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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1437 Session of  
2019

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INTRODUCED BY M. K. KELLER, GALLOWAY, CAUSER, EVERETT, GREINER,  
HERSHEY, JONES, JOZWIAK, KLUNK, MILLARD, PASHINSKI, PICKETT,  
PUSKARIC, PYLE, ROTHMAN, SCHMITT, SNYDER, STRUZZI, TOOHIL AND  
ZIMMERMAN, MAY 8, 2019

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REFERRED TO COMMITTEE ON COMMERCE, MAY 8, 2019

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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," in rural jobs and investment tax credit, further  
11 providing for definitions, for rural growth funds, for  
12 requirements, for rural growth fund failure to comply, for  
13 reporting obligations, for business firms, for tax credit  
14 certificates, for claiming the tax credit, for prohibitions,  
15 for revocation of tax credit certificates and for exit.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. The definitions of "principal business  
19 operations," "qualified tax liability," "rural business" and  
20 "rural growth investment" in section 1822-G of the act of March  
21 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are  
22 amended and the section is amended by adding definitions to  
23 read:

1 Section 1822-G. Definitions.

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

5 \* \* \*

6 "Full-time equivalent employee." The quotient obtained by  
7 dividing the total number of hours for which employees were  
8 compensated for employment over the preceding 12-month period by  
9 2,080.

10 \* \* \*

11 "Jobs created." Full-time equivalent employee positions  
12 that:

13 (1) Are created by the rural business.

14 (2) Are currently located in this Commonwealth.

15 (3) Were not located in this Commonwealth at the time of  
16 the rural growth investment in the rural business.

17 (4) Pay at least 150% of the Federal or State minimum  
18 wage, whichever is greater.

19 "Jobs retained." Full-time equivalent employee positions  
20 that:

21 (1) Are located in this Commonwealth.

22 (2) Existed before the initial rural growth investment  
23 in the rural business.

24 (3) Pay at least 150% of the Federal or State minimum  
25 wage, whichever is greater.

26 (4) Would have been lost or moved out of this  
27 Commonwealth had a rural growth investment not been made, as  
28 certified in writing by an executive officer of the rural  
29 business and approved by the department.

30 "Principal business operations." The place or places where

1 at least 60% of a rural business' employees work or where  
2 employees that are paid at least 60% of the business' payroll  
3 work. An out-of-State business that has agreed to relocate  
4 employees or an in-State business that has agreed to hire  
5 employees using the proceeds of a rural growth investment to  
6 establish principal business operations in a rural area in this  
7 Commonwealth shall be deemed to have the principal business  
8 operations in this new location if the business satisfies this  
9 definition within 180 days after receiving the rural growth  
10 investment, unless the department agrees to a later date.

11 "Qualified tax liability." The liability for taxes imposed  
12 under Article VII, VIII, IX or XV, the tax under Article XVI of  
13 the act of May 17, 1921 (P.L.682, No.284), known as The  
14 Insurance Company Law of 1921, or amounts imposed under section  
15 212 of the act of May 17, 1921 (P.L.789, No.285), known as The  
16 Insurance Department Act of 1921 and any other retaliatory tax  
17 imposed on a business firm in this Commonwealth.

18 \* \* \*

19 "Rural business." A business that, at the time of the  
20 initial rural growth investment in the business by a rural  
21 growth fund, meets the following conditions:

22 (1) Has fewer than [250] 150 employees and not more than  
23 \$15,000,000 in net income as determined by generally accepted  
24 accounting principles for the preceding calendar year.

25 (2) Has principal business operations in one or more  
26 rural areas in this Commonwealth.

27 (3) Is engaged in industries related to manufacturing,  
28 plant sciences, services or technology or, if not engaged in  
29 those industries, the department makes a determination that  
30 the investment will be highly beneficial to the economic

1 growth of this Commonwealth.

2 \* \* \*

3 "Rural growth investment." A capital or equity investment in  
4 a rural business or any loan to a rural business with a stated  
5 maturity at least one year after the date of issuance. A secured  
6 loan or a revolving line of credit provided to a rural business  
7 is a rural growth investment only if the growth fund obtains an  
8 affidavit from the president or chief executive officer or  
9 equivalent position of the rural business attesting that the  
10 rural business sought and was denied similar financing from a  
11 commercial bank.

12 "State repayment amount." The amount by which the rural  
13 growth fund's credit-eligible capital contributions exceed the  
14 product obtained by multiplying \$30,000 by the aggregate number  
15 of jobs created and jobs retained reported in annual reports  
16 under section 1827-G(b).

