

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 399 Session of 1995

INTRODUCED BY LLOYD, GIGLIOTTI, ROBERTS, PESCI, LAUGHLIN,  
BELARDI, HERMAN, PISTELLA, BELFANTI, COY, HANNA,  
D. R. WRIGHT, MELIO, STERN, TRELLO, BATTISTO, BAKER, FAJT,  
McCALL, ITKIN, ROONEY, STEELMAN, TRAVAGLIO, PETRARCA AND  
TIGUE, JANUARY 31, 1995

REFERRED TO COMMITTEE ON FINANCE, JANUARY 31, 1995

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 investment tax credit program.

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 XVIII-A

INVESTMENT TAX CREDIT

18 Section 1801-A. Short Title.--This article shall be known  
19 and may be cited as the Investment Tax Credit Law.

20 Section 1802-A. Investment Tax Credits Program.--(a) A

1 taxpayer shall be allowed an investment tax credit against the  
2 taxes imposed under Articles II, III, IV and VI. The amount of  
3 the credit shall be a percentage applied to the cost or other  
4 basis, for Federal income tax purposes, of tangible personal  
5 property and other forms of tangible property, described in  
6 subsection (b).

7 (b) Tangible personal property and other forms of tangible  
8 property which qualify for investment tax credit treatment under  
9 this section shall meet all of the following requirements:

10 (1) Be acquired through a purchase as defined under section  
11 179(d)(2) of the Internal Revenue Code of 1986 (Public Law 99-  
12 514, 26 U.S.C. § 179(d)(2)), or constructed by the taxpayer for  
13 the taxpayer's own use.

14 (2) Be depreciable under section 167 of the Internal Revenue  
15 Code of 1986.

16 (3) For property undergoing construction, the qualifying  
17 property represents that portion transferred to the property  
18 base for depreciation purposes.

19 (4) Have a useful life of greater than or equal to four (4)  
20 years.

21 (5) Be located and used in this Commonwealth.

22 (6) Be used principally by the taxpayer in any of the  
23 following:

24 (i) The production of goods by manufacturing, processing,  
25 assembling, refining, mining or extracting.

26 (ii) The exploration, production and transportation of  
27 natural gas or crude oil.

28 (iii) The transportation of goods produced, manufactured,  
29 processed, assembled, refined, mined or extracted in this  
30 Commonwealth.

1     (iv) Research and development.

2     (v) Computer-related services as defined under section  
3     201(dd) through (ii).

4     (7) With respect to property qualifying in 1996, such  
5     qualifying property shall include expenditures for purchases on  
6     or after January 1, 1996, which are transferred to the  
7     property's depreciable basis on or after January 1, 1996,  
8     regardless of the contract commitment date, and such other  
9     transfers to the property's depreciable basis on or after  
10    January 1, 1996.

11    (c) A taxpayer shall not make a claim for any such credit  
12    until the filing of the 1996 income tax return. The department  
13    shall verify the validity of any such claims and may assess a  
14    twenty-five per cent penalty against the tax otherwise due in  
15    the case of a fraudulent claim.

16    (d) Manufacturing means any stage of operation from the  
17    handling of raw material or components on the production  
18    activity site to the conversion of the raw materials into  
19    products suitable for use and ready for delivery or storage, or  
20    which provides a new form, new quality or new combinations to  
21    matter which already has undergone some process by use of  
22    machinery, tools, appliances or other similar equipment. The  
23    property used in the production of goods shall include  
24    machinery, equipment or other tangible property principally used  
25    in the repair and service of other machinery, equipment or other  
26    tangible property used principally for the production of goods.

27    (e) Research and development property means property which  
28    is used for purposes of research and development in the  
29    experimental or laboratory sense. Such purposes shall not be  
30    deemed to include the ordinary testing or inspection of

1 materials or products for quality control, efficiency surveys,  
2 management studies, consumer surveys, advertising, promotions,  
3 or research in connection with literary, historical or similar  
4 projects.

5 (f) Processing means processing as defined in section 601.

6 (g) An investment tax credit is not allowed for property  
7 otherwise qualifying for credit under the Neighborhood  
8 Assistance Tax Credit.

9 (h) (1) The investment tax credit shall be based upon a  
10 percentage being applied to the investment tax credit base. The  
11 total investment tax credit with respect to property  
12 constructed, reconstructed or acquired beginning on and after  
13 January 1, 1996, shall be taken over a period of no more than  
14 five years, with the same amount taken each year, and shall be  
15 in the following percentage:

16 (i) if the tangible personal property is located in an area  
17 in which the lowest interest rate under the act of May 17, 1956  
18 (1955 P.L.1609, No.537), known as the "Pennsylvania Industrial  
19 Development Authority Act," is applicable to investments  
20 qualifying for loans under that act, fifteen per cent, or

21 (ii) if the tangible personal property is not located in an  
22 area in which the lowest interest rate under the Pennsylvania  
23 Industrial Development Authority Act is applicable to  
24 investments qualifying for loans under that act, the sum of  
25 fifteen per cent and such lowest interest rate minus the  
26 interest rate under the Pennsylvania Industrial Development  
27 Authority Act which is applicable to investments in the area in  
28 which the tangible personal property is located.

