

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 538 Session of 2011

INTRODUCED BY PETRI, BAKER, BEAR, BOYD, CALTAGIRONE, CLYMER,
D. COSTA, DENLINGER, EVERETT, FLECK, GEIST, GOODMAN, GRELL,
GROVE, HARHART, HENNESSEY, HUTCHINSON, KILLION, KNOWLES,
LONGIETTI, MICOZZIE, MILLARD, MURT, O'NEILL, PETRARCA,
PICKETT, PYLE, RAPP, READSHAW, SCAVELLO, SWANGER, VULAKOVICH
AND WATSON, FEBRUARY 8, 2011

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 8, 2011

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 a long-term care tax credit.

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

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

ARTICLE XVII-G

LONG-TERM CARE INSURANCE TAX CREDIT

18 Section 1701-G. Scope of article.

19 This article relates to long-term care insurance tax credits.

20 Section 1702-G. Definitions.

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

"Department." The Department of Revenue of the Commonwealth.

"Long-term care insurance." An insurance policy, offered to an employee by an employer, to provide coverage when long-term care is needed, including chronic illness or disability and expenses for a nursing home, an assisted living facility, home care, a visiting nurse, a home health aide, a friendly visitor program, home-delivered meals, chore services, adult day-care centers or respite services.

"Long-term care insurance expenses." Expenses associated with providing long-term care insurance.

"Qualified tax liability." The liability for taxes imposed under Article III, IV or VI. The term shall include the liability for taxes imposed under Article III on an owner of a pass-through entity.

"Pass-through entity." Any of the following:

(1) A partnership, limited partnership, limited liability company, business trust or other unincorporated entity that for Federal income tax purposes is taxable as a partnership.

(2) A Pennsylvania S corporation.

"Secretary." The Secretary of Revenue of the Commonwealth.

"Small business." An employer who, on at least 50% of its working days during the taxable year, employed fewer than 100 people.

"Tax credit." The long-term care insurance tax credit authorized under this article.

"Taxpayer." An entity subject to tax under Article III, IV

1 or VI. The term includes the shareholder, owner or member of a
2 pass-through entity that receives a tax credit.

3 Section 1703-G. Credit for long-term care insurance.

4 (a) Application.--A taxpayer who purchases long-term care
5 insurance in a taxable year may apply for a tax credit as
6 provided in this article. By September 15, a taxpayer must
7 submit an application to the department for long-term care
8 insurance expenses incurred in the taxable year that ended in
9 the prior calendar year.

10 (b) Amount.--A taxpayer that is qualified under subsection
11 (a) shall receive a tax credit for the taxable year in the
12 amount of 20% of the long-term care insurance expenses incurred
13 by the taxpayer during the taxable year.

14 (c) Notification.--By December 15 of the calendar year
15 following the close of the taxable year during which the long-
16 term care insurance expense was incurred, the department shall
17 notify the taxpayer of the amount of the taxpayer's tax credit
18 approved by the department.

19 Section 1704-G. Carryover, carryback, refund and assignment of
20 credit.

21 (a) Credit.--If the taxpayer cannot use the entire amount of
22 the tax credit for the taxable year in which the tax credit is
23 first approved, the excess may be carried over to succeeding
24 taxable years and used as a credit against the qualified tax
25 liability of the taxpayer for those taxable years. Each time the
26 tax credit is carried over to a succeeding taxable year, it is
27 to be reduced by the amount that was used as a credit during the
28 immediately preceding taxable year. The tax credit may be
29 carried over and applied to succeeding taxable years for no more
30 than 15 taxable years following the first taxable year for which

1 the taxpayer was entitled to claim the credit.

2 (b) Application.--A tax credit approved by the department
3 for long-term care insurance expenses in a taxable year first
4 shall be applied against the taxpayer's qualified tax liability
5 for the current taxable year as of the date on which the credit
6 was approved before the tax credit is applied against any tax
7 liability under subsection (a).

8 (c) Prohibition.--A taxpayer is not entitled to assign,
9 carry back or obtain a refund of an unused tax credit.

10 Section 1705-G. Time limitations.

11 A taxpayer shall not be entitled to a tax credit for long-
12 term care insurance expenses incurred in taxable years ending
13 after December 31, 2020.

14 Section 1706-G. Limitation on credits.

15 (a) Total.--The total amount of tax credits approved by the
16 department shall not exceed \$20,000,000 in any fiscal year. Of
17 that amount, \$5,000,000 shall be allocated exclusively for small
18 businesses. If the total amounts allocated to either the group
19 of applicants, exclusive of small businesses, or the group of
20 small business applicants is not approved in any fiscal year,
21 the unused portion shall become available for use by the other
22 group of qualifying taxpayers.

23 (b) Proration among all applicants.--If the total amount of
24 tax credits applied for by all applicants, exclusive of small
25 businesses, exceeds the amount allocated for those credits, then
26 the tax credit to be received by each applicant shall be
27 prorated by the department among all applicants, exclusive of
28 small businesses, who have qualified for the credit.

29 (c) Proration among small business applicants.--If the total
30 amount of tax credits applied for by all small businesses

exceeds the amount allocated for those credits, then the tax credit to be received by each small business applicant shall be prorated by the department among all small business applicants who have qualified for the credit.

Section 1707-G. Shareholder, owner or member pass-through.

(a) Pennsylvania S corporation shareholder.--If a Pennsylvania S corporation does not have an eligible tax liability against which the tax credit may be applied, a shareholder of the Pennsylvania S corporation shall be entitled to a tax credit equal to the tax credit determined for the Pennsylvania S corporation for the taxable year multiplied by the percentage of the Pennsylvania S corporation's distributive income to which the shareholder is entitled.

(b) Pass-through entity owner or member.--If a pass-through entity other than a Pennsylvania S corporation does not have an eligible tax liability against which the tax credit may be applied, an owner or member of the pass-through entity is entitled to a tax credit equal to the tax credit determined for the pass-through entity for the taxable year multiplied by the percentage of the pass-through entity's distributive income to which the owner or member is entitled.

(c) Additional credit.--The credit provided under subsection (a) or (b) shall be in addition to any tax credit to which a shareholder, owner or member of a pass-through entity is otherwise entitled under this article, except that a pass-through entity and a shareholder, owner or member of a pass-through entity may not claim a credit under this article for the same long-term care insurance expense.

Section 1708-G. Report to General Assembly.

The secretary shall submit an annual report to the General

1 Assembly indicating the effectiveness of the credit provided by
2 this article no later than March 15 following the year in which
3 the credits were approved. The report shall include the names of
4 all taxpayers utilizing the credit as of the date of the report
5 and the amount of credits approved and utilized by each
6 taxpayer. Notwithstanding any law providing for the
7 confidentiality of tax records, the information contained in the
8 report shall be public information. The report may also include
9 any recommendations for changes in the calculation or
10 administration of the credit.

11 Section 1709-G. Termination.

12 The department shall not approve a tax credit under this
13 article for taxable years ending after December 31, 2020.

14 Section 1710-G. Regulations.

15 The secretary shall promulgate regulations necessary for the
16 implementation and administration of this article.

17 Section 2. The addition of Article XVII-G of the act shall
18 apply to taxable years beginning after December 31, 2010.

19 Section 3. This act shall take effect in 60 days.