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," providing for energy and fertilizer manufacturing tax credit.

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

Section 1. The act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is amended by adding an article to read:

ARTICLE XVII-L

ENERGY AND FERTILIZER MANUFACTURING TAX CREDIT

Section 1701-L. Scope of article.

This article establishes an energy and fertilizer 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:

"Ammonia." A compound of nitrogen and hydrogen, NH3, that is a colorless gas with a characteristic pungent smell that dissolves in water and gives a strongly alkaline solution.

"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." Includes 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 this Commonwealth.

"Gallon." A United States liquid gallon equal to a volume of 231 cubic inches and equal to 3.785411784 liters or 0.13368 cubic feet, where volumetric measurements made at ambient flowing conditions are typically adjusted for composition and to standard conditions using established industry standard practices.

"Methane." A colorless, odorless flammable gas that is the product of biological decomposition of organic matter.

"Methanol." A toxic, colorless flammable liquid alcohol, CH3OH, made by oxidizing methane.

"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 product." Methane used in creation of ammonia,
methanol and urea.

"Qualified tax liability." The liability for taxes imposed
under Articles III, IV, VI, 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 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 this article.

(2) Had made a capital investment of at least
$1,000,000,000 in order to construct the facility and place
the facility into service in this Commonwealth.

(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.

"Tax credit." The energy and fertilizer manufacturing tax
credit provided under this article.

"Upstream company." Includes a company that is engaged in
the exploration, development, production, processing, refining
or transportation of natural gas, natural gas liquids or
petroleum in this Commonwealth.

"Urea." A colorless crystalline compound, H2NCONH2, that is
the main nitrogenous breakdown product of protein metabolism in
mammals and is excreted in urine.

Section 1703-L. Application and approval of tax credit.

(a) Rate.--The tax credit shall be equal to $0.05 per gallon
of qualified product that is purchased and used in the
manufacturing of petrochemicals or fertilizers in this Commonwealth 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 qualified products purchased and used in manufacturing of petrochemicals or fertilizers by the qualified taxpayer during the prior calendar year. The application must be on the form required by the department.

(3) The department may require information necessary to document the amount of qualified products purchased and used in the manufacture of petrochemicals or fertilizers.

(c) Review and approval.--

(1) The department shall review and approve or disapprove the applications by March 20.

(2) Upon approval, the department shall issue a certificate stating the amount of tax credit granted for qualified products purchased and used in the manufacture of petrochemicals or fertilizers in the prior calendar year.

Section 1704-L. Use of tax credits.

(a) Initial use.--Prior to sale or assignment of a tax credit under section 1706-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) Application.--The tax credit shall be applied against the qualified taxpayer's liability only after all other statutory tax credits and deductions available to the qualified taxpayer have been used.

(d) 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 1705-L. Carryover, carryback and refund.

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

Section 1706-L. Sale or assignment.

(a) Authorization.--If a 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.

(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 of Community and Economic Development. The application must be on a form required by the Department of Community and Economic Development.

(2) To approve an application, the Department of Community and Economic Development 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) in the case of 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 1703-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 of Community and Economic Development, a qualified taxpayer may sell or assign, in whole or in part, a tax credit.

Section 1707-L. Purchasers and assignees.

(a) Time.--The purchaser or assignee under section 1706-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 1706-L may use against any one qualified tax liability may not exceed 50% of any of the qualified tax liabilities for the taxable year.

(c) Resale and assignment.--

(1) A purchaser under section 1706-L may not sell or assign the purchased tax credit.

(2) An assignee under section 1706-L may not sell or assign the assigned tax credit.

(d) Notice.--The purchaser or assignee under section 1706-L shall notify the department of the seller or assignor of the tax credit in compliance with procedures specified by the
Section 1708-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 1709-L.  Administration.

(a) Audits and assessments.--The department has the following powers:

(1) To audit a qualified taxpayer claiming a tax credit to ascertain the validity of the amount claimed.

(2) To issue an assessment against a qualified 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 1710-L. Reports to General Assembly.

(a) Annual report.--By October 1, 2020, 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, 2030, the Department of Community and Economic Development 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, at a minimum, 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 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.

(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 public records and shall be available electronically on the
publicly accessible Internet website of either the department or
the Department of Community and Economic Development. The
reports required under this section shall not contain
"confidential proprietary information" as the term is defined in
section 102 of the act of February 14, 2008 (P.L.6, No.3), known
as the Right-to-Know Law.

Section 1711-L. Expiration.

This article shall expire December 31, 2050.

Section 2. This act shall take effect in 60 days.