

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1549 Session of
2002

INTRODUCED BY DENT, M. WHITE, LAVALLE, COSTA, ERICKSON,
SCARNATI, TARTAGLIONE, WENGER, MUSTO, BOSCOLA, CONTI,
LEMMOND, MURPHY, RHOADES, MADIGAN, C. WILLIAMS, ARMSTRONG,
SCHWARTZ, KITCHEN, WAUGH, TOMLINSON, BODACK AND WOZNIAK,
OCTOBER 15, 2002

REFERRED TO FINANCE, OCTOBER 15, 2002

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 environmental remediation 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:

17 ARTICLE XVII-C

18 ENVIRONMENTAL REMEDIATION TAX CREDIT

19 Section 1701-C. Short Title.--This article shall be known
20 and may be cited as the Environmental Remediation Tax Credit
21 Law.

1 Section 1702-C. Definitions.--The following words and
2 phrases, when used in this article, shall have the meanings
3 given to them in this section, except where the context clearly
4 indicates a different meaning:

5 "Brownfields." A parcel of real property, or a portion of
6 the parcel, that has actual or perceived contamination and an
7 active potential for redevelopment.

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

9 "Environmental remediation tax credit" or "credit." The
10 credit provided under this article.

11 "Internal Revenue Code." The Internal Revenue Code of 1986
12 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

13 "Qualified purchaser." A purchaser of all or part of a site
14 having qualified tax liability.

15 "Qualified tax liability." The liability for taxes imposed
16 under Article IV, VI, VII, VII-A, VIII, VIII-A, IX, X or XV of
17 this act.

18 "Related party." The persons disallowed a deduction for
19 losses under section 267(b), (c) and (f)(1) of the Internal
20 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

21 "Remediation costs." The following costs:

22 (1) Preparation of bid documents and contracts.

23 (2) Engineering services.

24 (3) Site investigation, assessment and characterization,
25 including, but not limited to, collection of data and samples,
26 analysis of site samples and monitoring.

27 (4) Remediation activities and engineered barriers
28 including, but not limited to, demolition, clearance and
29 preparation of a site.

30 (5) Report and plan preparations.

1 (6) Legal fees and costs associated with site remediation.

2 "Site." A brownfield located in this Commonwealth.

3 "Taxpayer." An entity or person subject to tax under Article
4 IV, VI, VII, VII-A, VIII, VIII-A, IX, X or XV of this act.

5 "Unreimbursed eligible remediation costs." The remediation
6 costs approved by the Department of Environmental Protection
7 pursuant to section 1706-A of this article that were paid in
8 performing environmental remediation at a site. These costs
9 shall not include approved unreimbursed eligible remediation
10 costs that are at any time deducted under the provisions of the
11 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1
12 et seq.).

13 Section 1703-C. Credit for Environmental Remediation.--(a)
14 A taxpayer who incurs unreimbursed eligible remediation costs in
15 a taxable year may apply for an environmental remediation tax
16 credit as provided for in this article. By September 15, a
17 taxpayer must submit an application to the department for
18 unreimbursed eligible remediation costs incurred in the prior
19 calendar year.

20 (b) The department shall notify the taxpayer of the amount
21 of the taxpayer's credit approved by the department, by December
22 15 of the calendar year in which the taxpayer submitted an
23 application to the department for unreimbursed eligible
24 remediation costs that were incurred in the prior calendar year.

25 (c) The credit must be claimed for the taxable year in which
26 the department grants approval of the credit, but excess credit
27 may be carried over to succeeding years pursuant to section
28 1705-C.

29 (d) The credit is not available to any taxpayer if the
30 taxpayer or any related party intentionally or negligently

1 caused or contributed to, in any material respect, a release of
2 regulated substances as defined in section 103 of the act of May
3 19, 1995 (P.L.4, No.2), known as the "Land Recycling and
4 Environmental Remediation Standards Act," on, in, or under the
5 site that the remedial action was taken on and for which a
6 credit is now being sought.

7 Section 1704-C. Amount of Credit.--A taxpayer that is
8 qualified under section 1703-C of this act shall receive a
9 credit for the applicable taxable year equal to twenty-five per
10 cent of the unreimbursed eligible remediation costs in excess of
11 one hundred thousand dollars (\$100,000) per site. The total
12 credit allowed shall not exceed one hundred thousand dollars
13 (\$100,000) per year with a maximum total of three hundred
14 thousand dollars (\$300,000) per site over the entire course of
15 remediation.

16 Section 1705-C. Carryover, Carryback, Refund and Assignment
17 of Credit.--(a) If the taxpayer cannot use the entire amount of
18 the credit for the taxable year in which the credit is first
19 approved, then the excess may be carried over to succeeding
20 taxable years and used as a credit against the qualified tax
21 liability of the taxpayer for those taxable years. Each time
22 that the credit is carried over to a succeeding taxable year, it
23 is to be reduced by the amount that was used as a credit during
24 the immediately preceding taxable year. The credit provided by
25 this article may be carried over and applied to succeeding
26 taxable years for no more than fifteen taxable years following
27 the first taxable year for which the taxpayer was entitled to
28 claim the credit.

