

TAX REFORM CODE OF 1971 - EXCLUDED TRANSACTIONS AND LOCAL  
RESOURCE MANUFACTURING TAX CREDIT

Act of Jul. 23, 2020, P.L. 654, No. 66

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HB 732

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," in reaty transfer tax, further providing for excluded transactions; and providing for local resource manufacturing tax credit and for a penalty.

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

Section 1. Section 1102-C.3(23) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended to read:

Section 1102-C.3. Excluded Transactions.--The tax imposed by section 1102-C shall not be imposed upon:

\* \* \*

(23) A transfer of real estate[:

(i) for no or nominal consideration from the Commonwealth or any of its instrumentalities, agencies or political subdivisions to a volunteer emergency medical services agency, volunteer fire company or volunteer rescue company; or

(ii) between two or more volunteer emergency medical services agencies, volunteer fire companies or volunteer rescue companies.] **to or by a volunteer EMS company, volunteer fire company or volunteer rescue company as those terms are defined in 35 Pa.C.S. § 7802 (relating to definitions).**

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Section 1.1. The act is amended by adding an article to read:

**ARTICLE XVII-L**

**LOCAL RESOURCE MANUFACTURING TAX CREDIT**

**Section 1701-L. Scope of article.**

**This article establishes a local resource manufacturing tax credit.**

**Section 1702-L. 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:**

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

**"Department." The Department of Revenue of the Commonwealth.**

"Downstream company." The term includes a company that purchases chemical products or chemical compounds manufactured or processed by a qualified taxpayer.

"Dry natural gas." Natural gas in which there are no appreciable natural gas liquids recoverable by separation at the wellhead.

"Fertilizer." A chemical product derived from petrochemicals which is added to soil or land to increase fertility.

"Natural gas." As defined in 58 Pa.C.S. § 2301 (relating to definitions).

"Natural gas liquids." As defined in 58 Pa.C.S. § 3203 (relating to definitions).

"New job." A full-time-equivalent job created during the construction of the project facility and paying the prevailing minimum wage and benefit rates for each craft or classification as determined by the Department of Labor and Industry under the Prevailing Wage Act.

"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.

"Permanent job." A full-time-equivalent job created to support the ongoing operation of the project facility.

"Petrochemical." Chemical products obtained from refining and processing natural gas. The term does not include liquefaction or other processing of natural gas for the purpose of transport.

"Prevailing Wage Act." The act of August 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage Act.

"Project facility." A facility located in this Commonwealth which manufactures petrochemicals or fertilizers using dry natural gas and which required a capital investment of at least \$400,000,000 to construct and place into service.

"Qualified tax liability." The liability for taxes imposed under Articles III, IV, 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) Purchases and uses dry natural gas produced in this Commonwealth in the manufacture of petrochemicals or fertilizers at a project facility in this Commonwealth that has been placed in service on or after the effective date of this section.

(2) Has made a capital investment of at least \$400,000,000 in order to construct the project facility and place the project facility into service in this Commonwealth.

(3) Has created a minimum aggregate total of 800 new jobs and permanent jobs.

(4) Has made good faith efforts to recruit and employ, and to encourage any contractors or subcontractors to recruit and employ, workers from the local labor market for employment during the construction of the project facility.

(5) Has demonstrated that the new jobs created at the project facility or for work covered by section 1713-L are paid at least the prevailing minimum wage and benefit rates for each craft or classification as determined by the Department of Labor and Industry.

"Tax credit." The local resource manufacturing tax credit provided under this article.

"Unit." One thousand cubic feet of natural gas at a temperature of 60 degrees Fahrenheit and an absolute pressure

of 14.73 pounds per square inch, in accordance with American Gas Association standards and according to Boyle's law for the measurement of gas under varying pressures with deviations therefrom as follows:

(1) The average absolute atmospheric pressure shall be assumed to be 14.4 pounds to the square inch, notwithstanding the actual elevation or location of point of delivery above sea level or variations in the atmospheric pressure.

(2) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer installed so that the thermometer may properly record the temperature of the gas flowing through the meters. The arithmetic average of the temperature recorded each 24-hour day shall be used in computing gas volumes. If a recording thermometer is not installed, or if installed and not operating properly, an average flowing temperature of 60 degrees Fahrenheit shall be used in computing gas volume.

(3) The specific gravity of the gas shall be determined by tests made by the use of an Edwards or Acme gravity balance annually or at intervals as are found necessary in practice. Specific gravity shall be used in computing gas volumes.

(4) The deviation of the natural gas from Boyle's law shall be determined by tests annually or at other shorter intervals as are found necessary in practice. The apparatus and the method to be used in making the tests shall be in accordance with recommendations of the National Bureau of Standards of the Department of Commerce or Report No. 3 of the Gas Measurement Committee of the American Gas Association on the effective date of this section. The results of the tests shall be used in computing the volume of gas delivered. "Upstream company." The term includes a company that is engaged in the exploration, development, production, processing, refining or transportation of dry natural gas in this Commonwealth.

