

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1600 Session of 2012

INTRODUCED BY BLAKE, COSTA, STACK, TARTAGLIONE, SOLOBAY,
SCHWANK, BREWSTER, FONTANA, FARNESE, YUDICHAK, EARLL,
D. WHITE, GORDNER, BRUBAKER, FERLO, BROWNE AND DINNIMAN,
OCTOBER 1, 2012

REFERRED TO FINANCE, OCTOBER 1, 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 the Innovate in PA Program.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. The heading of Article XVIII-C of the act of
14 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
15 1971, added July 9, 2008 (P.L.922, No.66), is amended to read:

ARTICLE XVIII-C

[(RESERVED)]

INNOVATE IN PA TAX CREDIT

19 Section 2. The act is amended by adding sections to read:

20 Section 1801-C. Scope of article.

21 This article relates to the Innovate in PA Tax Credit.

1 Section 1802-C. Legislative intent.

2 It is the intent of this article to invest in innovation as a
3 catalyst for economic growth. Investment, through the Ben
4 Franklin Technology Development Authority, in the Ben Franklin
5 Technology Partners and in venture capital funds will advance
6 the competitiveness of this Commonwealth's companies in the
7 global economy.

8 Section 1803-C. Definitions.

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

12 "Allocation amount." The total amount of tax credits
13 purchased by a qualified taxpayer.

14 "Authority." The Ben Franklin Technology Development
15 Authority.

16 "Capital." The amount of money that a purchaser invests
17 under the Innovate in PA Program.

18 "Department." The Department of Community and Economic
19 Development of the Commonwealth.

20 "Fund." The Innovate in PA Fund.

21 "Insurance premium tax liability." Any liability incurred by
22 an insurance company under Article IX.

23 "Program." The Innovate in PA Program.

24 "Qualified taxpayer." Any of the following that has
25 insurance premium tax liability and contributes capital to
26 purchase premium tax credits under this article:

27 (1) An insurance company authorized to do business in
28 this Commonwealth.

29 (2) A holding company that has at least one insurance
30 company subsidiary authorized to do business in this

1 Commonwealth.

2 "Tax credit." A credit against insurance premium tax
3 liability offered to or held by a qualified taxpayer under this
4 article.

5 Section 1804-C. Tax credit.

6 A qualified taxpayer may purchase tax credits from the
7 department and may apply the tax credits against its insurance
8 premium tax liability in accordance with this article.

9 Section 1805-C. Duties.

10 (a) Sale of tax credits.--The department, shall have the
11 authority to sell up to \$175,000,000 in tax credits to qualified
12 taxpayers. Sale of the tax credits shall be in accordance with
13 section 1808-C.

14 (b) Time of sale.--The sale authorized under subsection (a)
15 may not occur before October 1, 2012.

16 (c) Transfer of funds.--All funds, minus any administrative
17 costs, received by the department as a result of the sale under
18 subsection (a) shall be transferred to the authority for deposit
19 into the fund.

20 Section 1806-C. Use of tax credits by qualified taxpayers.

21 (a) Use against insurance premium tax liability.--A
22 qualified taxpayer that purchases tax credits under section
23 1805-C may claim the credits beginning in calendar year 2016
24 against insurance premium tax liability incurred for a taxable
25 year that begins on or after January 1, 2015.

26 (b) Application to department.--A qualified taxpayer seeking
27 to use purchased tax credits may submit an application to the
28 department in a manner prescribed by the department.

29 (c) Construction.--The following shall apply:

30 (1) A qualified taxpayer may not be required to reduce

1 the amount of insurance premium tax included by the taxpayer
2 in connection with rate-making for any insurance contract
3 written in this Commonwealth because of a reduction of the
4 taxpayer's insurance premium tax liability derived from the
5 tax credit purchased under this article.

6 (2) If, under the insurance laws of this Commonwealth,
7 the assets of the qualified taxpayer are examined or
8 considered, the taxpayer's balance of tax credits shall be
9 treated as an admitted asset subject to the same financial
10 rating as held by the Commonwealth.

11 (d) Limitations.--The following shall apply:

12 (1) The total amount of tax credits applied against
13 insurance premium tax liability by all qualified taxpayers in
14 a fiscal year may not exceed \$35,000,000 per year beginning
15 in calendar year 2016.

16 (2) The credit to be applied in any one year may not
17 exceed the insurance premium tax liability of the qualified
18 taxpayer for that taxable year.

