

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 761

PRINTER'S NO. 3883

AMOUNT

FY 2012-13: (\$15,950,000)
FY 2012-13: (\$39,450,000)

FUND

General Fund

DATE INTRODUCED

February 23, 2011

PRIME SPONSOR

Representative Cutler

HISTORY OF BILL

Referred to FINANCE, Feb. 23, 2011
Reported as amended, Oct. 19, 2011
First consideration, Oct. 19, 2011
Laid on the table, Oct. 19, 2011
Removed from table, Dec. 6, 2011
Second consideration, Dec. 7, 2011
Re-committed to APPROPRIATIONS, Dec. 7, 2011
(Remarks see House Journal Page 2460-2470), Dec. 7, 2011
Re-reported as committed, Dec. 12, 2011
Third consideration and final passage, Dec. 12, 2011 (191-0)
(Remarks see House Journal Page 2517-2518), Dec. 12, 2011

In the Senate

Referred to FINANCE, Dec. 14, 2011
Reported as amended, April 3, 2012
First consideration, April 3, 2012
Re-referred to APPROPRIATIONS, May 1, 2012
Re-reported as amended, May 21, 2012
Second consideration, May 23, 2012
Re-committed to APPROPRIATIONS, June 18, 2012
Re-reported as amended, June 29, 2012

DESCRIPTION AND PURPOSE OF BILL

House Bill 761, as amended, amends the Tax Reform Code of 1971 (Act of March 4, 1971, P.L. 6, No. 2) by serving as the omnibus tax bill with regard to fiscal year 2012-13 budget implementation. The legislation amends the Tax Reform Code of 1971 ("TRC") as follows:

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SALES AND USE TAX

Egg Processing Exemption

- Provides a sales and use tax exemption for the collection, washing, sorting, inspecting and packaging of eggs. As a result, tangible personal property and services used directly and predominantly in the processing of eggs shall be exempt from sales and use tax.

Exclusion for Volunteer Firefighters' Relief Associations

- Excludes the sale at retail or use of tangible personal property or services by a volunteer firefighters' relief association from tax. If the Department of Revenue has issued sales tax exempt status to a volunteer firefighters' organization or a volunteer firefighters' relief association, the sales tax exempt status shall not expire unless the activities of the organization or association change in a manner which would disqualify it from exempt status.

Exclusion for Wrapping or Packaging Supplies

- Clarifies that any charge for wrapping or packaging is exempt from sales and use tax if the property wrapped or packaged will be resold by the purchaser of the wrapping or packaging services.

Monthly Filing Requirements

- Provides sales and use tax licensees whose actual tax liability for the third calendar quarter of the preceding year is at least \$25,000 but less than \$100,000 with an alternative payment option to the current requirement of paying 50% of the tax liability for the same month of the preceding calendar year. In the event that the same month of the preceding calendar year is not reflective of the monthly sales of the licensee in the current year, the licensee is permitted to remit a lesser amount as long as the amount paid is equal to or greater than 50% of the actual tax liability required to be reported for the same month in the current year.

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PERSONAL INCOME TAX

Joint Return for Surviving Spouse

- Provides that a surviving spouse may file a joint return for the year in which his or her spouse died if the joint return could have been filed if both spouses were living for the entire taxable year. If both taxpayers die during the same tax year, a joint final return may be filed if a joint return could have been filed had both spouses lived for the entire taxable year and with the consent of the personal representatives, executors or administrators of both deceased spouses under subsection (e.1) by the due date, including extensions, of the joint tax return.
- Under current law, joint returns between a surviving spouse and a deceased spouse are not permitted. If the deceased was married at the time of death, the surviving spouse must file a separate return as "single" unless he or she remarries before the end of the taxable year.

Estimated Tax Payments

- Eliminates the addition to tax, which is essentially a penalty for underpayment of estimated taxes, for taxpayers who make estimated tax payments equal to the amount of the taxpayer's tax liability for the preceding tax year by taking into account a calculation for the special provisions for poverty (i.e. tax forgiveness).

