

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2583 Session of 2010

INTRODUCED BY DERMODY, TURZAI, MURPHY, BISHOP, BOYLE, MELIO, BRENNAN, SOLOBAY, McGEEHAN, W. KELLER, MATZIE, GERGELY, HARKINS, SANTONI, FAIRCHILD, M. O'BRIEN, K. SMITH, THOMAS, YUDICHAK, FREEMAN, READSHAW, STABACK, DePASQUALE, D. COSTA, DEASY, KOTIK, LONGIETTI, SIPTROTH, GOODMAN, PASHINSKI, MANN, HARHAI, CALTAGIRONE, M. SMITH, HALUSKA, CARROLL, BRIGGS, JOSEPHS, GIBBONS, YOUNGBLOOD, HANNA, MAHONEY, BELFANTI, REICHLEY, DALEY, HORNAMAN, DeLUCA, GEIST, FRANKEL AND BRADFORD, JUNE 16, 2010

REFERRED TO COMMITTEE ON FINANCE, JUNE 16, 2010

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 a brownfield job creation program.

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

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

16 ARTICLE XIX-B

17 BROWNFIELD JOB CREATION PROGRAM

18 Section 1901-B. Scope of article.

1 This article relates to the brownfield job creation program.

2 Section 1902-B. Definitions.

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

6 "Brownfield." A parcel of real property that meets all of
7 the following:

8 (1) On July 1, 2010, was within a special industrial
9 area, as described in section 305(a) of the act of May 19,
10 1995 (P.L.4, No.2), known as the Land Recycling and
11 Environmental Remediation Standards Act, for which the
12 Department of Environmental Protection has executed a special
13 industrial area consent order and agreement, as provided
14 under section 502(a) of the Land Recycling and Environmental
15 Remediation Standards Act.

16 (2) On July 1, 2010, had no permanent vertical
17 structures affixed to it.

18 "Brownfield employer." A person or entity subject to the
19 taxes imposed by Article II, III, IV, VI, VII, VIII, IX, X or
20 XV, who employs one or more employees at a brownfield. The term
21 shall include a pass-through entity.

22 "Employee." An individual who is employed by a brownfield
23 employer at a brownfield.

24 "Full-time equivalent employee." The whole number of
25 employees, rounded down, that equals the sum of:

26 (1) the total paid hours, including paid time off and
27 family leave under the Family and Medical Leave Act of 1993
28 (Public Law 103-3, 29 U.S.C. § 2601 et seq.) of all of the
29 brownfield employer's employees classified as nonexempt
30 during the brownfield employer's tax year divided by 2000;

1 and
2 (2) a total number arrived at by adding, for each
3 brownfield employer's employee classified as exempt scheduled
4 to work at least 35 hours per week, the fraction equal to the
5 portion of the year the exempt employee was paid by the
6 brownfield employer. Whether an employee shall be classified
7 as exempt or nonexempt shall be determined under the Fair
8 Labor Standards Act of 1938 (52 Stat. 1060, 29 U.S.C. § 201
9 et seq.).

10 "Pass-through entity." A Pennsylvania S corporation,
11 partnership, limited partnership, limited liability company,
12 business trust or other unincorporated entity that for Federal
13 income tax purposes is taxable as a partnership. The term shall
14 include a pass-through owner.

15 "Pass-through owner." A shareholder of a Pennsylvania S
16 corporation, a partner of a partnership or a limited
17 partnership, a member of a limited liability company, a
18 beneficial owner of a business trust, or the owner of any other
19 unincorporated entity each of which, for Federal income tax
20 purposes, is taxable as a partnership.

21 "Qualified tax liability." Any tax owed by a brownfield
22 employer under Article II, III, IV, VI, VII, VIII, IX or XV for
23 a tax year.

24 Section 1903-B. Brownfield job creation tax credit.

25 (a) Tax credit.--A brownfield employer shall be entitled to
26 claim a tax credit against its qualified tax liability and, as
27 provided under subsection (d), against taxes it is required to
28 withhold under section 316.

29 (b) Availability.--The tax credit shall not be available to
30 a brownfield employer if the brownfield employer, after January

1 1, 1990, intentionally or negligently caused or contributed to,
2 in any material respect, a level of regulated substance above
3 the cleanup standards in the act of May 19, 1995 (P.L.4, No.2),
4 known as the Land Recycling and Environmental Remediation
5 Standards Act, on, in or under the brownfield at which an
6 employee described under subsection (c) is employed.

7 (c) Amount.--The amount of the tax credit a brownfield
8 employer may claim against its qualified tax liability in any
9 tax year shall be equal to \$3,500 for each full-time equivalent
10 employee of the brownfield employer during the tax year.

11 (d) Excess tax credits.--Any tax credit allowed under
12 subsection (c) in excess of the brownfield employer's qualified
13 tax liability for any tax year may, at the election of the
14 brownfield employer, be applied as a credit against taxes it is
15 required to withhold under section 316 for the following year on
16 a weekly, biweekly or monthly basis depending on the brownfield
17 employer's payroll period and when withholding taxes are
18 remitted. Any tax credit under this subsection is not considered
19 income to the brownfield employer. The amount of withholding
20 taxes under this subsection that a brownfield employer claims a
21 tax credit against shall be treated as an amount withheld under
22 section 316 and shall be allowed to the recipient of the
23 compensation as a credit against the tax imposed on him under
24 section 312.

25 (e) Claim.--A brownfield employer may claim the tax credit
26 allowed under subsection (c) or (d) for a period of up to ten
27 consecutive tax years during the 15-year period beginning
28 January 1, 2011, and ending December 31, 2025. The tax credit
29 that a brownfield employer may use in a tax year may not exceed
30 the amount of the brownfield employer's qualified tax liability

1 plus the taxes it is required to withhold under section 316. A
2 brownfield employer may carry forward for up to ten years any
3 tax credit originally claimed under this section during the 15-
4 year period that it is unable to use in the year the tax credit
5 is first available. The ten-year carryforward period may extend
6 into tax years beginning after December 31, 2025. Tax credit
7 carryforwards may be used by a brownfield employer on a first-
8 in-first-out basis.

9 (f) Dual-claim prohibited.--In a given year, a brownfield
10 employer may only claim tax credits under subsection (c) or (d)
11 or under the act of October 6, 1998 (P.L.705, No.92), known as
12 the Keystone Opportunity Zone, Keystone Opportunity Expansion
13 Zone and Keystone Opportunity Improvement Zone Act.

14 (g) Unused tax credit.--If a pass-through entity has any
15 unused tax credit under this section, it may allocate all or a
16 portion of the tax credit to its pass-through owners. If the
17 pass-through owner is unable to use the tax credit in the year
18 it is first available, the pass-through owner may carry forward
19 the tax credit for up to ten years and apply the tax credit
20 carryforward on a first-in-first-out basis. The ten-year carry
21 forward period may extend into tax years beginning after
22 December 31, 2025.

23 (h) Transfer.--Any tax credit or tax credit carryforward
24 that a brownfield employer is entitled to claim or use may be
25 transferred and continued by any transferee of all or
26 substantially all of the assets of the brownfield employer.

27 Section 2. This act shall take effect January 1, 2011, or
28 immediately, whichever is later.