

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. House Bill 1100

PRINTER NO. 1593

AMOUNT

See Fiscal Impact

FUND

General Fund

DATE INTRODUCED

April 29, 2019

PRIME SPONSOR

Representative Kaufer

DESCRIPTION AND PURPOSE OF BILL

House Bill 1100 amends the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, by adding a new Article XVII-L entitled "Energy and Fertilizer Manufacturing Tax Credit."

The legislation provides that a qualified taxpayer may apply for an energy and fertilizer manufacturing tax credit. A "qualified taxpayer" is defined as a company that satisfies all of the following criteria:

1. Purchases and uses Pennsylvania methane in the manufacture of petrochemicals or fertilizers at a facility in this Commonwealth that has been placed in service on or after the effective date of the article;
2. Has made a capital investment of at least \$1 billion in order to construct the facility and place the facility into service in this Commonwealth; and
3. Has created at least 1,000 full-time equivalent jobs during the construction phase in order to construct the facility and place it into service in this Commonwealth.

A qualified taxpayer may claim the credit against liabilities for personal income tax (excluding employer withholding), corporate net income tax, capital stock/franchise tax, bank and trust company shares tax, title insurance company shares tax, insurance premiums tax, gross receipts tax and mutual thrift institutions tax. House Bill 1100 stipulates that a qualified taxpayer that has been granted an energy and fertilizer manufacturing tax credit shall be ineligible for any other tax credit provided under the Tax Reform Code of 1971 (TRC).

The energy and fertilizer manufacturing tax credit is calculated as \$0.05 (5 cents) per gallon of methane used in the creation of "qualified products" (i.e., ammonia, methanol and urea) that is purchased and used in the manufacturing of petrochemicals or fertilizers in this Commonwealth by a qualified taxpayer.

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House Bill 1100 requires that tax credit applications be submitted to the Department of Revenue (department) by March 1 for tax credits claimed for qualified products purchased and used during the prior calendar year. The department shall review and approve or disapprove the applications by March 20, and it may require information necessary to document the amount of qualified products purchased and used. Upon approval, the department shall issue a certificate stating the amount of tax credit granted to the qualified taxpayer. The department has the power to audit a qualified taxpayer to ascertain the validity of the amount claimed and to issue an assessment against a qualified taxpayer for an improperly issued tax credit.

The legislation requires a qualified taxpayer to first use a tax credit against the qualified tax liability incurred in the taxable year for which the tax credit was approved; however, the tax credit only may be applied against up to 20% of the qualified taxpayer's tax liabilities. In addition, the tax credit shall be applied only after all other statutory tax credits and deductions available to the qualified taxpayer have been used.

House Bill 1100 prohibits tax credits from being carried back, carried forward or used to obtain a refund. The legislation includes operational provisions that allow qualified taxpayers which are pass-through entities such as partnerships and S-corporations to transfer all or a portion of the tax credits to shareholders, members or partners of the entity. In addition, upon application to and approval by the Department of Community and Economic Development, a qualified taxpayer may sell or assign a tax credit.

The legislation contains sale and assignment provisions that require a qualified taxpayer to offer to sell or assign a tax credit exclusively to a "downstream company" for a period of 30 days following approval of the credit and to an "upstream company" or "downstream company" for an additional 30 days beyond the exclusive downstream company offering. A "downstream company" is defined to include a company that uses chemical products or chemical compounds manufactured or processed by a qualified taxpayer as a raw material in the company's production process in the Commonwealth. An "upstream company" is defined to include a company that is engaged in the exploration, development, production, processing, refining or transportation of natural gas.

In addition to a general tax credit report required to be provided by the department to the General Assembly by October 1, 2020, House Bill 1100 requires an in-depth reconciliation report prepared by the Department of Community and Economic Development to be submitted to the General Assembly by May 1, 2030. The reconciliation report shall document the effectiveness of the Energy and Fertilizer Manufacturing Tax Credit program and include, at a minimum, the following information:

1. The name and business address of all qualified taxpayers who have been granted tax credits under this article.
2. The amount of tax credits granted to each qualified taxpayer.

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3. The total number of jobs created by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer, upstream company and downstream company. This paragraph includes the average annual salary and hourly wage information.
4. The amount of taxes paid under Article II by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer, upstream company and downstream company.
5. The amount of taxes withheld from employees or paid by members, partners or shareholders of the pass-through entities under Article III of the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer, upstream company and downstream company.
6. The amount of taxes paid under Article IV by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer, upstream company and downstream company.
7. The amount of taxes paid under Article VI by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer, upstream company and downstream company.
8. The amount of taxes paid under Article XI by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer, upstream company and downstream company.
9. The amount of any other state or local taxes paid by the qualified taxpayer, upstream company and downstream company and any companies that provide goods, utilities or other services that support the business operations of the qualified taxpayer, upstream company and downstream company.
10. Any other information pertaining to the economic impact of this article on this Commonwealth.

If the reconciliation report issued under subsection (b) reveals that the total amount of the tax credits granted under this article exceeds the total amount of tax revenue delineated in the report, the report must include any recommendation for changes in the calculation of the tax credit.

This act shall take effect in 60 days, and the article shall expire December 31, 2050.

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FISCAL IMPACT:

House Bill 1100 will have no fiscal impact on Commonwealth funds in fiscal years 2019-20 and 2020-21. The legislation provides a tax credit for qualified products purchased and used in the manufacturing of petrochemicals or fertilizers at a facility in this Commonwealth that has been placed in service on or after the effective date of the act. Such facilities have not yet been constructed and are subject to a minimum capital investment of \$1 billion. Based upon actual experience with a similar tax credit program established in Article XVII-G of the TRC, it is likely that the manufacturing activity required to claim a tax credit will not occur within at least the next few fiscal years.

A qualified facility may receive a tax credit equal to \$0.05 per gallon of qualified products that are purchased and used. Based upon information obtained from the natural gas, petrochemical and fertilizer industries, the methane used in the production of ammonia, methanol and urea is a dry gas that is not measured in gallons. Dry gas such as methane is more typically measured in cubic feet and is typically priced in millions of British thermal units (MMBtu), where 1.036 MMBtu is generally the equivalent of one thousand cubic feet (Mcf) in volume.

This fiscal analysis assumes that HB 1100 will be amended to correct the technical language regarding dry gas measurement and its effect on the tax credit rate. During the second half of 2012 when a similar tax credit was enacted for facilities purchasing and using natural gas liquids (ethane), the tax credit rate equal to \$0.05 per gallon of ethane was approximately 20% of the price of ethane at that time (\$0.25 per gallon). Over a recent twelve-month period, natural gas prices at hubs located in the Marcellus Shale region averaged approximately \$2.25 per MMBtu. A tax credit rate equal to 20% of the price results in a rate of \$0.45 per MMBtu of natural gas, which equates to a tax credit rate of \$0.47 per Mcf as measured by volume.

Data obtained from the crop inputs and services industry indicates that there were 20 manufacturing facilities located in the United States engaged in the production of urea, which is a main component of fertilizer. The average amount of urea produced at these 20 facilities totaled 581,500 metric tons annually. Approximately 25.2 MMBtus of natural gas are needed to produce one ton of urea. Therefore, the average U.S. urea facility utilizes approximately 14,653,800 MMBtus of natural gas per year, which converts to 14,144,595 Mcf of natural gas. At a tax credit rate of \$0.47 per Mcf, a typical facility is expected to realize a tax credit of \$6.6 million annually.