

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1999 Session of
2018

INTRODUCED BY ORTITAY, COX, DeLUCA, DIAMOND, GREINER, GROVE,
KAUFFMAN, KEEFER, STEPHENS AND ZIMMERMAN, JANUARY 2, 2018

REFERRED TO COMMITTEE ON FINANCE, JANUARY 2, 2018

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," in research and development tax credit, further
11 providing for carryover, carryback, refund and assignment of
12 credit; in entertainment production tax credit, further
13 providing for carryover, carryback and assignment of credit
14 and for carryover, carryback and assignment of tax credit; in
15 resource enhancement and protection tax credit, further
16 providing for Resource Enhancement and Protection Tax Credit
17 Program; in historic preservation incentive tax credit,
18 further providing for carryover, carryback and assignment of
19 credit; in coal refuse energy and reclamation tax credit,
20 further providing for sale or assignment; in waterfront
21 development tax credit, further providing for tax credit; in
22 Innovate in PA tax credit, further providing for sale,
23 carryover and carryback; in manufacturing and investment tax
24 credit, further providing for sale or assignment; in
25 neighborhood assistance tax credit, further providing for tax
26 credit; in keystone special development zone program, further
27 providing for Keystone Special Development Zone Tax Credit;
28 and, in keystone innovation zones, further providing for
29 keystone innovation zone tax credits.

30 The General Assembly of the Commonwealth of Pennsylvania

31 hereby enacts as follows:

1 Section 1. Section 1704-B(d) of the act of March 4, 1971
2 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended
3 to read:

4 Section 1704-B. Carryover, Carryback, Refund and Assignment
5 of Credit.--* * *

6 [(d) A taxpayer, upon application to and approval by the
7 Department of Community and Economic Development, may sell or
8 assign, in whole or in part, a research and development tax
9 credit granted to the taxpayer under this article. The
10 Department of Community and Economic Development shall establish
11 guidelines for the approval of applications under this
12 subsection.]

13 * * *

14 Section 2. Sections 1714-D(e) and 1755-D(e) of the act,
15 amended or added July 13, 2016 (P.L.526, No.84), are amended to
16 read:

17 Section 1714-D. Carryover, carryback and assignment of credit.

18 * * *

19 [(e) Sale or assignment.--The following shall apply:

20 (1) A taxpayer, upon application to and approval by the
21 department, may sell or assign, in whole or in part, a tax
22 credit granted to the taxpayer under this subarticle.

23 (2) The department and the Department of Revenue shall
24 jointly promulgate regulations for the approval of
25 applications under this subsection.

26 (3) Before an application is approved, the Department of
27 Revenue must make a finding that the applicant has filed all
28 required State tax reports and returns for all applicable
29 taxable years and paid any balance of State tax due as
30 determined at settlement, assessment or determination by the

1 Department of Revenue.

2 (4) Notwithstanding any other provision of law, the
3 Department of Revenue shall settle, assess or determine the
4 tax of an applicant under this subsection within 90 days of
5 the filing of all required final returns or reports in
6 accordance with section 806.1(a)(5) of the act of April 9,
7 1929 (P.L.343, No.176), known as The Fiscal Code.]

8 * * *

9 Section 1755-D. Carryover, carryback and assignment of credit.

10 * * *

11 [(e) Sale or assignment.--The following shall apply:

12 (1) A taxpayer, upon application to and approval by the
13 department, may sell or assign, in whole or in part, a tax
14 credit granted to the taxpayer under this subarticle.

15 (2) The department and the Department of Revenue shall
16 jointly promulgate regulations for the approval of
17 applications under this subsection.

18 (3) Before an application is approved, the Department of
19 Revenue must make a finding that the applicant has filed all
20 required State tax reports and returns for all applicable
21 taxable years and paid any balance of State tax due as
22 determined at settlement, assessment or determination by the
23 Department of Revenue.

24 (4) Notwithstanding any other provision of law, the
25 Department of Revenue shall settle, assess or determine the
26 tax of an applicant under this subsection within 90 days of
27 the filing of all required final returns or reports in
28 accordance with section 806.1(a)(5) of the act of April 9,
29 1929 (P.L.343, No.176), known as The Fiscal Code.]