19 (e) Hold-harmless provision.--In any year that a tax credit
20 is claimed under this article, the General Assembly shall do all
21 of the following:

22 (1) Transfer an amount equal to the amount of any tax
23 credit claimed by a foreign fire insurance company against
24 taxes that otherwise would be distributed in accordance with
25 Chapter 7 of the act of December 18, 1984 (P.L.1005, No.205),
26 known as the Municipal Pension Plan Funding Standard and
27 Recovery Act, to the fund as defined in section 702 of the
28 Municipal Pension Plan Funding Standard and Recovery Act.

29 (2) Transfer an amount equal to the amount of any tax
30 credit claimed by a foreign casualty insurance company

1 against taxes that otherwise would be distributed and used
2 for police pension, retirement or disability purposes as
3 provided by the act of May 12, 1943 (P.L.259, No.120),
4 referred to as the Foreign Casualty Insurance Premium Tax
5 Allocation Law, for distribution in accordance with the
6 Foreign Casualty Insurance Premium Tax Allocation Law.

7 (3) Ensure that the programs under paragraphs (1) and
8 (2) do not experience a negative fiscal impact due to a
9 foreign fire insurance company or a foreign casualty
10 insurance company claiming a tax credit authorized under this
11 article.

12 Section 1807-C. Sale, carryover and carryback.

13 (a) Carryover.--If the qualified taxpayer cannot use the
14 entire amount of the tax credit for the taxable year in which
15 the taxpayer is eligible for the credit, the excess may be
16 carried over to succeeding taxable years and used as a credit
17 against the qualified tax liability of the taxpayer for those
18 taxable years, provided that the credit may not be carried over
19 to any taxable year that begins after December 31, 2025.

20 (b) Sale.--No sooner than 30 days after providing the
21 Insurance Department and the department written notice of the
22 intent to transfer tax credits, a qualified taxpayer may
23 transfer tax credits held without restriction to any entity that
24 is a qualified taxpayer in good standing with the Insurance
25 Department and that agrees to assume all of the transferor's
26 obligations with respect to the tax credit.

27 (c) Carryback.--A qualified taxpayer may not carry back a
28 tax credit.

29 Section 1808-C. Sale of tax credits to qualified taxpayers.

30 (a) Conduct of sale.--The sale of tax credits authorized

1 under section 1805-C(a) shall be conducted in accordance with
2 this section.

3 (b) Process.--The department may sell the tax credits
4 authorized under this article or may contract with an
5 independent third party to conduct a bidding process among
6 qualified taxpayers to purchase the credits. In raising capital
7 for the program, the department shall have the discretion to
8 distribute credits using a market-driven approach or any
9 approach that maximizes the yield to the Commonwealth.

10 (c) Application.--A qualified taxpayer seeking to purchase
11 tax credits may apply to the department in the manner prescribed
12 by the department.

13 (d) Bidding process.--Using procedures adopted by the
14 department or, if applicable, by an independent third party,
15 each qualified taxpayer that submits an application shall make a
16 timely and irrevocable offer, subject only to the department's
17 issuance to the taxpayer of tax credit certificates, to make
18 specified contributions of capital to the department on dates
19 specified by the department.

20 (e) Contents of offer.--The offer under subsection (d) must
21 include all of the following:

22 (1) The requested amount of tax credits, which may not
23 be less than \$500,000.

24 (2) The qualified taxpayer's capital contribution for
25 each tax credit dollar requested, which may not be less than
26 the greater of either of the following:

27 (i) Eighty percent of the requested dollar amount of
28 tax credits.

29 (ii) The percentage of the requested dollar amount
30 of tax credits that the department and, if applicable,

1 the independent third party, determines to be consistent
2 with market conditions as of the offer date.

3 (3) Any other information the department or, if
4 applicable, independent third party requires.

5 (f) Notice of approval.--Each qualified taxpayer that
6 submits an application under this section shall receive a
7 written notice from the department indicating whether or not it
8 has been approved as a purchaser of tax credits and, if so, the
9 amount of tax credits allocated.

10 (g) Limitation.--No tax credits may be sold if the bidding
11 process, upon completion, has failed to yield at least
12 \$50,000,000 in revenue.

13 Section 1809-C. Payment for tax credits purchased and
14 certificates.

15 (a) Payment of capital.--Capital committed by a qualified
16 taxpayer shall be paid to the department for deposit into the
17 fund. Nothing under this section shall prohibit the department
18 from establishing an installment payment schedule for capital
19 payments to be made by the qualified taxpayer.

20 (b) Issuance of tax credit certificates.--On receipt of
21 payment of capital, the department shall issue to each qualified
22 taxpayer a tax credit certificate representing a fully vested
23 credit against insurance premium tax liability.

