



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 952

PRINTERS NO. 1934

PRIME SPONSOR: Oberlander

### COST / (SAVINGS)

FUND	FY 2020/21	FY 2021/22
General Fund	\$0	See fiscal impact
Local Sales Tax Funds	\$0	See fiscal impact

**SUMMARY:** House Bill 952, printer's number 1934, amends the Tax Reform Code to include the omnibus tax provision changes for the fiscal year 2020-21 budget.

**ANALYSIS & FISCAL IMPACT:** This legislation makes various changes and additions to the Tax Reform Code. More specific details on each provision of the legislation are provided below including the corresponding fiscal impact for each provision:

#### **Sales and Use Tax (SUT)**

##### **Flight Simulator Exemption**

Section 204 (Exclusions from Tax) is amended to include flight simulators and software or software grades, training materials, operational documents, and publications relating to the use of helicopters, similar rotorcraft and flight simulators in the current exclusions for helicopters, similar rotorcraft, and flight simulators.

*Fiscal Impact: This provision is estimated to reduce revenues by \$2.6 million in FY 2021-22.*

##### **Multipurpose Agricultural Vehicle Exemption**

The legislation adds new exclusions from the sale at retail or use of multipurpose agricultural vehicles operated for the benefit of, or pursuant to the operation of, a farm owned or operated by the owner or a business whose enterprises and activities are considered part of farming.

*Fiscal Impact: This provision is estimated to reduce revenues by \$800,000 in FY 2021-22.*

##### **Breast Feeding Property Exemption**

The legislation adds new exclusions from the sale at retail or use of tangible personal property manufactured for the purpose of initiating, supporting, or sustaining breast feeding.

*Fiscal Impact: This provision is estimated to reduce revenues by \$1.3 million in FY 2021-22.*

#### **Personal Income Tax (PIT)**

##### **1099-NEC**

The bill amends multiple sections of Article III to require the submission of Federal tax form 1099-NEC to report nonemployee compensation.

*Fiscal Impact: This provision shall have no adverse impact on Commonwealth funds.*

### Crop Insurance Proceeds

The bill adds Section 303 (a.10) (Classes of Income) to allow a person who receives crop insurance proceeds to recognize the proceeds as income in the taxable year following the taxable year in which the proceeds are received in accordance with Section 451(f) of the Internal Revenue Code of 1986.

*Fiscal Impact: Allowing a person the option of deferring crop insurance proceeds will align state personal income tax laws with federal income tax laws. In order to defer the crop insurance proceeds one year, this legislation requires the person to establish that the income from the crops, for which crop insurance proceeds were received, would have otherwise been reported in the following taxable year. Therefore, enactment of this legislation will have no adverse fiscal impact on Commonwealth funds.*

### Electronic Payment Threshold

Section 332.1 (Electronic Payment) is added to require any income tax payment in excess of \$15,000, excluding employer withholding payments and payments made under section 9 of the Fiscal Code, to be remitted to the Department of Revenue electronically. The bill also adds Section 352 (k) (Additions, Penalties and Fees) to impose a penalty of 3% of an income tax payment, not to exceed \$500, for a failure to remit a required tax.

*Fiscal Impact: This provision shall have no adverse impact on Commonwealth funds.*

### Corporate Net Income Tax (CNIT)

#### Qualified Manufacturing Innovation and Reinvestment Deduction (QMIRD)

Section 407.6(5) is amended to clarify that the Qualified Manufacturing Innovation and Reinvestment Deduction may be applied following the allocation and apportionment of Pennsylvania-sourced income.

*Fiscal Impact: This provision is estimated to reduce revenues by \$23.9 million in FY 2021-22.*

### Bank Shares Tax (BST)

#### Bank Merger Apportionment

The bill amends the definition of "receipt" in Section 701.5 to provide that, following the combination or two or more institutions into one, the total of all items of income that would have been reported on the income statements of each institution shall be combined as if the single institution had been in existence for the calendar year.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### Realty Transfer Tax (RTT)

#### Definitions Update

The legislation amends multiple sections of the article to replace the term, and tense uses of, "devise" with "demise", thereby restoring the original intent of the General Assembly on passage of Senate Bill 560, Printer's Number 2338 of 1986.

