

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1146 Session of
2015

INTRODUCED BY KAVULICH, READSHAW, SCHREIBER, THOMAS, McNEILL,
ROZZI, DERMODY, HANNA, MARKOSEK, FRANKEL, YOUNGBLOOD, STURLA,
DRISCOLL, GOODMAN, COHEN, BROWNLEE, DAVIDSON, DONATUCCI,
PASHINSKI, O'BRIEN, KINSEY, DEAN, SCHWEYER, WATERS, KIM,
M. DALEY, CALTAGIRONE, SCHLOSSBERG, FABRIZIO, DAVIS, BARRAR,
MURT, MACKENZIE, FARINA, GIBBONS, GILLEN AND ROEBUCK,
MAY 28, 2015

REFERRED TO COMMITTEE ON FINANCE, MAY 28, 2015

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 manufacturing tax credit; and
11 prohibiting agreements under and repealing the Promoting
12 Employment Across Pennsylvania Act.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

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

ARTICLE XVIII-G

MANUFACTURING TAX CREDIT

20 Section 1801-G. Definitions.

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

4 "Annual taxable payroll." The total amount of wages paid by
5 an employer for the base year or year one, as applicable, from
6 which personal income tax under Article III is withheld.

7 "Base year." The four calendar quarters preceding the start
8 date.

9 "Department." The Department of Community and Economic
10 Development of the Commonwealth.

11 "Manufacturing tax credit." A tax credit for which the
12 department has issued a certificate under this article.

13 "New job." A full-time job created in year one which has an
14 average wage at least equal to the county average wage where the
15 job is located and which includes employer-provided health
16 benefits.

17 "Pass-through entity." A partnership as defined in section
18 301 (n.0) or a Pennsylvania S Corporation as defined in section
19 301 (n.1).

20 Qualified tax liability." A taxpayer's tax liability under
21 Article III, IV, VI, VII, VIII, IX, XI or XV.

22 "Start date." The first day of the calendar quarter in which
23 an application is submitted to the department unless the
24 applicant requests and the department agrees to a later start
25 date.

26 "Taxpayer." An entity that is engaged in the mechanical,
27 physical or chemical transformation of materials, substances or
28 components into new products that are creations of new items of
29 tangible personal property for sale.

30 "Wages." Remuneration paid by an employer to an individual

1 with respect to the individual's employment.

2 "Year one." The four calendar quarters immediately following
3 the start date.

4 Section 1802-G. Eligibility.

5 In order to be eligible to receive a manufacturing tax
6 credit, a taxpayer must demonstrate to the department the
7 following:

8 (1) The ability of the taxpayer to create an increase in
9 the taxpayer's annual taxable payroll in year one by at least
10 \$1,000,000 above the amount in the base year solely through
11 the creation of new jobs and to maintain the increase for a
12 period of at least five years from the start date.

13 (2) The ability to maintain new jobs for a period of at
14 least five years from the start date.

15 (3) The intent to maintain existing operations in this
16 Commonwealth for a period of at least five years from the
17 start date.

18 Section 1803-G. Procedure.

19 (a) Application.--A taxpayer applying to claim a
20 manufacturing tax credit must complete and submit to the
21 department a manufacturing tax credit application on a form and
22 in a manner as determined by the department.

23 (b) Creation of new jobs.--In order to receive a
24 manufacturing tax credit, the taxpayer must agree to create in
25 year one new jobs that increase the taxpayer's annual taxable
26 payroll above the base year annual taxable payroll by
27 \$1,000,000. The taxpayer must agree to retain the new jobs and
28 increase in payroll for at least five years from the start date.

29 (c) Approval.--If the department approves the taxpayer's
30 application, the department and the taxpayer shall execute a

1 commitment letter containing the following:

2 (1) A description of the new jobs created.

3 (2) The number of new jobs to be created.

4 (3) The amount of private capital investment in the
5 creation of new jobs.

6 (4) The increase in year one of the annual taxable
7 payroll for new jobs above the base year amount of annual
8 taxable payroll.

9 (5) The maximum manufacturing tax credit amount the
10 taxpayer may claim.

11 (6) A signed statement that the taxpayer intends to
12 maintain existing operations in this Commonwealth for at
13 least five years from the start date.

