

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 16

Special Session No. 1 of  
2007-2008

INTRODUCED BY MELLOW, MUSTO, KITCHEN, FERLO, BOSCOLA, FONTANA,  
TARTAGLIONE, GORDNER, STOUT, WASHINGTON, STACK, COSTA,  
O'PAKE, KASUNIC, LAVALLE AND BROWNE, DECEMBER 7, 2007

REFERRED TO ENERGY POLICIES, DECEMBER 7, 2007

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 cellulosic ethanol research and  
11 development tax credit and for a cellulosic ethanol  
12 production tax credit.

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

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

ARTICLE XVII-F

19 CELLULOSIC ETHANOL RESEARCH AND DEVELOPMENT TAX CREDIT

20 Section 1701-F. Definitions.

21 The following words and phrases, when used in this article,  
22 shall have the meaning given to them in this section, except

1 where the context clearly indicates otherwise:

2 "Cellulosic ethanol technology." Technology that is used to  
3 develop a manufacturing process to convert lignocellulosic  
4 biomass into motor fuel grade ethanol.

5 "Department." The Department of Revenue of the Commonwealth.

6 "Energy crop." Cellulose-rich raw materials, including  
7 switchgrass, miscanthus, willow trees and hybrid poplar trees.

8 "Lignocellulosic biomass feedstocks." The term shall include  
9 energy crops, sewage, industrial waste, willow trees,  
10 agricultural and forestry residues, clean wood and wood wastes,  
11 pulp and paper mill wastes or extracts and nonrecyclable paper  
12 that provide a source of cellulose or hemicellulose.

13 "Motor fuel grade ethanol." An ethyl alcohol that has a  
14 purity of at least 99%, exclusive of added denaturants, that  
15 complies with all of the following:

16 (1) The product has been denatured by a method approved  
17 by the Bureau of Alcohol, Tobacco, Firearms and Explosives of  
18 the United States Department of Justice, as provided under 27  
19 CFR Pts. 20 (relating to distribution and use of denatured  
20 alcohol and rum) and 21 (relating to formulas for denatured  
21 alcohol and rum).

22 (2) The product meets all requirements of the American  
23 Society for Testing and Materials Specification D4806 or its  
24 successor standard, Standard Specification for Denatured Fuel  
25 Ethanol for Blending with Gasolines for Use as Automotive  
26 Spark-Ignition Engine Fuel.

27 "Qualified research and development expense." Expenses  
28 incurred for cellulosic ethanol technology research and  
29 development that is conducted within this Commonwealth.

30 "Qualified tax liability." The liability for taxes imposed

under Article III, IV or VI. The term shall not include any tax withheld by an employer from an employee under Article III.

"Research and development tax credit." The credit provided under this article.

"Secretary." The Secretary of Revenue of the Commonwealth.

"Taxpayer." An entity subject to tax under Article III, IV or VI. The term shall include the shareholder of a Pennsylvania S corporation that receives a cellulosic ethanol research and development tax credit.

Section 1702-F. Credit for research and development expenses.

(a) Application.--A taxpayer who incurs qualified research and development expense in a taxable year may apply for a research and development tax credit as provided under this article. By September 15, a taxpayer must submit an application to the department for qualified research and development expense incurred in the taxable year that ended in the prior calendar year.

(b) Amounts.--A taxpayer that is qualified under subsection (a) shall receive a research and development tax credit for the taxable year in the amount of 15% of the total qualified research and development expense incurred during the taxable year.

(c) Notification.--By December 15 of the calendar year following the close of the taxable year during which the qualified research and development expense was incurred, the department shall notify the taxpayer of the amount of the taxpayer's research and development tax credit approved by the department.

Section 1703-F. Carryover, carryback, refund and assignment of credit.

