

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 667 Session of 2011

INTRODUCED BY REICHLEY, CALTAGIRONE, EVERETT, HARHART, KILLION,  
MAJOR, MARSICO, READSHAW AND THOMAS, FEBRUARY 14, 2011

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 14, 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 an information technology services  
11 tax credit; and further providing for new job tax credits.

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-G

18 INFORMATION TECHNOLOGY SERVICES TAX CREDIT

19 Section 1701-G. Scope of article.

20 This article relates to information technology services tax  
21 credits.

22 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.

"Information technology services." An organization or business that uses electronic computers and computer software in the study, design, development, implementation, support or management to convert, store, protect, process, transmit and receive information.

"Qualified information technology services expense." Any costs or expenses incurred by a business or organization in the information technology services industry as a result of relocating in this Commonwealth or establishing a presence in this Commonwealth.

"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.

"Tax credit." The information technology services tax credit authorized under this article.

"Taxpayer." An entity subject to tax under Article III, IV or VI. The term shall include the shareholder, owner or member of a pass-through entity that receives a tax credit.

1 Section 1703-G. Credit.

2 (a) Application.--A taxpayer who incurs a qualified  
3 information technology services expense in a taxable year may  
4 apply for a tax credit as provided under this article. By  
5 September 15, a taxpayer must submit an application to the  
6 department for the qualified information technology services  
7 expense incurred in the taxable year that ended in the prior  
8 calendar year.

9 (b) Amount.--A taxpayer that is qualified under subsection  
10 (a) shall receive a tax credit for the taxable year in the  
11 amount of 30% of the qualified information technology services  
12 expense.

13 (c) Notification.--By December 15 of the calendar year  
14 following the close of the taxable year during which the  
15 qualified information technology services expense was incurred,  
16 the department shall notify the taxpayer of the amount of the  
17 taxpayer's tax credit approved by the department.

18 Section 1704-G. Carryover, carryback, refund and assignment.

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

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

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

9     Section 1705-G. Time limitations.

10     A taxpayer shall not be entitled to a tax credit for a  
11     qualified information technology service expense incurred in  
12     taxable years ending after December 31, 2013.

13     Section 1706-G. Limitation on credits.

14     (a) Total amount.--The total amount of tax credits approved  
15     by the department shall not exceed \$40,000,000 in any fiscal  
16     year.

17     (b) Proration.--If the total amount of tax credits applied  
18     for by all taxpayers exceeds the amount allocated for those  
19     credits, the tax credit to be received by each applicant shall  
20     be prorated by the department among all applicants who have  
21     qualified for the credit.

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

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

30     (b) Pass-through.--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 other tax credit to which a shareholder, owner or member of a pass-through entity is 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 qualified information technology service expense.

#### Section 1708-G. Report.

The secretary shall submit an annual report to the General Assembly indicating the effectiveness of the credit provided under this article no later than March 15 following the year in which the credits were approved. The report shall include the names of all taxpayers utilizing the credit as of the date of the report and the amount of credits approved and utilized by each taxpayer. Notwithstanding any law providing for the confidentiality of tax records, the information contained in the report shall be public information. The report may also include any recommendations for changes in the calculation or administration of the credit.

#### Section 1709-G. Termination.

The department shall not approve a tax credit under this article for taxable years ending after December 31, 2013.

#### Section 1710-G. Regulations.

1     The secretary shall promulgate regulations necessary for the  
2     implementation and administration of this article.

3     Section 2. Section 1804-B of the act, added June 22, 2001  
4     (P.L.353, No.23), is amended to read:

5     Section 1804-B. Tax credits.

6     (a) Maximum amount.--A company may claim a tax credit of  
7     \$1,000 per new job created up to the maximum job creation tax  
8     credit amount specified in the commitment letter.

9     (b) Determination of new jobs created.--

10       (1) New jobs shall be deemed created in year one to the  
11       extent that the company's average employment by quarter  
12       during year one exceeds the company's average employment  
13       level during the company's base period.

14       (2) New jobs shall be deemed created in year two to the  
15       extent that the company's average employment by quarter  
16       during year two exceeds the company's average employment by  
17       quarter during year one.

18       (3) New jobs shall be deemed created in year three to  
19       the extent that the company's average employment by quarter  
20       during year three exceeds the company's average employment by  
21       quarter during year two.

22     (c) Applicable taxes.--A company may apply the tax credit to  
23     100% of the company's State corporate net income tax, capital  
24     stock and franchise tax or the capital stock and franchise tax  
25     of a shareholder of the company if the company is a Pennsylvania  
26     S corporation, gross premiums tax, gross receipts tax, bank and  
27     trust company shares tax, mutual thrift institution tax, title  
28     insurance company shares tax, personal income tax or the  
29     personal income tax of shareholders of a Pennsylvania S  
30     corporation or any combination thereof.

1 (d) Tax credit term.--A company may claim the job creation  
2 tax credit for each new job created, as approved by the  
3 department, for a period determined by the department but not to  
4 exceed five years from the date the company first submits a job  
5 creation tax credit certificate.

6 [(e) Availability of tax credits.--Each fiscal year,  
7 \$22,500,000 in tax credits shall be made available to the  
8 department and may be awarded by the department in accordance  
9 with this article. In addition, in any fiscal year, the  
10 department may reissue or assign prior fiscal year tax credits  
11 which have been recaptured under section 1806-B(a) or (b) and  
12 may award prior fiscal year credits not previously issued. Prior  
13 fiscal year credits may be reissued, assigned or awarded by the  
14 department without limitation by section 1805-B(b).]

15 Section 3. The addition of Article XVII-G of the act shall  
16 apply to tax years beginning after December 31, 2011.

17 Section 4. This act shall take effect immediately.