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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1304 Session of 2011

INTRODUCED BY DINNIMAN, STACK, SCHWANK, WASHINGTON, BLAKE, BOSCOLA, BREWSTER, COSTA, ERICKSON, FONTANA, WILLIAMS AND TARTAGLIONE, OCTOBER 24, 2011

REFERRED TO FINANCE, OCTOBER 24, 2011

AN ACT

Amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, further providing for Keystone Innovation Zone tax credits; and providing for research and development tax credits for KIZ companies, for KIZ company corporate net income tax net loss deduction transfer program and for KIZ company tax credits for new jobs.

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

Section 1. Section 3706(d) of Title 12 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3706. Keystone innovation zone tax credits.

* * *

(d) Application of tax credit and election.--[A]

(1) Except as set forth in paragraph (2), a tax credit approved under this section must be first applied against the KIZ company's tax liability under Article III, IV or VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, for the taxable year during which the tax credit is approved. If the amount of tax liability owed

by the KIZ company is less than the amount of the tax credit, the KIZ company may elect to carry forward the amount of the remaining tax credit for a period not to exceed four additional taxable years and to apply the credit against tax liability incurred during those tax years; or the KIZ company may elect to sell or assign a portion of the tax credit in accordance with the provisions of subsection (f). A KIZ company may not carry back or obtain a refund of an unused keystone innovation zone tax credit.

(2) A KIZ company that is approved for a tax credit under this section may elect not to apply the credit against the KIZ company's tax liability as prescribed in this subsection if the KIZ company submitted with its tax credit application a current tax lien certificate issued by the department showing that the KIZ company has no unpaid tax liability due to the Commonwealth or a political subdivision. A KIZ company that submitted a current tax lien certificate with its application and is awarded a credit under this section may immediately sell or assign the tax credit under subsection (f).

* * *

Section 2. Title 12 is amended by adding sections to read:

§ 3706.1. Research and development tax credits for KIZ companies.

In addition to the provisions of Article XVII-B of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, the following shall apply to research and development tax credits awarded to KIZ companies:

(1) Notwithstanding any other provision of the Tax Reform Code of 1971, a KIZ company that is approved for a

research and development tax credit under Article XVII-B of the Tax Reform Code of 1971 may elect not to apply the credit against the KIZ company's qualified tax liability, as defined in section 1702-B of the Tax Reform Code of 1971, if the company submitted with its research and development tax credit application a current tax lien certificate issued by the department showing that the KIZ company has no unpaid tax liability due to the Commonwealth or its political subdivisions. A KIZ company that submitted a current tax lien certificate with its application and is awarded a credit under Article XVII-B of the Tax Reform Code of 1971 may immediately sell or assign the tax credit in accordance with section 3706(f) (relating to keystone innovation zone tax credits).

(2) The purchaser or assignee of a research and development tax credit from a KIZ company also may claim the tax credit against tax liability of the purchaser or assignee under Article VII, VIII, IX or XV of the Tax Reform Code of 1971.

§ 3706.2. KIZ company corporate net income tax net loss deduction transfer program.

(a) Establishment.--The department shall establish a corporate net income tax net loss deduction transfer program for KIZ companies. The program shall allow KIZ companies in this Commonwealth with unused net loss carryover deductions under section 401 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, to transfer, in exchange for private financial assistance, those unused deductions to other corporate net income taxpayers in this Commonwealth, provided that the taxpayer receiving the unused deductions is not affiliated with the KIZ company that is surrendering its unused deductions.

(b) Affiliation.--For the purposes of subsection (a), the test of affiliation is whether the same entity directly or indirectly owns or controls 5% or more of the voting rights or 5% or more of the value of the classes of stock of both the taxpayer receiving the unused deductions and the KIZ company that is surrendering the unused deductions.

(c) Applications.--The department, in cooperation with the Department of Revenue, shall accept, review and approve applications by submitted KIZ companies. The application shall be on the form prescribed by the department and must be received on or before November 30 of each fiscal year.

(d) Contents of application.--At a minimum, the application shall include:

(1) The name and tax identification number of the applicant.

(2) The name, location and tax identification number of the corporate net income taxpayer that will acquire the corporate net income tax net loss deduction transfer certificate from the applicant.

(3) The total amount of the corporate net income tax net loss deduction the applicant seeks to transfer.

(4) A brief description of the applicant's KIZ company.

(5) A statement that the applicant is not prohibited from participating in the program based on subsection (f).

(6) A brief summary of the intended use of the private financial assistance to be received by the applicant under subsection (h).

(7) Any other information deemed relevant by the

department.

(e) Approvals.--Approvals of applications filed under subsection (c) shall be issued in the form of corporate net income tax net loss deduction transfer certificates. A corporate net income tax net loss deduction transfer certificate shall not be issued unless the applicant certifies that as of the date of the receipt of the corporate net income tax net loss deduction transfer certificate it is operating as a KIZ company and has no current intention to cease operating as a KIZ company.