29 (b) A credit approved by the department in a taxable year
30 shall first be applied against the taxpayer's qualified tax

1 liability for the taxable year on which the credit was approved
2 before the credit is applied against any succeeding tax
3 liability under subsection (a).

4 (c) A taxpayer is not entitled to carry back or obtain a
5 refund of an unused credit.

6 (d) A credit allowed under this article may be sold to a
7 qualified purchaser as part of a sale of all or part of the site
8 for which the credit was granted or as part of a sale of an
9 interest of the taxpayer entity that owns the site. Upon the
10 sale of all or part of the site for which credit was granted,
11 the qualified purchaser shall succeed to the unused credit and
12 remaining carryforward period of the seller. In no event may a
13 credit be transferred to any taxpayer or related party if the
14 taxpayer or a related party would not be eligible under the
15 provisions of this article.

16 Section 1706-C. Determination of Environmental Remediation
17 Tax Credit.--(a) Prior to applying for the environmental
18 remediation tax credit a taxpayer shall first submit to the
19 Department of Environmental Protection an application for review
20 of remediation costs. The application and review process shall
21 be conducted in accordance with the requirements of this section
22 and the rules promulgated pursuant to subsection (f).

23 (b) No application for review shall be submitted until a
24 taxpayer has received written confirmation of a release of
25 liability from the Department of Environmental Protection
26 pursuant to the act of May 19, 1995 (P.L.4, No.2), known as the
27 Land Recycling and Environmental Remediation Standards Act. The
28 Department of Environmental Protection shall review the
29 application to determine whether the costs submitted are
30 remediation costs, and whether the costs incurred are

reasonable. The application shall be on forms prescribed and provided by the Department of Environmental Protection. At a minimum, the application shall include the following:

(1) Information identifying the taxpayer and the site for which the credit is being sought.

(2) A demonstration that the release of the regulated substances of concern was not caused or contributed to in any material respect by the taxpayer after 1990.

(3) An itemization and documentation, including receipts, of the remediation costs incurred.

(4) A demonstration that the costs incurred are remediation costs as defined in this article.

(5) A demonstration that the costs submitted for review were incurred by the taxpayer who performed remediation.

(6) An application fee in the amount set forth in subsection (d) for each site for which review of remediation costs is requested.

(7) Any other relevant information deemed necessary by the Department of Environmental Protection.

(c) Within sixty (60) days after receipt by the Department of Environmental Protection of an application meeting the requirements of subsection (b), the Department of Environmental Protection shall issue a letter to the taxpayer approving, disapproving or modifying the remediation costs submitted in the application. If the remediation costs are approved as submitted, the Department of Environmental Protection's letter shall state the amount of the remediation costs to be applied toward the environmental remediation tax credit. If an application is disapproved or approved with modification of remediation costs, the Department of Environmental Protection's letter shall set

forth the reasons for the disapproval or modification and state the amount of the remediation costs, if any, to be applied toward the environmental remediation tax credit.

(d) The taxpayer shall have the right to appeal the determination of the Department of Environmental Protection to the Environmental Hearing Board pursuant to the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act.

(e) The fees for reviews conducted under this section are in addition to any other fees or payments for Department of Environmental Protection services rendered for site remediation and shall be one thousand dollars (\$1,000) for each site reviewed. There shall be no fee for site review for any site that is located in whole or in part in an area designated as an enterprise zone by the Department of Community and Economic Development or a keystone opportunity zone established under the authority of the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone and Keystone Opportunity Expansion Zone Act. The Department of Environmental Protection shall attempt to streamline the application and review process for taxpayers involved in site remediation under this article or any other provision of law.

(f) The Department of Environmental Protection shall implement provisions to encourage the use of tax credits available under this article.

(g) The Department of Environmental Protection shall have the authority to enter into any contracts or agreements that may be necessary to carry out its duties and responsibilities under this section.

(h) Within six (6) months after the effective date of this

1 article, the Department of Environmental Protection shall
2 promulgate regulations prescribing procedures and standards for
3 the administration of this section.

4 Section 1707-C. Report.--The department, in cooperation with
5 the Department of Environmental Protection, shall develop a
6 program for monitoring the results achieved by the allowance of
7 a tax credit pursuant to this article and particularly on its
8 effect on brownfield remediation in this Commonwealth. The
9 department shall annually report its findings to the General
10 Assembly.

11 Section 1708-C. Termination.--The department shall not
12 approve an environmental remediation tax credit under this
13 article for taxable years ending after December 31, 2005.

14 Section 1709-C. Regulations.--The department shall
15 promulgate regulations necessary for the implementation and
16 administration of this article.

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