

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2698 Session of
2022

INTRODUCED BY O'NEAL, MIHALEK, ROTHMAN, TOPPER, BERNSTINE,
OWLETT, ROWE AND GILLEN, JUNE 21, 2022

REFERRED TO COMMITTEE ON FINANCE, JUNE 21, 2022

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 regional greenhouse gas initiative
11 tax credit.

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

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

17 ARTICLE XVIII-I

18 REGIONAL GREENHOUSE GAS INITIATIVE TAX CREDIT

19 Section 1801-I. Scope of article.

20 This article establishes a regional greenhouse gas initiative
21 tax credit.

22 Section 1802-I. Definitions.

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

"CO2." A gaseous substance composed of molecules, each containing one atom of carbon and two atoms of oxygen.

"CO2 allowances." A credit purchased by a qualified taxpayer at quarterly auctions or from set-aside accounts to emit up to one ton of CO2.

"Company." A corporation, partnership, limited liability company, limited liability partnership, business trust, affiliate, unincorporated joint venture or other business entity doing business within this Commonwealth.

"Control period." A three-year period after which a qualified taxpayer must surrender CO2 allowances for CO2 emissions that are emitted during the period.

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

"Pass-through entity." Any of the following:

(1) A partnership as defined in section 301(n.0).

(2) A Pennsylvania S corporation as defined in section 301(n.1).

(3) An unincorporated entity subject to section 307.21.

"Power plant." A stationary electric generating unit, consisting of a boiler, a gas turbine or a combined cycle unit, which produces electric power for purposes of sale or exchange and has the design capability of consuming any fuel or mixture of fuel at a fuel heat input rate of 100 million BTUs per hour or greater or is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel, or

mixture of fuels, at a fuel heat input rate of 250 million BTUs per hour or greater. The term does not include any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission or any cogeneration facility, less than one-half of the annual electric power generation of which is sold or exchanged for resale.

"Qualified tax liability." The liability for taxes imposed under Articles III, IV, VI, VII, VIII, IX, XI and XV. The term does not include tax withheld under section 316.1.

"Qualified taxpayer." A company that satisfies all of the following:

(1) Owns a power plant.

(2) Generates at least 25 megawatts of electric power.

(3) Emitted CO2 within a control period during which the Commonwealth has a CO2 budget trading program established by regulation in accordance with RGGI.

(4) Has a qualified tax liability.

"Regional Greenhouse Gas Initiative" or "RGGI." A cooperative effort among states to reduce CO2 emissions from power plants within each participating state.

"Tax credit." The regional greenhouse gas initiative tax credit provided under this article.

Section 1803-I. Application and approval of tax credit.

(a) Rate.--The tax credit shall be equal to the product of the following for each taxable year in which a qualified taxpayer claims a tax credit under this article:

(1) the number of CO2 allowances used by a qualified taxpayer during the taxable year; multiplied by

(2) the auction clearing price for the quarter in which the CO2 allowances that were used in the taxable year was

purchased by the qualified taxpayer.

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

(1) A qualified taxpayer may apply to the department for a tax credit under this section.

(2) The application must be submitted to the department by March 1 for the tax credit claimed for CO2 allowances used for compliance purposes by a qualified taxpayer during the prior taxable year. The application must be on the form required by the department.

(3) The department may require information necessary to document the amount of CO2 allowances purchased and used.

(c) Review and approval.--The following shall apply:

(1) The department shall review and approve or disapprove the applications by March 20 each year.

(2) Upon approval, the department shall issue a certificate stating the amount of tax credit granted for CO2 allowances used for compliance purposes in the prior taxable year.

Section 1804-I. Use of tax credits.

(a) Initial use.--Prior to sale or assignment of a tax credit under section 1806-I, a qualified taxpayer must first use a tax credit against the qualified tax liability incurred in the taxable year for which the tax credit was approved.

(b) Eligibility.--The credit may be applied against up to 100% of the qualified taxpayer's qualified tax liabilities incurred in the taxable year for which the credit was approved.

