

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1485 Session of
2010

INTRODUCED BY DINNIMAN, MELLOW, FONTANA, BOSCOLA, COSTA,
ERICKSON, FARNESE, FERLO, KITCHEN, O'PAKE, STACK, STOUT,
D. WHITE, WILLIAMS, WOZNIAK, HUGHES, TARTAGLIONE AND
GREENLEAF, NOVEMBER 8, 2010

REFERRED TO FINANCE, NOVEMBER 8, 2010

AN ACT

1 Amending Title 72 (Taxation and Fiscal Affairs) of the
2 Pennsylvania Consolidated Statutes, providing for Marcellus
3 shale job creation tax credit.

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

6 Section 1. Title 72 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 Chapter

9 31. Marcellus Shale Job Creation Tax Credit

10 CHAPTER 31

11 MARCELLUS SHALE JOB CREATION TAX CREDIT

12 Sec.

13 3101. Definitions.

14 3102. Eligibility.

15 3103. Application process.

16 3104. Tax credits.

17 3105. Prohibitions.

1 3106. Penalties.

2 3107. Annual reports.

3 3108. Notice of availability of tax credits.

4 § 3101. Definitions.

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

8 "Base period." As follows:

9 (1) Except as set forth in paragraph (2), the three
10 years immediately preceding the date on which a company may
11 begin creating new jobs which may be eligible for job
12 creation tax credits.

13 (2) If a company has been in business in this
14 Commonwealth for less than three years, the period which it
15 has been in business in this Commonwealth.

16 "Department." The Department of Labor and Industry of the
17 Commonwealth.

18 "Job creation tax credits." Tax credits for job creation for
19 which the department has issued a certificate under this
20 chapter.

21 "New job." A full-time job, the average hourly rate,
22 excluding benefits, for which must be at least 350% of the
23 Federal minimum wage, created within a municipality located in
24 this Commonwealth by a company within three years from the start
25 date. The term includes a job which was previously held by a
26 nonresident and is filled by a resident. The term does not
27 include a temporary or seasonal job.

28 "Nonresident." An individual who does not reside in this
29 Commonwealth.

30 "Qualified apprenticeship training program." A program

1 registered with the Apprenticeship and Training council within
2 the Department of Labor and Industry that is in compliance with
3 applicable Federal and State laws and regulations and which
4 requires at least 2,000 but not more than 10,000 hours of on-
5 the-job apprenticeship training.

6 "Resident." Any natural person who is considered a resident
7 of this Commonwealth under the act of March 4, 1971 (P.L.6,
8 No.2), known as the Tax Reform Code of 1971.

9 "Start date." The date on which a company may begin creating
10 new jobs which may be eligible for job creation tax credits.

11 "Year one." A one-year period immediately following the
12 start date.

13 "Year three." A one-year period immediately following the
14 end of year two.

15 "Year two." A one-year period immediately following the end
16 of year one.

17 § 3102. Eligibility.

18 In order to be eligible to receive job creation tax credits
19 under this chapter, a company must demonstrate to the department
20 the following:

21 (1) The company's financial stability and the project's
22 financial viability.

23 (2) The company's express intent to maintain operations
24 in this Commonwealth for a period of five years from the date
25 the company submits its tax credit certificate to the
26 Department of Revenue.

27 (3) The company is in conformity with industry laws and
28 regulations overseen and enforced by the Department of
29 Environmental Protection.

30 (4) The ability to conduct business in this Commonwealth

1 including the appropriate licenses and certifications.

2 (5) The intent to employ residents in new jobs that are
3 full-time, family sustaining and provide an average hourly
4 rate and benefits.

5 § 3103. Application process.