30 * * *

1 Section 3. Section 1775-D(d) of the act, added October 30,
2 2017 (P.L. , No.43), is amended to read:

3 Section 1775-D. Carryover, carryback and assignment of tax
4 credit.

5 * * *

6 [(d) Sale or assignment.--The following shall apply:

7 (1) A recipient, upon application to and approval by the
8 department, may sell or assign, in whole or in part, a tax
9 credit granted to the recipient under this subarticle.

10 (2) The department and the Department of Revenue shall
11 jointly promulgate regulations for the approval of
12 applications under this subsection.

13 (3) Before an application is approved, the Department of
14 Revenue must make a finding that the recipient has filed all
15 required State tax reports and returns for all applicable
16 taxable years and paid any balance of State tax due as
17 determined at settlement, assessment or determination by the
18 Department of Revenue.

19 (4) Notwithstanding any other provision of law, the
20 Department of Revenue shall settle, assess or determine the
21 tax of a taxpayer under this subsection within 60 days of the
22 filing of all required final returns or reports in accordance
23 with section 806.1(a) (5) of the act of April 9, 1929
24 (P.L.343, No.176), known as The Fiscal Code.]

25 Section 4. Sections 1703-E(d) and 1705-H(d) of the act are
26 amended to read:

27 Section 1703-E. Resource Enhancement and Protection Tax Credit
28 Program.

29 * * *

30 [(d) Sale or assignment of credit.--

1 (1) An eligible applicant, upon application to and
2 approval by the commission, may sell or assign, in whole or
3 in part, a tax credit granted to the eligible applicant under
4 this article if no claim for allowance of the credit is filed
5 within one year from the date the credit is granted by the
6 department under section 1708-E. The commission, in
7 consultation with the department, shall establish guidelines
8 for the approval of applications under this subsection.

9 (2) The purchaser or assignee of a portion of a tax
10 credit under this subsection shall immediately claim the
11 credit in the taxable year in which the purchase or
12 assignment is made. The amount of the credit that a purchaser
13 or assignee may use against a qualified tax liability may not
14 exceed 75% of the qualified tax liability for the taxable
15 year. The purchaser or assignee may not carry over, carry
16 back, obtain a refund of or sell or assign the tax credit.
17 The purchaser or assignee shall notify the department of the
18 seller or assignor of the tax credit in compliance with
19 procedures specified by the department.

20 (3) Before an application is approved, the department
21 must make a finding that the applicant has filed all required
22 State tax reports and returns for all applicable taxable
23 years and paid any balance of State tax due as determined at
24 settlement, assessment or determination by the department.

25 (4) Notwithstanding any other provision of law, the
26 department shall settle, assess or determine the tax of an
27 applicant under this subsection within 90 days of the filing
28 of all required final returns or reports in accordance with
29 section 806.1(a)(5) of the act of April 9, 1929 (P.L.343,
30 No.176), known as The Fiscal Code.]

* * *

Section 1705-H. Carryover, carryback and assignment of credit.

* * *

[(d) Sale or assignment.--The following shall apply:

(1) A qualified taxpayer, upon application to and approval by the Department of Community and Economic Development, may sell or assign, in whole or in part, a tax credit granted to the qualified taxpayer under this article.

(2) Before an application is approved, the department must find that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined at settlement, assessment or determination by the department.]

* * *

Section 5. Sections 1710-J and 1706-K(d) (1) of the act, added July 13, 2016 (P.L.526, No.84), are amended to read:

[Section 1710-J. Sale or assignment.

(a) Authorization.--Upon approval by the Department of Revenue, a qualified taxpayer may sell or assign, in whole or in part, a tax credit granted to the taxpayer under this article.

(b) Application.--The following shall apply:

(1) To sell or assign a tax credit, a qualified taxpayer must file an application for the sale or assignment of the tax credit with the Department of Revenue. The application must be on a form required by the Department of Revenue.

(2) The Department of Revenue shall approve a sale or assignment if the purchaser or assignee has:

(i) filed all required State tax reports and returns for all applicable taxable years; and

(ii) paid any balance of State tax due as determined

by assessment or determination by the Department of
Revenue and not under timely appeal.]

Section 1706-K. Tax credit.

* * *

(d) Sale or assignment of tax credits.--

[(1) A taxpayer, upon application to and approval by the
department, may sell or assign, in whole or in part, a
waterfront development tax credit granted to the business
firm under this article if no claim for allowance of the
credit is filed within one year from the date the credit is
granted by the Department of Revenue under section 1707-K.
The department and the Department of Revenue shall jointly
promulgate guidelines for the approval of applications under
this subsection.]

