

TAX REFORM CODE OF 1971 - REPORTS, RESTRICTIONS AND PENNSYLVANIA  
HOUSING TAX CREDIT

Act of Nov. 3, 2020, P.L. 1074, No. 107

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No. 2020-107

SB 30

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 city revitalization and improvement zones, further providing for reports and for restrictions; and providing for Pennsylvania Housing Tax Credit.

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

Section 1. Section 1809-C(a) and (b) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended July 23, 2020 (P.L.665, No.68), are amended and subsection (c) is amended by adding a paragraph to read: Section 1809-C. Reports.

(a) State zone report.--No later than June 15 following the baseline year and each year thereafter, **or by August 31 for reports due in 2020**, each qualified business shall file a report with the department in a form or manner required by the department which includes all of the following:

(1) Amount of each eligible tax which was paid to the Commonwealth by the qualified business in the prior calendar year.

(2) Amount of each eligible tax refund received from the Commonwealth in the prior calendar year by the qualified business.

(b) Local zone report.--No later than June 15 following the baseline year and for each year thereafter, **or by August 31 for reports due in 2020**, each qualified business shall file a report with the local taxing authority which includes all of the following:

(1) Amount of each eligible tax which was paid to the local taxing authority by the qualified business in the prior calendar year.

(2) Amount of each eligible tax refund received from the local taxing authority in the prior calendar year by the qualified business.

(c) Penalties.--

\* \* \*

(5) **No penalty shall be imposed by the department or the local taxing authority for failure to file a timely and complete report under subsection (a) or (b) in 2019 or 2020.**

Section 2. Section 1813-C(b) and (c) (1) of the act, amended July 23, 2020 (P.L.665, No.68), are amended and subsection (a) is amended by adding a paragraph to read:

Section 1813-C. Restrictions.

(a) Utilization.--Money transferred under section 1812-C may only be utilized for the following:

\* \* \*

**(1.2) Payment of grants and loans to qualifying businesses, political subdivisions and municipal authorities operating within the zone for business operating expenses, working capital, business loan payments to financial institutions, payroll to current employees as a means of retaining employees, establishment of loan guarantee accounts with financial institutions to guarantee short-term loans provided by the financial institutions to qualifying businesses negatively impacted by the proclamation of disaster emergency issued by the Governor on March 6, 2020, published at 50 Pa.B. 1644 (March 21, 2020), and any renewal of the state of disaster emergency. This paragraph shall only apply to a zone located in a county of the third class that has not adopted a home rule charter. This paragraph shall expire June 30, 2021.**

\* \* \*

(b) Prohibition.--

**(1) Money transferred under section 1812-C may not be utilized for maintenance or repair of a facility.**

**(2) Paragraph (1) shall not apply for the period of April 1, 2020, through June 30, 2021.**

(c) Excess money.--

**(1) Except as set forth in paragraph (4), if the amount of money transferred to the fund under sections 1811-C(c) and 1812-C in any one calendar year exceeds the money utilized, budgeted or appropriated by official resolution of the contracting authority under this section in that calendar year, the contracting authority shall submit by April 15 following the end of the calendar year [the excess money] any money not utilized, budgeted or appropriated by official resolution of the contracting authority to the State Treasurer for deposit into the General Fund.**

\* \* \*

Section 3. The act is amended by adding an article to read:

**ARTICLE XIX-G**

**PENNSYLVANIA HOUSING TAX CREDIT**

Section 1901-G. Scope of article.

This article establishes the Pennsylvania Housing Tax Credit.

Section 1902-G. 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:

"Agency." The Pennsylvania Housing Finance Agency.

"Credit period." A five-year period that begins with the taxable year in which a taxpayer is awarded a tax credit certificate in accordance with section 1903-G.

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

"Federal housing tax credit." The Federal tax credit created under section 42 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 42).

"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.

"Qualified allocation plan." The agency's plan for allocation of Federal housing tax credits developed under section 42(m)(1) of the Internal Revenue Code of 1986.

"Qualified low-income housing project." The term shall have the same meaning as provided under section 42(g)(1) of the Internal Revenue Code of 1986.

"Qualified tax liability." The tax liability imposed on a taxpayer under Article III, IV, VII, VIII, IX, XI or XV, excluding any tax withheld by an employer under Article III.

"Tax credit." The Pennsylvania Housing Tax Credit established under this article.

"Taxable year." The term shall have the same meaning as provided under section 441(b) of the Internal Revenue Code of 1986.

"Taxpayer." An individual, business firm, corporation, business trust, limited liability company, partnership, limited liability partnership, association or any other form of legal business entity.

#### Section 1903-G. Pennsylvania Housing Tax Credit.

(a) Establishment.--The Pennsylvania Housing Tax Credit is established to encourage the development of qualified low-income housing projects in this Commonwealth. The agency and department shall administer the tax credit as provided in this article.

(b) Availability.--Tax credits may not be awarded under this article until the notice under subsection (c.1) is published.

(c) Maximum amount.--(Reserved).

(c.1) Notice.--Upon an enactment after the effective date of this subsection to make an amount of tax credits available under this article, the Secretary of the Budget shall submit a notice to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(d) Application.--

(1) The agency may not accept applications for a tax credit under this section until the notice under subsection (c.1) is published.

(1.1) A taxpayer may apply to the agency for a tax credit under this section by submitting an application on a form required by the agency.

(2) The agency may require such information on the application as necessary to verify compliance with this act.

(3) Except as otherwise provided by law, before the tax credit may be awarded, the department must find that the taxpayer has filed all required State tax reports and returns for all applicable tax years and paid any balance of State tax due as determined at settlement or assessment by the department, unless the tax due is currently under appeal.