*Fiscal Impact: This provision is estimated to have no adverse impact on Commonwealth funds.*

### Tax Credits and Tax Benefits

#### Administrative Procedures

Article XVII-A.1. is amended to require the department or an administrating agency to make a finding that an applicant or a recipient of a tax credit or tax benefit has filed all required state tax reports and returns, and paid any balance of state tax due. For the purposes of the Educational Improvement Tax Credit Program (EITC), the department, within 30 days of receiving a completed application, must notify the Department of Community and Economic Development (DCED) of any findings. In addition, the bill allows the department or administering agency to require electronic applications for tax credits and tax benefits.

The legislation allows the department, in consultation with the administering agency, to require an applicant or recipient to submit additional documentation, meet virtually or in-person, or agree to site inspections if an application is incomplete when submitted. If the site is located in an area where unscheduled site visits are not feasible, the department or an administering agency must provide sufficient notice prior to the visit. In addition, the department is required to establish a policy to ensure the confidentiality of information or observed during a site inspection.

The bill enables the department, in consultation with an administering agency, to develop risk scoring criteria to determine if an applicant or recipient is required to submit audited financial statements, or an agreed-upon procedure report, or certification-of-cost report, and provide such information to the department.

After approval and until a tax credit or tax benefit is fully used, an applicant must file an annual report with the department or administering agency with certain information and if applicable, an itemization of expenses and jobs generated as result of the receipt of the tax credit or tax benefit. The department or administering agency, in turn, is required to provide the latter of this information to the Independent Fiscal Office for use in preparing reports required under the Performance-Based Budgeting and Tax Credit Efficiency Act (Act 48 of 2017).

The department may issue an assessment against a taxpayer if a tax credit was improperly issued or a tax benefit was improperly conferred or, if the tax credit is sold, transferred, or assigned, against an applicant or broker. An applicant and a broker are jointly and severally liable. The department cannot make an assessment against a broker that was determined to have acted in good faith. The amount of an assessment cannot exceed the face value of the tax credit or tax benefit or the benefits of the tax credit or tax benefit sold, transferred, assigned, or otherwise improperly conferred, plus applicable interest. Except for instances of fraud, for which an assessment can be made at any time, an assessment must be made within 3 years of the date a tax credit is sold, awarded, transferred, or assigned.

The bill requires the administering agency of a tax credit or tax benefit to provide employees, agents and representatives of an administering agency who assist applicants on all of the following:

- The requirements for a tax credit or tax benefit.
- Advising an applicant that has been issued a tax credit or tax benefit of the duty of the business to file reports concerning use of the tax credit or tax benefit, as required; and,
- Conducting onsite visits, scheduled and unscheduled, to verify compliance with the requirements relating to application for and issuance of a tax credit or tax benefit.

The language requires a broker, including an agent or other party representing a broker or assisting a broker on behalf of an applicant executing an application for or purchase or sale of a tax credit program, to register with the department. The department, in consultation with the Department of Community and Economic Development, is required to establish guidelines for the application and registration of brokers, which include all of the following:

- The name and address of the broker showing that the broker resides in this Commonwealth.
- The name and address of the business with which the broker is employed or otherwise associated that is located in this Commonwealth.
- That the broker be at least 18 years of age and has obtained the minimum educational requirements, qualifications, and experience necessary for the issuance of a registration.
- A criminal background check prepared by the Pennsylvania State Police that demonstrates the broker has not been convicted of a felony offense or an offense that involved fraud or misrepresentation in this Commonwealth or any other jurisdiction.

- A list of each professional license that has been issued to the broker and whether the broker is in good standing with the licensing authority.
- Verification that the application is submitted in accordance with 18 Pa.C.S. §§ 4903 (relating to false swearing) and 4904 (relating to unsworn falsification to authorities).
- Payment of any required application, licensing, and registration fees; and,
- Tax clearance showing satisfaction of all State and local taxes.