CORPORATE NET INCOME TAX

Single Sales Factor

- For taxable years 2013 and thereafter, apportions all business income to Pennsylvania by multiplying the income by a sales factor (i.e. single sales factor). Implements a 100% sales factor apportionment.
- Currently, income is apportioned to Pennsylvania using a 90% sales, 5% property and 5% payroll apportionment formula.

Extension of Time to File Reports

- Provides that the Department of Revenue shall automatically grant an extension of time for filing the CNI annual report if the federal income tax authorities grant an extension of time for filing reports with the Federal Government.
- If the amount of taxable income is changed or corrected by the Federal Government, a corporation shall have six months to make a report of change with the Department of Revenue. Currently, the report is due within 30 days of the federal change or correction.

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INSURANCE PREMIUMS TAX

Technical Correction

- Changes incorrect references to the "act" in Insurance Premiums Tax by correctly referencing the "article".

REALTY TRANSFER TAX

Family Farm Exemption

- Excludes the following transactions from realty transfer tax:
 - A transfer of real estate devoted to the business of agriculture to a family farm business.
 - A transfer between members of the same family of an ownership interest in a family farm business that owns real estate.
- Existing law provides for certain exemptions from realty transfer tax for family farm corporations and family farm partnerships. The legislation intends to ensure that a family farm business which is reorganized to provide limited liability will not be subject to realty transfer tax. The amendment to the realty transfer tax shall be retroactive and apply to any document made, executed, delivered, accepted or presented for recording on or after July 1, 2010.

Stepparent/Stepchild Exemption

- Excludes transfers of real property between a stepparent and a stepchild or the spouse of a stepchild from being subject to the realty transfer tax. Under current law, transfers between a parent and child or the spouse of a child are exempt from tax.

Acquired Company Transactions

- Broadens the definition of "real estate company" and provides further instances in which a real estate company shall become an "acquired company" triggering the application of realty transfer tax.

CIGARETTE TAX

Wholesaler Requirements

- Amends the definition of "wholesaler" such that any person who owns and operates no fewer than three retail outlets in this Commonwealth, having one hundred percent common ownership, may qualify as a wholesaler. Under current law, there are several provisions that enable a person to qualify as a wholesaler. The particular provision requiring a minimum number of retail outlets owned and operated presently stands at five retail outlets.

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RESEARCH AND DEVELOPMENT TAX CREDIT

Reestablishment of Certain Provisions into the TRC

- Reestablishes the R&D tax credit cap from \$40 million to \$55 million, and changes the small business set-aside from \$8 million to \$11 million, in the TRC. Presently, these existing R&D tax credit caps are carried in the Fiscal Code.

Sunset

- Eliminates the existing December 31, 2015 termination date of the R&D tax credit.

FILM PRODUCTION TAX CREDIT

Qualified Production Facility (Sound Stage)

- Amends section 1702-D of the Film Tax Credit to add "minimum stage filming requirements" to include minimum activities and spending requirements based upon film production budgets above or below \$30 million:
- Defines "qualified production facility" as a film production facility located in Pennsylvania containing at least one sound stage with column free, unobstructed floor space and meets one of the following:
 - Has had a minimum of \$10 million invested in the facility; or
 - Meets at least three of the following:
 - Sound stage having an industry standard Noise Criteria rating of 25 or better;
 - A permanent grid with a minimum point load capacity of no less than 1,000 pounds at a minimum of 25 points;
 - Built in power supply available at a minimum of 4,000 amps per sound stage;
 - A height from sound stage floor to permanent grid of 20 feet;
 - Sound stage with a sliding or roll-up access door with a minimum height of 14 feet;
 - A HVAC with a minimum cooling capacity of 50 tons per sound stage;
 - Twenty-four hour perimeter security;

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- On-site lighting and grip department with inventory cost of \$500,000;
- Sound stage with a contiguous production office of at least 5,000 square feet per sound stage.

Qualified Tax Liability

- Adds Bank Shares Tax and Insurance Premiums Tax to the list of taxes that may be offset by the Film Production Tax Credit.

