

AN ACT

1 Establishing the Agricultural Capital Investment Tax Credit  
 2 Program for the modernization or expansion of agricultural  
 3 operations in this Commonwealth; establishing a sponsorship  
 4 program; authorizing the transferability of tax credits; and  
 5 imposing powers and duties on the Department of Agriculture.

6 The General Assembly of the Commonwealth of Pennsylvania  
 7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Agricultural  
 10 Capital Investment Tax Credit Act.

11 Section 2. Definitions.

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

15 "Agricultural erosion and sediment control plan." A site-  
 16 specific plan that does all of the following:

- 17 (1) Meets the requirements of the act of June 22, 1937
- 18 (P.L.1987, No.394), known as The Clean Streams Law, and 25
- 19 Pa. Code Ch. 102 (relating to erosion and sediment control).

1           (2) Identifies best management practices to minimize  
2 accelerated erosion and sediment from an agricultural  
3 operation.

4 "Agricultural operation." A normal agricultural operation as  
5 defined under section 2 of the act of June 10, 1982 (P.L.454,  
6 No.133), referred to as the Right-to-Farm Law.

7 "Agricultural operation modernization and expansion." Any of  
8 the following:

9           (1) The construction, improvement or acquisition of  
10 buildings or facilities used exclusively for an agricultural  
11 operation.

12           (2) The acquisition of equipment for animal housing,  
13 confinement, feeding, ventilation or animal comfort and well-  
14 being acquired and placed in service on an agricultural  
15 operation.

16           (3) The construction or acquisition of equipment or  
17 other technology used in any of the following:

18               (i) Projects that will generate energy from on-farm  
19 resources of the agricultural operation.

20               (ii) Conserve the use of energy by the agricultural  
21 operation.

22 "Agricultural operation modernization or expansion plan." A  
23 comprehensive document that summarizes the operational and  
24 financial objectives of a business and contains detailed plans  
25 and budgets showing how the objectives are to be realized  
26 through investment in modernization or expansion of the  
27 agricultural operation.

28 "Business firm." An entity authorized to do business in this  
29 Commonwealth and subject to the taxes imposed under Article III,  
30 IV, VI, VII, VIII, IX or XV of the act of March 4, 1971 (P.L.6,

1 No.2), known as the Tax Reform Code of 1971.

2 "Conservation plan." A plan, including a schedule for  
3 implementation, that identifies site-specific conservation best  
4 management practices on an agricultural operation.

5 "Department." The Department of Agriculture of the  
6 Commonwealth.

7 "Eligible applicant." A business firm or an individual who  
8 is subject to taxation under Article III of the act of March 4,  
9 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

10 "Individual." A natural person.

11 "Nutrient management plan." As defined under 3 Pa.C.S. Ch. 5  
12 (relating to nutrient management and odor management).

13 "Pass-through entity." A partnership or Pennsylvania S  
14 corporation as defined under section 301(n.0) and (s.2) of the  
15 act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
16 of 1971.

17 "Program." The Agricultural Capital Investment Tax Credit  
18 Program.

19 "Project." Each component of an agricultural modernization  
20 or expansion plan included in an application for tax credits  
21 under this act.

22 "Qualified tax liability." The liability for taxes imposed  
23 upon an eligible applicant under Article III, IV, VI, VII, VIII,  
24 IX or XV of the act of March 4, 1971 (P.L.6, No.2), known as the  
25 Tax Reform Code of 1971.

26 Section 3. Agricultural Capital Investment Tax Credit Program.

27 (a) Establishment.--The Agricultural Capital Investment Tax  
28 Credit Program is established to encourage private investment in  
29 the modernization of the Commonwealth's agricultural industry.

30 (b) Limits.--The following limits shall apply:

1           (1) Except as set forth under paragraph (5), an eligible  
2 applicant may be granted a maximum of \$250,000 in tax credits  
3 under the program.

4           (2) No more than \$250,000 in tax credits shall be  
5 granted for projects on an agricultural operation under the  
6 program.

7           (3) An eligible applicant may submit an application for  
8 a single project or multiple applications for multiple  
9 projects within the limits of this section.

10          (4) There shall be no limit on the amount of tax credits  
11 that may be purchased or assigned from an eligible applicant.

