

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 309 Session of 2013

INTRODUCED BY GROVE, AUMENT, BAKER, COHEN, CUTLER, DENLINGER, EVANKOVICH, GINGRICH, C. HARRIS, HICKERNELL, KAUFFMAN, F. KELLER, KORTZ, MARSHALL, MATZIE, MICOZZIE, MILLER, MOUL, PICKETT, ROCK, SAYLOR, SIMMONS, SWANGER, WATSON, GABLER, PEIFER, MURT, GIBBONS AND JAMES, FEBRUARY 5, 2013

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 9, 2013

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 natural gas vehicle 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:

ARTICLE XIX-B

NATURAL GAS VEHICLE TAX CREDIT

18 Section 1901-B. Scope of article.

19 This article provides for a natural gas vehicle tax credit.

20 Section 1902-B. Definitions.

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

4 "Department." The Department of Revenue COMMUNITY AND <--
5 ECONOMIC DEVELOPMENT of the Commonwealth.

6 "Incremental cost." The difference between the cost of a
7 natural gas vehicle and the cost of the same or similar motor
8 vehicle, manufactured to operate exclusively on gasoline or
9 diesel fuel.

10 ~~"Internal Revenue Code." The Internal Revenue Code of 1986~~ <--
11 ~~(Public Law 99-514, 26 U.S.C. § 1 et seq.).~~

12 "Natural gas vehicle." A motor vehicle that has a gross
13 vehicle weight of at least 33,000 pounds, is produced by an
14 original equipment manufacturer and operates:

15 (1) on 100% compressed natural gas fuel; or

16 (2) on 90% or more liquefied natural gas fuel and 10% or
17 less on gasoline or diesel fuel.

18 "Original equipment manufacturer." An entity which
19 originally manufactures a natural gas vehicle for sale.

20 "Pass-through entity." A partnership as defined in section
21 301(n.0) or a Pennsylvania S corporation as defined in section
22 301(n.1).

23 "Qualified expense." The expense paid by a taxpayer for a
24 natural gas vehicle.

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

28 ~~"Secretary." The Secretary of Revenue of the Commonwealth.~~ <--

29 "Tax credit." The natural gas vehicle tax credit established
30 by this article.

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

5 ~~Section 1903-B. Credit for purchase of natural gas vehicle.~~ <--

6 ~~(a) General rule. A taxpayer who incurs a qualified expense~~
7 ~~in a taxable year may apply for a tax credit as provided in this~~
8 ~~article. By September 15, a taxpayer must submit an application~~
9 ~~to the department for a qualified expense incurred in the~~
10 ~~taxable year that ended in the prior calendar year.~~

11 ~~(b) Amount. A taxpayer that is qualified under subsection~~
12 ~~(a) shall receive a tax credit for the taxable year in the~~
13 ~~amount of, for each qualified expense, the lesser of 50% of the~~
14 ~~incremental cost of the natural gas vehicle or \$12,500.~~

15 ~~(c) Notification from department. By December 15 of the~~
16 ~~calendar year following the close of the taxable year during~~
17 ~~which the qualified expense was incurred, the department shall~~
18 ~~notify the taxpayer of the amount of the taxpayer's tax credit~~
19 ~~approved by the department.~~

20 SECTION 1903-B. ELIGIBILITY FOR AND AMOUNT OF TAX CREDIT. <--

21 A TAXPAYER WHO INCURS A QUALIFIED EXPENSE IN A TAXABLE YEAR
22 MAY APPLY TO THE DEPARTMENT FOR A TAX CREDIT AS PROVIDED IN THIS
23 ARTICLE. THE AMOUNT OF THE TAX CREDIT MAY NOT EXCEED THE LESSER
24 OF 50% OF THE INCREMENTAL COST OF THE NATURAL GAS VEHICLE OR
25 \$12,500.

26 SECTION 1904-B. APPLICATION AND APPROVAL OF TAX CREDIT.

27 (A) APPLICATION.--BY SEPTEMBER 15, A TAXPAYER MUST SUBMIT AN
28 APPLICATION TO THE DEPARTMENT FOR EACH QUALIFIED EXPENSE
29 INCURRED IN THE TAXABLE YEAR THAT ENDED IN THE PRIOR CALENDAR
30 YEAR. THE APPLICATION MUST BE ON A FORM REQUIRED BY THE

1 DEPARTMENT AND SHALL INCLUDE ALL OF THE FOLLOWING INFORMATION:

2 (1) THE NAME AND ADDRESS OF THE APPLICANT.

3 (2) DOCUMENTATION THAT THE TAXPAYER IS SUBJECT TO TAX
4 UNDER ARTICLE III, IV OR VI FOR THE TAXABLE YEAR THE
5 APPLICANT IS CLAIMING THE TAX CREDIT.

