

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1848 Session of 2009

INTRODUCED BY MUSTIO, BARRAR, BEYER, BRENNAN, CIVERA, DENLINGER, EVERETT, GEIST, GINGRICH, KILLION, KOTIK, MURT, O'NEILL, PYLE, RAPP, READSHAW, REICHLEY, ROSS, SIPTROTH, J. TAYLOR, VULAKOVICH AND YOUNGBLOOD, JULY 10, 2009

REFERRED TO COMMITTEE ON FINANCE, JULY 10, 2009

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," authorizing the Neighborhood Energy Assistance
11 Tax Credit.

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

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

17 ARTICLE XIX-B

18 NEIGHBORHOOD ENERGY ASSISTANCE TAX CREDIT

19 Section 1901-B. Scope.

20 This article authorizes the Neighborhood Energy Assistance
21 Tax Credit.

1 Section 1902-B. Definitions.

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

5 "Business firm." Any business entity authorized to do
6 business in this Commonwealth and subject to taxes imposed by
7 Article III, IV, VI, VII or VIII. This term includes an electric
8 generation or distribution company or natural gas supplier or
9 distribution company as defined in 66 Pa.C.S. § 2803 (relating
10 to definitions).

11 "Commission." The Pennsylvania Public Utility Commission.

12 "Comprehensive energy services plan." A strategy developed
13 jointly by a neighborhood energy organization and a sponsoring
14 business firm for the provision of energy assistance services
15 within an urban neighborhood, suburban community or rural
16 community.

17 "Comprehensive energy services project." Any activity
18 conducted jointly by a neighborhood or community-based
19 organization and a sponsoring business firm that implements a
20 comprehensive energy service plan.

21 "Energy assistance services." Any type of counseling and
22 advice or the provision of direct services to reduce the energy
23 usage and costs to individuals or groups throughout a
24 geographical area, which counseling, advice or services are in
25 addition to those services or programs required by Federal or
26 State statute or regulation or by an ordinance or regulation of
27 a local government. This term includes, but is not limited to,
28 the following activities: energy conservation education; home
29 weatherization services that include the provision of measures
30 that affect either heating or cooling costs or both in an

individual residence or within a building owned or operated by a nonprofit organization providing a community service; and administration of the Low Income Bill Payment Assistance Program. An individual residence includes either a premises owned and occupied by an individual or a premises rented by an individual.

"Neighborhood energy assistance." Financial assistance, labor, material and technical advice to aid in the physical improvement of any part or all of an individual residence that will result in the more efficient use of energy and a reduction in the energy costs within the individual residence.

"Neighborhood energy organization." A private, nonprofit organization that provides energy assistance services to residents in an urban neighborhood, suburban community or rural community and that has obtained a ruling from the Internal Revenue Service that the organization is exempt from income taxation under the provisions of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) and approved by the Department of Community and Economic Development. This term includes the sustainable energy funds established under the restructuring plans required under 66 Pa.C.S. Ch. 28 (relating to restructuring of electric utility industry) and pursuant to Pennsylvania Public Utility Commission Docket Nos. R-00973981, R-00974008, R-00974009, R-00973953 and R-00973954.

"Qualified investment." Any investment made by a business firm that promotes the efficient use of energy and a reduction in energy costs pursuant to a plan that has been developed in cooperation with and approved by a neighborhood or community-based energy organization operating pursuant to a plan for the administration of tax credits approved by the Department of

Community and Economic Development and the Pennsylvania Public
Utility Commission.

"Qualified tax liability." The liability for taxes imposed
under Article III, IV, VI, VII or VIII. The term does not
include any tax withheld by an employer from an employee under
Article III.

"Secretary." The Secretary of Community and Economic
Development of the Commonwealth.

Section 1903-B. Tax credit.

(a) General rule.--A business firm that engages in or
contributes to a neighborhood energy organization that engages
in the activities of providing neighborhood energy assistance to
low-income and moderate-income individuals or to nonprofit
organizations in an urban neighborhood, suburban community or
rural community shall receive a tax credit as provided in
section 1904-B if the secretary and the commission annually
approve the proposal of the business firm or private company.
The proposal shall set forth the program to be conducted, the
urban neighborhood, suburban community or rural community
selected, the estimated amount to be invested in the program and
the plan for implementing the program.

(b) Regulations.--The secretary, in cooperation with the
commission, shall promulgate rules and regulations for the
approval or disapproval of the proposals by business firms or
private companies and provide a listing of all applications
received and their disposition in each fiscal year to the
General Assembly by October 1 of the following fiscal year.

