

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2128 Session of
2012

INTRODUCED BY HACKETT, ADOLPH, BENNINGHOFF, BRENNAN, BURNS,
DALEY, DONATUCCI, FARRY, HAHN, HARHART, KAMPF, KILLION,
MICCARELLI, MURT, M. O'BRIEN, QUINN, RAPP, REED, ROCK,
CULVER, K. SMITH, VULAKOVICH, WATSON AND YOUNGBLOOD,
JANUARY 17, 2012

REFERRED TO COMMITTEE ON COMMERCE, JANUARY 17, 2012

AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania
2 Consolidated Statutes, providing for business finder's fee
3 tax credit.

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

6 Section 1. Title 12 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 38

9 BUSINESS FINDER'S FEE TAX CREDIT PROGRAM

10 Sec.

11 3801. Scope of chapter.

12 3802. Definitions.

13 3803. Establishment.

14 3804. Certification.

15 3805. Credit for sponsor and new business firm.

16 3806. Carryover, application of tax credit, carryback, refund

17 and assignment.

1 3807. Time limitation.

2 3808. Limitation on tax credits.

3 3809. Shareholder, owner or member pass-through.

4 3810. Reports.

5 3811. Termination.

6 3812. Guidelines.

7 § 3801. Scope of chapter.

8 This chapter relates to the Business Finder's Fee Tax Credit
9 Program.

10 § 3802. Definitions.

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

14 "Affiliate." A person that directly or indirectly, through
15 one or more intermediaries, controls, is controlled by or is
16 under common control with a specified person.

17 "Bank." Any of the following:

18 (1) A State-chartered bank, bank and trust company,
19 savings bank or private bank.

20 (2) A national bank.

21 (3) A federally chartered or State-chartered savings
22 association.

23 (4) A subsidiary of any of the entities listed under
24 this definition.

25 "Certification date." The date the Department of Community
26 and Economic Development issues the certification to the sponsor
27 firm and new business firm.

28 "Department." The Department of Community and Economic
29 Development of the Commonwealth.

30 "Full-time employee." An employee of a new business firm

1 whose compensation is based on a work week of at least 35 hours
2 and who spends at least 90% of the employee's working hours in
3 this Commonwealth.

4 "New business firm." A business that meets all of the
5 following criteria:

6 (1) Is a validly organized and existing corporation,
7 limited liability company, limited partnership, general
8 partnership, limited liability partnership, statutory trust
9 or sole proprietorship.

10 (2) Has been operating for at least three years at the
11 time it applies for certification.

12 (3) Has a place of business outside this Commonwealth.

13 (4) Does not have a place of business within this
14 Commonwealth and has not had a place of business within this
15 Commonwealth for at least three years prior to the time it
16 applies for certification.

17 (5) Is not a tenant of the sponsor firm.

18 (6) Has not entered into a rental agreement for a
19 commercial rental unit with the sponsor firm.

20 (7) Is not an affiliate of the sponsor firm.

21 "Pass-through entity." A partnership as defined in section
22 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
23 Tax Reform Code of 1971, or a Pennsylvania S corporation as
24 defined in section 301(n.1) of the Tax Reform Code of 1971.

25 "Qualified tax liability." The liability for taxes imposed
26 under Article III, IV or VI of the act of March 4, 1971 (P.L.6,
27 No.2), known as the Tax Reform Code of 1971. The term shall
28 include the liability for taxes imposed under Article III of the
29 Tax Reform Code of 1971 on an owner of a pass-through entity.

30 "Secretary." The Secretary of Community and Economic

1 Development of the Commonwealth.

2 "Sponsor firm." A business that meets all of the following
3 criteria:

4 (1) Is a validly organized and existing corporation,
5 limited liability company, limited partnership, general
6 partnership, limited liability partnership, statutory trust
7 or sole proprietorship.

8 (2) Has been conducting operations for at least three
9 years at the time it applies for certification.

10 (3) Has a place of business in this Commonwealth.

11 (4) Has not entered into a rental agreement for a
12 commercial rental unit with the new business firm.

13 (5) Is not a provider of real estate services to the new
14 business firm.

15 (6) Is not a landlord, as defined in the act of April 6,
16 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of
17 1951, for the new business firm.