* * *

Section 6. Section 1807-F(b) of the act is amended to read:
Section 1807-F. Sale, carryover and carryback.

* * *

[(b) Sale.--No sooner than 30 days after providing the
Insurance Department and the department written notice of the
intent to transfer tax credits, a qualified taxpayer may
transfer tax credits held without restriction to any entity that
is a qualified taxpayer in good standing with the Insurance
Department and that agrees to assume all of the transferor's
obligations with respect to the tax credit.]

* * *

Section 7. Sections 1806-G(a) and 1904-A(d) of the act,
amended or added July 13, 2016 (P.L.526, No.84), are amended to
read:

Section 1806-G. Sale or assignment.

1 [(a) Application.--A taxpayer, upon application to and
2 approval by the department, may sell or assign, in whole or in
3 part, a manufacturing tax credit granted to the taxpayer. The
4 following shall apply:

5 (1) The department and the Department of Revenue shall
6 jointly issue guidelines for the approval of applications
7 under this paragraph.

8 (2) Before an application is approved, the Department of
9 Revenue must make a finding that the applicant has filed all
10 required State tax reports and returns for all applicable
11 taxable years and paid any balance of State tax due as
12 determined at settlement, assessment or determination by the
13 Department of Revenue.

14 (3) Notwithstanding any other provision of law, the
15 Department of Revenue must settle, assess or determine the
16 tax of an applicant under this paragraph within 90 days of
17 the filing of each required final return or report in
18 accordance with section 806.1(a)(5) of the act of April 9,
19 1929 (P.L.343, No.176), known as The Fiscal Code.]

20 * * *

21 Section 1904-A. Tax Credit.--* * *

22 [(d) A taxpayer, upon application to and approval by the
23 Department of Community and Economic Development, may sell or
24 assign, in whole or in part, a neighborhood assistance tax
25 credit granted to the business firm under this article if no
26 claim for allowance of the credit is filed within one year from
27 the date the credit is granted by the Department of Revenue
28 under section 1905-A. The Department of Community and Economic
29 Development and the Department of Revenue shall jointly
30 promulgate guidelines for the approval of applications under

1 this subsection.]

2 * * *

3 Section 8. Section 1903-C(d.1)(1) and (2) of the act are
4 amended to read:

5 Section 1903-C. Keystone Special Development Zone tax credit.

6 * * *

7 (d.1) Sale or assignment of tax credit.--

8 [(1) If the Keystone Special Development Zone employer
9 is entitled to a credit in any year that exceeds its
10 qualified tax liability for that year, upon application to
11 and approval by the department, a Keystone Special
12 Development Zone employer which has been awarded a tax credit
13 may sell or assign, in whole or in part, the tax credit
14 granted to the Keystone Special Development Zone employer.
15 The application must be on the form required by the
16 department and must include or demonstrate all of the
17 following:

18 (i) The applicant's name and address.

19 (ii) A copy of the tax credit certificate previously
20 issued by the department.

21 (iii) A statement as to whether any part of the tax
22 credit has been applied to tax liability of the applicant
23 and the amount so applied.

24 (iv) Any other information required by the
25 department.

26 (2) The department shall review the application and,
27 upon being satisfied that all requirements have been met,
28 shall approve the application and shall notify the Department
29 of Revenue.]

30 * * *

Section 9. Section 1906-F(f) of the act, added July 13, 2016
(P.L.526, No.84), is amended to read:

Section 1906-F. Keystone innovation zone tax credits.

* * *

[(f) Sale or assignment of tax credit.--

(1) Upon application to and approval by the department,
a KIZ company which has been awarded a tax credit may sell or
assign, in whole or in part, the tax credit granted to the
KIZ company. The application must be on the form required by
the department and must include or demonstrate all of the
following:

(i) The applicant's name and address.

(ii) A copy of the tax credit certificate previously
issued by the department.

(iii) A statement as to whether any part of the tax
credit has been applied to tax liability of the applicant
and the amount so applied.

(iv) Any other information required by the
department.

(2) The department shall review the application and,
upon being satisfied that all requirements have been met, the
department may approve the application and shall notify the
Department of Revenue.]

* * *

Section 10. This act shall take effect immediately.