(c) Application.--The tax credit shall be applied against the qualified taxpayer's liability only after all other statutory tax credits and deductions available to the qualified taxpayer have been used.

1 Section 1805-I. Carryover, carryback and refund.

2 A tax credit may not be carried back, carried forward or be
3 used to obtain a refund.

4 Section 1806-I. Sale or assignment.

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

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

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

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

15 (i) Filed all required State tax reports and returns
16 for all applicable taxable years.

17 (ii) Paid any balance of State tax due as determined
18 by assessment or determination by the Department of
19 Revenue and not under timely appeal.

20 Section 1807-I. Purchasers and assignees.

21 (a) Time.--The purchaser or assignee under section 1806-I
22 must claim the tax credit in the taxable year in which the
23 purchase or assignment is made.

24 (b) Amount.--The amount of the tax credit that a purchaser
25 or assignee under section 1806-I may use against any one
26 qualified tax liability may not exceed 50% of any of the
27 qualified tax liabilities for the taxable year.

28 (c) Resale and reassignment.--The following shall apply:

29 (1) A purchaser under section 1806-I may not sell or
30 assign the purchased tax credit.

1 (2) An assignee under section 1806-I may not sell or
2 assign the assigned tax credit.

3 (d) Notice.--The purchaser or assignee under section 1806-I
4 shall notify the department of the seller or assignor of the tax
5 credit in compliance with procedures specified by the
6 department.

7 Section 1808-I. Pass-through entity.

8 (a) Election.--If a pass-through entity has an unused tax
9 credit, the pass-through entity may elect in writing, according
10 to procedures established by the department, to transfer all or
11 a portion of the credit to shareholders, members or partners in
12 proportion to the share of the entity's distributive income to
13 which the shareholders, members or partners are entitled.

14 (b) Limitation.--The same unused tax credit under subsection
15 (a) may not be claimed by:

16 (1) The pass-through entity.

17 (2) A shareholder, member or partner of the pass-through
18 entity.

19 (c) Amount.--The amount of the tax credit that a transferee
20 under subsection (a) may use against any one qualified tax
21 liability may not exceed 20% of any qualified tax liabilities
22 for the taxable year.

23 (d) Time.--A transferee under subsection (a) must claim the
24 tax credit in the taxable year in which the transfer is made.

25 (e) Sale and assignment.--A transferee under subsection (a)
26 may not sell or assign the tax credit.

27 Section 1809-I. Administration.

28 (a) Audits and assessments.--The Department of Revenue shall
29 have the following powers:

30 (1) To audit a qualified taxpayer claiming a tax credit

1 to ascertain the validity of the amount claimed.

2 (2) To issue an assessment against a qualified taxpayer
3 for an improperly issued tax credit. The procedures,
4 collection, enforcement and appeals of any assessment made
5 under this section shall be governed by Article II.

6 (b) Guidelines and regulations.--The department, in
7 consultation with the Department of Environmental Protection and
8 the Department of Revenue, shall develop written guidelines for
9 the implementation of this article.

10 Section 1810-I. Reports to General Assembly.

11 By October 1, 2023, and October 1 of each year thereafter,
12 the department shall submit a report on the tax credit provided
13 by this article to the chairperson and minority chairperson of
14 the Appropriations Committee of the Senate, the chairperson and
15 minority chairperson of the Appropriations Committee of the
16 House of Representatives, the chairperson and minority
17 chairperson of the Finance Committee of the Senate and the
18 chairperson and minority chairperson of the Finance Committee of
19 the House of Representatives. The report shall include the names
20 of the qualified taxpayers utilizing the tax credit as of the
21 date of the report and the amount of tax credits approved for,
22 utilized by or sold or assigned by a qualified taxpayer.

23 Section 1811-I. Applicability.

24 This article shall apply to the use of CO2 allowances for
25 compliance purposes for the period beginning January 1, 2023,
26 and ending December 31, 2049.

27 Section 1812-I. Expiration.

28 This article shall expire December 31, 2050.

29 Section 2. This act shall take effect in 60 days.