

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1563 Session of 2012

INTRODUCED BY VOGEL, JUNE 15, 2012

REFERRED TO FINANCE, JUNE 15, 2012

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 resource manufacturing 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-G

18 RESOURCE MANUFACTURING TAX CREDIT

19 Section 1701-G. Scope.

20 This article establishes a resource manufacturing tax credit.

21 Section 1702-G. Definitions.

22 The following words and phrases when used in this article
23 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

3 "Ethane." A colorless, odorless gaseous alkane, C₂H₆, which
4 occurs as a constituent of natural gas and is used as the raw
5 material in the manufacturing of ethylene.

6 "Gallon." A United States liquid gallon equal to a volume of
7 231 cubic inches and equal to 3.785411784 liters or 0.13368
8 cubic feet, where volumetric measurements made at ambient
9 flowing conditions are typically adjusted for composition and to
10 standard conditions using established industry standard
11 practices.

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

13 (1) A partnership as defined in section 301(n.0).

14 (2) A Pennsylvania S corporation as defined in section
15 301(n.2).

16 (3) An unincorporated entity subject to section 307.21.

17 "Qualified tax liability." The liability for taxes imposed
18 under Articles III, IV, VI, VII, VIII, IX and XV. The term does
19 not include tax withheld under section 316.

20 "Qualified taxpayer." An entity purchasing ethane for use in
21 manufacturing ethylene at a facility in this Commonwealth which
22 has been placed in service on or after the effective date of
23 this article. The term does not include a contractor or
24 subcontractor of a manufacturer of ethylene.

25 "Tax credit." The resource manufacturing tax credit provided
26 under this article.

27 Section 1703-G. Application and approval of tax credit.

28 (a) Rate.--The tax credit shall be equal to \$0.05 per gallon
29 of ethane purchased and used in manufacturing ethylene in this
30 Commonwealth by a qualified taxpayer.

1 (b) Application.--

2 (1) A qualified taxpayer may apply to the department for
3 a tax credit under this section.

4 (2) The application must be submitted to the department
5 by March 1 for the tax credit claimed for ethane purchased
6 and used by the qualified taxpayer during the prior calendar
7 year. The application must be on the form required by the
8 department.

9 (3) The department may require information necessary to
10 document the amount of ethane purchased and used.

11 (c) Review and approval.--

12 (1) The department shall review and approve or
13 disapprove the applications by March 20. Failure to meet the
14 deadline under this paragraph shall be deemed an approval.

15 (2) Upon approval, the department shall issue a
16 certificate stating the amount of tax credit granted for
17 ethane purchased in the prior calendar year.

18 (d) Limitation.--The total amount of tax credits authorized
19 by this article shall not exceed an amount determined by act of
20 the General Assembly each fiscal year.

21 (e) Apportionment.--If the total amount of tax credits
22 approved for all qualified taxpayers exceeds the amount
23 allocated for those credits, the tax credit to be received by
24 each applicant shall be determined as follows:

25 (1) Divide:

26 (i) the tax credit approved for the applicant; by
27 (ii) the total tax credits approved for all
28 applicants.

29 (2) Multiply:

30 (i) the quotient under paragraph (1); by

1 (ii) the maximum amount allocated under subsection

2 (d).

3 Section 1704-G. Use of tax credits.

4 (a) Priority.--Prior to sale or assignment of a tax credit
5 under section 1706-G, a qualified taxpayer must first use a tax
6 credit against the qualified tax liability incurred in the
7 taxable year for which the tax credit was approved.

8 (b) Limit.--The credit shall be limited to 20% of the
9 qualified taxpayer's qualified tax liabilities incurred in the
10 taxable year for which the credit was approved.

11 Section 1705-G. Carryover, carryback and refund.

12 A tax credit cannot be carried back, carried forward or be
13 used to obtain a refund.

14 Section 1706-G. Sale or assignment.

15 (a) Authorization.--If a qualified taxpayer holds a tax
16 credit through the calendar year in which the tax credit was
17 awarded, the qualified taxpayer may sell or assign a tax credit,
18 in whole or in part.

19 (b) Application.--

20 (1) To sell or assign a tax credit, a qualified taxpayer
21 must file an application for the sale or assignment of the
22 tax credit with the Department of Community and Economic
23 Development. The application must be on a form required by
24 the Department of Community and Economic Development.

25 (2) To approve an application, the Department of
26 Community and Economic Development must receive a finding
27 from the department that the applicant has:

28 (i) filed all required State tax reports and returns
29 for all applicable taxable years; and

30 (ii) paid any balance of State tax due as determined

1 by assessment or determination by the department.

