
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1641 Session of
2015

INTRODUCED BY DRISCOLL, DiGIROLAMO, SCHWEYER, SCHLOSSBERG,
LONGIETTI, KINSEY, MURT, THOMAS, READSHAW, BULLOCK, O'BRIEN,
McNEILL, BIZZARRO, DAVIS, COHEN, ZIMMERMAN, FARINA,
YOUNGBLOOD, D. COSTA, KIM, BRADFORD AND SCHEMEL,
OCTOBER 19, 2015

REFERRED TO COMMITTEE ON FINANCE, OCTOBER 19, 2015

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 food donation tax credit.

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

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

16 ARTICLE XVIII-G

17 FOOD DONATION TAX CREDIT

18 Section 1801-G. 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

1 context clearly indicates otherwise:

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

3 "Emergency food provider." As defined in section 2 of the
4 act of December 11, 1992 (P.L.807, No.129), known as the State
5 Food Purchase Program Act.

6 "Glean." As defined in 42 Pa.C.S. § 8338 (relating to
7 liability for damages from donated food and grocery products).

8 "Pass-through entity." A partnership as defined in section
9 301(n.0) or a Pennsylvania S Corporation as defined in section
10 301(n.1).

11 "Qualified tax liability." The liability for taxes imposed
12 under Article III or IV.

13 "Regional food bank." As defined in section 2 of the act of
14 December 11, 1992 (P.L.807, No.129), known as the State Food
15 Purchase Program Act.

16 "Tax credit." The food donation tax credit available under
17 this article.

18 "Taxpayer." An individual or entity subject to taxation
19 under Article III or IV.

20 Section 1802-G. Application.

21 A taxpayer applying to claim a food donation tax credit must
22 complete and submit to the department a tax credit application
23 on a form and in a manner as determined by the department.

24 Section 1803-G. Applicable taxes.

25 A taxpayer may apply the tax credit to the taxpayer's
26 qualified tax liability.

27 Section 1804-G. Eligibility.

28 (a) Tax credit.--A taxpayer who donates food to a regional
29 food bank or emergency food provider shall be allowed a tax
30 credit against the taxes imposed under Article III or IV.

1 (b) Amount.--The tax credit may not exceed a qualifying
2 amount for the tax year in which the tax credit is claimed. The
3 qualifying amount is 15% of the value of the commodities donated
4 during the tax year in which the tax credit is claimed. The
5 value of the commodities shall be determined in the same manner
6 as a charitable contribution of food for Federal tax purposes
7 under section 170(e)(3)(C) of the Internal Revenue Code of 1986
8 (Public Law 99-514, 26 U.S.C. § 170(e)(3)(C)). Food collected or
9 gleaned for donating satisfies this requirement. The tax credit
10 may not exceed \$10,000 per taxpayer.

11 (c) Limitation.--The donated food commodity may not be
12 damaged or out-of-condition and declared to be unfit for human
13 consumption by a Federal, State or local health official. A food
14 commodity that meets the requirements for donated food under any
15 Federal emergency food assistance program satisfies this
16 requirement. A regional food bank or emergency food provider may
17 accept or reject a donation of food for any reason.

18 Section 1805-G. Availability.

19 (a) Availability.--A tax credit shall be made available by
20 the department on a first-come, first-served basis.

21 (b) Limitation.--Each fiscal year, \$5,000,000 in tax credits
22 shall be made available to the department and may be awarded by
23 the department in accordance with this article. In any fiscal
24 year, the department may award prior fiscal year tax credits not
25 previously issued.

26 Section 1806-G. Limitations.

27 The following apply to tax credits under this article:

28 (1) If the taxpayer cannot use the entire amount of the
29 tax credit for the taxable year in which the tax credit is
30 first approved, the excess may be carried over to succeeding

1 taxable years and used as a credit against the qualified tax
2 liability of the taxpayer for the taxable years. Each time
3 the tax credit is carried over to a succeeding taxable year,
4 the tax credit shall be reduced by the amount of the tax
5 credit used as a credit during the immediately preceding
6 taxable year. The tax credit may be carried over and applied
7 to succeeding taxable years for no more than three taxable
8 years following the first taxable year for which the taxpayer
9 was entitled to claim the credit.

10 (2) A tax credit approved by the department in a taxable
11 year first shall be applied against the taxpayer's qualified
12 tax liability for the current taxable year as of the date on
13 which the credit was approved before the tax credit can be
14 applied against any tax liability under paragraph (1).

15 (3) A taxpayer shall not be entitled to carry forward,
16 carry back, obtain a refund of or sell or assign all or any
17 portion of an unused tax credit granted to the taxpayer under
18 this article.

19 Section 1807-G. Pass-through entity.

20 (a) General rule.--If a pass-through entity has any unused
21 tax credits under section 1806-G, the entity may elect in
22 writing, according to procedures established by the department,
23 to transfer all or a portion of the credit to shareholders,
24 members or partners in proportion or the share of the entity's
25 distributive income to which the shareholder, member or partner
26 is entitled.

27 (b) Limitation.--A pass-through entity and a shareholder,
28 member or partner of a pass-through entity may not claim the
29 credit under subsection (a) for the same food donation.

30 (c) Application.--A shareholder, member or partner of a

1 pass-through entity to whom a credit is transferred under
2 subsection (a) shall immediately claim the credit in the taxable
3 year in which the transfer is made. The shareholder, member or
4 partner may not carry forward, carry back, obtain a refund of or
5 sell or assign the credit.

6 Section 1808-G. Guidelines.

7 (a) Guidelines.--The department shall develop and publish
8 guidelines necessary to implement this article.

9 (b) Rules.--The department may promulgate rules to implement
10 the provisions of this section.

11 Section 2. This act shall apply to taxable years beginning
12 after December 31, 2015.

13 Section 3. This act shall take effect immediately.