

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 409 Session of  
2005

INTRODUCED BY ERICKSON, BRIGHTBILL, KITCHEN, ORIE, RAFFERTY,  
O'PAKE, BOSCOLA, COSTA, SCARNATI, D. WHITE, PIPPY, PILEGGI,  
GORDNER, WOZNIAK AND WAUGH, MARCH 21, 2005

REFERRED TO FINANCE, MARCH 21, 2005

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An  
2 act relating to tax reform and State taxation by codifying  
3 and enumerating certain subjects of taxation and imposing  
4 taxes thereon; providing procedures for the payment,  
5 collection, administration and enforcement thereof; providing  
6 for tax credits in certain cases; conferring powers and  
7 imposing duties upon the Department of Revenue, certain  
8 employers, fiduciaries, individuals, persons, corporations  
9 and other entities; prescribing crimes, offenses and  
10 penalties," providing for an alternative energy expense tax  
11 credit.

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

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

ARTICLE XVII-D

ALTERNATIVE ENERGY EXPENSE TAX CREDIT

19 Section 1701-D. Scope of article.

20 This article relates to alternative energy expense tax  
21 credits.

22 Section 1702-D. 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:

"Alternative energy expense." The expense incurred by a retail electric customer in purchasing electricity from an electric distribution company or electric generation supplier that is attributable to the obligation under State law for those entities to procure alternative energy.

"Alternative energy expense tax credit" or "tax credit." The credit provided under this article.

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

"Electric distribution company." The term shall have the same meaning given to it in 66 Pa.C.S. Ch. 28 (relating to restructuring of electric utility industry).

"Electric generation supplier." The term shall have the same meaning given to it in 66 Pa.C.S. Ch. 28 (relating to restructuring of electric utility industry).

"Pass-through entity." A partnership as defined in section 301(n.0) (relating to definitions) or a Pennsylvania S corporation as defined in section 301(n.1).

"Qualified tax liability." The liability for taxes imposed under Article IV (relating to corporate net income tax) or VI (relating to capital stock--franchise tax), and in the case of a pass-through entity, under Article III (relating to personal income tax).

"Retail electric customer." The term shall have the same meaning given to it in 66 Pa.C.S. Ch. 28 (relating to restructuring of electric utility industry).

"Taxpayer." An entity subject to tax under imposed under Article IV (relating to corporate net income tax) or VI

(relating to capital stock--franchise tax), and in the case of a pass-through entity, under Article III (relating to personal income tax).

Section 1703-D. Credit for alternative energy expenses.

(a) General rule.--A taxpayer who incurs an alternative energy expense in a taxable year may apply for an alternative energy expense tax credit as provided in this article. A taxpayer seeking a tax credit must submit an application to the department by February 15 for alternative energy expenses incurred in the taxable year that ended in the prior calendar year.

(b) Amount of tax credit.--A taxpayer that is qualified under subsection (a) shall receive an alternative energy expense tax credit for the taxable year in the amount of 20% of the alternative energy expenses.

(c) Notification.--By August 15 of the calendar year following the close of the taxable year during which the alternative energy expense was incurred, the department shall notify a taxpayer of the amount of the taxpayer's alternative energy expense tax credit approved by the department.

Section 1704-D. Carryover, carryback, refund and assignment of tax credit.

(a) General rule.--If a taxpayer cannot use the entire amount of the alternative energy expense tax credit for the taxable year in which the tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a tax credit against the qualified tax liability of the taxpayer for those taxable years. Each time that the tax credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a tax credit during the

1 immediately preceding taxable year. The tax credit may be  
2 carried over and applied to succeeding taxable years for no more  
3 than three taxable years following the first taxable year for  
4 which the taxpayer was entitled to claim the tax credit.

5 (b) Application.--An alternative energy expense tax credit  
6 approved by the department for alternative energy expenses in a  
7 taxable year first shall be applied against the taxpayer's  
8 qualified tax liability for the current taxable year as of the  
9 date on which the tax credit was approved before the tax credit  
10 can be applied against any tax liability under subsection (a).

11 (c) No carryback.--A taxpayer is not entitled to carry back  
12 or obtain a refund of an unused alternative energy expense tax  
13 credit.

14 (d) Sale or assignment.--

15 (1) A taxpayer, upon application to and approval by the  
16 Department of Community and Economic Development, may sell or  
17 assign, in whole or in part, an alternative energy expense  
18 tax credit granted to the taxpayer under this article.

19 (2) The Department of Community and Economic Development  
20 and the department shall jointly promulgate regulations for  
21 the approval of applications under this subsection.