#### Section 1703-L. Eligibility.

In order to be eligible to receive a tax credit, a company shall demonstrate the following:

(1) The company meets the requirements of a qualified taxpayer.

(2) The use of carbon capture and sequestration technology, or similar technologies, at the project facility to the extent it is cost effective and feasible at the discretion of the qualified taxpayer.

(3) Confirmation that the company has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined by assessment or determination by the department and not under timely appeal.

#### Section 1704-L. Application and approval of tax credit.

(a) Rate.--The tax credit shall be equal to \$0.47 per unit of dry natural gas that is purchased and used in the manufacturing of petrochemicals or fertilizers at the project facility by a qualified taxpayer.

(b) Application.--

(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 dry natural gas purchased and used in manufacturing of petrochemicals or fertilizers by the qualified taxpayer at the project facility during the prior calendar year.

(3) The application must be on the form required by the department which shall include the following:

(i) information required by the department to document the amount of dry natural gas purchased and used in the manufacture of petrochemicals or fertilizers at the project facility;

(ii) information required by the department to verify that the applicant is a qualified taxpayer; and

(iii) any other information as the department deems appropriate.

(c) Review and approval.--

(1) The department shall review the applications and shall issue an approval or disapproval by May 1.

(2) Upon approval, the department shall issue a certificate stating the amount of tax credit granted for dry natural gas purchased and used in the manufacture of petrochemicals or fertilizers at the project facility in the prior calendar year.

(d) Availability of tax credits.--

(1) Each fiscal year, \$26,666,668 in tax credits shall be made available to the department in accordance with this article.

(2) No more than four qualified taxpayers shall receive a tax credit annually, for a maximum credit of \$6,666,667 each.

(3) The department, at its discretion, may issue unallocated credits to a qualified taxpayer, notwithstanding the maximum credit limit under paragraph (2).

Section 1705-L. Use of tax credits.

(a) Initial use.--Prior to sale or assignment of a tax credit under section 1707-L, 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 tax credit may be applied against up to 20% of the qualified taxpayer's qualified tax liabilities incurred in the taxable year for which the tax credit was approved.

(c) Limit.--A qualified taxpayer that has been granted a tax credit under this article shall be ineligible for any other tax credit provided under this act.

Section 1706-L. Carryover, carryback and refund.

A tax credit cannot be carried back, carried forward or be used to obtain a refund.

Section 1707-L. Sale or assignment.

(a) Authorization.--If the qualified taxpayer holds a tax credit through the end of the calendar year in which the tax credit was granted, the qualified taxpayer may sell or assign a tax credit, in whole or in part, provided the sale is effective by the close of the following calendar year.

(b) Application.--

(1) To sell or assign a tax credit, a qualified taxpayer must file an application for the sale or assignment of the tax credit with the department. The application must be on a form required by the department.

(2) To approve an application, the department must receive:

(i) a finding from the department that the applicant has:

(A) filed all required State tax reports and returns for all applicable taxable years; and

(B) paid any balance of State tax due as determined by assessment or determination by the department and not under timely appeal; and  
(ii) for a sale or assignment to a company that is not an upstream company or downstream company, a certification from the qualified taxpayer that the qualified taxpayer has offered to sell or assign the tax credit:

(A) exclusively to a downstream company for a period of 30 days following approval of the tax credit under section 1704-L(c); and

(B) to an upstream company or downstream company for a period of 30 days following expiration of the period under clause (A).

(c) Approval.--Upon approval by the department, a qualified taxpayer may sell or assign, in whole or in part, a tax credit. Section 1708-L. Purchasers and assignees.

(a) Time.--The purchaser or assignee under section 1707-L must claim the tax credit in the calendar year in which the purchase or assignment is made.

(b) Amount.--The amount of the tax credit that a purchaser or assignee under section 1707-L may use against any one qualified tax liability may not exceed 50% of any of the qualified tax liabilities of the purchaser or assignee for the taxable year.

(c) Resale and assignment.--

(1) A purchaser under section 1707-L may not sell or assign the purchased tax credit.

(2) An assignee under section 1707-L may not sell or assign the assigned tax credit.

(d) Notice.--The purchaser or assignee under section 1707-L shall notify the department of the seller or assignor of the tax credit in compliance with procedures specified by the department.

Section 1709-L. Pass-through entity.

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

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

(1) the pass-through entity; and

(2) a shareholder, member or partner of the pass-through entity.

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

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

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

Section 1710-L. (Reserved).

Section 1711-L. Administration.

(a) Audits and assessments.--

(1) The department may audit a taxpayer awarded a tax credit to ascertain the validity of the amount awarded.

