

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2139 Session of 2012

INTRODUCED BY THOMAS, BISHOP, BROWNLEE, CALTAGIRONE, COHEN, DALEY, DONATUCCI, FABRIZIO, HUTCHINSON, JOSEPHS AND MYERS, JANUARY 23, 2012

REFERRED TO COMMITTEE ON FINANCE, JANUARY 23, 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," further providing for the Tax Credit for New
11 Jobs; and providing for the Keystone Job Training Tax Credit.

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

14 Section 1. Sections 1801-B, 1802-B, 1803-B, 1804-B and
15 1805-B of the act of March 4, 1971 (P.L.6, No.2), known as the
16 Tax Reform Code of 1971, added June 22, 2001 (P.L.353, No.23),
17 are amended to read:

18 Section 1801-B. Definitions.

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

1 "Base period." The three years immediately preceding the
2 date on which a company may begin creating new jobs which may be
3 eligible for job creation tax credits.

4 "Department." The Department of Community and Economic
5 Development of the Commonwealth.

6 "Job creation tax credits." Tax credits for which the
7 department has issued a certificate under this article.

8 "New job." A full-time job, the average hourly rate,
9 excluding benefits, for which must be at least 150% of the
10 Federal minimum wage, created within a municipality located in
11 this Commonwealth by a company within three years from the start
12 date. This term does not include a temporary or seasonal job.

13 "Start date." The date on which a company may begin creating
14 new jobs which may be eligible for job creation tax credits.

15 "Year one." A one-year period immediately following the
16 start date.

17 "Year three." A one-year period immediately following the
18 end of year two.

19 "Year two." A one-year period immediately following the end
20 of year one.

21 Section 1802-B. Eligibility.

22 In order to be eligible to receive job creation tax credits,
23 a company must demonstrate to the department the following:

24 (1) The company's ability to create the number of jobs
25 required by the department within three years from the start
26 date.

27 [(2) Leadership in the application, development or
28 deployment of leading technologies.]

29 (3) [Financial] The company's financial stability and
30 the project's financial viability.

1 (4) The company's express intent to maintain operations
2 in this Commonwealth for a period of five years from the date
3 the company submits its tax credit certificate to the
4 Department of Revenue.

5 (5) An affirmation by the company that the decision to
6 expand or locate in this Commonwealth was due in large part
7 to the availability of a job creation tax credit.

8 Section 1803-B. Application process.

9 (a) Application.--A company must complete and submit to the
10 department a job creation tax credit application.

11 (b) Creation of jobs.--The applicant must agree to create at
12 least 25 new jobs or to increase the applicant's number of
13 employees by at least 20% within three years of the start date.

14 (b.1) Priority.--The department shall review and approve or
15 disapprove applications in the order in which they are received
16 and shall give priority to applications from taxpayers applying
17 for credits for the following types of new employees:

18 (1) A dislocated worker as defined in the act of
19 December 18, 2001 (P.L.949, No.114), known as the Workforce
20 Development Act, who meets any one of the following criteria:

21 (i) Has been terminated or laid off or has received
22 notice of termination or layoff, and is eligible for or
23 has exhausted unemployment compensation benefits.

24 (ii) Is unlikely to return to the industry or
25 occupation in which the individual was employed.

26 (iii) Has been terminated or received notice of
27 termination as a result of the permanent closure or
28 relocation of a plant, facility or plant operation in
29 which the individual was employed.

30 (iv) Is chronically unemployed.

1 (v) Has limited opportunities of employment in the
2 geographic area in which the individual resides.

3 (vi) Is an individual who may face substantial
4 barriers to employment because of age or disability.

5 (2) An individual who has been unemployed for at least
6 six consecutive months.

7 (c) Approval.--If the department approves the company's
8 application, the department and the company shall execute a
9 commitment letter containing the following:

10 (1) A description of the project.

11 (2) The number of new jobs to be created.

12 (3) The amount of private capital investment in the
13 project.

14 (4) The maximum job creation tax credit amount the
15 company may claim.

16 (5) A signed statement that the company intends to
17 maintain its operation in this Commonwealth for five years
18 from the start date.

19 (6) Such other information as the department deems
20 appropriate.

21 (d) Commitment letter.--After a commitment letter has been
22 signed by both the Commonwealth and the company, the company
23 shall receive a job creation tax credit certificate and filing
24 information.