6 (3) DOCUMENTATION OF THE QUALIFIED EXPENSE.

7 (4) ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT.

8 (B) REVIEW AND APPROVAL.--

9 (1) THE DEPARTMENT SHALL REVIEW AND APPROVE OR
10 DISAPPROVE THE APPLICATIONS RECEIVED UNDER SUBSECTION (A) BY
11 DECEMBER 15 OF THE SAME CALENDAR YEAR AS THE APPLICATION.

12 (2) IF THE APPLICATION IS APPROVED, THE DEPARTMENT SHALL
13 NOTIFY THE TAXPAYER OF THE AMOUNT OF THE TAX CREDIT APPROVED
14 AND ISSUE THE QUALIFIED TAXPAYER A TAX CREDIT CERTIFICATE
15 WITHIN 15 DAYS OF THE APPROVAL.

16 Section 1904-B 1905-B. Carryover, carryback, refund and
17 assignment of credit.

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18 (a) The following shall apply to tax credits:

19 (1) If the taxpayer cannot use the entire amount of the
20 tax credit for the taxable year in which the tax credit is
21 first approved, then the excess may be carried over to
22 succeeding taxable years and used as a credit against the
23 qualified tax liability of the taxpayer for those taxable
24 years.

25 (2) Each time that the tax credit is carried over to a
26 succeeding taxable year, it is to be reduced by the amount
27 that was used as a credit during the immediately preceding
28 taxable year.

29 (3) The tax credit may be carried over and applied to
30 succeeding taxable years for no more than five taxable years

1 following the first taxable year for which the taxpayer was
2 entitled to claim the credit.

3 (4) A tax credit approved by the department for a
4 qualified expense in a taxable year first shall be applied
5 against the taxpayer's qualified tax liability for the
6 current taxable year as of the date on which the tax credit
7 was approved before the tax credit is applied against any tax
8 liability under paragraph (1).

9 (5) A taxpayer may not carry back or obtain a refund of
10 an unused tax credit.

11 (6) A taxpayer, upon application to and approval by the
12 ~~Department of Community and Economic Development~~ DEPARTMENT, <--
13 may sell or assign, in whole or in part, a tax credit granted
14 to the taxpayer. The ~~Department of Community and Economic~~ <--
15 ~~Development~~ DEPARTMENT shall establish guidelines for the <--
16 approval of applications under this paragraph.

17 (7) The purchaser or assignee of a portion of a tax
18 credit under paragraph (6) shall immediately claim the credit
19 in the taxable year in which the purchase or assignment is
20 made. The amount of the tax credit that a purchaser or
21 assignee may use against any one qualified tax liability may
22 not exceed ~~100%~~ 75% of the qualified tax liability for the <--
23 taxable year. The purchaser or assignee may not carry over,
24 carry back, obtain a refund of or assign the tax credit. The
25 purchaser or assignee shall notify the department of the
26 seller or assignor of the tax credit in compliance with
27 procedures specified by the department.

28 ~~Section 1905 B. Application of Internal Revenue Code.~~ <--

29 ~~The provisions of section 41 of the Internal Revenue Code and~~
30 ~~the regulations promulgated regarding those provisions shall~~

~~1 apply to the department's interpretation and administration of~~
~~2 the credit provided by this article. References to the Internal~~
~~3 Revenue Code shall mean the sections of the Internal Revenue~~
~~4 Code as existing on any date of interpretation of this article.~~
~~5 However, if those sections of the Internal Revenue Code~~
~~6 referenced in this article are repealed or terminated,~~
~~7 references to the Internal Revenue Code shall mean those~~
~~8 sections last having full force and effect. If, after repeal or~~
~~9 termination, the Internal Revenue Code sections are revised or~~
~~10 reenacted, references in this article to Internal Revenue Code~~
~~11 sections shall mean those revised or reenacted sections.~~

~~12 Section 1906 B 1905 B. (Reserved).~~

~~13 Section 1907 B 1906 B. Time limitations.~~

~~14 A taxpayer is not entitled to a tax credit for qualified~~
~~15 expenses incurred in taxable years ending after December 31,~~
~~16 2020. The termination date in section 41(h) of the Internal~~
~~17 Revenue Code does not apply to a taxpayer who is eligible for~~
~~18 the tax credit under this article for the taxable year in which~~
~~19 the qualified expense is incurred.~~

