

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1341 Session of 2011

INTRODUCED BY SCHWANK, COSTA, KITCHEN, WASHINGTON, TARTAGLIONE,
STACK, FONTANA, LEACH, ERICKSON, HUGHES, BREWSTER, FERLO,
SOLOBAY, WILLIAMS, YUDICHAK, KASUNIC AND FARNESE,
NOVEMBER 21, 2011

REFERRED TO FINANCE, NOVEMBER 21, 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 tax credit for employer dependent
11 and child care.

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:

ARTICLE XVII-G

SMALL BUSINESS DEPENDENT AND

CHILD CARE TAX CREDIT

20 Section 1701-G. Scope of article.

21 This article relates to small business dependent and child

1 care tax credits.

2 Section 1702-G. Definitions.

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

6 "Child care expense." Expenses incurred by a small business
7 minus the employee's copayment to provide, or paid by a small
8 business to an employee or a third-party provider to provide,
9 care in lieu of parental care to an employee's child or children
10 under 12 years of age for that part of the 24-hour day when the
11 employee is engaged in the duties of employment. The term does
12 not include child care furnished in places of worship during
13 religious services.

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

15 "Dependent care expense." Expenses incurred by a small
16 business minus the employee's copayment to provide, or paid by a
17 small business to an employee or a third-party provider to
18 provide, care to qualified dependent persons for that part of
19 the 24-hour day when the employee is engaged in the duties of
20 employment. The term does not include dependent care services
21 furnished in places of worship during religious services.

22 "Employee copayment." An amount equal to 10% of the total
23 annual cost of the dependent or child care expenses.

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

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

29 (2) A Pennsylvania S corporation.

30 "Qualified dependent person." A disabled spouse, parent or

child of an employee who is not physically or mentally able to
care for himself or herself or any other person who is not
physically or mentally able to care for himself or herself and
whom the employee could claim as a dependent for Federal income
tax purposes.

"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.

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

"Small business." An employer who employs 50 or fewer
individuals.

"Tax credit." The employer dependent and child care tax
credit authorized under this article.

"Taxpayer." A small business 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.
Section 1703-G. Employer credit for dependent or child care.

(a) Application.--A taxpayer who incurs dependent or child
care expense in a taxable year may apply for a tax credit as
provided under this article. By September 15 of each year, a
taxpayer must submit an application for the tax credit to the
department, which shall include expenses incurred by the
taxpayer for dependent or child care in the taxable year that
ended in the prior calendar year.

(b) Amount.--A taxpayer that is qualified under subsection
(a) shall receive a tax credit for the taxable year in the
amount of 20% of the dependent or child care expense.

(c) Notification.--By December 15 of the calendar year
following the close of the taxable year during which the

dependent or child care expense was incurred, the department shall notify the taxpayer of the amount of the taxpayer's tax credit approved by the department.

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

(a) Carryover.--If the taxpayer cannot use the entire amount of the 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 credit against the qualified tax liability of the taxpayer for those taxable years. Each time that the tax credit is carried over to a succeeding taxable year, it 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 15 taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) Application.--An employer child care tax credit approved by the department for dependent or child care expense in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the tax credit is applied against any tax liability under subsection (a).

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

Section 1705-G. Limitation on credits.

(a) Total amount.--The total amount of dependent and child care tax credits approved by the department may not exceed \$5,000,000 in any fiscal year.

(b) Proration among applicants.--If the total amount of tax

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

Section 1706-G. Shareholder, owner or member pass-through.

(a) Shareholder credit.--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 is 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 credit.--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 entities' distributive income to
which the owner or member is entitled.

(c) Credit cumulation.--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 child day care expense.

Section 1707-G. Report to General Assembly.

The secretary shall submit an annual report to the General

1 Assembly indicating the effectiveness of the credit provided
2 under this article no later than March 15 following the year in
3 which the credits were approved. The report shall include the
4 names of all taxpayers utilizing the credit as of the date of
5 the report and the amount of credits approved and utilized by
6 each 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 include any
9 recommendations for changes in the calculation or administration
10 of the credit.

11 Section 1708-G. Regulations.

12 The secretary shall promulgate regulations necessary for the
13 implementation and administration of this article.

14 Section 2. The addition of Article XVII-G of the act shall
15 apply to taxable years beginning after December 31, 2011.

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