25 Section 1804-B. Tax credits.

26 (a) Maximum amount.--A company may claim a tax credit of
27 \$1,000 per new job created up to the maximum job creation tax
28 credit amount specified in the commitment letter, which may not
29 exceed \$100,000 annually.

30 (b) Determination of new jobs created.--

1 (1) New jobs shall be deemed created in year one to the
2 extent that the company's average employment by quarter
3 during year one exceeds the company's average employment
4 level during the company's base period.

5 (2) New jobs shall be deemed created in year two to the
6 extent that the company's average employment by quarter
7 during year two exceeds the company's average employment by
8 quarter during year one.

9 (3) New jobs shall be deemed created in year three to
10 the extent that the company's average employment by quarter
11 during year three exceeds the company's average employment by
12 quarter during year two.

13 (c) Applicable taxes.--A company may apply the tax credit to
14 100% of the company's State corporate net income tax, capital
15 stock and franchise tax or the capital stock and franchise tax
16 of a shareholder of the company if the company is a Pennsylvania
17 S corporation, gross premiums tax, gross receipts tax, bank and
18 trust company shares tax, mutual thrift institution tax, title
19 insurance company shares tax, personal income tax or the
20 personal income tax of shareholders of a Pennsylvania S
21 corporation or any combination thereof.

22 (d) Tax credit term.--A company may claim the job creation
23 tax credit for each new job created, as approved by the
24 department, for a period determined by the department but not to
25 exceed five years from the date the company first submits a job
26 creation tax credit certificate.

27 (e) Availability of tax credits.--[Each] Subject to section
28 1804-C(b), each fiscal year, \$22,500,000 in tax credits shall be
29 made available to the department and may be awarded by the
30 department in accordance with this article. In addition, in any

1 fiscal year, the department may reissue or assign prior fiscal
2 year tax credits which have been recaptured under section 1806-
3 B(a) or (b) and may award prior fiscal year credits not
4 previously issued. Prior fiscal year credits may be reissued,
5 assigned or awarded by the department without limitation by
6 section 1805-B(b).

7 Section 1805-B. Prohibitions.

8 (a) Prohibitions.--The following actions with regard to job
9 creation tax credits are prohibited:

10 (1) Approval of jobs that have been created prior to the
11 start date.

12 (2) Approval for a company which is relocating
13 operations from one municipality in this Commonwealth to
14 another unless special circumstances exist and the
15 municipality that is losing the existing jobs has an
16 opportunity to submit comments prior to action by the
17 department. If the department approves the tax credits, the
18 company must commit to preserving the existing employees, and
19 the credit shall apply only to the new jobs.

20 (3) The assignment, transfer or use of credits by any
21 other company, provided, however, that tax credits may be
22 assigned in whole or in part to an affiliated entity. As used
23 in this paragraph, the term "affiliated entity" means an
24 entity which is part of the same "affiliated group," as
25 defined by section 1504(a)(1) of the Internal Revenue Code of
26 1986 (Public Law 99-514, 26 U.S.C. § 1504(a)(1)), as the
27 company awarded the credit.

28 (b) Allocations.--Twenty-five percent of the total amount of
29 all tax credits authorized in any fiscal year under section
30 1804-B(e) shall be available to companies with fewer than 100

1 employees. Any portion of this allocation not committed by April
2 30 of each year shall be available to any [business] company
3 which meets the remaining program criteria.

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

5 Section 1807-B. Annual reports.

6 (a) Contents.--The department shall prepare an annual report
7 on job creation tax credits which at a minimum shall include:

8 (1) A list of all job creation tax credit certificates
9 provided during the previous fiscal year.

10 (2) The name and location of each company receiving job
11 creation tax credit certificates.

12 (3) An analysis of the effectiveness of the job creation
13 tax credits in creating jobs in this Commonwealth.

14 (4) Any other information that may be deemed relevant by
15 the department.

16 (b) Submission.--The annual report shall be submitted to the
17 Governor, the Majority Leader of the Senate, the Minority Leader
18 of the Senate, the Majority Leader of the House of
19 Representatives and the Minority Leader of the House of
20 Representatives by March 1 of the first full year following the
21 effective date of this section and March 1 of each year
22 thereafter.

