THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1100 Session of 2019

INTRODUCED BY KAUFER, TURZAI, MIHALEK, KAIL, FRITZ, TOOHIL, NELSON, PUSKARIC, O'NEAL, GILLESPIE, GREINER, ROTHMAN, BERNSTINE, PYLE, STRUZZI, MOUL, KAUFFMAN, CAUSER, GREGORY, ZIMMERMAN, OWLETT, SCHMITT, MILLARD, GLEIM, HERSHEY, GILLEN, EVERETT, RADER, SANKEY, WARNER, RYAN, BOBACK, DIAMOND, MARSHALL, PICKETT, COOK, MASSER, HEFFLEY, DOWLING, REESE, GABLER, TOBASH AND DUSH, APRIL 29, 2019

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, FEBRUARY 3, 2020

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.

"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).

"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.

"PETROCHEMICAL." CHEMICAL PRODUCTS OBTAINED FROM REFINING AND PROCESSING NATURAL GAS.

"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 NATURAL GAS 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) HAS made a capital investment of at least $1,000,000,000 $450,000,000 in order to construct the facility and place the facility into service in this Commonwealth.

(3) Has created at least 1,000 A COMBINED 800 full-time equivalent jobs during the construction phase AND PERMANENT JOBS in order to construct the facility and place it into service AND OPERATE in this Commonwealth.

(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 PHASE.

(5) HAS DEMONSTRATED THAT INDIVIDUALS EMPLOYED BY THE
TAXPAYER OR ANY CONTRACTOR OR SUBCONTRACTOR FOR THE
CONSTRUCTION, RECONSTRUCTION, DEMOLITION, ALTERATION OR
REPAIR OF THE FACILITY HAVE BEEN PAID THE PREVAILING MINIMUM
WAGE RATE FOR EACH CRAFT OR CLASSIFICATION AS DETERMINED BY
THE DEPARTMENT OF LABOR AND INDUSTRY UNDER THE ACT OF AUGUST
15, 1961 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA
PREVAILING WAGE ACT.

"Tax credit." The energy and fertilizer 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 Recorder 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, OR ANY AMENDMENTS THEREOF. THE RESULTS OF THE
TESTS SHALL BE USED IN COMPUTING THE VOLUME OF GAS DELIVERED.

"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 $0.47 PER UNIT OF NATURAL GAS 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 NATURAL GAS 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 NATURAL GAS 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 NATURAL GAS 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 department.

Section 1708-L. Pass-through entity.

(a) Election.—If a pass-through entity has an unused tax credit.
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.

(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 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.