18 (7) Is not a bank who provides financing for the new
19 business firm to establish a location within this
20 Commonwealth.

21 (8) Is not an affiliate of the new business firm.

22 "Tax credit." The tax credit established by the Business
23 Finder's Fee Tax Credit Program.

24 "Taxpayer." A person subject to tax under Article III, IV or
25 VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax
26 Reform Code of 1971. The term shall include the shareholder,
27 owner or member of a pass-through entity which receives the tax
28 credit.

29 § 3803. Establishment.

30 There is established a tax credit program to be known as the

Business Finder's Fee Tax Credit Program. The program shall
create incentives for businesses located within this
Commonwealth to encourage their suppliers as well as other
businesses to relocate to this Commonwealth.

§ 3804. Certification.

(a) Application.--The sponsor firm and a new business firm
may submit a joint application to become certified by the
department. The application must be on a form required by the
department and shall include all of the following:

(1) The names and addresses of both businesses
completing the joint application.

(2) Documentation that one applicant meets the
requirements to be a sponsor firm.

(3) Documentation that one applicant meets the
requirements to be a new business firm.

(4) Evidence that the new business firm intends:

(i) To relocate to this Commonwealth as a result of
recruitment efforts by the sponsor firm.

(ii) To employ three or more full-time employees
within this Commonwealth within eight months of the date
of application for certification.

(5) Any other information required by the department.

(b) Review and approval.--The department shall review the
application to determine if all certification requirements have
been met. If the department determines all requirements have
been met, the department shall approve the application and issue
certifications to both applicants. Certification by the
department does not guarantee approval of tax credits under this
chapter.

§ 3805. Credit for sponsor firm and new business firm.

1 (a) Application.--A sponsor firm and a new business firm
2 certified under section 3804 (relating to certification) shall
3 be eligible to submit a joint application for the tax credit on
4 or after the first anniversary of the certification date. The
5 joint application must be on a form required by the Department
6 of Revenue and shall include all of the following:

7 (1) The name and address of the sponsor firm.

8 (2) The name and address of the new business firm.

9 (3) Copies of the certifications issued by the
10 department.

11 (4) The number of full-time employees located in this
12 Commonwealth that have been continuously employed by the new
13 business firm for a period of at least three months prior to
14 the date of application under this section.

15 (5) Any other information required by the Department of
16 Revenue.

17 (b) Review.--The Department of Revenue shall review the
18 application and determine if all of the requirements established
19 under this chapter have been met.

20 (c) Approval.--

21 (1) Except as provided under paragraph (2), upon being
22 satisfied under subsection (b), the Department of Revenue
23 shall approve the application and shall award the sponsor
24 firm and the new business firm a tax credit for the taxable
25 year in an amount equal to \$500 times the total number of
26 full-time employees employed during the taxable year for
27 which the application was made.

28 (2) The Department of Revenue shall not award tax
29 credits to new business firms who receive a tax credit under
30 Article XVII-D of the act of March 4, 1971 (P.L.6, No.2),

1 known as the Tax Reform Code of 1971.

2 (d) Notification.--The Department of Revenue shall notify
3 the sponsor firm and new business firm of the amount of the tax
4 credit awarded within 30 days after approval by the Department
5 of Revenue.

6 \$ 3806. Carryover, application of tax credit, carryback, refund
7 and assignment.

8 (a) Carryover.--If the taxpayer cannot use the entire amount
9 of the tax credit for the taxable year in which the tax credit
10 is first approved, the excess may be carried over to succeeding
11 taxable years and used as a credit against the qualified tax
12 liability of the taxpayer for those taxable years. Each time
13 that the tax credit is carried over to a succeeding taxable
14 year, it shall be reduced by the amount that was used as a
15 credit during the immediately preceding taxable year. The tax
16 credit may be carried over and applied to succeeding taxable
17 years for no more than seven taxable years following the first
18 taxable year for which the taxpayer was entitled to claim the
19 tax credit.

20 (b) Application of tax credit.--A tax credit approved by the
21 Department of Revenue shall first be applied against the
22 taxpayer's qualified tax liability for the current taxable year
23 as of the date on which the tax credit was approved before the
24 tax credit is applied against any tax liability under subsection
25 (a).