22 (3) Before an application is approved, the department  
23 must make a finding that the applicant has filed required  
24 State tax reports for the taxable year for which the  
25 qualified expenses were approved and paid any balance of  
26 State tax due as determined at settlement, assessment or  
27 determination by the department.

28 (4) Notwithstanding any other provision of law, the  
29 department shall settle, assess or determine the tax of an  
30 applicant under this subsection within 90 days of the filing

1 of all required final returns or reports in accordance with  
2 section 806.1(a)(5) of the act of April 9, 1929 (P.L.343,  
3 No.176), known as The Fiscal Code.

4 (e) Purchasers and assignees.--The purchaser or assignee of  
5 a portion of an alternative energy expense tax credit under  
6 subsection (d) shall immediately claim the credit in the taxable  
7 year in which the purchase or assignment is made. The amount of  
8 the tax credit that a purchaser or assignee may use against any  
9 one qualified tax liability may not exceed 50% of such qualified  
10 tax liability for the taxable year. The purchaser or assignee  
11 may not carry over, carry back, obtain a refund of or assign the  
12 tax credit. The purchaser or assignee shall notify the  
13 department of the seller or assignor of the tax credit in  
14 compliance with procedures specified by the department.

15 Section 1705-D. Time limitations.

16 A taxpayer is not entitled to an alternative energy tax  
17 credit for alternative energy expenses incurred in taxable years  
18 ending after December 31, 2012.

19 Section 1706-D Limitation on tax credits.

20 (a) General rule.--The total amount of tax credits approved  
21 by the department shall not exceed \$10,000,000 in any fiscal  
22 year.

23 (b) Exception.--If the total amount of alternative energy  
24 expense tax credits applied for by all taxpayers exceeds the  
25 amount allocated for those tax credits, then the tax credit to  
26 be received by each applicant shall be the product of the  
27 allocated amount multiplied by the quotient of the tax credit  
28 applied for by the applicant divided by the total of all tax  
29 credits applied for by all applicants, the algebraic equivalent  
30 of which is:

1 taxpayer's alternative energy expense tax credit=amount  
2 allocated for those tax credits X (alternative energy expense  
3 tax credit applied for by the applicant/total of all  
4 alternative energy expense tax credits applied for by all  
5 applicants).

6 Section 1707-D. Pass-through entity.

7 (a) General rule.--If a pass-through entity has any unused  
8 alternative energy expense tax credit under section 1704-D  
9 (relating to carryover, carryback, refund and assignment of tax  
10 credit), it may elect in writing, according to procedures  
11 established by the department, to transfer all or a portion of  
12 the tax credit to shareholders, members or partners in  
13 proportion to the share of its distributive income to which the  
14 shareholder, member or partner is entitled.

15 (b) Limitation.--The alternative energy expense tax credit  
16 provided under subsection (a) is in addition to any tax credit  
17 to which a shareholder, member or partner of a pass-through  
18 entity is otherwise entitled under this article. However, a  
19 pass-through entity and a shareholder, member or partner of a  
20 pass-through entity may not claim a tax credit for the same  
21 alternative energy expense.

22 (c) Application.--A shareholder, member or partner of a  
23 pass-through entity to whom an alternative energy expense tax  
24 credit is transferred under subsection (a) shall immediately  
25 claim the tax credit in the taxable year in which the transfer  
26 is made. A tax credit transferred to a natural person may be  
27 applied only against the income referred to under section  
28 303(a)(2) (relating to classes of income). The shareholder,  
29 member or partner may not carry back, obtain a refund of or  
30 assign the tax credit.

1 Section 1708-D. Report to General Assembly.

2 The secretary shall submit an annual report to the General  
3 Assembly indicating the effectiveness of the alternative energy  
4 expense tax credit no later than April 1 following the year in  
5 which the tax credits were approved. The report shall include  
6 the names of all taxpayers utilizing the tax credit as of the  
7 date of the report and the amount of tax credits approved and  
8 utilized by each taxpayer. Notwithstanding any law providing for  
9 the confidentiality of tax records, the information contained in  
10 the report shall be public information. The report may also  
11 include any recommendations for changes in the calculation or  
12 administration of the tax credit.

13 Section 1709-D. Termination.

14 The department shall not approve an alternative energy  
15 expense tax credit for taxable years ending after December 31,  
16 2012.

17 Section 1710-D. Regulations.

18 The department shall promulgate regulations necessary for the  
19 implementation and administration of this article.

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