(f) Prohibitions.--No application for a corporate net income tax net loss deduction transfer shall be approved if the KIZ company:

(1) has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards; or

(2) is directly or indirectly at least 50% owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards or is part of a consolidated group of affiliated corporations, as filed for Federal income tax purposes, that in the aggregate has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements issued according to generally accepted accounting standards.

(g) Carryover, carryback and refund of corporate net income tax net operating loss deduction transfer certificate.--The following shall apply:

(1) A corporate net income tax net loss deduction transfer certificate approved by the department in a taxable year first shall be applied against recipient taxpayer's corporate net income tax liability under Article IV of the Tax Reform Code of 1971 for the current taxable year as of the date on which the certificate was received.

(2) If the recipient of a corporate net income tax net loss deduction transfer certificate cannot use the entire amount of the certificate for the taxable year in which the certificate is first approved, then the excess may be carried over to succeeding taxable years and used against the qualified tax liability of the taxpayer for those taxable years. Each time the tax certificate is carried over to a succeeding taxable year, it shall be reduced by the amount that was used during the immediately preceding taxable year. The certificate may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer received the certificate.

(3) A recipient taxpayer is not entitled to carry back, assign or obtain a refund of all or any portion of an unused corporate net income tax net operating loss deduction transfer certificate granted to the taxpayer under this chapter.

(h) Use of private financial assistance.--

(1) Private financial assistance shall assist in funding expenses incurred in connection with the operation of the KIZ company, including, but not limited to, the expenses of fixed assets, such as the construction, acquisition and development of real estate, materials, start-up, tenant fit-out, working

capital, salaries, research and development expenditures and other expenses determined by the department to be necessary to carry out the purposes of this section.

(2) The department shall require a corporate net income taxpayer that acquires a corporate net income tax net loss deduction transfer certificate to enter into a written agreement with the KIZ company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the KIZ company of a headquarters or a base of operation in this Commonwealth.

(i) Recapture.--The department, in consultation with the Department of Revenue, shall establish rules for the recapture of all of, or a portion of, the amount of a grant of a corporate net income tax net loss deduction transfer from the KIZ company having surrendered tax benefits under this section if the KIZ company fails to use the private financial assistance received for the surrender of tax benefits as required by this section or fails to maintain a headquarters or a base of operation in this Commonwealth during the five years following receipt of the private financial assistance, except if the failure to maintain a headquarters or a base of operation in this Commonwealth is due to the liquidation of the KIZ company.

(j) Annual report.--Not later than one year following the effective date of this section, and for each succeeding year in which a financial assistance agreement entered into under this section is in effect, the department shall prepare a report on the program. The report shall include, but need not be limited to:

(1) A description of the demand for the program from KIZ companies and financial institutions.

(2) The efforts made by the department to promote the program.

(3) The total amount of financial assistance approved by the department under the program.

(4) An assessment of the effectiveness of the program in meeting the goals of this section.

(5) Recommendations for legislation to improve the effectiveness of the program.

The department shall submit its report to the Governor and the General Assembly.

(k) Limitations.--

(1) In no case shall the department approve the transfer of more than $25,000,000 in corporate net income tax net operating loss deductions in a year.

(2) The maximum lifetime value of net loss deduction that a KIZ company shall be permitted to transfer is $10,000,000.

(3) If the total amount of transferable tax benefits requested to be transferred by approved applicants exceeds $25,000,000 in a year, the department, in cooperation with the Department of Revenue, shall develop a formula to allocate the transfer of tax benefits by approved companies, provided that:

(i) An eligible applicant with $250,000 or less of transferable tax benefits shall be authorized to surrender the entire amount of its transferable tax benefits.

(ii) An eligible applicant with more than $250,000 of transferable tax benefits shall be authorized to surrender a minimum of $250,000 of its transferable tax benefits.

§ 3706.3. KIZ company tax credits for new jobs.

(a) Sale or assignment.--Notwithstanding any other provision of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, upon application to and approval by the department, a KIZ company that is approved for a tax credit for new jobs under Article XVIII-B of the Tax Reform Code of 1971 may sell or assign, in whole or in part, a tax credit granted to the KIZ company under the article. The department shall establish guidelines for the approval of applications under this section.

(b) Purchaser or assignee.--The purchaser or assignee of a portion of a tax credit under subsection (a) shall immediately claim the credit in the taxable year in which the purchase or assignment is made. The purchaser or assignee may claim the credit against the tax liability of the purchaser or assignee imposed under Article III, IV, VI, VII, VIII, IX or XV of the Tax Reform Code of 1971. The credit may not be claimed against a tax withheld by an employer from an employee under Article III of the Tax Reform Code of 1971. The amount of the credit that a purchaser or assignee may use against a tax liability may not exceed 75% of the tax liability for the taxable year. The purchaser or assignee may not carry over, carry back, obtain a refund of or assign the tax credit. The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the tax credit in compliance with procedures specified by the Department of Revenue.

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