

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 993 Session of
2003

INTRODUCED BY RUBLEY, ADOLPH, BAKER, BALDWIN, BARD, BARRAR, BASTIAN, BELARDI, BELFANTI, BENNINGHOFF, BROWNE, CAPPELLI, CAWLEY, CORRIGAN, CRAHALLA, CREIGHTON, CURRY, DAILEY, DALEY, FAIRCHILD, FRANKEL, FREEMAN, GEIST, GEORGE, GORDNER, GRUCELA, HARHAI, HARPER, HENNESSEY, HERMAN, HERSHEY, HORSEY, HUTCHINSON, JOSEPHS, LAUGHLIN, LEACH, LEVDANSKY, MARSICO, McILHATTAN, MELIO, MUNDY, PAYNE, READSHAW, REICHLEY, ROSS, SAINATO, SATHER, SCAVELLO, SCHRODER, B. SMITH, SOLOBAY, STABACK, STEIL, T. STEVENSON, STURLA, SURRA, TANGRETTI, E. Z. TAYLOR, THOMAS, TURZAI, VANCE, VITALI, WANSACZ, WATSON, WHEATLEY, WOJNAROSKI, WRIGHT, YOUNGBLOOD AND YUDICHAK, MARCH 26, 2003

REFERRED TO COMMITTEE ON FINANCE, MARCH 26, 2003

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," further providing for exclusions from tax; and
11 providing for an energy-efficient building tax credit.

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

14 Section 1. Section 204 of the act of March 4, 1971 (P.L.6,
15 No.2), known as the Tax Reform Code of 1971, is amended by
16 adding clauses to read:

17 Section 204. Exclusions from Tax.--The tax imposed by

1 section 202 shall not be imposed upon any of the following:

2 * * *

3 (64) The sale at retail or use of the following electric
4 appliances that have received the Energy Star label developed by
5 the United States Environmental Protection Agency at the time of
6 purchase:

7 (i) A clothes washer purchased on or after the effective
8 date of this act but before December 31, 2011.

9 (ii) A room air conditioner purchased on or after the
10 effective date of this act but before December 31, 2011.

11 (iii) A standard size refrigerator purchased on or after the
12 effective date of this act but before December 31, 2011.

13 (iv) A clothes dryer purchased on or after the effective
14 date of this act but before December 31, 2011.

15 (v) A ceiling fan purchased on or after the effective date
16 of this act but before December 31, 2011.

17 (65) The sale at retail or use of a fuel cell that generates
18 electricity and heat using an electrochemical process and has an
19 electricity-only generation efficiency greater than 35% and has
20 a generating capacity of at least two kilowatts or an Energy
21 Star rating, whichever is higher.

22 (66) The sale at retail or use of a natural gas heat pump
23 that has a coefficient of performance of at least 1.25 for
24 heating and at least 0.70 for cooling; an electric heat pump
25 that has a heating system performance factor of at least 7.5 and
26 a cooling seasonal energy-efficient ratio of at least 13.5; an
27 advanced natural gas water heater that has an energy factor of
28 at least 0.65; or an electric heat pump hot water heater that
29 yields an energy factor of at least 1.7, or an Energy Star
30 rating, whichever is higher.

1 (67) The sale at retail or use of a central air conditioner
2 that has a cooling seasonal energy efficiency ratio (SEER) of at
3 least 13.5, or an Energy Star rating, whichever is higher, and
4 for central air conditioning systems, does not contain
5 hydrofluorocarbons or other ozone-depleting substances.

6 (68) The sale at retail or use of small wind energy systems
7 up to 75 kilowatts.

8 (69) Solar water heating systems or components that meet
9 Solar Rating and Certification Corporation (SRCC) standards.

10 (70) Solar photovoltaic systems whose components meet
11 applicable Underwriters Laboratories (UL) and Institute of
12 Electronic and Electrical Engineers (IEEE) standards.

13 (71) Advanced time-of-use metering devices.

