
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1171 Session of
2013

INTRODUCED BY DUNBAR, EVANKOVICH, GINGRICH, GROVE, LAWRENCE,
REESE AND SANKEY, APRIL 15, 2013

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
APRIL 15, 2013

AN ACT

1 Amending the act of July 9, 2008 (1st Sp.Sess., P.L.1873, No.1),
2 entitled "An act providing for alternative sources of energy;
3 establishing the Alternative Energy Development Program, the
4 Consumer Energy Program, the Home Energy Efficiency Loan
5 Program, the Home Energy Efficiency Loan Fund and the
6 Alternative Energy Production Tax Credit Program; and
7 providing for the powers and duties of the Department of
8 Environmental Protection," repealing provisions relating to
9 the Alternative Energy Production Tax Credit Program.

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

12 Section 1. Chapter 7 of the act of July 9, 2008 (1st
13 Sp.Sess., P.L.1873, No.1), known as the Alternative Energy
14 Investment Act, is repealed:

15 [CHAPTER 7

16 Section 701. Establishment.

17 There is established the Alternative Energy Production Tax
18 Credit Program.

19 Section 702. Definitions.

20 The following words and phrases when used in this chapter
21 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 "Alternative energy production tax credit." The credit
3 provided for under this chapter.

4 "Pass-through entity." A partnership as defined under
5 section 301(n.0) of the Tax Reform Code of 1971, or a
6 Pennsylvania S corporation as defined under section 301(n.1) of
7 the Tax Reform Code of 1971.

8 "Qualified tax liability." The liability for taxes imposed
9 under Article III, IV or VI of the Tax Reform Code of 1971. The
10 term does not include any tax withheld by an employer from an
11 employee under Article III of the Tax Reform Code of 1971.

12 "Taxpayer." An entity subject to tax under Article III, IV
13 or VI of the Tax Reform Code of 1971.
14 Section 703. Eligible applicants.

15 (a) General rule.--A taxpayer who develops or constructs an
16 alternative energy production project located in this
17 Commonwealth with a useful life of at least four years may apply
18 for an alternative energy production tax credit as provided
19 under this chapter. By September 15, 2009, a taxpayer must
20 submit an application to the department on a form prescribed by
21 the department, setting forth the amount of the investment in an
22 alternative energy production project that was made in the
23 taxable year that ended in the prior calendar year.

24 (b) Application.--An application shall be developed by the
25 department and shall include:

26 (1) Type and location of the alternative energy
27 production project.

28 (2) Total cost of the alternative energy production
29 project.

30 (3) Any other information deemed appropriate by the

1 department.

2 Section 704. Award of tax credits.

3 (a) Qualification.--A taxpayer that is eligible under
4 section 703 shall receive an alternative energy production tax
5 credit for the taxable year in an amount equal to 15% of the
6 total amount of all development, equipment and construction
7 costs paid for alternative energy production projects, not to
8 exceed \$1,000,000 for each taxpayer, in the taxable year to be
9 applied against the taxpayer's qualified tax liability.

10 (b) Calculation.--In calculating the total amount of all
11 development, equipment and construction costs paid for
12 alternative energy production projects, the taxpayer shall
13 deduct the amount of any grant or other subsidy received in
14 relation to the alternative energy production project for which
15 the credit is sought by the taxpayer from a Federal, State or
16 local government entity, including an authority.

17 (c) Notification of applicant.--The department shall, within
18 90 days of receipt, review each application and notify the
19 applicant whether or not the applicant is approved for a tax
20 credit.

21 (d) Notification of Department of Revenue.--Upon
22 determination by the department that an approved applicant has
23 incurred costs for an alternative energy production project, the
24 Department of Revenue shall issue to an applicant a tax
25 certificate that sets forth the amount of alternative energy
26 production tax credit approved for the eligible applicant.

27 Section 705. Carryover, refund, assignment and carryback of
28 credit.

29 (a) Carryover.--If the taxpayer cannot use the entire amount
30 of the alternative energy production tax credit for the taxable

1 year in which the alternative energy production tax credit is
2 first approved, the excess may be carried over to succeeding
3 taxable years and used as a credit against the qualified tax
4 liability of the taxpayer for those taxable years. Each time
5 that the alternative energy production tax credit is carried
6 over to a succeeding taxable year, it is to be reduced by the
7 amount that was used as a credit during the immediately
8 preceding taxable year. The alternative energy production tax
9 credit provided under this chapter may be carried over and
10 applied to succeeding taxable years for no more than five
11 taxable years following the first taxable year for which the
12 taxpayer was entitled to claim the credit.

13 (b) Application.--An alternative energy production tax
14 credit approved by the department in a taxable year first shall
15 be applied against the taxpayer's qualified tax liability for
16 the current taxable year as of the date on which the credit was
17 approved before the alternative energy production tax credit is
18 applied against any tax liability under subsection (a).

19 (c) Carryback and refund.--A taxpayer is not entitled to
20 carry back or obtain a refund of an unused alternative energy
21 production tax credit.

22 (d) Sale or assignment.--

23 (1) A taxpayer, upon application to and approval by the
24 department, may sell or assign, in whole or in part, an
25 alternative energy production project tax credit granted to
26 the taxpayer under this chapter if no claim for allowance of
27 the credit is filed within one year from the date the credit
28 is approved by the department and the Department of Revenue
29 under this act. The department, in consultation with the
30 Department of Revenue, shall establish guidelines for the

1 approval of applications under this subsection.

2 (2) Before an application is approved, the Department of
3 Revenue must make a finding that the applicant has filed all
4 required State tax reports and returns for all applicable
5 taxable years and paid any balance of State tax due.