14 (7) Any other information as the department deems
15 appropriate.

16 (d) Commitment letter.--After a commitment letter has been
17 signed by both the Commonwealth and the taxpayer, the taxpayer
18 must increase the annual taxable payroll in year one by at least
19 \$1,000,000 above the base year amount from the creation of new
20 jobs up to the amount specified in the commitment letter. If the
21 taxpayer does not increase the annual taxable payroll as
22 provided under this subsection, the commitment letter shall be
23 revoked and deemed to be null and void.

24 Section 1804-G. Manufacturing tax credit.

25 (a) Maximum amount.--The department may award a
26 manufacturing tax credit of up to 5% of the taxpayer's increase
27 in annual taxable payroll, if the annual taxable payroll
28 increases in year one by at least \$1,000,000 above the base year
29 amount from the creation of new jobs up to the amount specified
30 in the commitment letter.

1 (b) Determination.--The annual taxable payroll in year one
2 for a new job shall be the sum of the amount of annual taxable
3 payroll in year one for the new jobs created above the taxable
4 payroll in the base year.

5 (c) Certificate.--After verification by the department that
6 the taxpayer has increased the annual taxable payroll in year
7 one by at least \$1,000,000 above the base year amount from the
8 creation of new jobs up to the amount specified and any other
9 conditions required by the department and specified in the
10 commitment letter, the taxpayer shall receive a manufacturing
11 tax credit certificate and filing information.

12 (d) Applicable taxes.--A taxpayer may apply the
13 manufacturing tax credit to 100% of the taxpayer's qualified tax
14 liability.

15 (e) Term.--A taxpayer may claim the manufacturing tax credit
16 for a period determined by the department, not to exceed the
17 earlier of:

18 (1) five years from the date the taxpayer receives the
19 manufacturing tax credit certificate; or

20 (2) six years from the start date.

21 (f) Availability.--A manufacturing tax credit shall be made
22 available by the department on a first-come, first-served basis.

23 (g) Limitation.--Each fiscal year, \$5,000,000 in
24 manufacturing tax credits shall be made available to the
25 department and may be awarded by the department in accordance
26 with this article. In any fiscal year, the department may
27 reissue, assign or award prior fiscal year manufacturing tax
28 credits which have been recaptured under section 1808-G(a) or
29 (b) and may award prior fiscal year manufacturing tax credits
30 not previously issued.

1 Section 1805-G. Limitations.

2 The following apply to manufacturing tax credits:

3 (1) If the taxpayer cannot use the entire amount of the
4 manufacturing tax credit for the taxable year in which the
5 manufacturing tax credit is first approved, the excess may be
6 carried over to succeeding taxable years and used as a credit
7 against the qualified tax liability of the taxpayer for the
8 taxable years. Each time the manufacturing tax credit is
9 carried over to a succeeding taxable year, the manufacturing
10 tax credit shall be reduced by the amount of the
11 manufacturing tax credit used as a credit during the
12 immediately preceding taxable year. The manufacturing tax
13 credit may be carried over and applied to succeeding taxable
14 years for no more than three taxable years following the
15 first taxable year for which the taxpayer was entitled to
16 claim the credit.

17 (2) A manufacturing tax credit approved by the
18 department in a taxable year first shall be applied against
19 the taxpayer's qualified tax liability for the current
20 taxable year as of the date on which the credit was approved
21 before the manufacturing tax credit can be applied against
22 any tax liability under paragraph (1).

23 (3) A taxpayer shall not be entitled to carry back or
24 obtain a refund of all or any portion of an unused
25 manufacturing tax credit granted to the taxpayer under this
26 article.

27 Section 1806-G. Sale or assignment.

28 (a) Application.--A taxpayer, upon application to and
29 approval by the department, may sell or assign, in whole or in
30 part, a manufacturing tax credit granted to the taxpayer. The

1 following shall apply:

2 (1) The department and the Department of Revenue shall
3 jointly issue guidelines for the approval of applications
4 under this paragraph.

5 (2) Before an application is approved, the Department of
6 Revenue must make a finding that the applicant has filed all
7 required State tax reports and returns for all applicable
8 taxable years and paid any balance of State tax due as
9 determined at settlement, assessment or determination by the
10 Department of Revenue.