Review and Approval

- Applications will be reviewed by DCED in 90 day periods on a competitive basis and will be evaluated on the following criteria: the number of production days in Pennsylvania; number of Pennsylvania employees; number of preproduction through postproduction days in Pennsylvania; number of days spent in Pennsylvania hotels; Pennsylvania production expenses in comparison to the production budget; and the use of studio resources.

Awarding of Credits

- A portion of tax credits may be awarded for up to three years beyond the current fiscal year.

Carry Forward

- Permits carry forward of a tax credit purchased or assigned in 2010 to tax years 2011 and 2012.

Qualified Production Expense

- Provides that a taxpayer is eligible for an additional tax credit of 5% of the "qualified film production expenses" incurred if a taxpayer films a feature film, television film or television series that is intended as programming for a national audience and is filmed in a qualified production facility that meets all minimum stage filming requirements.
- Allows DCED to waive the requirement that 60% of the film's total expenses be incurred in the Commonwealth.

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RESOURCE MANUFACTURING TAX CREDIT

Establishment

- Establishes a new resource manufacturing tax credit for a company that purchases natural gas containing ethane for use in manufacturing ethylene at a facility in this Commonwealth. The tax credit applies to the purchase of ethane for the period after 12/31/2016 and before January 1, 2043.
- Provides that the tax credit is equal to \$0.05 per gallon of ethane purchased and used in manufacturing ethylene in this Commonwealth by a qualified taxpayer.
- Provides that the new article expires December 31, 2044.

Requirements

- Requires a company to make a capital investment of at least \$1,000,000,000 in order to construct and place a facility into service.
- Requires that a company must create at least 2,500 full-time equivalent jobs during the construction phase.

Use of Tax Credits

- Provides that tax credits may be applied against up to 20% of qualified taxpayer's qualified tax liabilities only after all other statutory tax credits and deductions have been used.
- Specifies that a qualified taxpayer that receives a tax credit shall be ineligible for any other tax credit provided under the TRC.
- Provides that a tax credit cannot be carried back, carried forward or be used to obtain a refund.
- Allows tax credits to be sold or assigned.
- Requires that tax credits to be sold or assigned must be offered exclusively to an upstream or downstream company for a period of 60 days before they can be sold or assigned elsewhere.

Reports Required

- Requires an annual report to include names of all qualified taxpayers utilizing the tax credit and the amount of tax credits approved, utilized, or sold or assigned by each qualified taxpayer.
- Requires that a reconciliation report be filed in ten years to include the total number of jobs created, the amount of tax revenue generated from qualified taxpayers and upstream or downstream companies, and any other information pertaining to the economic impact of the tax credit program.

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Recommendations for Change

- Provides that if the ten-year reconciliation report reveals that the total amount of the tax credit exceeds the total amount of tax revenue generated, the report shall include recommendations for changes in the calculation of the tax credit.

HISTORIC PRESERVATION INCENTIVE TAX CREDIT

Establishment

- Establishes a new \$3 million per year tax credit program to encourage the restoration of qualified historic structures.
- Defines a "qualified historic structure" as a commercial building located in this Commonwealth that qualifies as a certified historic structure under the federal Internal Revenue Code (IRC).
- Defines "qualified expenditures" as the costs and expenses incurred by a qualified taxpayer in the restoration of a qualified historic structure pursuant to a "qualified rehabilitation plan", and which are defined as qualified rehabilitation expenditures under the federal IRC.

COMMUNITY-BASED SERVICES TAX CREDIT

Establishment

- Establishes a new \$3 million per year tax credit program for contributions made by business firms to providers of community-based services to individuals with intellectual disabilities, mental illness or drug and alcohol addiction.
- Requires providers to be a nonprofit entity that provides community-based services to individuals that is exempt from Federal taxation under section 501(c)(3) of the Internal revenue Code.