14 Section 2. The act is amended by adding an article to read:

15 ARTICLE XVIII-C

16 HIGH PERFORMANCE GREEN BUILDINGS TAX CREDIT

17 Section 1801-C. Short title.

18 This article shall be known and may be cited as the High
19 Performance Green Buildings Tax Credit Law.

20 Section 1802-C. Purpose.

21 (a) General purpose.--It is the policy of the Commonwealth
22 to encourage the construction, rehabilitation and maintenance of
23 buildings in this Commonwealth in such a manner as to:

24 (1) Improve the health and productivity of building
25 occupants by meeting advanced criteria for indoor
26 environmental quality.

27 (2) Improve energy efficiency and conservation of energy
28 through renewable and clean energy technologies.

29 (3) Improve the natural environment by decreasing the
30 discharge of pollutants from buildings and decreasing the

1 environmental impact of the building siting, landscaping,
2 storm water and operating water management, construction,
3 operation and deconstruction of buildings.

4 (4) Promote better environmental standards for the
5 design, construction, rehabilitation, maintenance and
6 deconstruction of buildings.

7 (5) Increase the use and demand for environmentally
8 preferable building materials, finishes and furnishings.

9 (6) Create industry and public awareness and use of new
10 technologies and practices that can improve the quality of
11 life for building occupants, communities and the
12 Commonwealth.

13 (b) Development of State capacity.--It is also the policy of
14 the Commonwealth to improve Pennsylvania's capacity to design,
15 build and operate high performance green buildings, and in so
16 doing to create new jobs and contribute to economic growth in
17 Pennsylvania.

18 (c) Continuing improvement.--It is also the policy of the
19 Commonwealth to foster and encourage continuing improvement in
20 meeting the goals described in subsections (a) and (b).

21 Section 1803-C. Definitions.

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

25 "Commissioning." The process of verifying and ensuring that
26 building systems are designed, installed, functionally tested
27 and calibrated to operate as intended by the design criteria and
28 other requirements of the building project.

29 "Credit allowance year." The later of:

30 (1) The taxable year during which the property,

1 construction, completion or rehabilitation referred to in
2 section 1805-C(a) has been placed in service or has received
3 a final certificate of occupancy.

4 (2) The first taxable year with respect to which the
5 credit may be claimed pursuant to the initial credit
6 component certificate issued pursuant to section 1806-C(a).
7 "Department." The Department of Revenue of the Commonwealth.
8 "Eligible building." A building located in this Commonwealth

9 which is:

10 (1) A residential multifamily building with at least
11 four habitable stories that contain at least 10,000 square
12 feet of interior space.

13 (2) One or more residential multifamily buildings with
14 at least four habitable stories that are part of a single or
15 phased construction project that contains, in the aggregate,
16 at least 20,000 square feet of interior space, provided that
17 in any single phase of such project at least 10,000 square
18 feet of interior space is under construction or
19 rehabilitation.

20 (3) A building used for commercial or industrial
21 purposes.

22 (4) Any combination of buildings described in
23 subparagraphs (1) through (3).

24 "Gold level building." A high performance green building
25 that meets a level of performance that is equivalent to or
26 higher than the second highest level of performance certified
27 under Leadership in Energy and Environmental Design.

28 "High performance green building." An eligible building, or
29 portion thereof, that has been certified under the Leadership in
30 Energy and Environmental Design High Performance Green Building

1 Rating System or any other program that requires an equivalent
2 level of performance.

3 "LEED (Trade Mark)." The Leadership in Energy and
4 Environmental Design green building rating system developed and
5 published by the United States Green Building Council.

6 "Platinum level building." A high performance green building
7 that meets a level of performance that is equivalent to or
8 higher than the highest level of performance certified under
9 Leadership in Energy and Environmental Design.

10 "Silver level building." A high performance green building
11 that meets a level of performance that is equivalent to or
12 higher than the third highest level of performance certified
13 under Leadership in Energy and Environmental Design.

14 Section 1804-C. High performance green building credit.

15 (a) Eligible taxpayers and buildings.--The high performance
16 green building tax credit shall be available to a taxpayer,
17 whether owner or tenant, for either the construction of a high
18 performance green building or the rehabilitation of a building
19 which is not a high performance green building into a high
20 performance green building.