23 Section 1808-B. Notice of availability of tax credits.

24 The department shall publish notice of the availability of
25 the job creation tax credits on its publicly accessible Internet
26 website and make information available annually to the
27 Department of Labor and Industry Workforce Investment Board for
28 distribution to local boards.

29 Section 3. The heading of Article XVIII-C of the act, added
30 July 9, 2008 (P.L.902, No.66), is amended to read:

1 ARTICLE XVIII-C

2 [RESERVED]

3 KEYSTONE JOB TRAINING TAX CREDIT

4 Section 4. The act is amended by adding sections to read:

5 Section 1801-C. Definitions.

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

9 "Department." The Department of Community and Economic
10 Development of the Commonwealth.

11 "Eligible job." A full-time job in this Commonwealth, the
12 annual wage, excluding benefits, for which is at least equal to
13 150% of the Federal minimum wage. The term shall not include a
14 temporary or seasonal job.

15 "Job training." Training designed to provide a trainee with
16 the skills and knowledge necessary to meet a company's
17 specifications for an occupation or trade that results in the
18 trainee's employment or continued employment in an eligible job
19 with the company in this Commonwealth.

20 "Job training tax credits." Tax credits for providing job
21 training authorized under this article.

22 "Qualified tax liability." The liability for taxes imposed
23 under Article III, IV, VI, VII, VIII, IX or XV. The term shall
24 not include liability for any tax withheld or required to be
25 withheld by a taxpayer from an employee under Article III.

26 "Small business." Any of the following with fewer than 100
27 employees at the time the taxpayer applies for a job training
28 tax credit under this article and which is operating in this
29 Commonwealth:

30 (1) A for-profit corporation.

1 (2) A limited liability company.

2 (3) A partnership.

3 (4) A proprietorship.

4 "Start date." The effective date of this section.

5 "Taxpayer." A small business subject to a tax imposed under
6 Article III, IV, VI, VII, VIII, IX or XV. The term shall not
7 include a small business that does not file combined income tax
8 returns with the Department of Revenue with its in-State or out-
9 of-State subsidiaries and other affiliates.

10 "Trainee." An individual receiving job training for which a
11 taxpayer applies for a job training tax credit under this
12 article.

13 "Year four." A one-year period immediately following the end
14 of year three.

15 "Year one." A one-year period immediately following the
16 start date.

17 "Year three." A one-year period immediately following the
18 end of year two.

19 "Year two." A one-year period immediately following the end
20 of year one.

21 Section 1802-C. Job training tax credits.

22 (a) Criteria.--A taxpayer that provides job training from
23 and after the start date shall be entitled to a job training tax
24 credit against the taxpayer's qualified liability as provided
25 under this article. To be eligible for a tax credit, the
26 taxpayer must certify and agree in the taxpayer's application to
27 all of the following:

28 (1) The taxpayer shall maintain the operation of its
29 small business in this Commonwealth for at least five years
30 following the taxable year for which the taxpayer first

1 claims a job training tax credit awarded under this article.

2 (2) The taxpayer has the ability to provide a level of
3 job training appropriate for the employment or continued
4 employment of the trainee, as determined by the department.

5 (3) During each taxable year that the taxpayer claims a
6 job training tax credit, the taxpayer shall dedicate at least
7 25% of a trainee's work time to job training for at least six
8 months during the trainee's first year of employment.

9 (4) If the job training credit is for a new employee,
10 the individual was hired for a new position in the taxpayer's
11 small business or was hired to fill the position of another
12 employee who voluntarily separated from employment with the
13 taxpayer.

14 (b) Amount.--The following shall apply:

15 (1) The tax credit shall be equal to \$1,500 for each
16 trainee and shall be available for each taxable year that the
17 taxpayer provides job training through the end of the taxable
18 year in which the end of year four occurs.

19 (2) Notwithstanding paragraph (1), a taxpayer may not
20 claim more than an aggregate of \$100,000 of job training tax
21 credits in any taxable year.

22 (c) Eligibility for other tax credits.--A taxpayer that
23 claims tax credits under any other Federal or State law shall be
24 eligible for a job training tax credit if the taxpayer also
25 meets the requirements of this article.

26 Section 1803-C. Application and award.

27 (a) Application.--A taxpayer wishing to claim a job training
28 tax credit shall apply to the department on a form required by
29 the department. The application shall contain information as the
30 department deems necessary for the department to determine that

1 the taxpayer is entitled to the tax credit or credits for which
2 the taxpayer is applying.

