

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 880 Session of 2011

INTRODUCED BY PYLE, ADOLPH, BAKER, BENNINGHOFF, BOYD, CAUSER, CLYMER, CUTLER, DENLINGER, ELLIS, EVERETT, FABRIZIO, FLECK, GABLER, GEIST, GROVE, HARHART, HARPER, HENNESSEY, HESS, HUTCHINSON, KNOWLES, LONGIETTI, MARSICO, METZGAR, MOUL, MURT, OBERLANDER, PICKETT, RAPP, READSHAW, REED, REICHLEY, ROAE, ROCK, SONNEY, STERN, STEVENSON AND VULAKOVICH, MARCH 2, 2011

REFERRED TO COMMITTEE ON FINANCE, MARCH 2, 2011

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," establishing the Pennsylvania Coal and Air  
11 Quality Improvement Tax Credit.

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

14 Section 1. Article XVIII-C heading of the act of March 4,  
15 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, added  
16 July 9, 2008 (P.L.922, No.66), is amended to read:

ARTICLE XVIII-C

[RESERVED]

PENNSYLVANIA COAL AND AIR QUALITY IMPROVEMENT

TAX CREDIT

1 Section 2. The act is amended by adding sections to read:

2 Section 1801-C. 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 "Compliance facility." Property that is designed,  
7 constructed or installed, and used at a coal-fired or waste  
8 coal-fired electric generating facility for the primary purpose  
9 of complying with acid rain control requirements under Title IV  
10 of the Clean Air Act Amendments of 1990 (Public Law 101-549, 42  
11 U.S.C. § 7651 et seq.) or that controls or limits emissions of  
12 sulphur or nitrogen compounds or mercury resulting from the  
13 combustion of coal through the removal or reduction of those  
14 compounds before, during or after the combustion of the coal,  
15 but before the combustion products are emitted into the  
16 atmosphere. The term includes, but is not limited to, the  
17 following:

18 (1) A facility that removes sulfur compounds from coal  
19 before the combustion of the coal and is located off the  
20 premises of an electric generating facility where the coal  
21 processed by the facility that removes sulfur compounds from  
22 coal is burned.

23 (2) Modifications to an electric generating facility  
24 where such property is constructed or installed that are  
25 necessary to accommodate the construction or installation,  
26 and operation of such property.

27 (3) A by-product disposal facility that exclusively  
28 disposes of wastes produced by such property and other coal  
29 combustion by-products produced by the generating unit in or  
30 to which such property is incorporated or connected

1 regardless of whether the by-product disposal facility is  
2 located on the same premises as such property or generating  
3 unit that produces the wastes disposed of at such property.

4 (4) A facility or equipment that is acquired,  
5 constructed or installed, and used at a coal-fired electric  
6 generating facility exclusively for the purpose of handling  
7 the by-products produced by the first facility or other coal  
8 combustion by-products produced by the generating unit in or  
9 to which the first facility is incorporated or connected.

10 (5) A flue gas desulfurization system that is connected  
11 to a coal-fired electric generating unit.

12 (6) A selective catalytic reduction system that is  
13 connected to a coal-fired electric generation unit and used  
14 to reduce the level of nitrogen oxide emissions.

15 (7) Low nitrogen oxide burners that are used to reduce  
16 the level of nitrogen oxide emissions.

17 (8) An activated carbon injection system or other  
18 similar system designed to reduce the level of mercury  
19 emissions.

20 (9) A facility or equipment acquired, constructed or  
21 installed, and used, at a coal-fired electric generating unit  
22 primarily for the purpose of handling the by-products  
23 produced by such facility or other coal combustion by-  
24 products produced by the generating unit in or to which such  
25 facility is incorporated or connected.

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

27 "Pass-through entity." A partnership as defined in section  
28 301(n.0) or a Pennsylvania S corporation as defined in section  
29 301(n.1).

30 "Pennsylvania coal." Coal mined from coal deposits located

1 in or waste coal recovered within this Commonwealth.

2 "Pennsylvania qualified coal expense." The cost to purchase  
3 Pennsylvania qualified coal that is delivered to coal-fired  
4 electric generating units or the handling cost incurred to  
5 recover waste coal for use in a waste coal-fired electric  
6 generating unit. For purposes of this definition, the handling  
7 cost does not include costs to transport coal from the mine to  
8 an end-user.

9 "Qualified tax liability." The liability for taxes imposed  
10 under Article III, IV or VI. The term shall not include any tax  
11 withheld by an employer from an employee under Article III.

12 "Secretary." The Secretary of Revenue of the Commonwealth.

13 "Taxpayer." An entity subject to tax under Article III, IV  
14 or VI. The term shall include the shareholder of a Pennsylvania  
15 S corporation that receives a research and development tax  
16 credit.

17 "Waste coal facility." A facility that utilizes coal  
18 previously disposed or abandoned prior to July 31, 1982, or  
19 disposed of thereafter in a permitted coal refuse disposal site  
20 or classified as waste coal.

21 Section 1802-C. Establishment of program.

22 (a) General rule.--A qualified entity shall receive the tax  
23 credit authorized under section 1803-C.

24 (b) Administration and regulations.--The department shall  
25 administer this article and cooperate with the Department of  
26 Environmental Protection. The Department of Environmental  
27 Protection and the Pennsylvania Public Utility Commission shall  
28 provide assistance to the department in identifying compliance  
29 facilities and providing other information that may be necessary  
30 to ensure the proper administration of this article.