JOB CREATION TAX CREDIT

Program Revisions

- Adds definitions of "small business" for companies with fewer than 100 employees and "unemployed individual" as someone who has been unemployed for at least 60 days.
- Provides that a small business must agree to increase employment by at least 10% as opposed to the existing 20% requirement.
- Allows tax credits to be authorized as single year or multiple year credits.

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- Increases the per-job tax credit from \$1,000 to \$2,500 if the new job created is filled by an unemployed individual.
- Reestablishes the tax credit cap at \$10,100,000 as amended into the FY 2011-12 Fiscal Code bill.

NEIGHBORHOOD ASSISTANCE TAX CREDIT

Charitable Food Programs

- Permits the Secretary of the DCED to take into special consideration applications for Neighborhood Assistance Tax Credits which involve "charitable food programs".

INHERITANCE TAX

Family Farm Exclusion

- Provides that a transfer of real estate devoted to the business of agriculture between members of the same family shall not be subject to the state inheritance tax, provided that after the transfer the real estate continues to be devoted to the business of agriculture for a period of seven years beyond the transferor's date of death and the real estate derives a yearly gross income of at least \$2,000.
- Specifies that any tract of land which is no longer devoted to the business of agriculture within seven years shall be subject to the inheritance tax in the amount that would have been paid for nonexempt transfers of property, plus interest.
- Requires annual certification to the Department of Revenue that the land qualifies for the exemption and shall notify the department within 30 days if it fails to qualify.
- Provides definitions of the terms "business of agriculture" and "members of the same family" with respect to the inheritance tax exemption.
- Applies to the estates of decedents dying after June 30, 2012.

Transfer of Agricultural Property

- Provides that a transfer of an agricultural commodity, agricultural conservation easement, agricultural reserve, agricultural use property or a forest reserve to lineal descendants or siblings is exempt from tax.

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TAX APPEALS REFORM

Adjustment of Tax Item

- Allows challenges to tax adjustments in cases that do not result in an increase in tax liability but may increase the tax due in a subsequent year.

Compromise by Secretary

- Authorizes compromises by the Secretary of the Department of Revenue in civil tax cases.

Petitions for Refund

- Provides that petitions for refunds for taxes paid with respect to an audit must be filed within six months of the mailing date of the assessment (current law) or within three years of actual payment of the tax, whichever is later.

ADMINISTRATION AND ENFORCEMENT

Requirement to File Federal Form 1099

- Requires companies that bring out-of-state independent contractors into Pennsylvania to work to file a copy of any Federal Form 1099-MISC with the Department of Revenue.
- Requires companies making oil/gas royalty payments on Pennsylvania land to file a copy of Federal Form 1099-MISC with the Department of Revenue.

Administrative Bank Attachment

- Allows the Department of Revenue to levy bank accounts of delinquent taxpayers and implements an administrative bank attachment process and system.
- Permits bank attachment in cases where the delinquency is greater than \$1,000.

Certified Mail Requirement

- Eliminates the requirement that assessments be mailed by certified mail.

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FISCAL IMPACT:

The Department of Revenue projects that the fiscal impact to the General Fund will be a cost of \$15,950,000 in FY 2012-13 and a cost of \$39,450,000 in FY 2013-14. Please refer to the attached chart.

FY 2012-13 Tax Bill - Fiscal Impact

\$ millions

Tax	Issue	Effective Date	FY 2011-12 Impact	FY 2012-13 Impact	FY 2013-14 Impact
SALES AND USE TAX					
SUT	Egg Processing	Immediately	\$ -	\$ (0.30)	\$ (0.30)
SUT	Volunteer Firefighters' Relief Associations	Immediately	\$ -	\$ -	\$ -
SUT	Wrapping or Packaging Supplies	Immediately	\$ -	\$ -	\$ -
SUT	Monthly Filing Requirements	10/1/2012	\$ -	\$ (4.9)	\$ (0.2)
PERSONAL INCOME TAX					
PIT	Joint Return for Surviving Spouse	TYB after 12/31/2012	\$ -	\$ -	\$ -
PIT	Estimated Tax Payments	TYB after 12/31/2012	\$ -	\$ -	\$ -
CORPORATE NET INCOME TAX					
CNIT	Single Sales Factor	TYB after 12/31/2012	\$ -	\$ (12.00)	\$ (38.00)
CNIT	Extension of Time to File Reports	TYB after 12/31/2012	\$ -	\$ -	\$ -
INSURANCE PREMIUMS TAX					
IPT	Technical Correction	Immediately	\$ -	\$ -	\$ -
REALTY TRANSFER TAX					
RTT	Family Farm Exemption	Retroactive to July 1, 2010	\$ -	\$ -	\$ -
RTT	Stepparent/Stepchild Exemption	Immediately	\$ -	\$ -	\$ -
RTT	Acquired Company Transactions	1/1/2013	\$ -	\$ -	\$ -