1       (a) Carryover.--If the taxpayer cannot use the entire amount  
2 of the research and development tax credit for the taxable year  
3 in which the research and development tax credit is first  
4 approved, the excess may be carried over to succeeding taxable  
5 years and used as a credit against the qualified tax liability  
6 of the taxpayer for those taxable years. Each time that the  
7 research and development tax credit is carried over to a  
8 succeeding taxable year, it is to be reduced by the amount that  
9 was used as a credit during the immediately preceding taxable  
10 year. The research and development tax credit provided by this  
11 article may be carried over and applied to succeeding taxable  
12 years for no more than 15 taxable years following the first  
13 taxable year for which the taxpayer was entitled to claim the  
14 credit.

15       (b) Application.--A research and development tax credit  
16 approved by the department for Pennsylvania qualified research  
17 and development expense in a taxable year first shall be applied  
18 against the taxpayer's qualified tax liability for the current  
19 taxable year as of the date on which the credit was approved  
20 before the research and development tax credit is applied  
21 against any tax liability under subsection (a).

22       (c) Carryback.--A taxpayer is not entitled to carry back or  
23 obtain a refund of an unused research and development tax  
24 credit.

25       (d) Sale or assignment.--A taxpayer, upon application to and  
26 approval by the Department of Community and Economic  
27 Development, may sell or assign, in whole or in part, a research  
28 and development tax credit granted to the taxpayer under this  
29 article if no claim for allowance of the credit is filed within  
30 one year from the date the credit is approved by the department

1 under section 1702-F. The Department of Community and Economic  
2 Development shall establish guidelines for the approval of  
3 applications under this subsection.

4 (e) Claim.--The purchaser or assignee of a portion of a  
5 research and development tax credit under subsection (d) shall  
6 immediately claim the credit in the taxable year in which the  
7 purchase or assignment is made. The amount of the research and  
8 development credit that a purchaser or assignee may use against  
9 any one qualified tax liability may not exceed 75% of the  
10 qualified tax liability for the taxable year. The purchaser or  
11 assignee may not carry over, carry back, obtain a refund of or  
12 assign the research and development tax credit. The purchaser or  
13 assignee shall notify the department of the seller or assignor  
14 of the research and development tax credit in compliance with  
15 procedures specified by the department.

16 Section 1704-F. Determination of qualified research and  
17 development expenses.

18 In prescribing standards for determining which qualified  
19 research and development expense were incurred within this  
20 Commonwealth, the department shall consider all of the  
21 following:

22 (1) The location where the services are performed.

23 (2) The residence or business location of the person or  
24 persons performing the service.

25 (3) The location where qualified research and  
26 development supplies are consumed.

27 (4) Other factors that the department determines are  
28 relevant for the determination.

29 Section 1705-F. Limitation on credits.

30 (a) Total credits.--The total amount of credits approved by

1 the department shall not exceed \$10,000,000 in any fiscal year.  
2 If the total amounts allocated to either the group of applicants  
3 exclusive of small businesses or the group of small business  
4 applicants is not approved in any fiscal year, the unused  
5 portion will become available for use by the other group of  
6 qualifying taxpayers.

7 (b) Individual credits.--If the total amount of research and  
8 development tax credits applied for by all taxpayers, exclusive  
9 of small businesses, exceeds the amount allocated for those  
10 credits, the research and development tax credit to be received  
11 by each applicant shall be the product of the allocated amount  
12 multiplied by the quotient of the research and development tax  
13 credit applied for by the applicant divided by the total of all  
14 research and development credits applied for by all applicants,  
15 the algebraic equivalent of which is: taxpayer's research and  
16 development tax credit=amount allocated for those credits X  
17 (research and development tax credit applied for by the  
18 applicant/total of all research and development tax credits  
19 applied for by all applicants).

20 Section 1706-F. Report to General Assembly.

21 The secretary shall submit an annual report to the General  
22 Assembly indicating the effectiveness of the credit provided by  
23 this article no later than March 15 following the year in which  
24 the credits were approved. The report shall include the names of  
25 all taxpayers utilizing the credit as of the date of the report  
26 and the amount of credits approved and utilized by each  
27 taxpayer. Notwithstanding any law providing for the  
28 confidentiality of tax records, the information contained in the  
29 report shall be public information. The report may also include  
30 any recommendations for changes in the calculation or

1 administration of the credit.