3 (b) Priority.--The department shall review and approve or
4 disapprove applications in the order in which they are received
5 and shall give priority to applications from taxpayers applying
6 for tax credits for the following types of trainees:

7 (1) A dislocated worker as defined in section 701-A of
8 the act of December 18, 2001 (P.L.949, No.114), known as the
9 Workforce Development Act, who meets any of the following
10 criteria:

11 (i) Has been terminated or laid off or has received
12 notice of termination or layoff and is eligible for or
13 has exhausted unemployment compensation benefits.

14 (ii) Is unlikely to return to the industry or
15 occupation in which the individual was employed.

16 (iii) Has been terminated or received notice of
17 termination as a result of the permanent closure or
18 relocation of a plant, facility or plant operation in
19 which the individual was employed.

20 (iv) Is chronically unemployed.

21 (v) Has limited opportunities of employment in the
22 geographic area in which the individual resides.

23 (vi) Is an individual who may face substantial
24 barriers to employment because of age or disability.

25 (2) An individual who has been unemployed for at least
26 six consecutive months.

27 (3) An underemployed individual who requires training to
28 meet industry demands or increased employment opportunities.

29 (4) An individual who will receive job training related
30 to a high priority occupation within this Commonwealth, as

1 identified in consultation with the Department of Labor and
2 Industry, including a green job, a clean and renewable energy
3 job or a job within an industry cluster.

4 (c) Award.--Upon determining that the taxpayer is entitled
5 to one or more job training tax credits, the department shall
6 award the credits and issue a job training tax credit
7 certificate to the taxpayer.

8 Section 1804-C. Limitations.

9 (a) Use by taxpayer.--A taxpayer may not carry over, carry
10 back, assign or obtain a refund of any portion of a job training
11 tax credit.

12 (b) Aggregate amount of awards.--Twenty-five percent of the
13 amount available for tax credits under section 1804-B(e) in any
14 fiscal year shall be available for job training credits under
15 this article.

16 (c) Length of program.--A taxpayer shall not be entitled to
17 a job training tax credit in taxable years ending December 31 of
18 the year in which the end of year four occurs and beyond.

19 Section 1805-C. Repayment and penalty.

20 (a) Repayment.--A taxpayer who has claimed one or more job
21 training tax credits and fails to meet any of the criteria
22 required under section 1802-C or a taxpayer who has received a
23 job training tax credit in error shall repay to the Commonwealth
24 the amount of all tax credits claimed.

25 (b) Penalty.--If it is determined that the failure or error
26 referred to under subsection (a) occurred as a result of fraud
27 perpetrated by the taxpayer, the taxpayer, in addition to being
28 required to repay the amount of all tax credits claimed, shall
29 be subject to other appropriate penalties and remedies as
30 provided by law.

1 Section 1806-C. Reports.

2 (a) Taxpayer reports.--Within 30 days following the close of
3 each taxable year that a taxpayer claims a job training tax
4 credit awarded under this article, the taxpayer shall submit a
5 written report to the department describing all job training
6 provided to trainees hired in new positions in the taxpayer's
7 small business during the taxable year.

8 (b) Department reports.--On or before March 1 of each
9 calendar year, the department shall submit a written report to
10 the Governor, the Majority Leader of the Senate, the Minority
11 Leader of the Senate, the Majority Leader of the House of
12 Representative and the Minority Leader of the House of
13 Representatives containing the following information:

14 (1) A list of all job training tax credit certificates
15 issued by the department during the previous calendar year
16 and the name and location of each taxpayer to whom the
17 certificates were issued.

18 (2) An analysis of the effectiveness of the job training
19 tax credits issued in creating new eligible jobs or retaining
20 existing eligible jobs.

21 (3) Any other information the department deems relevant
22 with respect to the job training tax credit program
23 established under this article.

24 Section 1807-C. Notice.

25 The department shall, no later than 60 days following the
26 effective date of this section, post the following on its
27 publicly accessible Internet website:

28 (1) The availability and start date of the job training
29 tax credits.

30 (2) Guidelines for the awarding of the job training tax

1 credits.

2 (3) A downloadable copy of the application form.

3 Section 5. This act shall take effect in 30 days.