ensures that all qualifying production expenses will be subject to withholding—there are no special withholding rules for Pennsylvania film production companies or pass-through entities. A pass-through entity is not required to withhold tax on the income allocable to resident partners or resident shareholders, who are responsible for reporting and paying the tax themselves.

Provided below is a brief explanation of the compensation that is subject to employer withholding and how employers with withholding requirements should report and pay the tax to the Pennsylvania Department of Revenue. The guidance provided here is an overview of the information found in the Employer Withholding Information Guide (REV-415), which should be reviewed by film production companies and pass-through entities that may have employer withholding requirements. The Employer Withholding Information Guide is available on the Forms and Publications section of the Department of Revenue’s website at www.revenue.pa.gov/FormsandPublications.

I. Compensation Subject to Withholding

Compensation subject to Pennsylvania Personal Income Tax withholding includes salaries, wages, commissions, bonuses and incentive payments, fees, tips, and similar remuneration received for services rendered. Compensation does not include payments paid to persons retired from service, unemployment compensation, or payments paid to reimburse allowable business expenses if the employer requires the employee to account for the expenses and reimburses the employee in the exact amount of the expense. Tax must be withheld from each paycheck issued, even on supplemental compensation not paid daily, weekly, semiweekly, semimonthly, monthly, or quarterly.

1. Resident Employees

When a Pennsylvania resident performs services in Pennsylvania, a Pennsylvania film production company must withhold Pennsylvania Personal Income Tax from the employee's compensation. When a Pennsylvania resident is rendering services as the production company's employee wholly in another state, the production company must withhold on the entire compensation paid to the employee unless the other state has an income tax and the film production company is withholding the other state's tax. If the other state does not have an income tax, the film production company must withhold Pennsylvania Personal Income Tax on all compensation it pays to the employee.

When a Pennsylvania resident is performing services partly within and partly outside the Commonwealth, then the production company must withhold Pennsylvania Personal Income Tax on compensation for services rendered within the Commonwealth, even if the other state has an income tax and the production company is withholding the other state's tax. Compensation attributable to services within the Commonwealth is a proportion of the total compensation and is determined by dividing the number of working days in Pennsylvania by the total number of working days, then multiplying the result by total compensation.

2. Nonresident Employees

When nonresidents perform services in Pennsylvania, their employers must withhold Pennsylvania income tax from their compensation except when reciprocal tax agreements apply. When nonresidents perform services partly within and partly outside the Commonwealth, only compensation for services performed within the Commonwealth is subject to Pennsylvania withholding. Pennsylvania film production companies must withhold on all compensation paid to nonresidents who work within and outside of Pennsylvania, unless the production company maintains adequate records to accurately determine the amount of compensation from Pennsylvania sources.

The Commonwealth of Pennsylvania has reciprocal tax agreements with Indiana, New Jersey, Maryland, Ohio, Virginia, and West Virginia. These agreements provide that if a Pennsylvania resident employee receives compensation for services performed in one of these six states, the employer in that state withholds Pennsylvania Personal Income Tax from compensation received by the employee and remits that tax to Pennsylvania. If a nonresident employee from one of

these states receives compensation for services performed within Pennsylvania, no withholding of Pennsylvania Personal Income Tax is required provided an Employee's Non-Withholding Application Certificate (REV-419 EX) is filed by the nonresident employee with the Pennsylvania employer. In this case, the Pennsylvania film production company would withhold the income tax of the state in which the nonresident employee resides and would pay the tax to that state.

II. Registering for Employer Withholding

Film production companies and pass-through entities that are required to withhold Pennsylvania Personal Income Tax must register with the Commonwealth. Taxpayers must register with the Department of Revenue and the Department of Labor and Industry by submitting an Enterprise Registration Form (Form PA-100), which is available at www.pa100.state.pa.us. Taxpayers must also register with the Department of State, which may be done online at www.corporations.pa.gov.

III. Filing Employer Withholding

There are four filing obligations for Pennsylvania film production companies and pass-through entities that are required to withhold Pennsylvania Personal Income Tax.

1. An **Employer Quarterly Return of Withholding Tax (PA-W3)** must be filed for each quarter, either online using e-TIDES (www.etides.state.pa.us) or by phone using TeleFile (1-800-748-8299). The PA-W3 must be received on or before the last day of April, July, October, and January for the quarters ending on the last day of March, June, September, and December.
2. A **W-2 Wage and Tax Statement** for each employee must be submitted to the Department of Revenue by January 31 following the year in which compensation was made or thirty days from the termination of business, if the business terminated during the calendar year. Employers that file 250 or more W-2 forms are required to file electronically via e-TIDES. Taxpayers filing less than 250 W-2s may file by e-TIDES, mail, or TeleFile (if less than ten W-2 forms).
3. A **W-2 Transmittal (Form REV-1667)**, along with a W-2 Wage and Tax Statement for each employee, must be submitted annually by each employer on or before January 31 following the year in which wages are paid.
4. The **Federal Form 1099R** must be mailed to the Department of Revenue by February 28 of the year following the distribution. No other information returns are required.

Taxpayers filing by mail must complete and send the REV-1667 Transmittal Forms, along with all paper W-2 or 1099 forms that have withholding, to one of the following addresses:

If using US Postal Service:
PA Department of Revenue
P.O. Box 280412
Harrisburg, PA 17128-0412

If using a private carrier:
PA Department of Revenue
Bureau of Business Trust Fund Taxes
Receiving & Processing Section, 9th Floor
4th and Walnut Streets
Harrisburg, PA 17128-0904

Taxpayers should mail 1009 Forms without withholding to:

PA Department of Revenue
P.O. Box 280509
Harrisburg, PA 17128-0509

IV. Paying Employer Withholding

An employer required to withhold Pennsylvania Personal Income Tax must pay over to the Department of Revenue the tax it deducted and withheld on a quarterly, monthly, semimonthly or semiweekly basis, depending on the amount of tax withheld:

1. Quarterly – If total withholding is under \$300 per quarter, the taxes are due the last day of April, July, October and January.
2. Monthly – If total withholding is \$300 to \$999 per quarter, the taxes are due the 15th day of the following month.
3. Semi-Monthly - If total withholding is \$1,000 to \$4,999.99 per quarter, the taxes are due within three banking days of the close of the semi-monthly period.
4. Semi-Weekly – If total withholding is \$5,000 or greater per quarter (\$20,000 per year), the taxes are due on the Wednesday following the pay dates for employers whose paydays fall on a Wednesday, Thursday or Friday; and on the Friday following the pay dates for employers whose paydays fall on Saturday, Sunday, Monday or Tuesday

Except for employers filing quarterly returns, employers should remit payments using the Employer Deposit Statement of Withholding Tax (Form PA-501) through the e-TIDES website. PA-501 payments can also be remitted through TeleFile or by credit card, ACH Credit methods, or by mailing a check. Additional information be found in the EFT Electronic Payment Guide for Business Taxpayers (REV-300), available on the Department of Revenue's website. Quarterly filers are not required to use the PA-501. Rather, payments for tax withheld by quarterly filers must be forwarded quarterly with the PA-W3. Payments of \$1,000 or more must be remitted by Electronic Funds Transfer.