2 (c) Approval.--Upon approval by the Department of Community
3 and Economic Development, a qualified taxpayer may sell or
4 assign, in whole or in part, a tax credit.

5 (d) Time limit.--Notwithstanding any other provision of law,
6 the department shall assess or determine the tax of an applicant
7 under this section within 90 days of the filing of all required
8 final returns or reports in accordance with section 806.1(a)(5)
9 of the act of April 9, 1929 (P.L.343, No.176), known as The
10 Fiscal Code.

11 Section 1707-G. Purchasers and assignees.

12 (a) Time.--The purchaser or assignee under section 1706-G
13 must claim the tax credit in the calendar year in which the
14 purchase or assignment is made.

15 (b) Amount.--The amount of the tax credit that a purchaser
16 or assignee under section 1706-G may use against any one
17 qualified tax liability may not exceed 50% of any of the
18 qualified tax liabilities for the taxable year.

19 (c) Resale and reassignment.--

20 (1) A purchaser under section 1706-G may not sell or
21 assign the purchased tax credit.

22 (2) An assignee under section 1706-G may not sell or
23 assign the assigned tax credit.

24 (d) Notice.--The purchaser or assignee under section 1706-G
25 shall notify the department of the seller or assignor of the tax
26 credit in compliance with procedures specified by the
27 department.

28 Section 1708-G. Pass-through entity.

29 (a) Election.--If a pass-through entity has an unused tax
30 credit, it may elect in writing, according to procedures

1 established by the department, to transfer all or a portion of
2 the credit to shareholders, members or partners in proportion to
3 the share of the entity's distributive income to which the
4 shareholders, members or partners are entitled.

5 (b) Limitation.--The same tax credit under subsection (a)
6 may not be claimed by:

7 (1) the pass-through entity; and

8 (2) a shareholder, member or partner of the pass-through
9 entity.

10 (c) Amount.--The amount of the tax credit that a transferee
11 under subsection (a) may use against any one qualified tax
12 liability may not exceed 20% of any qualified tax liabilities
13 for the taxable year.

14 (d) Time.--A transferee under subsection (a) must claim the
15 tax credit in the calendar year in which the transfer is made.

16 (e) Sale and assignment.--A transferee under subsection (a)
17 may not sell or assign the tax credit.

18 Section 1709-G. Administration.

19 (a) Audits and assessments.--The department has the
20 following powers:

21 (1) To audit a qualified taxpayer claiming a tax credit
22 to ascertain the validity of the amount claimed.

23 (2) To issue an assessment against a qualified taxpayer
24 for an improperly issued tax credit. The procedures,
25 collection, enforcement and appeals of any assessment made
26 under this section shall be governed by Article II.

27 (b) Guidelines and regulations.--The department shall
28 develop written guidelines for the implementation of this
29 article. The guidelines shall be in effect until the department
30 promulgates regulations for the implementation of the provisions

1 of this article.

2 Section 1710-G. Reports to General Assembly.

3 (a) Department.--

4 (1) By June 1, 2018, and June 1 of each year thereafter,
5 the department shall submit a report on the tax credit
6 provided by this article to the chairman and minority
7 chairman of the Appropriations Committee of the Senate, the
8 chairman and minority chairman of the Finance Committee of
9 the Senate, the chairman and minority chairman of the
10 Appropriations Committee of the House of Representatives and
11 the chairman and minority chairman of the Finance Committee
12 of the House of Representatives.

13 (2) The report shall include the names of all qualified
14 taxpayers utilizing the tax credit as of the date of the
15 report and the amount of tax credits approved for, utilized
16 by or sold or assigned by each qualified taxpayer. The report
17 shall not disclose sensitive competitive information on the
18 qualified taxpayer's production.

19 (3) Notwithstanding any statute providing for the
20 confidentiality of tax records, the information in the report
21 shall be public information, and all report information shall
22 be posted on the department's Internet website.

23 (4) If the report is filed in a calendar year, the tax
24 credit shall remain in effect at the same rate for the next
25 calendar year.

26 (b) Department of Community and Economic Development.--By a
27 date determined by act of the General Assembly, the Department
28 of Community and Economic Development shall submit to the
29 Secretary of the Senate and the Chief Clerk of the House of
30 Representatives a report on the effectiveness of the tax credit,

1 including recommendations on changes and continuation.

2 Section 1711-G. Reduction or extension.

3 To the extent a qualified taxpayer may claim a tax credit,
4 the tax credit shall not be reduced or abolished unless by act
5 of the General Assembly.

6 Section 2. The addition of Article XVII-G of the act shall
7 apply to the purchase of ethane for the period from January 1,
8 2017, through a date determined by act of the General Assembly.

9 Section 3. This act shall take effect immediately.