Tax	Issue	Effective Date	FY 2011-12 Impact	FY 2012-13 Impact	FY 2013-14 Impact
CIGARETTE TAX					
Cigarette Tax	Wholesaler Requirements	60 days	\$ -	\$ -	\$ -
RESEARCH AND DEVELOPMENT TAX CREDIT					
R&D Tax Credit	Reestablishment of Certain Provisions into the TRC	Immediately	\$ -	\$ -	\$ -
R&D Tax Credit	Sunset		\$ -	\$ -	\$ -
FILM PRODUCTION TAX CREDIT					
FPTC	Qualified Production Facility (Sound Stage)	Immediately			
FPTC	Qualified Tax Liability				
FPTC	Review and Approval				
FPTC	Awarding of Credits		\$ -	\$ -	\$ -
FPTC	Carry Forward				
FPTC	Qualified Production Expense				
RESOURCE MANUFACTURING TAX CREDIT					
PRM	Establishment	Ethane purchased after 12/31/2016			
PRM	Requirements				
PRM	Use of Tax Credits		\$ -	\$ -	\$ -
PRM	Reports Required				
PRM	Recommendations for Change				

Tax	Issue	Effective Date	FY 2011-12 Impact	FY 2012-13 Impact	FY 2013-14 Impact
HISTORIC PRESERVATION INCENTIVE TAX CREDIT					
HPTC	Establishment	Granted after 6/30/2013	\$ -	\$ -	(3.00)
COMMUNITY-BASED SERVICES TAX CREDIT					
CBSTC	Establishment	Granted after 6/30/2013	\$ -	\$ -	(3.00)
JOB CREATION TAX CREDIT					
JCTC	Program Revisions	7/1/2012	\$ -	\$ -	-
NEIGHBORHOOD ASSISTANCE TAX CREDIT					
NAP	Charitable Food Programs	Immediately	\$ -	\$ -	-
INHERITANCE TAX					
IET	Family Farm Exclusion	Estates of decedents dying after 6/30/2012	\$ -	(2.40)	(5.50)
IET	Transfer of Agricultural Property	Estates of decedents dying after 6/30/2012	\$ -	\$ -	-
TAX APPEALS REFORM					
Various Taxes	Adjustment of Tax Item	Open Appeals			
Various Taxes	Compromise by Secretary	Immediately	\$ -	\$ -	-
Various Taxes	Petitions for Refund	Petitions filed after 7/1/2012			
ADMINISTRATION AND ENFORCEMENT					
PIT	Requirement to File Federal Form 1099 Independent Contractors	Immediately	\$ -	\$ -	1.80
PIT	Requirement to File Federal Form 1099 Income Received under an Oil or Gas Lease	Immediately	\$ -	\$ -	8.00
Various Taxes	Administrative Bank Attachment	1/1/2013	\$ -	2.90	\$ -

Tax	Issue	Effective Date	FY 2011-12 Impact	FY 2012-13 Impact	FY 2013-14 Impact
Various Taxes	Certified Mail Requirement	Immediately	\$ -	\$ 0.75	\$ 0.75
TOTAL:			\$ -	\$(15.95)	\$(39.45)
TOTAL EXCL. SSF:			\$ -	\$(3.95)	\$(1.45)