2 Section 1707-F. Applicability.

3 The tax credit authorized under this article shall apply to  
4 taxable years beginning after December 31, 2007.

5 Section 1708-F. Regulations.

6 The secretary shall promulgate regulations necessary for the  
7 implementation and administration of this article.

8 ARTICLE XVII-G

9 CELLULOSIC ETHANOL PRODUCTION TAX CREDIT

10 Section 1701-G. Definitions.

11 The following words and phrases, when used in this article,  
12 shall have the meaning given to them in this section, except  
13 where the context clearly indicates otherwise:

14 "Cellulose-rich raw material." Fibrous plant material which  
15 contains high levels of cellulose and hemicellulose.

16 "Cellulosic ethanol." Motor fuel grade ethanol produced from  
17 lignocellulosic biomass.

18 "Department." The Department of Revenue of the Commonwealth.

19 "Energy crop." Cellulose-rich raw materials, including  
20 switchgrass, miscanthus, willow trees and hybrid poplar trees.

21 "Lignocellulosic biomass feedstocks." The term shall include  
22 energy crops, sewage, industrial waste, willow trees,  
23 agricultural and forestry residues, clean wood and wood wastes,  
24 pulp and paper mill wastes or extracts and nonrecyclable paper  
25 that provide a source of cellulose or hemicellulose .

26 "Motor fuel grade ethanol." An ethyl alcohol that has a  
27 purity of at least 99%, exclusive of added denaturants, that  
28 complies with all of the following:

29 (1) The product has been denatured by a method approved  
30 by the Bureau of Alcohol, Tobacco, Firearms and Explosives of

1 the United States Department of Justice, as provided under 27  
2 CFR Pts. 20 (relating to distribution and use of denatured  
3 alcohol and rum) and 21 (relating to formulas for denatured  
4 alcohol and rum).

5 (2) The product meets all requirements of the American  
6 Society for Testing and Materials Specification D4806 or its  
7 successor standard, Standard Specification for Denatured Fuel  
8 Ethanol for Blending with Gasolines for Use as Automotive  
9 Spark-Ignition Engine Fuel.

10 "Pennsylvania facility." A cellulosic ethanol plant located  
11 in this Commonwealth. The term shall include a pilot plant or a  
12 research and development facility.

13 "Production tax credit." The credit provided under this  
14 article.

15 "Qualified tax liability." The liability for taxes imposed  
16 under Article III, IV or VI. The term shall not include any tax  
17 withheld by an employer from an employee under Article III.

18 "Secretary." The Secretary of Revenue of the Commonwealth.

19 "Taxpayer." An entity subject to tax under Article III, IV  
20 or VI. The term shall include the shareholder of a Pennsylvania  
21 S corporation that receives a production tax credit.

22 Section 1702-G. Credit for cellulosic ethanol production.

23 (a) Application.--A taxpayer which produces cellulosic  
24 ethanol within this Commonwealth may apply for a cellulosic  
25 ethanol production tax credit as provided under this article. By  
26 September 15, a taxpayer must submit an application to the  
27 department for a production credit. The credit shall be based on  
28 the amount of cellulosic ethanol produced in the taxable year  
29 that ended in the prior calendar year.

30 (b) Amounts.--A taxpayer that is qualified under subsection



1 (a) shall receive a production tax credit for the taxable year  
2 in the amount equal to 20¢ multiplied by the number of gallons  
3 of cellulosic ethanol produced at a Pennsylvania facility.

4 (c) Notification.--By December 15 of the calendar year  
5 following the close of the taxable year during which the  
6 qualified production expense was incurred, the department shall  
7 notify the taxpayer of the amount of the taxpayer's production  
8 tax credit approved by the department.

