

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1336 Session of  
1997

INTRODUCED BY ALLEN, LUCYK, ARGALL, BELFANTI, PHILLIPS, HASAY,  
McCALL, EACHUS, DALEY, STAIRS, RAYMOND, S. H. SMITH, TULLI,  
READSHAW, SATHER, JAROLIN, SEMMEL, COY, GANNON, MARKOSEK,  
SERAFINI, LAUGHLIN, COLAIZZO, FARGO, STEELMAN, HERSHEY,  
LEVDANSKY, HENNESSEY, YOUNGBLOOD, ARMSTRONG, WALKO, TIGUE,  
GEORGE, GEIST, CORNELL, BENNINGHOFF AND PETRARCA,  
APRIL 16, 1997

REFERRED TO COMMITTEE ON FINANCE, APRIL 16, 1997

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 program of tax incentives,  
11 including investment tax credits and to stimulate the  
12 development of a synthetic fuels industry within the  
13 Commonwealth.

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

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

ARTICLE XVIII-A

FOREIGN OIL DEVELOPMENT

21 Section 1801-A. Short Title.--This article shall be known

1 and may be cited as the Foreign Oil Displacement Act.

2 Section 1802-A. Definitions.--The following words, terms and  
3 phrases, when used in this article, shall have the meanings  
4 ascribed to them in this section, except where the context  
5 clearly indicates a different meaning:

6 "Act" means the Tax Reform Code of 1971 (P.L.6, No.2), as  
7 amended.

8 "Department" means the Department of Revenue of the  
9 Commonwealth of Pennsylvania.

10 "Developer" means the owner-operator of a facility as defined  
11 herein or the operator of such a facility that has sold the  
12 facility in new condition to a third party from whom that  
13 operator has simultaneously leased back such facility for a  
14 minimum period of twelve (12) years.

15 "Facility" means and includes all plant and equipment,  
16 purchased or constructed by or on behalf of the developer, used  
17 within this Commonwealth by the developer to produce one or more  
18 qualified fuels.

19 "Internal Revenue Code" means the Internal Revenue Code of  
20 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), as amended.

21 "Qualified fuels" means those fuels produced from non-  
22 traditional feedstocks, as further defined in section 29(c) of  
23 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.  
24 § 1 et seq.).

25 Section 1803-A. Investment Tax Credits Program.--(a) A new  
26 developer of a new facility for the production of one or more  
27 qualified fuels shall be allowed an investment tax credit  
28 against the taxes imposed under Articles II, IV and VI of the  
29 act. The amount of the credit shall be computed as a percentage  
30 applied to the cost or other basis, for Federal income tax

purposes, of tangible personal property and other forms of  
tangible property described in subsection (b).

(b) Tangible personal property and other forms of tangible  
property which qualify for investment tax credit treatment under  
this section, hereinafter collectively identified as "qualifying  
property," shall meet all of the following requirements:

(1) Be acquired through a purchase, as defined under section  
179(d)(2) of the Internal Revenue Code, or constructed by the  
developer for its own use.

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

(3) Have a useful life of greater than or equal to four  
years.

(4) Be located within this Commonwealth.

(5) Be used by the developer in the production of qualified  
fuels.

(6) Be acquired by purchase or constructed on or after  
January 1, 1998, and before January 1, 2011.

(7) Not be the subject of any tax credit otherwise available  
to the developer under this act.

(c) Only such portion of the cost or other basis of  
qualifying property that is properly transferred to the  
facility's basis for depreciation for Federal income tax  
purposes between January 1, 1998, and December 31, 2010,  
hereinafter identified as the "tax credit base," shall be  
subject to the investment tax credit.

(d) (1) The investment tax credit shall be computed as  
fifteen per cent of the tax credit base.

(2) The maximum investment tax credit available for  
application, whether claimed by one or more taxpayers, shall not

1 exceed fifteen per cent of the capital cost of the facility.

2 (3) Any amount of allowable investment tax credit not used  
3 in the tax year for which the credit was claimed can be carried  
4 forward by the claiming taxpayer to succeeding years until the  
5 full amount of allowable credit has been used.

6 (e) (1) The developer, upon notice to the department as  
7 specified by the department, may sell or assign, in whole or in  
8 part, any investment tax credit afforded under this section to  
9 one or more taxpayers, provided that no claim for allowance of  
10 such credit has been filed.

11 (2) A taxpayer recipient by purchase or assignment of any  
12 portion of the developer's investment tax credit under paragraph  
13 (1) shall initially claim such credit, upon notice to the  
14 department of the derivative basis of the credit in compliance  
15 with procedures specified by the department, for the tax year in  
16 which the purchase or assignment is made, but in no event  
17 subsequent to the filing of an income tax return for the year  
18 2010.

19 (3) Any taxpayer who acquires any portion of the developer's  
20 investment tax credit by sale or assignment, for value and  
21 without notice of any irregularity or invalidity, shall not  
22 suffer any disallowance of the credit or the imposition of any  
23 adjustment or fraud penalty attributable to conduct by the  
24 developer.

25 (f) (1) If, prior to the expiration of any qualifying  
26 property's useful life, as used to calculate depreciation for  
27 Federal income tax purposes, the developer, upon mandatory  
28 notice to the department in compliance with procedures specified  
29 by the department, disposes of any qualifying property in a  
30 transaction other than a sale-leaseback, upon which the

1 department has previously allowed an investment tax credit  
2 claimed by any taxpayer, a portion of all such credit shall be  
3 recaptured and added to the developer's tax liability for the  
4 tax year in which the qualifying property is disposed.

5 (2) The portion of the investment tax credit previously  
6 allowed, which is subject to recapture from the developer, shall  
7 be equal to a fraction whose numerator is the number of years  
8 remaining to fully depreciate for Federal income tax purposes  
9 the qualifying property disposed and whose denominator is the  
10 total number of years over which the property would otherwise  
11 have been subject to depreciation by the developer.

12 (3) In calculating the recapture percentage, the year of  
13 disposition of the qualifying property is considered a year of  
14 remaining depreciation.

15 (g) The department shall verify the validity of any claim  
16 for allowance of any investment tax credit afforded under this  
17 section and, in the case of a fraudulent claim, may assess  
18 against the developer a penalty of one hundred and twenty-five  
19 per cent of the credit improperly claimed.

20 Section 1804-A. Tax Exemption.--Any qualified fuel produced  
21 by a facility subject to an investment tax credit afforded by  
22 section 1803-A shall be exempt from any tax otherwise imposed by  
23 the act of May 21, 1931 (P.L.149, No.105), known as "The Liquid  
24 Fuels Tax Act."

25 Section 2. This act shall take effect immediately.