

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2801 Session of
2008

INTRODUCED BY STERN, HERSHEY, FLECK, REICHLEY, DENLINGER, RAPP, KAUFFMAN, R. STEVENSON, BARRAR, R. MILLER, SAYLOR, SIPTROTH, FAIRCHILD, BOYD, BAKER, HICKERNELL, MILLARD, HUTCHINSON, ROCK, VULAKOVICH, REED, WATSON, SWANGER, ROAE, PHILLIPS, MARSICO, MAJOR, MARSHALL, HARRIS, MENSCH, BOBACK, HESS, GEORGE, BASTIAN, KESSLER, PICKETT, KOTIK, LONGIETTI, CUTLER, GINGRICH, BEYER, BEAR, MURT, CAUSER, GOODMAN, PYLE, EVERETT, HARHAI, GEIST AND ROHRER, SEPTEMBER 29, 2008

REFERRED TO COMMITTEE ON FINANCE, SEPTEMBER 29, 2008

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, in resource enhancement and
11 protection tax credit, for resource enhancement and
12 protection tax credit program and for annual tax credits.

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

15 Section 1. Sections 1703-E and 1709-E of the act of March 4,
16 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added
17 July 25, 2007 (P.L.373, No.55), are amended to read:

18 Section 1703-E. Resource Enhancement and Protection Tax Credit
19 Program.

20 (a) Establishment.--The Resource Enhancement and Protection

1 Tax Credit Program is established to encourage private
2 investment in the implementation of best management practices on
3 agricultural operations, the planting of riparian forest buffers
4 and the remediation of legacy sediment.

5 (b) Limits.--The following limits shall apply:

6 (1) Except as set forth in paragraph (5), an eligible
7 applicant may be granted a maximum of \$150,000 in tax credits
8 under this program.

9 (2) No more than \$150,000 in tax credits shall be
10 granted toward projects for an agricultural operation.

11 (3) An eligible applicant may submit an application for
12 a single project or multiple applications for multiple
13 projects within the limits of this section.

14 (4) There shall be no limit on the amount of tax credits
15 that may be purchased from or be assigned from an eligible
16 applicant.

17 (5) Notwithstanding paragraph (1), there shall be no
18 limit on the amount of tax credits granted to a sponsor under
19 subsection (e).

20 (6) The credits for legacy sediment shall not be issued
21 prior to July 1, 2008. Applications for legacy sediment
22 remediation will not be accepted prior to July 1, 2008.

23 (c) Carryover.--

24 (1) If the eligible applicant cannot use the entire
25 amount of the tax credit for the taxable year in which the
26 tax credit is first granted, then the excess may be carried
27 over to succeeding taxable years and used as a credit against
28 the qualified tax liability of the eligible applicant for
29 those taxable years. Each time that the tax credit is carried
30 over to a succeeding taxable year, it is to be reduced by the

1 amount that was used as a credit during the immediately
2 preceding taxable year. The tax credit provided by this
3 article may be carried over and applied to succeeding taxable
4 years for no more than 15 taxable years following the first
5 taxable year for which the eligible applicant was entitled to
6 claim the credit.

7 (2) A tax credit granted by the department shall be
8 applied against the taxpayer's qualified tax liability for
9 the current taxable year as of the date on which the credit
10 was granted before the tax credit is applied against any tax
11 liability under paragraph (1).

12 (3) A tax credit granted under this article shall not be
13 carried back or refunded.

14 (d) Sale or assignment of credit.--

15 (1) An eligible applicant, upon application to and
16 approval by the commission, may sell or assign, in whole or
17 in part, a tax credit granted to the eligible applicant under
18 this article [if no claim for allowance of the credit is
19 filed within one year from the date the credit is granted by
20 the department under section 1708-E]. The commission, in
21 consultation with the department, shall establish guidelines
22 for the approval of applications under this subsection.

23 (2) The purchaser or assignee of a portion of a tax
24 credit under this subsection shall immediately claim the
25 credit in the taxable year in which the purchase or
26 assignment is made. The amount of the credit that a purchaser
27 or assignee may use against a qualified tax liability may not
28 exceed 75% of the qualified tax liability for the taxable
29 year. The purchaser or assignee may not carry over, carry
30 back, obtain a refund of or sell or assign the tax credit.

1 The purchaser or assignee shall notify the department of the
2 seller or assignor of the tax credit in compliance with
3 procedures specified by the department.

4 (3) Before an application is approved, the department
5 must make a finding that the applicant has filed all required
6 State tax reports and returns for all applicable taxable
7 years and paid any balance of State tax due as determined at
8 settlement, assessment or determination by the department.

9 (4) Notwithstanding any other provision of law, the
10 department shall settle, assess or determine the tax of an
11 applicant under this subsection within 90 days of the filing
12 of all required final returns or reports in accordance with
13 section 806.1(a)(5) of the act of April 9, 1929 (P.L.343,
14 No.176), known as The Fiscal Code.

15 (e) Sponsorship.--An eligible applicant may be a sponsor by
16 applying for a tax credit for a project authorized under section
17 1707-E if a written [agreement] contract between the eligible
18 applicant and the owner of property on which the project will be
19 completed is submitted to the commission, certifying that the
20 property owner will comply with all the provisions of this
21 article.

22 (f) Tax credits for pass-through entities.--

23 (1) If a pass-through entity has any unused tax credit
24 under section 1704-E, it may elect in writing, according to
25 procedures established by the department, to transfer all or
26 a portion of the credit to shareholders, members or partners
27 in proportion to the share of the entity's distributive
28 income to which the shareholder, member or partner is
29 entitled.

30 (2) The credit provided under paragraph (1) is in

1 addition to any tax credit to which the shareholder, member
2 or partner is otherwise entitled under this article. However,
3 a pass-through entity and its shareholders, members or
4 partners shall not claim a tax credit under this article for
5 the same project authorized under section 1707-E.

6 (3) A shareholder, member or partner of a pass-through
7 entity to whom credit is transferred under paragraph (1)
8 shall immediately claim the credit in the taxable year in
9 which the transfer is made. The shareholder, member or
10 partner may not carry forward, carry back, obtain a refund of
11 or sell or assign the credit.

12 Section 1709-E. Annual tax credits.

13 The total amount of tax credits authorized by the commission
14 shall not exceed [\$10,000,000] \$35,000,000 in any fiscal year.

15 Section 2. The amendment of section 1703-E(d) of the act
16 shall apply retroactively to July 1, 2008.

17 Section 3. This act shall take effect immediately.