21 (b) Application.--A taxpayer may apply for a high
22 performance green building credit against any tax imposed under
23 Article IV, VI, VII, VII-A, VIII, VIII-A, IX, X or XV. The
24 amount of the credit shall be as specified in section 1805-C of
25 this article. The amount of each credit shall not exceed the
26 limit set forth in the initial credit certificate obtained
27 pursuant to section 1806-C(a). In the determination of such
28 credit, no cost paid or incurred by the taxpayer shall be the
29 basis for more than one credit.

30 (c) Requirements.--The credit may not be allowed for any

1 taxable year unless all of the following are met:

2 (1) The taxpayer has obtained and filed both an initial
3 credit certificate and an eligibility certificate issued
4 pursuant to section 1806-C.

5 (2) A certificate of occupancy for the building has been
6 issued.

7 (3) The property for which the credit is claimed is in
8 service during the taxable year.

9 (d) Timing.--The credit amount allowed for the high
10 performance green building may be claimed for the credit
11 allowance year and for each of the three taxable years
12 succeeding the credit allowance year. The total credit allowed
13 in the aggregate for the credit allowance year and the three
14 succeeding years may not exceed the maximum set forth in the
15 initial credit certificate issued under section 1806-C.

16 (e) Credit to successor owner.--If a credit is allowed to a
17 building owner pursuant to this article with respect to property
18 and the property, or an interest therein, is sold, the credit
19 for the period after the sale which would have been allowable to
20 the prior owner had the property not been sold shall be
21 allowable to the new owner. Credit for the year of sale shall be
22 allocated between the parties on the basis of the number of days
23 during such year that the property or interest was held by each.

24 (f) Credit to successor tenant.--If a credit is allowed to a
25 tenant pursuant to this article with respect to property and if
26 the tenancy is terminated but the property remains in use in the
27 building by a successor tenant, the credit for the period after
28 termination which would have been allowable to the prior tenant
29 had the tenancy not been terminated shall be allowable to the
30 successor tenant. Credit for the year of termination shall be

1 allocated between the parties on the basis of the number of days
2 during such year that the property was used by each.

3 Section 1805-C. Credit amount.

4 (a) Amount of tax credit.--The high performance green
5 building tax credit that is available annually to a taxpayer for
6 each of the four years specified in section 1804-C(d) shall be
7 based on the number of square feet of floor space in the
8 building, the size of the building, and the level of LEED (Trade
9 Mark) performance achieved by the building. The levels of LEED
10 (Trade Mark) performance for which a building may qualify for a
11 tax credit shall be silver, gold and platinum. In addition, no
12 building may receive a tax credit unless it has received at
13 least two LEED (Trade Mark) points for energy efficiency. The
14 department shall adopt by regulation a schedule showing the
15 amount of tax credit on a per-square-foot basis for each size of
16 building and for each level of LEED (Trade Mark) performance.

17 (b) Reduction in credit amount.--The amount of any Federal,
18 State or local grant received by the taxpayer and used for the
19 purchase, design, construction, rehabilitation or commissioning
20 of a high performance green building, and which was not included
21 in the Federal gross income of the taxpayer, shall be subtracted
22 from the amount of the allowable cost.

23 Section 1806-C. Certifications.

24 (a) Initial credit certificate.--The department shall issue
25 an initial credit certificate to a taxpayer that has applied for
26 one where the taxpayer has made a showing that he will place in
27 service within a reasonable period of time a property which
28 would warrant the allowance of a credit under this article. The
29 initial credit certificate shall state the first taxable year
30 for which the credit may be claimed and its expiration date, and

1 shall apply only to property placed in service by such
2 expiration date. The expiration date may be extended at the
3 discretion of the department in order to avoid unwarranted
4 hardship. The initial credit certificate shall state the maximum
5 amount of credit allowable for each of the four taxable years
6 for which the credit is allowed under section 1804-C. Initial
7 credit certificates shall not be issued, in the aggregate, for
8 more than \$50 million worth of credits. In addition, such
9 certificates shall be limited in their applicability, as
10 follows:

11	<u>Total credits shall not</u>	<u>With respect to taxable</u>
12	<u>be allowed for more than:</u>	<u>years beginning in:</u>
13	<u>\$2 million</u>	<u>2003</u>
14	<u>\$4 million</u>	<u>2004</u>
15	<u>\$6 million</u>	<u>2005</u>
16	<u>\$8 million</u>	<u>2006</u>
17	<u>\$10 million</u>	<u>2007</u>
18	<u>\$8 million</u>	<u>2008</u>
19	<u>\$6 million</u>	<u>2009</u>
20	<u>\$4 million</u>	<u>2010</u>
21	<u>\$2 million</u>	<u>2011</u>

22 (b) Eligibility certificate.--For each taxable year for
23 which a taxpayer claims a credit under this section, the
24 taxpayer shall obtain from the project architect or professional
25 engineer licensed to practice in this Commonwealth an
26 eligibility certificate. The eligibility certificate shall
27 consist of a certification by the United States Green Building
28 Council that the building with respect to which the credit is
29 claimed is LEED (Trade Mark) certified, and that the building
30 has been commissioned at a level of performance that is

1 equivalent to or greater than the level of performance required
2 by the LEED (Trade Mark) Prerequisite for Fundamental Building
3 Systems Commissioning. The certificate shall also state the
4 level of LEED (Trade Mark) performance achieved by the building,
5 silver, gold or platinum, to permit determination of the proper
6 credit amount under section 1805-C. The eligibility certificate
7 shall be made in accordance with the standards and guidelines in
8 effect at the time the property which is the basis for the
9 credit was placed in service. The eligibility certificate shall
10 set forth the specific findings upon which the certificate is
11 based.

12 (c) Filing.--The taxpayer shall file the eligibility
13 certificate and the associated initial credit certificate with
14 the application for credit.

15 (d) Information.--The eligibility certificate shall include
16 sufficient information to identify each building and such other
17 information as the department may require. Except for the first
18 year for which the tax credit is sought, such information shall
19 include:

20 (1) Annual energy consumption for the building in terms
21 of British Thermal Units per square foot per year as well as
22 costs per square foot per year for energy consumption by fuel
23 type.

24 (2) Annual results of indoor air monitoring relating to
25 LEED (Trade Mark), if any.

26 (3) Confirmation that the building continues to meet
27 requirements regarding smoking areas, if provided.

28 Section 1807-C. Regulations.

29 (a) General rule.--Within six months after the effective
30 date of this article, the department shall promulgate such

1 regulations as may be necessary for the implementation and
2 administration of this article.

3 (b) Review of regulations.--When a LEED (Trade Mark)
4 standard or certification requirement for high performance green
5 buildings is modified, the department shall publish a notice to
6 that effect in the Pennsylvania Bulletin, requesting comment on
7 whether the regulations adopted under this act should be
8 modified for eligible buildings to which the new standard or
9 certification requirement would apply. In considering whether to
10 modify regulations adopted under this act, the department shall
11 consider the findings and goals contained in section 1802-C. The
12 department may adopt regulations to correspond to the levels of
13 performance contained in the new LEED (Trade Mark) standard or
14 certification requirement. Such regulations may include
15 appropriate changes to the definition of high performance green
16 building contained in section 1803-C.

17 (c) Additional review.--The department shall also, from time
18 to time, review the sales tax exclusions set forth in section
19 204 to determine whether they are based on the most current and
20 energy-efficient technologies available for sale. If the
21 department determines, based on this review, that modification
22 of one or more exclusions is necessary to ensure that they are
23 based on the most current and energy-efficient technologies
24 available for sale, it may adopt appropriate regulations
25 modifying section 204.

26 (d) Cooperation.--In drafting, responding to comments and
27 finalizing regulations under this section, the department shall
28 cooperate with the Department of Environmental Protection and
29 the Governor's Green Government Council.

30 Section 3. This act shall take effect in 60 days.