(e) Review of application by agency.--

(1) The agency shall review applications submitted for a tax credit and, in accordance with the procedures established by the agency under section 1909-G, conditionally reserve tax credits for a qualified low-income housing project.

(2) The agency shall conditionally reserve tax credits in a manner that the agency, at the time of conditional reservation, reasonably believes will result in at least 10% of the tax credits being used to provide housing units targeting households with incomes at or below 30% of the area median income.

(3) The agency shall determine the amount of tax credits conditionally reserved to a taxpayer based on the merits of the qualified low-income housing project.

(f) Tax credit certificates.--Upon notification that a qualified low-income housing project receiving a conditional reservation of tax credits has been completed, the agency shall

determine compliance with this act. Following verification of compliance, the agency shall issue the tax credit certificates in an amount not to exceed 20% of the conditional reservation for each taxable year in the tax credit period.

Section 1904-G. Use of tax credits.

(a) Claiming the credit.--Upon presentation of a tax credit certificate to the department, the taxpayer may claim a tax credit against the qualified tax liability.

(b) Amount.--The tax credit may be claimed at an amount not to exceed 50% of the taxpayer's qualified tax liability for a single taxable year.

Section 1905-G. Carryover, carryback and refund.

(a) General rule.--A taxpayer shall be entitled to carry forward a tax credit for a period not to exceed five taxable years from the taxable year in which the tax credit was awarded. Each time the tax credit is carried over to a succeeding taxable year, the tax credit shall be reduced by the amount that was used as a credit during the immediately preceding taxable year.

(b) Application.--A tax credit certificate received by the department in a taxable year shall first be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was issued before the tax credit can be applied against a qualified tax liability under subsection (a).

(c) No carryback or refund.--A taxpayer may not carry back or obtain a refund of all or any portion of an unused tax credit granted to the taxpayer under this article.

Section 1906-G. Sale or assignment.

(a) Application.--A taxpayer, upon application to and approval by the department, may sell or assign, in whole or in part, a tax credit granted to the taxpayer under this article.

(b) Compliance.--Before an application under subsection (a) is approved, the department must find that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined at settlement, assessment or determination by the department.

Section 1907-G. Pass-through entity.

(a) General rule.--If a pass-through entity has any unused tax credit under section 1904-G, the taxpayer may elect in writing, according to procedures established by the department, to transfer all or a portion of the tax credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled.

(b) Limitation.--A pass-through entity and a shareholder, member or partner of a pass-through entity may not claim the credit under subsection (a) for the same qualified project.

(c) Application.--A shareholder, member or partner of a pass-through entity to whom a credit is transferred under subsection (a) shall immediately claim the credit in the taxable year in which the transfer is made. The shareholder, member or partner may not carry forward, carry back, obtain a refund of or sell or assign the tax credit.

Section 1908-G. Purchasers and assignees.

The purchaser or assignee of all or a portion of the tax credit under section 1906-G shall immediately claim the tax credit in the taxable year in which the purchase or assignment is made, subject to the following:

(1) If a purchaser or assignee of all or a portion of the tax credit obtained under section 1906-G cannot use the entire amount of the tax credit for the taxable year in which

the tax credit was purchased or assigned, the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the purchaser or assignee for those taxable years.

(2) Each time a tax credit is carried over to a succeeding taxable year, the tax credit shall be reduced by the amount that was used as a credit during the immediately preceding taxable year.

(3) The tax credit may be carried over and applied to succeeding taxable years for the remainder of the carryforward period from the original tax credit certificate.

(4) The purchaser or assignee may not carry back the credit or obtain a refund.

#### Section 1909-G. Administration.

(a) Agency guidelines and procedures.--The agency shall issue guidelines and procedures for the administration of the tax credit in conjunction with the qualified allocation plan and when possible, administer the tax credit using the same guidelines, procedures and priorities that the agency uses to administer the Federal housing tax credit.

(b) Recapture.--The department, in consultation with the agency, shall establish guidelines that include procedures for recapture of tax credits during the credit period that are similar in structure and effect to events of noncompliance under section 42 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 42). The guidelines shall provide for the mechanism and formula that the tax credit may be recaptured over the remaining credit period.

(c) Fraud or misrepresentation.--If a taxpayer engages in fraud or intentional misrepresentation of information required to be provided to the agency or the department under this article or the agency's guidelines, the department may:

(1) Recapture all or a portion of the tax credit.

(2) Deem ineligible the applicant or taxpayer from future tax credits.

(3) Impose other penalties as specified in the agency's guidelines.

(d) Fee.--The agency may charge a taxpayer applying for a tax credit a reasonable fee not to exceed 5% of the tax credit awarded for the administrative expenses of the agency for processing applications under this article.

#### Section 1910-G. Annual report.

(a) Duty of agency.--By the first September 30 of the calendar year after the notice under 1903-G(c.1) is published and each September 30 thereafter, the agency shall submit a report on the tax credit 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 Urban Affairs and Housing Committee of the Senate and the chairperson and minority chairperson of the Urban Affairs Committee of the House of Representatives. The report shall include:

(1) The number and amount of tax credits awarded in the prior fiscal year.

(2) The taxpayers that were awarded tax credits in the prior fiscal year.

(3) The amount of tax credits issued to each taxpayer in the prior fiscal year.

(b) Public posting.--The agency shall make the report identified in subsection (a) available on the agency's publicly accessible Internet website.

Section 4. The amendment of section 1813-C(b) and (c) (1) of the act shall apply retroactively to January 1, 2019.

Section 5. This act shall take effect immediately.

APPROVED--The 3rd day of November, A.D. 2020.

TOM WOLF