1 Section 1803-C. Credit for Pennsylvania qualified coal  
2 expenses.

3 (a) General rule.--A taxpayer who incurs Pennsylvania  
4 qualified coal expense in a calendar year may apply for a tax  
5 credit as provided in this article. By September 15 of each  
6 calendar year a taxpayer must submit an application to the  
7 department for Pennsylvania qualified coal expense incurred in  
8 the calendar year that ended in the prior calendar year.

9 (b) Amount.--A taxpayer that is qualified under subsection  
10 (a) shall receive a tax credit for the calendar year in the  
11 amount of \$3 per ton for each ton of Pennsylvania qualified coal  
12 expense.

13 (c) Notification to taxpayer.--By December 15 of the  
14 calendar year following the close of the calendar year during  
15 which the Pennsylvania qualified coal expense was incurred, the  
16 department shall notify the taxpayer of the amount of the  
17 taxpayer's tax credit approved by the department.

18 Section 1804-C. Carryover, carryback, refund and assignment of  
19 credit.

20 (a) General rule.--If the taxpayer cannot use the entire  
21 amount of the tax credit for the taxable year in which the tax  
22 credit is first approved, then the excess may be carried over to  
23 succeeding taxable years and used as a credit against the  
24 qualified tax liability of the taxpayer for those taxable years.  
25 Each time that the tax credit is carried over to a succeeding  
26 taxable year, it is to be reduced by the amount that was used as  
27 a credit during the immediately preceding taxable year. The tax  
28 credit provided by this article may be carried over and applied  
29 to succeeding taxable years for no more than 15 taxable years  
30 following the first taxable year for which the taxpayer was

1 entitled to claim the credit.

2 (b) Application.--A tax credit approved by the department  
3 for Pennsylvania qualified coal expense in a calendar year first  
4 shall be applied against the taxpayer's qualified tax liability  
5 for the current taxable year as of the date on which the credit  
6 was approved before the tax credit is applied against any tax  
7 liability under subsection (a).

8 (c) Restriction.--A taxpayer is not entitled to carry back  
9 or obtain a refund of an unused tax credit.

10 Section 1805-C. Determination of Pennsylvania qualified coal  
11 expense.

12 In prescribing standards for determining which qualified coal  
13 expenses are considered Pennsylvania qualified coal expense for  
14 purposes of computing the credit provided by this article, the  
15 department may consider:

16 (1) The location where the coal deposits are mined.

17 (2) The residence or business location of the person or  
18 persons where the qualifying entity is located.

19 (3) The location and the characteristics of the  
20 compliance facility.

21 (4) Other factors that the department determines are  
22 relevant for the determination.

23 Section 1806-C. Time limitation.

24 A taxpayer is not entitled to a tax credit for expenses  
25 incurred in calendar years beginning after December 31, 2015.

26 Section 1807-C. Limitation on credits.

27 (a) General rule.--The total amount of credits approved by  
28 the department shall not exceed \$30,000,000 in any fiscal year.

29 (b) Calculation.--If the total amount of tax credits applied  
30 for by all taxpayers exceeds the amount allocated for those

1 credits, then the tax credit to be received by each applicant  
2 shall be the product of the allocated amount multiplied by the  
3 quotient of the tax credit applied for by the applicant divided  
4 by the total of all tax credits applied for by all applicants,  
5 the algebraic equivalent of which is:

6 taxpayer's tax credit = amount allocated for those  
7 credits X tax credit applied for by the applicant/total  
8 of all tax credits applied for by all applicants.

9 Section 1808-C. Pass-through entity.

10 (a) General rule.--If a pass-through entity has any unused  
11 tax credit under section 1804-C, the entity may elect, in  
12 writing, according to the department's procedures, to transfer  
13 all or a portion of the credit to shareholders, members or  
14 partners in proportion to the shares of the entity's  
15 distributive income to which the shareholder, member or partner  
16 is entitled.

17 (b) Independent from other tax credits.--The tax credit  
18 provided under subsection (a) is in addition to any tax credit  
19 to which a shareholder, member or partner of a pass-through  
20 entity is otherwise entitled under this article. However, a  
21 pass-through entity and a shareholder, member or partner of a  
22 pass-through entity may not claim a credit under this article  
23 for the same qualified coal expense.

24 (c) Claim of tax credit.--A shareholder, member or partner  
25 of a pass-through entity to whom credit is transferred under  
26 subsection (a) must immediately claim the credit in the taxable  
27 year in which the transfer is made. The shareholder, member or  
28 partner may not carry forward, carry back, obtain a refund of or  
29 sell or assign the credit.

30 Section 1809-C. Termination.

1     The department shall not approve a tax credit under this  
2     article for calendar years ending after December 31, 2015.  
3     Section 1810-C. Report.

4     The department shall annually make a report to the  
5     Environmental Resources and Energy Committee of the Senate and  
6     the Environmental Resources and Energy Committee of the House of  
7     Representatives on the activities undertaken pursuant to this  
8     article including, but not limited to:

9             (1) The number and amount of tax credits provided.

10            (2) The number and description of the business entities  
11     receiving the tax credits.

12            (3) The amount of coal on which the tax credits were  
13     provided against.

14     Section 1811-C. Regulations.

15     The secretary shall promulgate regulations necessary for the  
16     implementation and administration of this article.

17     Section 1812-C. Applicability.

18     This article shall apply to Pennsylvania qualified coal  
19     expenses on or after January 1, 2010.

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