9 Section 1703-G. Carryover, carryback, refund and assignment of  
10 credit.

11 (a) Carryover.--If the taxpayer cannot use the entire amount  
12 of the production tax credit for the taxable year in which the  
13 production tax credit is first approved, the excess may be  
14 carried over to succeeding taxable years and used as a credit  
15 against the qualified tax liability of the taxpayer for those  
16 taxable years. Each time that the production tax credit is  
17 carried over to a succeeding taxable year, it is to be reduced  
18 by the amount that was used as a credit during the immediately  
19 preceding taxable year. The production tax credit provided by  
20 this article may be carried over and applied to succeeding  
21 taxable years for no more than 15 taxable years following the  
22 first taxable year for which the taxpayer was entitled to claim  
23 the credit.

24 (b) Application.--A production tax credit approved by the  
25 department for Pennsylvania qualified production expense in a  
26 taxable year first shall be applied against the taxpayer's  
27 qualified tax liability for the current taxable year as of the  
28 date on which the credit was approved before the production tax  
29 credit is applied against any tax liability under subsection  
30 (a).

1     (c) Carryback.--A taxpayer is not entitled to carry back or  
2     obtain a refund of an unused production tax credit.

3     (d) Sale or assignment.--A taxpayer, upon application to and  
4     approval by the Department of Community and Economic  
5     Development, may sell or assign, in whole or in part, a  
6     production tax credit granted to the taxpayer under this article  
7     if no claim for allowance of the credit is filed within one year  
8     from the date the credit is approved by the department under  
9     section 1702-G. The Department of Community and Economic  
10    Development shall establish guidelines for the approval of  
11    applications under this subsection.

12    (e) Claim.--The purchaser or assignee of a portion of a  
13    production tax credit under subsection (d) shall immediately  
14    claim the credit in the taxable year in which the purchase or  
15    assignment is made. The amount of the production credit that a  
16    purchaser or assignee may use against any one qualified tax  
17    liability may not exceed 50% of the qualified tax liability for  
18    the taxable year. The purchaser or assignee may not carry over,  
19    carry back, obtain a refund of or assign the production tax  
20    credit. The purchaser or assignee shall notify the department of  
21    the seller or assignor of the production tax credit in  
22    compliance with procedures specified by the department.

23    Section 1704-G. Limitation on credits.

24    (a) Total credits.--The total amount of credits approved by  
25    the department shall not exceed \$10,000,000 in any fiscal year.

26    (b) Individual credits.--If the total amount of production  
27    tax credits applied for by all taxpayers, exclusive of small  
28    businesses, exceeds the amount allocated for those credits, the  
29    production tax credit to be received by each applicant shall be  
30    the product of the allocated amount multiplied by the quotient

1 of the production tax credit applied for by the applicant  
2 divided by the total of all production credits applied for by  
3 all applicants, the algebraic equivalent of which is: taxpayer's  
4 production tax credit=amount allocated for those credits X  
5 (production tax credit applied for by the applicant/total of all  
6 production tax credits applied for by all applicants).

7 Section 1705-G. Report to General Assembly.

8 The secretary shall submit an annual report to the General  
9 Assembly indicating the effectiveness of the credit provided by  
10 this article no later than March 15 following the year in which  
11 the credits were approved. The report shall include the names of  
12 all taxpayers utilizing the credit as of the date of the report  
13 and the amount of credits approved and utilized by each  
14 taxpayer. Notwithstanding any law providing for the  
15 confidentiality of tax records, the information contained in the  
16 report shall be public information. The report may also include  
17 any recommendations for changes in the calculation or  
18 administration of the credit.

19 Section 1706-G. Applicability.

20 The tax credit authorized under this article shall apply to  
21 taxable years beginning after December 31, 2007.

22 Section 1707-G. Termination.

23 The department shall not approve a production tax credit  
24 under this article for taxable years beginning after December  
25 31, 2018.

26 Section 1708-G. Regulations.

27 The secretary shall promulgate regulations necessary for the  
28 implementation and administration of this article.

29 Section 2. This act shall take effect in 60 days.