17 \* \* \*

18 Section 2. Sections 1824-G(b) (2) and (3), (d) (4) and (e),  
19 1825-G(a) (2), 1826-G(a), 1827-G, 1828-G(c), 1829-G(b) (2.1) and  
20 (3), 1830-G, 1832-G(c), 1833-G(a) and 1834-G(a) of the act are  
21 amended to read:

22 Section 1824-G. Rural growth funds.

23 \* \* \*

24 (b) Information.--An application to qualify as a rural  
25 growth fund shall include all of the following:

26 \* \* \*

27 (2) Documents and other evidence sufficient to prove to  
28 the satisfaction of the department that the applicant meets  
29 all of the following criteria:

30 (i) The applicant or an affiliate of the applicant

1 is licensed as a rural business investment company under  
2 the Consolidated Farm and Rural Development Act (Public  
3 Law 87-128, 75 Stat. 307) or as a small business  
4 investment company under the Small Business Investment  
5 Act of 1958 (Public Law 85-699, 72 Stat. 689).

6 (ii) Evidence that as of the date the application is  
7 submitted, the applicant or affiliates of the applicant  
8 have invested at least \$100,000,000 in nonpublic  
9 companies located in rural areas of this Commonwealth or  
10 other states.

11 (iii) At least one principal in a rural business  
12 investment company or a small business investment company  
13 has been an officer or employee of the applicant or of an  
14 affiliate of the applicant for at least four years prior  
15 to the date the application is submitted.

16 (3) An estimate of the number of jobs [that will be]  
17 created or retained in this Commonwealth [as a result of]  
18 that will result from the applicant's rural growth  
19 investments.

20 \* \* \*

21 (d) Notice of approval or disapproval.--

22 \* \* \*

23 (4) An applicant may resubmit the application within 30  
24 days after receipt of a notice of disapproval[.] and provide  
25 additional information to complete, clarify or cure defects  
26 identified in the application by the department. The  
27 department shall consider that application submitted before  
28 any pending applications submitted after the date the  
29 application was originally submitted.

30 (e) Request for determination.--A rural growth fund, before

1 making a rural growth investment, may request from the  
2 department a written opinion as to whether the business in which  
3 the rural growth fund [proposed] proposes to invest is a rural  
4 business. The department shall notify the rural growth fund of  
5 the determination within 15 days after receipt of the request.  
6 If the department fails to notify a rural growth fund of the  
7 determination within 15 days, the business in which the rural  
8 growth fund proposes to invest shall be considered a rural  
9 business.

10 \* \* \*

11 Section 1825-G. Requirements.

12 (a) Collections.--Upon receiving approval under section  
13 1824-G, a rural growth fund must do all of the following within  
14 60 days:

15 \* \* \*

16 (2) Collect one or more investments of cash that, when  
17 added to the contributions collected under paragraph (1),  
18 equal the rural growth fund's investment authority. At least  
19 10% of the rural growth fund's investment authority shall be  
20 comprised of equity investments contributed, directly or  
21 indirectly, by affiliates of the rural growth fund, including  
22 employees, officers and directors of the affiliates.

23 \* \* \*

24 Section 1826-G. Rural growth fund failure to comply.

25 (a) Revocation.--If a rural growth fund fails to meet the  
26 requirements of section 1825-G, the rural growth fund's approval  
27 shall be revoked, and, the corresponding investment authority  
28 and credit-eligible capital contributions may not be included in  
29 determining the limits on total investment authority and credit-  
30 eligible capital contributions prescribed in sections 1824-G(f)

1 and 1828-G(c), respectively.

2 \* \* \*

3 Section 1827-G. Reporting obligations.

4 (a) Initial report.--Each rural growth fund shall submit a  
5 report to the department on or before the fifth business day  
6 after the second anniversary of the closing date. The report  
7 shall provide documentation as to the rural growth fund's rural  
8 growth investments and include the following information:

9 (1) A bank statement evidencing each rural growth  
10 investment.

11 (2) The name, location and industry of each business  
12 receiving a rural growth investment, including either the  
13 determination letter issued by the department under section  
14 1824-G(e) or other evidence that the business qualified as a  
15 rural business at the time the investment was made.

16 (3) [The number of jobs created or retained as a result  
17 of the fund's rural growth investments as of the last day of  
18 the preceding calendar year.