6 (3) Notwithstanding any other provision of law, the
7 Department of Revenue shall assess the tax of an applicant
8 under this subsection within 120 days of the filing of all
9 required final returns or reports in accordance with section
10 806.1(a)(5) of the act of April 9, 1929 (P.L.343, No.176),
11 known as The Fiscal Code.

12 (e) Purchasers and assignees.--The purchaser or assignee of
13 all or a portion of a tax credit under subsection (d) shall
14 immediately claim the credit in the taxable year in which the
15 purchase or assignment is made. The amount of the tax credit
16 that a purchaser or assignee may use against any one qualified
17 tax liability may not exceed 50% of such qualified tax liability
18 for the taxable year. The purchaser or assignee may not carry
19 forward, carry back or obtain a refund of or sell or assign the
20 tax credit.

21 Section 706. Limitation on tax credits.

22 (a) Total.--The total amount of credits approved by the
23 department shall not exceed:

24 (1) \$5,000,000 in fiscal years 2008-2009 through 2011-
25 2012.

26 (2) \$8,000,000 in fiscal year 2012-2013.

27 (3) \$10,000,000 in fiscal years 2013-2014 through 2014-
28 2015.

29 (4) \$2,000,000 in fiscal year 2015-2016.

30 (b) Formula.--If the total amount of alternative energy

1 production tax credits approved for all taxpayers exceeds the
2 amount allocated for those credits, then the alternative energy
3 production tax credit to be received by each applicant shall be
4 the product of the allocated amount multiplied by the quotient
5 of the alternative energy production tax credit approved for the
6 applicant divided by the total of all alternative energy
7 production tax credits approved for all applicants, the
8 algebraic equivalent of which is:

9 taxpayer's alternative energy production tax credit =
10 amount allocated for those credits x (alternative energy
11 production tax credit approved for the applicant/total of
12 all alternative energy production tax credits approved
13 for all applicants).

14 Section 707. Pass-through entity.

15 (a) General rule.--If a pass-through entity has any unused
16 tax credit under section 705, the entity may elect, in writing,
17 according to the department's procedures, to transfer all or a
18 portion of the credit to shareholders, members or partners in
19 proportion to the share of the entity's distributive income to
20 which the shareholder, member or partner is entitled.

21 (b) Additional credit and limitation.--The credit provided
22 under subsection (a) is in addition to any alternative energy
23 production tax credit to which a shareholder, member or partner
24 of a pass-through entity is otherwise entitled under this
25 chapter. A pass-through entity and a shareholder, member or
26 partner of a pass-through entity may not claim a credit under
27 this chapter for the same alternative energy production
28 investment.

29 (c) Application.--A shareholder, member or partner of a
30 pass-through entity to whom credit is transferred under

1 subsection (a) must immediately claim the credit in the taxable
2 year in which the transfer is made. The shareholder, member or
3 partner may not carry forward, carry back, obtain a refund of or
4 sell or assign the credit.

5 Section 708. Reporting.

6 (a) General rule.--No later than September 1 of each year,
7 the department, in consultation with the Department of Revenue,
8 shall submit a report to the General Assembly summarizing the
9 effectiveness of the tax credit provided under this chapter. The
10 report shall include the name of each taxpayer utilizing the
11 credit as of the date of the report and the amount of credits
12 approved for or utilized by each taxpayer. The report may also
13 include recommendation for changes in the calculation or
14 administration of the tax credit. The report shall be submitted
15 to the chairman and minority chairman of the Appropriations
16 Committee of the Senate, the chairman and minority chairman of
17 the Finance Committee of the Senate, the chairman and minority
18 chairman of the Appropriations Committee of the House of
19 Representatives and the chairman and minority chairman of the
20 Finance Committee of the House of Representatives. The report
21 shall include the following information, which shall be
22 separated by geographic location within this Commonwealth:

23 (1) The amount of credits claimed during the fiscal
24 year.

25 (2) The number of alternative energy production projects
26 receiving a tax credit and the dollar amount of tax credits
27 granted under this chapter in the aggregate and by project.

28 (3) The types, locations and costs of projects.

29 (4) The total amount spent in this Commonwealth during
30 the fiscal year by each alternative energy production

1 project.

2 (5) The estimated benefits of the projects in creating
3 alternative energy.

4 (6) The total amount of tax revenues generated in this
5 Commonwealth from alternative energy production projects.

6 (7) The total number of jobs created during the fiscal
7 year by alternative energy production projects.

8 (b) Public information.--Notwithstanding any law providing
9 for confidentiality of tax records, the following shall be
10 public information:

11 (1) Information in the report under subsection (a) which
12 shall be posted on the Internet websites of the Department of
13 Revenue and the department.

14 (2) The identity of each taxpayer utilizing a tax credit
15 under this chapter and the amount of credits approved and
16 utilized by each taxpayer which shall be made available
17 annually, beginning no later than one year after the credits
18 were granted.

19 Section 709. Termination.

20 The department shall not approve an alternative energy
21 production tax credit under this chapter for taxable years
22 ending after December 31, 2016.

23 Section 710. Regulations.

24 The department, in cooperation with the Department of
25 Revenue, shall promulgate regulations necessary for the
26 implementation and administration of this chapter.

27 Section 711. Applicability of chapter.

28 This chapter shall apply as follows:

29 (1) Except as provided in paragraph (2), this chapter
30 shall apply to taxable years beginning after December 31,

1 2007.

2 (2) The tax credit under this chapter shall apply to
3 alternative energy production projects commencing on or
4 after the effective date of this section.]

5 Section 2. This act shall take effect immediately.