A broker registered must post a \$50,000 bond with the department. Registrations are valid for a period of two years from the date of issuance and include a unique registration number for the registrant. A broker executing the sale of a tax credit or tax benefit or assisting with the purchase of a tax credit or tax benefit must include broker's unique registration number and attach a certification to the application that the statements are representations made within the application are true and correct.

An administering agency of a tax credit or tax benefit must issue an annual report for each tax credit or tax benefit that the administering agency oversees. The annual report shall include the following, which may be incorporated into an annual report required by law:

- The name of each applicant that received a tax credit or tax benefit in the prior program year.
- For a tax credit, the amount of tax credit awarded to each applicant and whether an applicant sold, assigned, or transferred a transferable tax credit in the prior program year.
- If applicable, a summary of the data submitted for the itemization of expenses, income and jobs generated as a result of the receipt of the tax credit or tax benefit.
- If available, the following: the name of the recipient to which a tax credit was sold, assigned or transferred in the prior program year; the name of an individual receiving a tax credit without consideration from a pass-through entity in which the individual is a shareholder, member or partner shall not be published; or the amount of tax credit that was sold, assigned or transferred in the prior program year and the price for which a tax credit was sold, assigned or transferred.

Unless otherwise required by law, an administering agency shall publish the annual report on the administering agency's publicly available Internet website within 45 days of the end of the tax credit or tax benefit program year.

If an administering agency denies an applicant's application for a tax credit or tax benefit program, and the applicant subsequently is successful in appeal, the following shall apply:

- If an applicant is awarded a tax credit which is subject to a total annual limitation, upon the final resolution of an appeal after the full allocation of credits available for a fiscal year is completely expended, an administering agency shall include the awarded tax credit within the distribution of tax credits in the next program year after the resolution of the appeal for which an amount for allocation is available.
- When awarding a tax credit to an applicant, an administering agency shall apply any reduction in the awarded tax credit amount as was applied in the program year for which the credit was denied if the reduction was applied due to the total credits applied for exceeding the amount of credits allocated for the program year.
- When awarding a tax credit to an applicant, an administering agency shall reduce the total amount of credits available for allocation in the next program year by the amount of credits awarded.
- The awarded tax credits shall apply for the program year in which the credit was denied.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### **Research and Development Tax Credit (R&D)**

A taxpayer must apply for a qualified research and development expense to the Department of Revenue (DOR) no later than December 1st. The DOR must notify a taxpayer of the amount of tax credit approved to May 1st of the second calendar year following the close of the taxable year in which the expense was incurred. The DOR must also submit an annual report to the General Assembly no later than October 1st following the calendar year in which the tax credits were approved. The bill also clarifies that if a taxpayer cannot use the entire amount of an awarded tax credit in the taxable year in which the tax credit was applied for, the taxpayer may carry over the unused amount to succeeding taxable years.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### **Film Production Tax Credit**

Subarticle B is amended to add a definition of a “multifilm”, defined as a series of separate and distinct films produced by the same taxpayer over a period of no less than one year and no more than four years from the time of application. The bill allows the Department of Community and Economic Development (DCED) to consider the ability of a taxpayer to produce multiple films in the Commonwealth during the proposed period of production and the potential economic impact, including tourism impact, of the multiple films to the Commonwealth when reviewing a multifilm application. DCED is also required to provide 90 days for a taxpayer to resubmit an application for an alternative individual film produced by the taxpayer if an individual film that was issued a credit as part of a multifilm application is cancelled.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### **Entertainment Economic Enhancement Tax Credit (Concert Rehearsal and Tour).**

Subarticle E is amended to add a definition of a “streaming performance”, defined as a live performance which is performed at a qualified rehearsal facility to be remotely viewed by individuals. The term includes streaming and broadcasting of a performance. The bill allows DCED to carryover any tax credits not awarded in a fiscal year to the immediately succeeding fiscal year. The bill also adds Section 1782-D. (Pennsylvania live events industry COVID-19 emergency assistance) to allow a taxpayer to apply for a tax credit related to a streaming performance for fiscal years 2021-22 and 2022-23. DCED must establish an application period not less than 10 days on a bimonthly basis, with applications evaluated based on the following anticipations:

- Rehearsal days in a qualified rehearsal facility
- Number of streaming performances
- Pennsylvania rehearsal and tour expenses
- Concert tour equipment expenses which are or will be purchased or rented from companies located and maintaining a place of business in this Commonwealth and which will be used for the rehearsal and streaming performances.
- Concert tour equipment expenses which are not or will not be purchased or rented from companies located and maintaining a place of business in this Commonwealth and which will be used for the rehearsal and streaming performances.
- Number of days spent in Commonwealth hotels; and,
- Other criteria that DCED deems appropriate to ensure maximum employment opportunities and entertainment benefits for the residents of this Commonwealth.