11 (3) Notwithstanding any other provision of law, the
12 Department of Revenue must settle, assess or determine the
13 tax of an applicant under this paragraph within 90 days of
14 the filing of each required final return or report in
15 accordance with section 806.1(a)(5) of the act of April 9,
16 1929 (P.L.343, No.176), known as The Fiscal Code.

17 (b) Use by purchaser or assignee.--The purchaser or assignee
18 of all or a portion of a manufacturing tax credit under
19 subsection (a) must immediately claim the credit in the taxable
20 year in which the purchase or assignment is made.

21 (1) The amount of the manufacturing tax credit that a
22 purchaser or assignee may use against any one qualified tax
23 liability may not exceed 50% of the qualified tax liability
24 for the taxable year.

25 (2) The purchaser or assignee may not carry forward,
26 carry back or obtain a refund of or sell or assign the
27 manufacturing tax credit.

28 (3) The purchaser or assignee shall notify the
29 Department of Revenue of the seller or assignor of the
30 manufacturing tax credit in compliance with procedures

1 specified by the Department of Revenue.

2 Section 1807-G. Pass-through entity.

3 (a) General rule.--If a pass-through entity has any unused
4 tax credits under section 1805-G, the entity may elect in
5 writing, according to procedures established by the Department
6 of Revenue, to transfer all or a portion of the credit to
7 shareholders, members or partners in proportion or the share of
8 the entity's distributive income to which the shareholder,
9 member or partner is entitled.

10 (b) Limitation.--A pass-through entity and a shareholder,
11 member or partner of a pass-through entity may not claim the
12 credit under subsection (a) for the same new job.

13 (c) Application.--A shareholder, member or partner of a
14 pass-through entity to whom a credit is transferred under
15 subsection (a) shall immediately claim the credit in the taxable
16 year in which the transfer is made. The shareholder, member or
17 partner may not carry forward, carry back, obtain a refund of or
18 sell or assign the credit.

19 Section 1808-G. Penalties.

20 (a) Failure to maintain operations.--A taxpayer which
21 receives a manufacturing tax credit and fails to maintain
22 existing operations related to the manufacturing tax credits in
23 this Commonwealth for a period of at least five years from the
24 start date must refund to the Commonwealth the total amount of
25 manufacturing tax credits granted. The Department of Revenue may
26 issue an assessment, including interest, additions and
27 penalties, for the total amount of each manufacturing tax credit
28 to be refunded to the Commonwealth.

29 (b) Failure to maintain jobs.--A taxpayer which receives a
30 manufacturing tax credit and fails to maintain new jobs along

1 with the increase in taxable payroll for a period of at least
2 five years from the start date must refund to the Commonwealth
3 the total amount of manufacturing tax credits granted. The
4 Department of Revenue may issue an assessment, including
5 interest, additions and penalties, for the total amount of
6 manufacturing tax credits to be refunded to the Commonwealth.

7 (c) Waiver.--The department may waive the penalties under
8 subsections (a) and (b) if it is determined that a company's
9 existing operations were not maintained or the new jobs and
10 increase to payroll were not created because of circumstances
11 beyond the company's control. Circumstances shall include
12 natural disasters, unforeseen industry trends or a loss of a
13 major supplier or market.

14 Section 1807-G. Guidelines.

15 The department shall develop and publish guidelines necessary
16 to implement this article.

17 Section 2. Notwithstanding section 314 of the act of October
18 25, 2012 (P.L.1664, No.206), known as the Promoting Employment
19 Across Pennsylvania Act, no agreement under the Promoting
20 Employment Across Pennsylvania Act may be entered into after
21 June 30, 2015.

22 Section 3. Repeals are as follows:

23 (1) The General Assembly declares that the repeal under
24 paragraph (2) is necessary to effectuate the addition of
25 Article XVIII-G of the act.

26 (2) The act of October 25, 2012 (P.L.1664, No.206),
27 known as the Promoting Employment Across Pennsylvania Act, is
28 repealed.

29 Section 4. This act shall take effect as follows:

30 (1) This section and section 2 of this act shall take

1 effect immediately.

2 (2) Section 3 of this act shall take effect July 1,
3 2015, or immediately, whichever is later.

4 (3) The remainder of this act shall take effect in 90
5 days.