

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2399 Session of 2012

INTRODUCED BY MIRABITO, GEORGE, BRIGGS, BROWNLEE, CARROLL,
CONKLIN, DEAN, DERMODY, FABRIZIO, FRANKEL, GIBBONS, GOODMAN,
HANNA, HORNAMAN, KIRKLAND, KOTIK, LONGIETTI, MAHONEY, MUNDY,
M. O'BRIEN, PASHINSKI, READSHAW, SCHMOTZER, STURLA,
YOUNGBLOOD AND MULLERY, MAY 21, 2012

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY, MAY
21, 2012

AN ACT

1 Amending Titles 58 (Oil and Gas) and 72 (Taxation and Fiscal
2 Affairs) of the Pennsylvania Consolidated Statutes, further
3 providing for distribution of unconventional gas well fee;
4 providing for the establishment, implementation and
5 administration of the Marcellus Shale Job Creation Tax
6 Credit; and imposing additional duties on the Department of
7 Community and Economic Development.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2314(c.1) of Title 58 of the Pennsylvania
11 Consolidated Statutes is amended by adding a paragraph to read:

12 § 2314. Distribution of fee.

13 * * *

14 (c.1) Additional distributions.--From fees collected under
15 this chapter and deposited in the fund for 2011 and each year
16 thereafter:

17 * * *

18 (7) Twenty-five million dollars to the Department of

Community and Economic Development for the Marcellus Shale
Job Creation Tax Credit.

* * *

Section 2. Title 72 is amended by adding a part to read:

PART III

TAX CREDITS

Chapter

31. Marcellus Shale Job Creation Tax Credit

CHAPTER 31

MARCELLUS SHALE JOB CREATION TAX CREDIT

Sec.

3101. Definitions.

3102. Eligibility.

3103. Application process.

3104. Tax credits.

3105. Prohibitions.

3106. Penalties.

3107. Annual reports.

3108. Notice of availability of tax credits.

§ 3101. Definitions.

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

"Base period." As follows:

(1) Except as set forth in paragraph (2), the three
years immediately preceding the date on which a company may
begin creating new jobs which may be eligible for job
creation tax credits.

(2) If a company has been in business in this
Commonwealth for less than three years, the period which it

1 has been in business in this Commonwealth.

2 "Department." The Department of Community and Economic
3 Development of the Commonwealth.

4 "Job creation tax credits." Tax credits for job creation for
5 which the department has issued a certificate under this
6 chapter.

7 "New job." A full-time job, the average hourly rate,
8 excluding benefits, for which must be at least 350% of the
9 Federal minimum wage, created within a municipality located in
10 this Commonwealth by a company within three years from the start
11 date. The term includes a job which was previously held by a
12 nonresident and is filled by a resident. The term does not
13 include a temporary or seasonal job.

14 "Nonresident." An individual who does not reside in this
15 Commonwealth.

16 "Qualified apprenticeship training program." A program
17 registered with the Apprenticeship and Training Council within
18 the Department of Labor and Industry that is in compliance with
19 applicable Federal and State laws and regulations and which
20 requires at least 2,000 but not more than 10,000 hours of on-
21 the-job apprenticeship training.

22 "Resident." Any natural person who is considered a resident
23 of this Commonwealth under the act of March 4, 1971 (P.L.6,
24 No.2), known as the Tax Reform Code of 1971.

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

27 "Year one." A one-year period immediately following the
28 start date.

29 "Year three." A one-year period immediately following the
30 end of year two.

1 "Year two." A one-year period immediately following the end
2 of year one.

3 § 3102. Eligibility.

4 In order to be eligible to receive job creation tax credits
5 under this chapter, a company must demonstrate to the department
6 the following:

7 (1) The company's financial stability and the project's
8 financial viability.

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

13 (3) The company is in conformity with industry laws and
14 regulations overseen and enforced by the Department of
15 Environmental Protection.

16 § 3103. Application process.

17 (a) Application.--A company must complete and submit to the
18 department a job creation tax credit application along with a
19 copy of the permit issued by the Department of Environmental
20 Protection providing that the company has obtained the necessary
21 permit allowing the company to drill in this Commonwealth or a
22 statement from the Department of Environmental Protection
23 stating the same. The Department of Environmental Protection
24 shall notify the Department of Labor and Industry, the
25 Department of Revenue and the department upon suspension or
26 revocation of drilling permits or other changes that affect the
27 company's ability to continuously drill in this Commonwealth.

28 (b) Applicant priority.--The department shall give priority
29 to eligible applicants that will place the following workers in
30 new jobs:

1 (1) Workers who have completed a qualified
2 apprenticeship training program or a job training program
3 approved by the Department of Labor and Industry.

4 (2) Dislocated workers under the act of December 18,
5 2001 (P.L.949, No.114), known as the Workforce Development
6 Act, who meet any one of the following conditions:

7 (i) Have been terminated or laid off or have
8 received notice of termination or layoff, and are
9 eligible for or have exhausted unemployment compensation
10 benefits.