Section 1904-B. Grant of tax credit.

(a) Authorization.--The Department of Revenue shall grant a
tax credit against any tax due under Article III, IV, VI, VII or

VIII. The total amount of tax credit granted for programs approved under this article shall not exceed \$20,000,000 of tax credit in any fiscal year, subject to the following:

(1) A business firm that incurs a Pennsylvania qualified neighborhood energy assistance expense in a taxable year may apply for a neighborhood energy assistance tax credit as provided in this article. By September 15, a business firm must submit an application to the Department of Revenue for Pennsylvania neighborhood energy assistance expenses incurred in the taxable year that ended in the prior calendar year.

(2) A business firm that is qualified under section 1903-B and incurs an expense that supports a program of energy education, counseling or advice or that does not show a direct energy savings or cost reduction shall receive a neighborhood energy assistance tax credit for the taxable year in the amount of 50% of the excess of the business firm's total Pennsylvania qualified neighborhood energy assistance expense for the taxable year.

(3) A business firm that is qualified under section 1903-B and incurs an expense that supports a program providing direct energy services that include the installation of actual energy efficiency measures, including solar water heating and solar photovoltaic systems, that demonstrate a direct energy savings or cost reduction, or that administer low income bill payment assistance programs shall receive a neighborhood assistance tax credit for the taxable year in the amount of 70% of the excess of the business firm's total Pennsylvania qualified neighborhood or community-based energy assistance expense for the taxable year.

1 (b) Notification of approved tax credits.--By December 15 of
2 the calendar year following the close of the taxable year during
3 which the Pennsylvania qualified neighborhood energy assistance
4 expense was incurred, the Department of Revenue shall notify the
5 business firm of the amount of the business firm's neighborhood
6 energy assistance tax credit approved by the Department of
7 Revenue.

8 (c) Carryover, carryback, refund and assignment of credit.--

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

22 (2) A tax credit approved by the Department of Revenue
23 for a neighborhood energy assistance tax credit expense in a
24 calendar year first shall be applied against the business
25 firm's qualified tax liability for the current taxable year
26 as of the date on which the credit was approved before the
27 tax credit is applied against any tax liability under section
28 1903-B.

29 (3) A business firm may not carry back or obtain a
30 refund of an unused tax credit.

1 (4) Tax credits under this article shall be provided on
2 a first-come-first-served basis until all annual available
3 credits have been allocated.

4 (d) Pass-through entity.--

5 (1) If a pass-through entity has any unused tax credit
6 under section 1903-B, the entity may elect, in writing,
7 according to the Department of Revenue's procedures, to
8 transfer all or a portion of the credit to shareholders,
9 members or partners in proportion to the shares of the
10 entity's distributive income to which the shareholder, member
11 or partner is entitled.

12 (2) The tax credit provided under section 1903-B is in
13 addition to any tax credit to which a shareholder, member or
14 partner of a pass-through entity is otherwise entitled under
15 this article. However, a pass-through entity and a
16 shareholder, member or partner of a pass-through entity may
17 not claim a credit under this article for the same qualified
18 expense.

19 (3) A shareholder, member or partner of a pass-through
20 entity to whom credit is transferred under section 1903-B
21 must immediately claim the credit in the taxable year in
22 which the transfer is made. The shareholder, member or
23 partner may not carry forward, carry back, obtain a refund or
24 sell or assign the credit.

25 Section 1905-B. Report.

26 The Department of Revenue shall annually make a report to the
27 Environmental Resources and Energy Committee of the Senate and
28 Environmental Resources and Energy Committee of the House of
29 Representatives on the activities undertaken pursuant to this
30 article, including, but not limited to:

1 (1) The number and amount of tax credits provided.

2 (2) The number and description of the neighborhood or
3 community-based energy organizations receiving the tax
4 credits.

5 (3) The type of programs receiving support and the
6 amount of investment on which the tax credits were provided
7 against.

8 Section 1906-B. Regulations.

9 The Department of Revenue, the Department of Community and
10 Economic Development and the commission shall promulgate
11 regulations necessary for the implementation and administration
12 of this article.

13 Section 1907-B. Decision in writing.

14 The decision of the secretary to approve or disapprove a
15 proposal pursuant to section 1903-B shall be in writing and, if
16 it approves the proposal, it shall state the maximum credit
17 allowable to the business firm. A copy of the decision of the
18 secretary shall be transmitted to the Governor and to the
19 Secretary of Revenue.

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