INTRODUCED BY BLAKE, HUGHES, FARNESE, COLLETT, FONTANA, SANTARSIERO, SCHWANK, BREWSTER, GORDNER, A. WILLIAMS, DINNIMAN AND COSTA, APRIL 15, 2020

REFERRED TO FINANCE, APRIL 15, 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," in manufacturing and investment tax credit, providing for personal protective equipment retrofitting tax credit.

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

Section 1. Article XVIII-G of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971, is amended by adding a part to read:

PART III

PERSONAL PROTECTIVE EQUIPMENT RETROFITTING TAX CREDIT

Section 1841-G. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section unless the
context clearly indicates otherwise:

"COVID-19 pandemic of 2020." The outbreak of the novel coronavirus that was declared a pandemic by the World Health Organization.

"Department." The Department of Community and Economic Development of the Commonwealth.

"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 tax liability." A taxpayer's liability for taxes imposed under Article III, IV, VI, VII, VIII, IX, XI or XV.

"Tax credit." The personal protective equipment retrofitting tax credit provided under this part.

"Taxpayer." An owner and operator of a business located in this Commonwealth that specializes in manufacturing any item other than personal protective equipment.

Section 1842-G. Eligibility.

In order to be eligible to receive a personal protective equipment retrofitting tax credit, a taxpayer must demonstrate to the department the following:

(1) The taxpayer has converted or retrofitted the taxpayer's existing business facility in order to manufacture personal protective equipment.
(2) The personal protective equipment is to be used for this Commonwealth's response to the COVID-19 pandemic of 2020.

Section 1843-G. Procedure.

(a) Application.--A taxpayer applying to claim tax credit
must complete and submit to the department a tax credit
application on a form and in a manner as determined by the
department.

(b) Approval.--If the department approves the taxpayer's
application, the department and the taxpayer shall execute a
commitment letter containing the following:

(1) The taxpayer is the owner and operator of the
business.
(2) The taxpayer has expended funds to convert or
retrofit the taxpayer's existing business facility in order
to manufacture personal protective equipment.
(3) The personal protective equipment is to be used for
this Commonwealth's response to the COVID-19 pandemic of
2020.
(4) Any other information the department deems
appropriate.

Section 1844-G. Personal protective equipment retrofitting tax
credit.

(a) Maximum amount.--The department may award a tax credit
of up to 100% of the taxpayer's costs relating to the converting
or retrofitting of the taxpayer's existing business facility in
order to manufacture personal protective equipment.
(b) Applicable taxes.--A taxpayer may apply the tax credit
to 100% of the taxpayer's qualified tax liability.
(c) Term.--A taxpayer may claim the tax credit for a period
determined by the department, not to exceed the earlier of:

(1) five years from the date the taxpayer receives the
tax credit certificate; or
(2) six years from the start date.
(d) Availability.--A tax credit shall be made available by
the department on a first-come, first-served basis.

(e) Limitation.--For the 2020 tax year, $50,000,000 in tax credits shall be made available to the department and may be awarded by the department in accordance with this part.

Section 1845-G. Limitations.

The following shall apply:

(1) If the taxpayer cannot use the entire amount of the tax credit for the taxable year in which the tax credit is first approved, the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for the taxable years. Each time the tax credit is carried over to a succeeding taxable year, the tax credit shall be reduced by the amount of the tax credit used as a credit during the immediately preceding taxable year. The tax credit may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(2) A tax credit approved by the department in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the tax credit can be applied against any tax liability under paragraph (1).

(3) A taxpayer shall not be entitled to carry back or obtain a refund of all or any portion of an unused tax credit granted to the taxpayer under this part.

Section 1846-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. The following shall
apply:

(1) The department and the Department of Revenue shall jointly issue guidelines for the approval of applications under this paragraph.

(2) Before an application is approved, the Department of Revenue must make a finding 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 of Revenue.

(3) Notwithstanding any other provision of law, the Department of Revenue must settle, assess or determine the tax of an applicant under this paragraph within 90 days of the filing of each required final return or report in accordance with section 806.1(a)(5) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(b) Use by purchaser or assignee.--The purchaser or assignee of all or a portion of a tax credit under subsection (a) must immediately claim the credit in the taxable year in which the purchase or assignment is made.

(1) The amount of the tax credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of the qualified tax liability for the taxable year.

(2) The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the manufacturing tax credit.

(3) The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the manufacturing tax credit in compliance with procedures
specified by the Department of Revenue.

Section 1847-G. Pass-through entity.

(a) General rule.--If a pass-through entity has any unused tax credits under section 1845-G, the entity may elect in writing according to procedures established by the Department of Revenue, to transfer all or a portion of the credit to shareholders, members or partners in proportion or the share of the entity's distributive income to which the shareholder, member or partner is entitled.

(b) 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 credit.

Section 1848-G. Guidelines.

The department shall develop and publish guidelines necessary to implement this part.

Section 2. This act shall take effect immediately.