12          (5) Notwithstanding paragraph (1), there shall be no  
13 limit on the amount of tax credits granted to a sponsor under  
14 subsection (f).

15       (c) Carryover.--

16           (1) If an eligible applicant cannot use the entire  
17 amount of the tax credit for the taxable year in which the  
18 tax credit is first granted, the excess may be carried over  
19 to succeeding taxable years and used as a credit against the  
20 qualified tax liability of the eligible applicant for those  
21 taxable years. Each time that the tax credit is carried over  
22 to a succeeding taxable year, it is to be reduced by the  
23 amount that was used as a credit during the immediately  
24 preceding taxable year. The tax credit provided under this  
25 act may be carried over and applied to succeeding taxable  
26 years for no more than 15 taxable years following the first  
27 taxable year for which the eligible applicant was entitled to  
28 claim the credit.

29           (2) A tax credit granted by the Department of Revenue  
30 shall be applied against the taxpayer's qualified tax

1 liability for the current taxable year as of the date on  
2 which the credit was granted before the tax credit is applied  
3 against any tax liability under paragraph (1).

4 (3) A tax credit granted under this section may not be  
5 carried back or refunded.

6 (d) Sale or assignment of credit.--

7 (1) An eligible applicant, upon application to and  
8 approval by the department, may sell or assign, in whole or  
9 in part, a tax credit granted to the eligible applicant under  
10 this act. The department, in consultation with the Department  
11 of Revenue, shall establish guidelines for the approval of  
12 applications under this subsection.

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

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

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

7 (e) Sponsorship.--An eligible applicant may become a sponsor  
8 by applying for a tax credit for a project authorized under  
9 section 6 if a written contract between the eligible applicant  
10 and the owner of an agricultural operation on which the project  
11 will be completed is submitted to the department, certifying  
12 that the owner of the agricultural operation will comply with  
13 all provisions of this act.

14 (f) Tax credits for pass-through entities.--

15 (1) If a pass-through entity has any unused tax credit  
16 under section 4, it may elect in writing, according to  
17 procedures established by the Department of Revenue, to  
18 transfer all or a portion of the credit to shareholders,  
19 members or partners in proportion to the share of the  
20 entity's distributive income to which the shareholder, member  
21 or partner is entitled.

22 (2) The credit provided under paragraph (1) shall be in  
23 addition to any tax credit to which the shareholder, member  
24 or partner is otherwise entitled under The Fiscal Code,  
25 except that a pass-through entity and its shareholders,  
26 members or partners may not claim a tax credit under this  
27 section for the same project authorized under section 4.

28 (3) A shareholder, member or partner of a pass-through  
29 entity to whom credit is transferred under paragraph (1)  
30 shall immediately claim the credit in the taxable year in

1       which the transfer is made. The shareholder, member or  
2       partner may not carry forward, carry back, obtain a refund of  
3       or sell or assign the credit.

4   Section 4.   Tax credits.

5       (a)   General eligibility.--Projects shall be eligible for a  
6       tax credit as follows:

7           (1)   Only eligible project costs incurred after the  
8       effective date of this section shall be eligible for a tax  
9       credit.

10          (2)   An agricultural operation shall have in place a  
11       current conservation plan, a current agricultural erosion and  
12       sediment control plan if engaged in plowing and tilling and,  
13       if required, a current nutrient management plan and  
14       Concentrated Animal Feeding Operation National Pollutant  
15       Discharge Elimination System permit or the costs of  
16       development of the plans shall be included in the  
17       agricultural modernization or expansion plan submitted with  
18       the application.

19          (3)   A project shall meet the design and construction  
20       standards acceptable to the department.

21       (b)   Amount of tax credit.--A tax credit equal to 25% of the  
22       eligible costs under subsection (c) of a project authorized  
23       under section 6 shall be granted.

24       (c)   Eligible costs of a project.--

25           (1)   All purchases of depreciable property related to the  
26       agricultural operation modernization or expansion shall be  
27       considered eligible costs of a project to which a tax credit  
28       may be applied.

29           (2)   In addition to the eligible costs under paragraph  
30       (1), the following shall be considered eligible costs to

1 which a tax credit may be applied:

2 (i) Project design, engineering and associated  
3 planning.