6 (a) Application.--A company must complete and submit to the
7 department a job creation tax credit application along with a
8 copy of the permit issued by the Department of Environmental
9 Protection providing that the company has obtained the necessary
10 permit allowing the company to drill in this Commonwealth or a
11 statement from the Department of Environmental Protection
12 stating the same. The Department of Environmental Protection
13 shall notify the department, the Department of Revenue and the
14 department upon suspension or revocation of drilling permits or
15 other changes that affect the company's ability to continuously
16 drill in this Commonwealth.

17 (b) Employment of residents.--At least 80% of the
18 applicant's work force in this Commonwealth must be composed of
19 residents.

20 (c) Applicant priority.--The department shall give priority
21 to eligible applicants that will place the following residents
22 in new jobs:

23 (1) Workers who have completed a qualified
24 apprenticeship training program or a job training program
25 approved by the department.

26 (2) Dislocated workers under the act of December 18,
27 2001 (P.L.949, No.114), known as the Workforce Development
28 Act, who meet any one of the following conditions:

29 (i) Have been terminated or laid off or have
30 received notice of termination or layoff, and are

1 eligible for or have exhausted unemployment compensation
2 benefits.

3 (ii) Are unlikely to return to the industry or
4 occupation in which the individuals were employed.

5 (iii) Have been terminated or received notice of
6 termination as a result of the permanent closure or
7 relocation of a plant, facility or plant operation in
8 which the individuals were employed.

9 (iv) Are chronically unemployed.

10 (v) Have limited opportunities of employment in the
11 geographic area in which the individuals reside.

12 (vi) Are individuals who may face substantial
13 barriers to employment because of age or disability.

14 (3) Workers who have been unemployed for at least six
15 months.

16 (4) Underemployed workers who require skill training to
17 meet industry demands or increase employment opportunities.

18 (d) Approval.--If the department approves the company's
19 application, the department and the company shall execute a
20 commitment letter containing the following:

21 (1) A description of the project.

22 (2) The number of Pennsylvania residents employed in new
23 jobs.

24 (3) The amount of private capital investment in the
25 project.

26 (4) The maximum job creation tax credit amount the
27 company may claim.

28 (5) A signed statement that the company intends to
29 maintain its operation in this Commonwealth for five years
30 from the start date.

1 (6) A signed statement from the company that the company
2 will provide to the department a list of workers which
3 satisfies the requirements of subsection (b) for which the
4 company will claim tax credit, including documentation of
5 each worker's status as a resident of this Commonwealth.

6 (7) A signed statement that the company will refund the
7 Commonwealth all job creation tax credits in accordance with
8 section 3106 (relating to penalties) for noncompliance.

9 (8) Such other information as the department deems
10 appropriate.

11 (e) Commitment letter.--After a commitment letter has been
12 signed by both the Commonwealth and the company, the company
13 shall receive a job creation tax credit certificate and filing
14 information.

15 § 3104. Tax credits.

16 (a) Maximum amount.--A company may claim a tax credit of
17 \$2,500 per resident employed in a new job and up to the maximum
18 job creation tax credit amount specified in the commitment
19 letter.

20 (b) Determination of new jobs created.--

21 (1) New jobs shall be deemed created in year one to the
22 extent that the company's average employment by quarter
23 during year one exceeds the company's average employment
24 level during the company's base period, as adjusted for any
25 job held by a nonresident during the period which is no
26 longer held by a nonresident.

27 (2) New jobs shall be deemed created in year two to the
28 extent that the company's average employment by quarter
29 during year two exceeds the company's average employment by
30 quarter during year one.

1 (3) New jobs shall be deemed created in year three to
2 the extent that the company's average employment by quarter
3 during year three exceeds the company's average employment by
4 quarter during year two.

5 (c) Applicable taxes.--A company may apply the tax credit to
6 100% of the company's corporate net income tax, capital stock
7 and franchise tax or the capital stock and franchise tax of a
8 shareholder of the company if the company is a Pennsylvania S
9 corporation, personal income tax or the personal income tax of
10 shareholders of a Pennsylvania S corporation or any combination
11 thereof.