29 (2) Except as otherwise provided, the total investment tax  
30 credit available for application against each year's tax

1 liabilities shall not exceed sixty per cent of the taxes imposed  
2 under Articles II, III, IV and VI with the order of application  
3 to be determined by the taxpayer.

4 (3) With respect to depreciable property pursuant to section  
5 167 of the Internal Revenue Code of 1986 which is disposed of or  
6 ceases to be in qualified use prior to the end of the first  
7 taxable year in which such property is eligible for the  
8 investment tax credit, the amount of the credit available shall  
9 be that portion calculated by the ratio of the months in which  
10 the property was qualified in relation to the property's total  
11 months of useful life which is used for computing Federal  
12 depreciation.

13 (4) If the taxpayer disposes of any property for which it  
14 has taken investment tax credits prior to the completion of the  
15 applicable cost recovery period used for Federal tax purposes, a  
16 portion of the credit taken will be recaptured and added to the  
17 tax liability for the taxable year in which such disposition is  
18 made. The portion of the investment tax credit subject to  
19 recapture is equal to the percentage which the number of years  
20 remaining in the cost recovery period of the property bears to  
21 the total years of cost recovery which could have been claimed  
22 but for the disposition of the property. In calculating the  
23 recapture percentage, the year of disposition is considered a  
24 year of remaining cost recovery.

25 (5) Any amount of the investment tax credit not used in the  
26 taxable year in which the credit was generated can be carried  
27 forward to succeeding years until the full amount of allowable  
28 credit has been used.

29 (i) At the option of the lessor, a lessor can pass on the  
30 amount of investment tax credit otherwise allowable to the

1 lessor to a lessee who is the actual user of the new property  
2 which qualifies for the credit. However, a lessor cannot pass on  
3 to a lessee the credit for used property.

4 Section 1803-A. Application Procedures.--(a) Applications  
5 for an investment tax credit pursuant to this article shall be  
6 filed with the Secretary of Revenue at such time and in such  
7 manner as the secretary shall prescribe.

8 (b) The Secretary of Revenue shall review all applications  
9 and shall determine whether or not the expenditures for tangible  
10 personal property for which credits are requested qualify for an  
11 investment tax credit. Whenever the secretary determines that  
12 the expenditures qualify for an investment tax credit, the  
13 taxpayer shall be notified and the appropriate tax credits shall  
14 be entered upon the accounts of the taxpayer upon the submission  
15 of evidence that the expenditures for which the application was  
16 approved have been made by the taxpayer. If the total amount of  
17 tax credits for all taxpayers who qualify for such credits  
18 pursuant to section 1802-A(h)(1)(i) and (ii) of this article for  
19 any tax year exceeds twenty-five million dollars (\$25,000,000),  
20 the secretary shall provide the tax credits for that tax year on  
21 a prorated basis.

22 (c) On or before April 15 following the end of any taxable  
23 year for which credits are requested, the taxpayer shall file a  
24 report with the Secretary of Revenue showing the actual amount  
25 of investments made during such period. If the expenditures for  
26 qualified investments made by a taxpayer pursuant to section  
27 1802-A(b) of this article are less than the amount upon which  
28 any credits approved were based, the secretary shall reduce the  
29 amount of credits awarded to that taxpayer by an appropriate  
30 fractional amount of the deficiency of such investment.

1     (d) The Secretary of Revenue shall establish procedures for  
2 the submission of applications by taxpayers for investment tax  
3 credits pursuant to this article, the review and approval or  
4 disapproval of such applications and the award of tax credits.

5     Section 1804-A. Annual Reports.--On or before June 30 of  
6 each year, the Secretary of Revenue shall submit a report to the  
7 General Assembly which shall describe the activities of the  
8 investment tax credit program for the preceding tax year  
9 pursuant to this article. The report shall contain:

10     (1) An identification of each taxpayer awarded an investment  
11 tax credit pursuant to this article.

12     (2) The amount of tax credits approved for each taxpayer  
13 pursuant to this article.

14     (3) The types of property or projects for which tax credits  
15 were granted.

16     (4) The amount of tax credits utilized by each taxpayer  
17 pursuant to this article.

18     (5) Any actual or projected increases in employment  
19 resulting from such investments.

20     Section 1805-A. Regulations.--The Secretary of Revenue shall  
21 have the power and authority to promulgate, adopt and use  
22 guidelines to implement the provisions of this article. Such  
23 guidelines shall be published in the Pennsylvania Bulletin. The  
24 guidelines shall not be subject to review pursuant to section  
25 205 of the act of July 31, 1968 (P.L.769, No.240), referred to  
26 as the Commonwealth Documents Law, sections 204(b) and 301(10)  
27 of the act of October 15, 1980 (P.L.950, No.164), known as the  
28 "Commonwealth Attorneys Act," or the act of June 25, 1982  
29 (P.L.633, No.181), known as the "Regulatory Review Act," and  
30 shall be effective for a period of not more than two (2) years

1 from the effective date of this article. After the expiration of  
2 the two-year period, the guidelines shall expire and shall be  
3 replaced by regulations which shall have been promulgated,  
4 adopted and published as provided by law.

5       Section 2. This act shall apply to taxable years 1996  
6 through 1999 for purchases made between January 1, 1996, and  
7 December 31, 1999.

8       Section 3. This act shall take effect immediately.