

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 208 Session of 2011

INTRODUCED BY MENSCH, PILEGGI, GREENLEAF, WAUGH, EICHELBERGER,
ERICKSON, VOGEL, YAW, FOLMER, PICCOLA, ARGALL, BREWSTER,
ALLOWAY, KASUNIC, D. WHITE, M. WHITE, PIPPY AND BOSCOLA,
JANUARY 21, 2011

REFERRED TO FINANCE, JANUARY 21, 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 a career development tax credit.

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 XVII-G

17 CAREER DEVELOPMENT TAX CREDIT

18 Section 1701-G. Short title of article.

19 This article shall be known and may be cited as the Career
20 Development Tax Credit Act.

21 Section 1702-G. Definitions.

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

"Career development tax credit" or "tax credit." The credit provided under this article.

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

"Nonqualified individual."

(1) An individual who is one of the following:

(i) an officer of a business entity;

(ii) a member or shareholder owning more than 5% of the voting power or value of all classes of stock of a business entity; or

(iii) an individual who, for the preceding taxable year:

(A) received compensation from an employer in excess of the Federal limitation, after adjustment by the Secretary of the United States Treasury for inflation, set forth in section 414(q)(1)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 414(q)(1)(B)); or

(B) is in the group consisting of the top 20% of all full-time employees of the employer with at least three years of service when ranked on the basis of compensation paid during the taxable year.

(2) A partner or self-employed individual.

(3) A physician.

(4) A veterinarian.

(5) An attorney.

(6) An executive.

"Nonqualified training expense." All of the following:

1 (1) Expenditures either reimbursed or subject to
2 reimbursement through any Federal or State training program.

3 (2) Federal, State or local grants or other payments to
4 provide training or retraining.

5 (3) Capital expenses.

6 (4) Equipment, materials and software used beyond the
7 training program.

8 (5) Expenses for out-of-State travel.

9 (6) Convention or conference expenses, unless directly
10 related to a qualified career development training program.

11 "Qualified career development training program." A training
12 program that is certified by the Department of Labor and
13 Industry as meeting recognized industry standards, designed to
14 meet the special requirements of an employer, and conducted with
15 a commitment by the employer to continue to employ an individual
16 on successful completion of the training. The term does not
17 include the following:

18 (1) Any program in which 50% or more of the employee's
19 time is spent on activities other than those directly related
20 to the training program.

21 (2) An executive training program.

22 (3) A personal enrichment program.

23 (4) A general health program.

24 (5) A seminar or conference unless directly related to
25 the employee's job requirements.

26 "Qualified employee." A Commonwealth resident who is
27 employed in this Commonwealth by a taxpayer and who averages at
28 least 30 hours of work per week at the time training commences
29 and for a period of 12 months following the employee's
30 completion of the qualified career development program. The term

1 excludes an individual who is a nonqualified individual.

2 "Qualified tax liability." The liability for taxes imposed
3 under Article III, IV or VI. The term includes the liability for
4 taxes imposed under Article III on a shareholder of a
5 Pennsylvania S corporation.

6 "Qualified training expense." Wages paid to a qualified
7 employee during normal working hours while participating in a
8 qualified career development training program. The term includes
9 preskill and postskill assessment, direct costs of instructors,
10 instructional materials, instructional supplies, instructional
11 media, necessary training equipment, tuition reimbursement,
12 travel costs to and from class and other instructional
13 activities. The term excludes nonqualified training expense.

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

15 "Taxpayer." An entity that is engaged in the business of
16 manufacturing and subject to tax under Article III, IV or VI.
17 The term includes the shareholder of a Pennsylvania S
18 corporation that receives a career development tax credit or the
19 member of a limited liability company that receives a career
20 development tax credit.

21 Section 1703-G. Tax credit for qualified training expenses.

22 (a) General rule.--A taxpayer who incurs qualified training
23 expenses in a taxable year may apply for a career development
24 tax credit as provided in this article. By September 15, a
25 taxpayer must submit an application to the department for
26 qualified training expense incurred in the taxable year that
27 ended in the prior calendar year.

28 (b) Amount of tax credit.--A taxpayer that is qualified
29 under subsection (a) shall receive a career development tax
30 credit for the taxable year in the amount of 25% of the

1 taxpayer's total qualified training expense for the taxable
2 year.

3 (c) Notification of approved tax credit.--By December 15 of
4 the calendar year following the close of the taxable year during
5 which the qualified training expense was incurred, the
6 department shall notify the taxpayer of the amount of the
7 taxpayer's career development tax credit approved by the
8 department.