4 (ii) Project management costs, including  
5 contracting, document preparation and applications.

6 (iii) Project construction or installation.

7 (iv) Required post-construction inspections.

8 (v) Interest payments on loans for project  
9 implementation for up to one year prior to the award of  
10 the tax credit.

11 (3) A tax credit may not be applied to that portion of a  
12 project cost under this section for which public funding was  
13 received.

14 Section 5. Project maintenance.

15 (a) Time period.--The owners of an agricultural operation  
16 receiving a tax credit under this act shall maintain each  
17 component of a project receiving a tax credit for the  
18 depreciable life of the component.

19 (b) Failure.--If the project is not maintained for the time  
20 period required under subsection (a), the owner of the property  
21 upon which the project exists shall return to the Department of  
22 Revenue the amount of the tax credit originally granted. Any  
23 amount paid to the Department of Revenue under this subsection  
24 shall be deposited in the General Fund.

25 (c) Exception.--If the recipient of a tax credit provides  
26 prior written notification to the department that the recipient  
27 will be unable to maintain all components of an agricultural  
28 operation modernization or expansion due to sale of the  
29 property, cessation of an agricultural operation or other  
30 factors, the department may direct the Department of Revenue to

1 prorate the amount of the tax credit that shall be returned  
2 based on the remaining lifespan of the component of the  
3 agricultural operation modernization or expansion in question.  
4 Section 6. Application, review and authorization by department.

5 (a) Application process.--An eligible applicant shall apply  
6 to the department for authorization that a project is eligible  
7 for a tax credit under the program. An application shall be  
8 developed by the department and shall include all of the  
9 following:

10 (1) An agricultural operation modernization or expansion  
11 plan acceptable to the department.

12 (2) A description and total cost of the components of  
13 the agricultural operation modernization and expansion plan  
14 for which a tax credit is being applied.

15 (3) Verification of eligibility under section 4(a).

16 (b) Review, notification and authorization.--The department  
17 shall, within 30 days of receipt, review each application and  
18 notify an eligible applicant whether or not the eligible  
19 applicant meets the requirements and is authorized to receive a  
20 tax credit under this act.

21 (c) Authorization of tax credit.--The department shall not  
22 authorize tax credits that exceed the limits under sections 3(b)  
23 and 9. The department shall authorize tax credits on a first-  
24 come-first-served basis.

25 (d) Completion of project.--Upon completion of a project  
26 authorized under this section, an eligible applicant shall  
27 submit to the department written notice of project completion.  
28 The notice shall include all of the following:

29 (1) Documentation satisfactory to the department that  
30 the project is complete.

1 (2) Documentation of the final eligible costs included  
2 in the initial application.

3 (3) Any other documentation as may be required by the  
4 department.

5 (e) Notification to Department of Revenue.--Upon  
6 determination that a project authorized under this section is  
7 complete, the department shall provide notification to the  
8 Department of Revenue of all of the following:

9 (1) That the eligible applicant has completed a project  
10 which meets the criteria for a tax credit under this act.

11 (2) The amount of tax credit for the eligible applicant.

12 (f) Inspection.--Projects authorized under this section may  
13 be subject to inspection by the department or an agent of the  
14 department.

15 Section 7. Grant of tax credit.

16 The Department of Revenue shall grant a tax credit authorized  
17 under section 6. The department shall, within 60 days of receipt  
18 of the notice under section 6(e), issue a notice of grant of a  
19 tax credit to the eligible applicant.

20 Section 8. Annual cap of tax credits.

21 Tax credits shall be granted to the extent that funds are  
22 appropriated by the General Assembly. The total amount of tax  
23 credits granted by the department shall not exceed the  
24 following:

25 (1) For fiscal year 2012-2013, \$50,000,000.

26 (2) For fiscal years 2013-2014, 2014-2015, 2015-2016 and  
27 2016-2017, \$50,000,000 per fiscal year.

28 Section 9. Report.

29 The department, in consultation with the Department of  
30 Revenue, shall annually report to the General Assembly on the

1 program as follows:

2 (1) The number of tax credits granted under the program.

3 (2) The types and locations of projects.

4 (3) The estimated benefits of the projects.

5 Section 30. Effective date.

6 This act shall take effect July 1, 2013, or immediately,

7 whichever is later.