DCED may approve a taxpayer if they have paid the application fee, and if they have met, or will meet, all of the following:

- Rehearse at a qualified rehearsal facility for a minimum of 7 days
- Perform at least one streaming performance at a qualified rehearsal facility

- Incurred or will incur Pennsylvania rehearsal and tour expenses in an amount of at least \$300,000 from companies located and maintaining a place of business in this Commonwealth
- Purchase or rent concert tour equipment to be delivered to a qualified rehearsal facility in an amount of at least \$225,000 from companies located in this Commonwealth
- Purchase or rent at least 70% of the concert tour equipment to be used for the rehearsal and any streaming performances from companies located in this Commonwealth
- Maintain a place of business in this Commonwealth or employs a representative for the period beginning with the start date and ending with the award of tax certificates under this section.

If a tax credit is awarded, DCED and the taxpayer shall enter into a contract containing the start date or the expected start date, a commitment by the taxpayer to hold at least one streaming performance at a qualified rehearsal facility and incur the Pennsylvania rehearsal and tour expenses as itemized, and any other information DCED deems appropriate. A taxpayer may not be awarded more than 25% of Pennsylvania rehearsal and tour expenses the taxpayer incurred or will incur for a tour nor more than \$250,000 of tax credits for a tour.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### **Local Resource Manufacturing Tax Credit**

Article XVII-L is amended to limit the number of qualified taxpayers that may receive a tax credit to two. The DOR is required to issue unallocated tax credits to no more than one qualified taxpayer that meets the following:

- Made a total capital investment of at least \$1 billion in order to construct the project facility and place the project facility into service in this Commonwealth
- Created a minimum aggregate total of 1,800 new jobs and permanent jobs
- Satisfied all other eligibility requirements for qualified taxpayers

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### **Keystone Innovation Zone Tax Credit**

House Bill 952 provides a five-year extension for a designated zone set to expire in 2022 if the designated zone is located in a county of the third class with a population of at least 350,000, but less than 410,000, based on the 2010 Federal decennial census. In addition, the bill provides a one-year extension for a political subdivision, or its designee, to submit an application to DCED for the designation of a zone under Section 1921-D.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### **Mixed-Use Development Tax Credit**

The legislation increases the amount of tax credits allocated to the Pennsylvania Housing Finance Agency to \$4.5 million per fiscal year.

*Fiscal Impact: This provision is estimated to reduce revenues by \$1.5 million in FY2021-22*

### **Keystone Innovation Zones (KIZ)**

The article is amended to require a KIZ company to apply to DCED no later than to December 1st for the prior taxable year. DCED must award a tax credit certificate to a KIZ company no later than May 1st of the following calendar year and submit an annual report to the General Assembly to no later than October 1st following the calendar year of application. The bill also clarifies that an awarded tax credit must first be applied to tax liabilities incurred in the taxable year in which the tax credit is approved before carrying over any unused amount.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### **Pennsylvania Housing Tax Credit**

House Bill 952 allocates \$10 million to the Pennsylvania Housing Finance Agency (PHFA) to award per fiscal year, plus any unallocated tax credits from preceding fiscal years. PHFA is prohibited from awarding a tax credit for an amount in excess of \$1.5 million per qualified low-income housing project. The date by which PHFA must submit an annual report to the General Assembly is changed to October 1, 2022, and each October 1 thereafter.

*Fiscal Impact: This provision is estimated to reduce revenues by up to \$10 million in FY2021-22.*

### **Table Games Tax**

Section 2503 is repealed to permanently extend the additional 2% tax rate.