9 Section 1704-G. Carryover, carryback, refund and assignment of
10 tax credit.

11 (a) General rule.--If the taxpayer cannot use the entire
12 amount of the career development tax credit for the taxable year
13 in which the career development tax credit is first approved,
14 then the excess may be carried over to succeeding taxable years
15 and used as a credit against the qualified tax liability of the
16 taxpayer for those taxable years. Each time that the career
17 development tax credit is carried over to a succeeding taxable
18 year, it is to be reduced by the amount that was used as a
19 credit during the immediately preceding taxable year. The career
20 development tax credit provided by this article may be carried
21 over and applied to succeeding taxable years for no more than 15
22 taxable years following the first taxable year for which the
23 taxpayer was entitled to claim the credit.

24 (b) Taxable year in which tax credit applied.--A career
25 development tax credit approved by the department for qualified
26 training expenses in a taxable year first shall be applied
27 against the taxpayer's qualified tax liability for the current
28 taxable year as of the date on which the credit was approved
29 before the career development tax credit is applied against any
30 tax liability under subsection (a).

1 (c) Limitation.--A taxpayer is not entitled to carry back or
2 obtain a refund of an unused career development tax credit.

3 Section 1705-G. Time limitations.

4 A taxpayer is not entitled to a career development tax credit
5 for qualified training expenses incurred in taxable years ending
6 after December 31, 2012.

7 Section 1706-G. Limitation on tax credits.

8 (a) General rule.--The total amount of career development
9 tax credits approved by the department shall not exceed
10 \$20,000,000 in any fiscal year.

11 (b) Proration required.--If the total amount of career
12 development tax credits applied for by all taxpayers exceeds the
13 amount allocated for those credits, then the career development
14 tax credit to be received by each applicant shall be prorated by
15 the department among all applicants who have qualified for the
16 tax credit.

17 Section 1707-G. Pennsylvania S corporation shareholder pass-
18 through.

19 (a) General rule.--If a Pennsylvania S corporation does not
20 have an eligible tax liability against which the career
21 development tax credit may be applied, a shareholder of the
22 Pennsylvania S corporation is entitled to a tax credit equal to
23 the tax credit determined for the Pennsylvania S corporation for
24 the taxable year multiplied by the percentage of the
25 Pennsylvania S corporation's distributive income to which the
26 shareholder is entitled.

27 (b) Operation of tax credit.--The career development tax
28 credit provided under subsection (a) is in addition to any
29 career development tax credit to which a shareholder of a
30 Pennsylvania S corporation is otherwise entitled under this

1 article. However, a Pennsylvania S corporation and a shareholder
2 of a Pennsylvania S corporation may not claim a tax credit for
3 the same qualified training expense.

4 Section 1708-G. Pennsylvania limited liability company member
5 pass-through.

6 (a) General rule.--If a limited liability company does not
7 have an eligible tax liability against which the career
8 development tax credit may be applied, a member of the limited
9 liability company is entitled to a tax credit equal to the tax
10 credit determined for the limited liability company for the
11 taxable year multiplied by the percentage of the limited
12 liability company's distributive income to which the member is
13 entitled.

14 (b) Operation of tax credit.--The career development tax
15 credit under subsection (a) is in addition to any career
16 development tax credit to which a member of a limited liability
17 company is otherwise entitled under this article. A limited
18 liability company and a member of a limited liability company
19 may not claim a tax credit for the same qualified training
20 expense.

21 Section 1709-G. Recapture of credit.

22 (a) General rule.--If an employee for whom a credit has been
23 awarded does not maintain continuous employment with the
24 taxpayer for a period of 12 months following the completion of
25 the qualified career development training program, the
26 department shall recapture any credit awarded to the taxpayer
27 for the qualified training expense of that employee.

28 (b) Nonapplicability.--This section shall not apply if the
29 employee:

30 (1) is deceased;

1 (2) is disabled;
2 (3) voluntarily leaves employment; or
3 (4) is discharged for cause as certified by the
4 Department of Labor and Industry.

5 Section 1710-G. Report to General Assembly.

6 The secretary shall submit an annual report to the General
7 Assembly indicating the effectiveness of the career development
8 tax credit no later than March 15 following the year in which
9 the tax credits were approved. The report shall include the
10 names of all taxpayers utilizing the tax credit as of the date
11 of the report and the amount of tax credits approved and
12 utilized by each taxpayer. Notwithstanding any law providing for
13 the confidentiality of tax records, the information contained in
14 the report shall be public information. The report may also
15 include any recommendations for changes in the calculation or
16 administration of the tax credit.

17 Section 1711-G. Termination.

18 The department shall not approve a career development tax
19 credit for taxable years ending after December 31, 2012.

20 Section 1712-G. Regulations.

21 The secretary shall promulgate regulations necessary for the
22 implementation and administration of this article.

23 Section 2. This act shall apply to taxable years commencing
24 after December 31, 2010.

25 Section 3. This act shall take effect immediately.