12 (d) Tax credit term.--A company may claim the job creation
13 tax credit for each resident employed in a new job, as approved
14 by the department, for a period determined by the department but
15 not to exceed five years from the date the company first submits
16 a job creation tax credit certificate.

17 (e) Availability of tax credits.--Each fiscal year,
18 \$24,000,000 in tax credits shall be made available to the
19 department and may be awarded by the department in accordance
20 with this chapter. In addition, in any fiscal year, the
21 department may reissue or assign prior fiscal year tax credits
22 which have been recaptured under section 3106(a) or (b)
23 (relating to penalties) and may award prior fiscal year credits
24 not previously issued. Prior fiscal year credits may be
25 reissued, assigned or awarded by the department.

26 § 3105. Prohibitions.

27 The following actions with regard to job creation tax credits
28 are prohibited:

29 (1) Approval of jobs that have been created prior to the
30 start date, unless the job was held by a nonresident who has

1 been replaced by a resident.

2 (2) The assignment, transfer or use of credits by any
3 other company, provided, however, that tax credits may be
4 assigned in whole or in part to an affiliated entity. As used
5 in this paragraph, the term "affiliated entity" means an
6 entity which is part of the same "affiliated group," as
7 defined by section 1504(a) (1) of the Internal Revenue Code of
8 1986 (Public Law 99-514, 26 U.S.C. § 1504(a) (1)), as the
9 company awarded the credit.

10 § 3106. Penalties.

11 (a) Failure to maintain operations.--A company which
12 receives job creation tax credits and fails to substantially
13 maintain existing operations and the operations related to the
14 job creation tax credits in this Commonwealth for a period of
15 five years from the date the company first submits a job
16 creation tax credit certificate to the Department of Revenue
17 shall be required to refund to the Commonwealth the total amount
18 of credit or credits granted.

19 (b) Failure to employ residents in new jobs.--A company
20 which receives job creation tax credits and fails to:

21 (1) Continuously employ the approved number of residents
22 in new jobs within three years of the start date will be
23 required to refund to the Commonwealth the total amount of
24 credit or credits granted.

25 (2) It shall not be considered failure to employ
26 residents under this section if a company continues to
27 provide remuneration to employees during a work stoppage that
28 is due to an event or circumstances beyond the employer's
29 control.

30 (c) Waiver.--

1 (1) The department may waive the penalties outlined in
2 subsection (b) if it is determined that a company's
3 operations were not maintained or the residents employed in
4 new jobs because of circumstances beyond the company's
5 control. Such circumstances include natural disasters or
6 unforeseen industry trends or a loss of a major supplier
7 market.

8 (2) A company may seek a waiver for failure to employ
9 residents in at least 80% of its Commonwealth work force due
10 to the availability of technical or professional personnel
11 needed if the company has conducted a reasonable search to
12 employ residents.

13 § 3107. Annual reports.

14 (a) Contents.--The department shall provide an annual report
15 on job creation tax credits which at a minimum shall include:

16 (1) A list of all job creation tax credit certificates
17 provided during the previous fiscal year.

18 (2) The name and location of each company receiving job
19 creation tax credit certificates.

20 (3) An analysis of the job creation tax credits' ability
21 to create jobs in this Commonwealth.

22 (4) Any other information that may be deemed relevant by
23 the department.

24 (b) Submission.--The annual report shall be submitted to the
25 Governor, the Majority Leader of the Senate, the Minority Leader
26 of the Senate, the Majority Leader of the House of
27 Representatives and the Minority Leader of the House of
28 Representatives by March 1 of the first full year following the
29 effective date of this section and March 1 of each year
30 thereafter.

1 § 3108. Notice of availability of tax credits.

2 The department shall publish notice of the availability of
3 the job creation tax credit on its publicly accessible Internet
4 website and make information available annually to the
5 Department of Labor and Industry Workforce Investment Board for
6 distribution to local boards.

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