*Fiscal Impact: This provision is estimated to increase revenues by \$18.3 million in FY2021-22.*

### **Procedure and Administration**

Article XXVII is amended to allow an applicant that has been denied a tax credit or tax benefit by an administering agency to file a petition for reassessment to the Department of Revenue (DOR). An applicant must provide a copy of the petition to the administering agency within 30 days of the applicant filing the petition with DOR. The administering agency has the right to be represented in all proceedings. The review is limited to the denial of the tax credit or tax benefit and shall not include a review of any underlying tax determinations.

The bill requires the following be included for a petition for review:

- A petition for review of tax adjustment not resulting in an increase in liability:
  - The tax type and tax periods included within the petition.
  - The amount of the tax that the taxpayer claims to have been erroneously adjusted.
  - The basis upon which the taxpayer claims that the adjustment is erroneous.
- A petition for review of denial of tax credit or tax benefit:
  - The tax credit or tax benefit program for which the applicant was denied.
  - The amount of the tax credit or tax benefit that the taxpayer claims to have been erroneously denied.
  - The basis upon which the taxpayer claims that the denial is erroneous.

The legislation permits the administering agency of a tax credit or tax benefit to participate in a hearing before DOR or, if the applicant further appeals the determination of DOR, the Board of Finance and Revenue (Board), with DOR or, if applicable, the Board, required to notify the administering agency of the date, time and place where the hearing of the petition for reassessment will be held. The administering agency may provide comment and written or oral argument to support its denial.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

### **Computer Data Center Equipment Incentive Program**

The bill converts the program to a Sales and Use Tax exemption program for the sale at retail or use of computer data center equipment if purchased for installation in a certified computer data center by the owner or operator or qualified tenant of a computer data center that is certified by the department. The conversion would take effect beginning January 1, 2022.

The following would not qualify for the exemption:

- A computer data center of a telecommunications provider that does not have retail or wholesale customers being billed or paying for services and does provide a majority of services for internal use or use by its subsidiaries

- Computer data center equipment used by a certified computer data center for the following purposes: generating electricity for resale to a power utility; or generating, providing, or selling more than 5% of its electricity outside of the certified computer data center
- Laptop computers, handheld devices, and motor vehicles for use both inside and outside the computer data center

On or before the fourth anniversary of certification, the owner, operator, or qualified tenant, in the aggregate:

- Have a combined minimum \$75 million of new investment and 25 new jobs, if located in a county with a population of 250,000 or less; or if located in a county with a population greater than 250,000, \$100 million of new investment and 45 new jobs; and,
- Pay annual compensation of at least \$1 million to employees at the certified computer data center site for each year of the certification.
- If a computer data center has met the prior eligibility requirements for certification under the existing program, the eligibility of the computer data center for the exemption program will remain valid for the remainder of the qualification period of the computer data center.

On or before the fourth anniversary of certification, the owner or operator of the computer data center must notify the DOR whether the computer data center has satisfied the eligibility requirements. The owner or operator or qualified tenant must maintain all records of investments created by the computer data center, including costs of buildings and computer data center equipment, any tax exemptions received by the owner or operator or qualified tenant, and purchase journals for examination by the department. If the computer data center is found to be in noncompliance, DOR may revoke the sales tax exemption certification and recapture all or part of the tax exemption received by the owner or operator or qualified tenant. A computer data center retains its certification regardless of a transfer, sale, or other disposition, directly or indirectly, of the computer data center.

On or before October 1, 2021, and each October 1 thereafter, the owner or operator or qualified tenant may apply for a sales tax certificate, provided all reporting, filing, and compliance requirements are met and the owner or operator or qualified tenant is in full compliance with all State tax laws.

*Fiscal Impact: This provision is estimated to reduce revenues by \$14 million in FY2021-22.*

**Bad Checks and Electronic Funds Transfers Not Credited Upon Transmission.**

Reduces the maximum penalty for the remittance of a bad check or insufficient electronic funds transfer to \$100.

*Fiscal Impact: This provision will have no adverse impact on Commonwealth funds.*

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**DATE:** June 25, 2021

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*