(2) The department may issue an assessment against a taxpayer for an improperly issued tax credit. The procedures,

collection, enforcement and appeals of an assessment made under this section shall be governed by Article II.

(b) Guidelines and regulations.--The department shall develop written guidelines for the implementation of this article. The guidelines shall be in effect until the department promulgates regulations for the implementation of the provisions of this article.

Section 1712-L. Reports to General Assembly.

(a) Annual report.--No later than the year after which tax credits are first awarded under this article, and each October 1 thereafter, the department shall submit a report on the tax credit provided under this article to the chairperson and minority chairperson of the Appropriations Committee of the Senate, the chairperson and minority chairperson of the Appropriations Committee of the House of Representatives, the chairperson and minority chairperson of the Finance Committee of the Senate and the chairperson and minority chairperson of the Finance Committee of the House of Representatives. The report must include the names of the qualified taxpayers utilizing the tax credit as of the date of the report and the amount of tax credits approved for, utilized by or sold or assigned by a qualified taxpayer.

(b) Reconciliation report.--On May 1 of the year which is 10 years after the year in which tax credits are first awarded under this article, the department shall submit to the Secretary of the Senate and the Chief Clerk of the House of Representatives a reconciliation report on the effectiveness of this article. The report shall include, to the extent possible, the following information for the preceding 10 years:

(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.

(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 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.

(8) 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.

(9) Any other information pertaining to the economic impact of this article on this Commonwealth.

(c) Reduction.--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 reported under subsection (b)(4), (5), (6), (7), (8) and (9), the report must include any recommendation for changes in the calculation of the credit.

(d) Publication.--The reports required by this section shall be a public record as defined under section 102 of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, and shall be available electronically on the publicly accessible Internet website of the department. The reports required under this section may not contain "confidential proprietary information" as defined in section 102 of the Right-to-Know Law.

Section 1713-L. Prevailing wage.

(a) Application.--A project facility for which a tax credit is sought and awarded under this article is deemed to meet each of the minimum requirements necessary to apply the wage and benefit rates, and related certification of payroll records, required by the Prevailing Wage Act. A qualified taxpayer, or the qualified taxpayer's agent, and all contractors and subcontractors, of every tier, engaged to perform on the project facility must comply with all provisions and requirements of the Prevailing Wage Act for all new jobs and for all crafts or classifications performing construction, reconstruction, demolition, alteration and/or repair work, other than maintenance work, undertaken at the project facility during the initial construction and during any period in which tax credits are sought and awarded for the project facility.

(b) Compliance.--The Department of Labor and Industry shall enforce this section and shall apply the same administration and enforcement applicable to any project of construction, reconstruction, demolition, alteration and/or repair work, other than maintenance work, undertaken pursuant to the requirements of the Prevailing Wage Act to ensure compliance.

(c) Notification.--Prior to the solicitation of bids or proposals of any contract or subcontract covered under subsection (a), the qualified taxpayer, or the qualified taxpayer's agent, shall notify the Department of Labor and Industry of the solicitation and request the issuance of a wage and benefit rate determination for all crafts and classifications anticipated to perform at the project facility. Rate requests shall be in conformity with the procedures of the Prevailing Wage Act, and the Department of Labor and Industry shall issue rates upon request as required pursuant to this section and the provisions of the Prevailing Wage Act.

(d) Violation.--In addition to enforcement authorized under the Prevailing Wage Act and subsection (b), if, after notice and hearing, the Department of Labor and Industry determines that the qualified taxpayer intentionally failed to pay or intentionally caused another to fail to pay prevailing wage rates or benefit rates as set forth under section 11(h) of the Prevailing Wage Act for work covered under subsection (a), or

ratified any such intentional failure by any contractors or subcontractors of the qualified taxpayer, the qualified taxpayer shall be required to refund 10% of the amount of the tax credits awarded to the qualified taxpayer for the first fiscal year for which tax credits are awarded, in the case of initial construction, or the fiscal year in which the intentional noncompliance occurred as determined by the department.

(e) Appeal.--A finding of a violation under subsection (d) shall be appealable under section 2.2(e)(1) of the Prevailing Wage Act and 34 Pa. Code § 213.3 (relating to appeals from determinations of the secretary) . Any final determination by the appeals board under the Prevailing Wage Act may be appealed pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

**Section 1714-L. Applicability.**

This article shall apply to the purchase of dry natural gas produced in this Commonwealth for the period beginning January 1, 2024, and ending December 31, 2049.

**Section 1715-L. Expiration.**

This article shall expire December 31, 2050.

Section 2. The amendment of section 1102-C.3(23) shall be retroactive to January 1, 2019.

Section 3. This act shall take effect as follows:

(1) The addition of Article XVII-L of the act shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 23rd day of July, A.D. 2020.

TOM WOLF