11 (ii) Are unlikely to return to the industry or
12 occupation in which the individuals were employed.

13 (iii) Have been terminated or received notice of
14 termination as a result of the permanent closure or
15 relocation of a plant, facility or plant operation in
16 which the individuals were employed.

17 (iv) Are chronically unemployed.

18 (v) Have limited opportunities of employment in the
19 geographic area in which the individuals reside.

20 (vi) Are individuals who may face substantial
21 barriers to employment because of age or disability.

22 (3) Workers who have been unemployed for at least six
23 months.

24 (4) Underemployed workers who require skill training to
25 meet industry demands or increase employment opportunities.

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

29 (1) A description of the project.

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

1 (3) The amount of private capital investment in the
2 project.

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

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

8 (6) A signed statement from the company that the company
9 will provide to the department a list of workers which
10 satisfies the requirements of subsection (b) for which the
11 company will claim tax credit, including documentation of
12 each worker's status as a resident of this Commonwealth.

13 (7) Such other information as the department deems
14 appropriate.

15 (d) Commitment letter.--After a commitment letter has been
16 signed by both the Commonwealth and the company, the company
17 shall receive a job creation tax credit certificate and filing
18 information.

19 § 3104. Tax credits.

20 (a) Maximum amount.--A company may claim a tax credit of
21 \$2,500 per new job created and up to the maximum job creation
22 tax credit amount specified in the commitment letter.

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

24 (1) New jobs shall be deemed created in year one to the
25 extent that the company's average employment by quarter
26 during year one exceeds the company's average employment
27 level during the company's base period, as adjusted for any
28 job held by a nonresident during the period which is no
29 longer held by a nonresident.

30 (2) New jobs shall be deemed created in year two to the

1 extent that the company's average employment by quarter
2 during year two exceeds the company's average employment by
3 quarter during year one.

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

8 (c) Applicable taxes.--A company may apply the tax credit to
9 100% of the company's corporate net income tax, capital stock
10 and franchise tax or the capital stock and franchise tax of a
11 shareholder of the company if the company is a Pennsylvania S
12 corporation, personal income tax or the personal income tax of
13 shareholders of a Pennsylvania S corporation or any combination
14 thereof.

15 (d) Tax credit term.--A company may claim the job creation
16 tax credit for each new job created, as approved by the
17 department, for a period determined by the department but not to
18 exceed five years from the date the company first submits a job
19 creation tax credit certificate.

20 (e) Availability of tax credits.--Each fiscal year,
21 \$25,000,000 in tax credits shall be made available to the
22 department and may be awarded by the department in accordance
23 with this chapter.

24 § 3105. Prohibitions.

25 The following actions with regard to job creation tax credits
26 are prohibited:

27 (1) Approval of jobs that have been created prior to the
28 start date, unless the job was held by a nonresident who has
29 been replaced by a resident.

30 (2) The assignment, transfer or use of credits by any

1 other company, provided, however, that tax credits may be
2 assigned in whole or in part to an affiliated entity. As used
3 in this paragraph, the term "affiliated entity" means an
4 entity which is part of the same "affiliated group," as
5 defined by section 1504(a)(1) of the Internal Revenue Code of
6 1986 (Public Law 99-514, 26 U.S.C. § 1504(a)(1)), as the
7 company awarded the credit.

8 § 3106. Penalties.

9 (a) Failure to create jobs.--A company which receives job
10 creation tax credits and fails to create the approved number of
11 new jobs within three years of the start date will be required
12 to refund to the Commonwealth the total amount of credit or
13 credits granted.

14 (b) Waiver.--The department may waive the penalties outlined
15 in subsection (a) if it is determined that a company's
16 operations were not maintained or the new jobs were not created
17 because of circumstances beyond the company's control. Such
18 circumstances include natural disasters or unforeseen industry
19 trends.

20 § 3107. Annual reports.

21 (a) Contents.--The department shall provide an annual report
22 on job creation tax credits which at a minimum shall include:

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

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

27 (3) An analysis of the job creation tax credits' ability
28 to create jobs in this Commonwealth.

29 (4) Any other information that may be deemed relevant by
30 the department.

1 (b) Submission.--The annual report shall be submitted to the
2 Governor, the Majority Leader of the Senate, the Minority Leader
3 of the Senate, the Majority Leader of the House of
4 Representatives and the Minority Leader of the House of
5 Representatives by March 1 of the first full year following the
6 effective date of this section and March 1 of each year
7 thereafter.

8 § 3108. Notice of availability of tax credits.

9 The department shall publish notice of the availability of
10 the job creation tax credit on its publicly accessible Internet
11 website and make information available annually to the
12 Department of Labor and Industry Workforce Investment Board for
13 distribution to local boards.

14 Section 3. This act shall take effect immediately.