26 (c) Carryback or refund.--A taxpayer is not entitled to
27 carry back or obtain a refund of an unused tax credit.

28 (d) Sale or assignment.--A taxpayer, upon application to and
29 approval by the Department of Revenue, may sell or assign, in
30 whole or in part, a tax credit granted to the taxpayer under

this chapter if the taxpayer does not have a qualified tax liability against which the tax credit may be applied in the current taxable year. The Department of Revenue shall establish guidelines for the approval of applications under this subsection. Before an application is approved, the Department of Revenue shall make a finding that the applicant has filed all required State tax reports and returns for all taxable years and paid any balance of State tax due as determined by the Department of Revenue.

(e) Purchasers and assignees.--The purchaser or assignee of all or a portion of a tax credit under subsection (d) shall immediately claim the credit in the taxable year in which the purchase or assignment is made, although the purchaser or assignee may carry over unused tax credits to the succeeding taxable year for up to two years. The amount of the tax credit that a purchaser or assignee may use against any qualified tax liability may not exceed 75% of the qualified tax liability for the taxable year. The purchaser or assignee may not carry back or obtain a refund of or sell or assign the tax credit. The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the tax credit in compliance with procedures specified by the Department of Revenue.

§ 3807. Time limitation.

A sponsor firm and a new business firm are eligible for a tax credit for the taxable year following the anniversary of the certification date and are not eligible for the tax credit thereafter.

§ 3808. Limitation on tax credits.

(a) Total amount.--The total amount of tax credits approved by the Department of Revenue shall not exceed \$5,000,000 in any

1 fiscal year.

2 (b) Allocation.--Tax credits shall be allocated by the
3 Department of Revenue on a first-come, first-served basis.
4 § 3809. Shareholder, owner or member pass-through.

5 (a) Shareholder entitlement.--If a Pennsylvania S
6 corporation does not have an eligible tax liability against
7 which the tax credit may be applied, a shareholder of the
8 Pennsylvania S corporation shall be entitled to a tax credit
9 equal to the tax credit determined for the Pennsylvania S
10 corporation for the taxable year multiplied by the percentage of
11 the Pennsylvania S corporation's distributive income to which
12 the shareholder is entitled.

13 (b) Pass-through entity entitlement.--If a pass-through
14 entity other than a Pennsylvania S corporation does not have a
15 tax liability against which the tax credit may be applied, an
16 owner or member of the pass-through entity shall be entitled to
17 a tax credit equal to the tax credit determined for the pass-
18 through entity for the taxable year multiplied by the percentage
19 of the pass-through entities' distributive income to which the
20 owner or member is entitled.

21 (c) Additional credit.--The tax credit provided under
22 subsection (a) or (b) shall be in addition to any tax credit to
23 which a shareholder, owner or member of a pass-through entity is
24 otherwise entitled under this chapter.

25 § 3810. Reports.

26 The secretary shall submit an annual report to the chairmen
27 and minority chairmen of the standing committees in the Senate
28 and the chairmen and minority chairmen of the standing
29 committees in the House of Representatives with jurisdiction
30 over the department and the Department of Revenue indicating the

effectiveness of the tax credit provided under this chapter no
later than March 15 following the fiscal year in which the tax
credits were approved. Notwithstanding any law providing for the
confidentiality of tax records, the report shall include the
names of all taxpayers awarded the tax credits, all taxpayers
utilizing the tax credits, the amount of tax credits approved
and utilized by each taxpayer and the names and locations of the
qualified business ventures for which the tax credits were
awarded. The report may also include any recommendations for
changes in the calculation or administration of the tax credit.
The report and the information contained in it shall be
considered a public record under section 102 of the act of
February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.
§ 3811. Termination.

The Department of Revenue shall not approve a tax credit for
taxable years ending after December 31, 2021.

§ 3812. Guidelines.

The department, in conjunction with the Department of
Revenue, shall establish written guidelines for the
implementation and administration of this chapter. The
guidelines shall be published on each of the department's
publicly accessible Internet websites.

Section 2. The provisions of this act shall apply to tax
years beginning after December 31, 2011.

Section 3. This act shall be retroactive to December 31,
2011.

Section 4. This act shall take effect in 60 days.