24 (c) Certificate issued in accordance with bidding process.--
25 The department shall issue tax credit certificates to qualified
26 taxpayers in accordance with the bidding process selected by the
27 department or the independent third party.

28 (d) Contents.--The tax credit certificate shall state all of
29 the following:

30 (1) The total amount of premium tax credits that the

1 qualified taxpayer may claim.

2 (2) The amount of capital that the qualified taxpayer
3 has contributed or agreed to contribute in return for the
4 issuance of the tax credit certificate.

5 (3) The dates on which the tax credits will be available
6 for use by the qualified taxpayer.

7 (4) Any penalties or other remedies for noncompliance.

8 (5) The procedures to be used for transferring the tax
9 credits.

10 (6) Any other requirements the department considers
11 necessary.

12 Section 1810-C. Failure to make contribution of capital and
13 reallocation.

14 (a) Prohibition.--A tax credit certificate under section
15 1809-C may not be issued to any qualified taxpayer that fails to
16 make a contribution of capital within the time the department
17 specifies.

18 (b) Penalty.--A qualified taxpayer that fails to make a
19 contribution of capital within the time the department specifies
20 shall be subject to a penalty equal to 10% of the amount of
21 capital that remains unpaid. The penalty shall be paid to the
22 department within 30 days after demand.

23 (c) Reallocation.--The department may offer to reallocate
24 the defaulted capital among other qualified taxpayers, so that
25 the result after reallocation is the same as if the initial
26 allocation had been performed without considering the tax credit
27 allocation to the defaulting qualified taxpayer.

28 (d) Contribution.--If the reallocation of capital under
29 subsection (c) results in the contribution by another qualified
30 taxpayer of the amount of capital not contributed by the

1 defaulting qualified taxpayer, the department may waive the
2 penalty provided under subsection (b).

3 (e) Transfer.--A qualified taxpayer that fails to make a
4 contribution of capital within the time specified may avoid the
5 imposition of the penalty by transferring the allocation of tax
6 credits to a new or existing qualified taxpayer within 30 days
7 after the due date of the defaulted installment. Any transferee
8 of an allocation of tax credits of a defaulting qualified
9 taxpayer under this subsection shall agree to make the required
10 contribution of capital within 30 days after the date of the
11 transfer.

12 Section 1811-C. Innovate in PA Program.

13 (a) Establishment.--The Innovate in PA Program is
14 established within the authority.

15 (b) Authority.--The authority shall have the power and duty
16 to establish the Innovate in PA Fund within this authority. The
17 authority shall receive all net proceeds from the sale of tax
18 credits under section 1805-C(a) for deposit into the fund and
19 for distribution in accordance with subsection (c).

20 (c) Distribution.--The authority shall distribute all funds,
21 minus administrative costs incurred by the authority, received
22 under subsection (b) as follows:

23 (1) Sixty percent of the proceeds shall be distributed
24 to the Venture Investment Program for use according to
25 program guidelines.

26 (2) Forty percent shall be distributed to the Ben
27 Franklin Technology Partners Program for use according to
28 program guidelines.

29 Section 1812-C. Guidelines.

30 The department, in consultation with the authority, shall

1 promulgate guidelines implementing this article.

2 Section 1813-C. Report.

3 (a) Duties.--On or before January 1, 2014, and January 1 of
4 each subsequent year, the department, in consultation with the
5 authority, shall do all of the following:

6 (1) Submit a report on the implementation of the program
7 to all of the following:

8 (i) The Governor.

9 (ii) The chairman and minority chairman of the
10 Appropriations Committee of the Senate.

11 (iii) The chairman and minority chairman of the
12 Appropriations Committee of the House of Representatives.

13 (2) Publish the report under paragraph (1) on the
14 department's publicly accessible Internet website.

15 (b) Contents.--The report under subsection (a) shall include
16 all of the following:

17 (1) The name of the purchaser of premium tax credits.

18 (2) The amount of premium tax credits allocated to the
19 purchaser.

20 (3) The amount of capital the purchaser contributed for
21 the issuance of the tax credit certificate.

22 (4) The amount of any tax credits that have been
23 transferred under section 1810-C(e).

24 (5) The amount of funds received by the authority during
25 the previous year.

26 (6) The cumulative amount of capital received by the
27 authority.

28 (7) The amount of capital remaining uninvested at the
29 end of the preceding calendar year.

30 (8) The names and locations of businesses receiving

1 capital from the authority, the reason for the investment and
2 the amount of the investment.

3 (9) The total number of jobs created in this
4 Commonwealth by the investment and the average wages paid for
5 the jobs.

6 (10) The total number of jobs retained in this
7 Commonwealth as a result of the investment and the average
8 wages paid for the jobs.

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