19 (4)] Any other information required by the department.

20 (b) Annual report.--No later than March 1 of each year  
21 following the [year in which the report required under  
22 subsection (a) is due,] closing date the rural growth fund shall  
23 submit an annual report to the department that includes the  
24 following information:

25 (1) The number of jobs created [or retained as a result  
26 of the fund's rural growth investments as of the last day of  
27 the preceding calendar year.] and retained at each rural  
28 business. The number of jobs created and retained shall be  
29 calculated as follows:

30 (i) The number of jobs created by a rural business

1 is calculated each year by subtracting the number of  
2 full-time equivalent employee positions in this  
3 Commonwealth at the time of the initial rural growth  
4 investment in the rural business from the monthly average  
5 of those employment positions for that year. If the  
6 number calculated is less than zero, the number shall be  
7 reported as zero. The monthly average of full-time  
8 equivalent employee positions for a year is calculated by  
9 adding together the number of full-time equivalent  
10 employee positions existing on the last day of each month  
11 of the year and dividing by 12.

12 (ii) The number of jobs retained by a rural business  
13 is calculated each year based on the monthly average of  
14 full-time equivalent employee positions for that year.  
15 The monthly average of full-time equivalent employee  
16 positions for a year is calculated by adding together the  
17 number of full-time equivalent employee positions  
18 existing on the last day of each month of the year and  
19 dividing by 12. The reported number of jobs retained for  
20 a year may not exceed the number reported on the annual  
21 report under this subsection. The rural growth fund shall  
22 reduce the number of jobs retained for a year if  
23 employment at the rural business drops below the number  
24 reported on the annual report.

25 (1.1) If not provided under subsection (a)(2), the name  
26 and location of each business receiving a rural growth  
27 investment, including either the determination letter issued  
28 by the department under section 1824-G(e) or other evidence  
29 that the business qualified as a rural business at the time  
30 the investment was made.

1           (2) The average [annual salary] hourly wage of the jobs  
2 reported in paragraph (1).

3           (3) Any other information required by the department.

4 Section 1828-G. Business firms.

5 \* \* \*

6           (c) Limitation.--The department may not approve more than  
7 [\$4,000,000] \$60,000,000 in credit-eligible capital  
8 contributions under this part.

9 Section 1829-G. Tax credit certificates.

10 \* \* \*

11           (b) Review, recommendation and approval.--

12 \* \* \*

13           (2.1) [A tax credit] Tax credits awarded under this  
14 section to a business firm shall not exceed [90%] the amount  
15 of the credit-eligible capital contributions made by [a] the  
16 business firm.

17           (3) In awarding tax credit certificates under this part,  
18 the department:

19           (i) Beginning with fiscal year [2017-2018] 2019-  
20 2020, may not award tax credit certificates that would  
21 result in the utilization of more than [\$1,000,000]  
22 \$12,000,000 in tax credits in any fiscal year, except for  
23 tax credits carried forward.

24           (ii) May not award more than [\$4,000,000]  
25 \$60,000,000 in tax credit certificates, in the aggregate,  
26 under this part.

27 Section 1830-G. Claiming the tax credit.

28           (a) Presentation.--Beginning July 1, [2017] 2019, upon  
29 presenting a tax credit certificate to the Department of  
30 Revenue, a business firm may claim a tax credit of up to [25%]

1 20% of the amount awarded under section 1829-G for each of the  
2 taxable years that includes the third, fourth, fifth [and],  
3 sixth and seventh anniversaries of the closing date, exclusive  
4 of any tax credit amounts carried over under section 1831-G(b).

5 (b) Allowance.--The Department of Revenue shall allow a tax  
6 credit against any tax due under Article VII, VIII, IX or XV,  
7 the tax under Article XVI of the act of May 17, 1921 (P.L.682,  
8 No.284), known as The Insurance Company Law of 1921, amounts  
9 imposed under section 212 of the act of May 17, 1921 (P.L.789,  
10 No.285), known as The Insurance Department Act of 1921, any  
11 retaliatory taxes imposed by this Commonwealth or any tax  
12 substituted in lieu of one of the taxes under this subsection.  
13 Section 1832-G. Prohibitions.

14 \* \* \*

15 (c) Business activities.--Neither a rural growth fund nor  
16 any business firm that invests in the rural growth fund shall be  
17 an affiliate of or have a pecuniary interest in a rural business  
18 that receives a rural growth investment from the rural growth  
19 fund prior to the rural growth fund's initial rural growth  
20 investment in the rural business.

21 Section 1833-G. Revocation of tax credit certificates.

22 (a) Revocation.--The department shall revoke a tax credit  
23 certificate awarded under section 1829-G if any of the following  
24 occur with respect to a rural growth fund before the rural  
25 growth fund exits the program under section 1834-G:

26 (1) The rural growth fund in which the credit-eligible  
27 capital contribution was made does not invest all of its  
28 investment authority in rural growth investments in this  
29 Commonwealth within [two] three years of the closing date  
30 with at least 25% of its investment authority initially

1 invested in rural businesses engaged in manufacturing.

2 (2) The rural growth fund, after satisfying the  
3 conditions of paragraph (1), fails to maintain rural growth  
4 investments equal to 100% of its investment authority until  
5 the [sixth] seventh anniversary of the closing date. For the  
6 purposes of this paragraph, [an] a rural growth investment is  
7 "maintained" even if the rural growth investment is sold or  
8 repaid so long as the rural growth fund reinvests an amount  
9 equal to the capital returned or recovered by the rural  
10 growth fund from the original rural growth investment,  
11 exclusive of any profits realized, in other rural growth  
12 investments in this Commonwealth within 12 months of the  
13 receipt of the capital. Amounts received periodically by a  
14 rural growth fund shall be treated as continually invested in  
15 rural growth investments if the amounts are reinvested in one  
16 or more rural growth investments by the end of the following  
17 calendar year. A rural growth fund is not required to  
18 reinvest capital returned from rural growth investments after  
19 the [fifth] sixth anniversary of the closing date, and the  
20 rural growth investments shall be considered held  
21 continuously by the rural growth fund through the [sixth]  
22 seventh anniversary of the closing date.

23 (3) The rural growth fund, before exiting the program in  
24 accordance with section 1834-G, makes a distribution or  
25 payment that results in the rural growth fund having less  
26 than 100% of its investment authority invested in rural  
27 growth investments in this Commonwealth or available for  
28 investment in rural growth investments and held in cash and  
29 other marketable securities.

30 [(4) The rural growth fund invests more than 20% of its

1 investment authority in the same rural business, including  
2 amounts invested in affiliates of the rural business.]

3 (5) The rural growth fund makes a rural growth  
4 investment in a rural business that directly or indirectly  
5 through an affiliate owns, has the right to acquire an  
6 ownership interest, makes a loan to or makes an investment in  
7 the rural growth fund, an affiliate of the rural growth fund  
8 or an investor in the rural growth fund. This paragraph does  
9 not apply to investments in publicly traded securities by a  
10 rural business or an owner or affiliate of a rural business.  
11 For purposes of this paragraph, a rural growth fund shall not  
12 be considered an affiliate of a rural business solely as a  
13 result of its rural growth investment. The amount by which a  
14 rural growth investment in a rural business, exclusive of  
15 receipts or redeemed rural growth investments, exceeds 20% of  
16 a rural growth fund's investment authority may not count  
17 toward the satisfaction of the requirements of subsections  
18 (a) (1) and (2).

19 \* \* \*

20 Section 1834-G. Exit.

21 (a) Application for exit.--On or after the [sixth] seventh  
22 anniversary of the closing date, a rural growth fund may apply  
23 to the department to exit the Rural Jobs and Investment Tax  
24 Credit Program and no longer be subject to regulation under this  
25 part. A rural growth fund shall calculate the State repayment  
26 amount in its application for exit and if the product is greater  
27 than the rural growth fund's credit-eligible capital  
28 contributions, the State repayment amount shall equal zero. The  
29 department shall respond to the application within 30 days after  
30 receipt and confirm the State repayment amount. In evaluating

1 the application, the fact that no tax credit certificates have  
2 been revoked and that the rural growth fund has not received a  
3 notice of revocation that has not been cured under section 1833-  
4 G(b) shall be sufficient evidence to show that the rural growth  
5 fund is eligible for exit. The department may not deny an  
6 application submitted under this subsection without reasonable  
7 cause. If the application is denied, the department shall issue  
8 a notice which shall include the reasons for the denial. If the  
9 rural growth fund owes a State repayment amount, the rural  
10 growth fund may not be permitted to make distributions or  
11 payments in excess of the investment authority until the rural  
12 growth fund first remits the State repayment amount to the  
13 department. All amounts received by the department under this  
14 section shall be credited to the general revenue fund.

15 \* \* \*

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