~~20 SECTION 1906-B. SHAREHOLDER, OWNER OR MEMBER PASS-THROUGH. <--~~

~~21 (A) SHAREHOLDER ENTITLEMENT.--IF A PENNSYLVANIA S~~
~~22 CORPORATION DOES NOT HAVE AN ELIGIBLE TAX LIABILITY AGAINST~~
~~23 WHICH THE TAX CREDIT MAY BE APPLIED, A SHAREHOLDER OF THE~~
~~24 PENNSYLVANIA S CORPORATION SHALL BE ENTITLED TO A TAX CREDIT~~
~~25 EQUAL TO THE TAX CREDIT DETERMINED FOR THE PENNSYLVANIA S~~
~~26 CORPORATION FOR THE TAXABLE YEAR MULTIPLIED BY THE PERCENTAGE OF~~
~~27 THE PENNSYLVANIA S CORPORATION'S DISTRIBUTIVE INCOME TO WHICH~~
~~28 THE SHAREHOLDER IS ENTITLED.~~

~~29 (B) PASS-THROUGH ENTITY ENTITLEMENT.--IF A PASS-THROUGH~~
~~30 ENTITY OTHER THAN A PENNSYLVANIA S CORPORATION DOES NOT HAVE TAX~~

1 LIABILITY AGAINST WHICH THE TAX CREDIT MAY BE APPLIED, AN OWNER
2 OR MEMBER OF THE PASS-THROUGH ENTITY SHALL BE ENTITLED TO A TAX
3 CREDIT EQUAL TO THE TAX CREDIT DETERMINED FOR THE PASS-THROUGH
4 ENTITY FOR THE TAXABLE YEAR MULTIPLIED BY THE PERCENTAGE OF THE
5 PASS-THROUGH ENTITY'S DISTRIBUTIVE INCOME TO WHICH THE OWNER OR
6 MEMBER IS ENTITLED.

7 (C) ADDITIONAL CREDIT.--

8 (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), THE TAX
9 CREDIT PROVIDED UNDER SUBSECTION (A) OR (B) SHALL BE IN
10 ADDITION TO ANY OTHER TAX CREDIT TO WHICH A SHAREHOLDER,
11 OWNER OR MEMBER OF A PASS-THROUGH ENTITY IS OTHERWISE
12 ENTITLED UNDER THIS ARTICLE.

13 (2) A PASS-THROUGH ENTITY AND A SHAREHOLDER, OWNER OR
14 MEMBER OF A PASS-THROUGH ENTITY SHALL NOT CLAIM A TAX CREDIT
15 UNDER THIS ARTICLE FOR THE SAME QUALIFIED INVESTMENT.

16 Section 1908-B 1907-B. Limitation on TAX credits. <--

17 (a) General rule.--The total amount of credits approved by <--
18 the department shall not exceed:

19 (1) In fiscal year 2013-2014, \$30,000,000.

20 (2) In fiscal year 2014-2015, \$30,000,000.

21 (3) In fiscal year 2015-2016, \$30,000,000. IN GRANTING <--

22 TAX CREDIT CERTIFICATES UNDER THIS ARTICLE, THE DEPARTMENT
23 SHALL NOT GRANT MORE THAN:

24 (1) THIRTY MILLION DOLLARS IN TAX CREDIT CERTIFICATES IN
25 ANY FISCAL YEAR.

26 (2) ONE MILLION DOLLARS IN TAX CREDIT CERTIFICATES TO A
27 SINGLE TAXPAYER IN ANY FISCAL YEAR.

28 (b) Prorata distribution.--If the total amount of tax
29 credits applied for by all taxpayers, exceeds the amount
30 allocated for those tax credits, then the tax credit to be

1 received by each applicant shall be the product of the allocated
2 amount multiplied by the quotient of the tax credit applied for
3 by the applicant divided by the total of all tax credits applied
4 for by all applicants, the algebraic equivalent of which is:
5 taxpayer's tax credit = amount allocated for those
6 credits X (tax credit applied for by the applicant/total
7 of all tax credits applied for by all applicants).

8 (C) APPLICABILITY.--A TAXPAYER SHALL NOT BE ENTITLED TO A <--
9 TAX CREDIT UNDER THIS ARTICLE FOR TAXABLE YEARS ENDING AFTER
10 DECEMBER 31, 2016, UNLESS THE TAX CREDIT IS PERMITTED UNDER
11 SECTION 1905-B. THE TERMINATION DATE IN SECTION 41(H) OF THE
12 INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-514, 26 U.S.C. §
13 41(H)) DOES NOT APPLY TO A TAXPAYER WHO IS ELIGIBLE FOR THE TAX
14 CREDIT UNDER THIS ARTICLE FOR THE TAXABLE YEAR IN WHICH THE
15 QUALIFIED EXPENSE IS INCURRED.

16 SECTION 1908-B. REPAYMENT AND PENALTIES.

17 (A) REPAYMENT.--THE TOTAL AMOUNT OF TAX CREDIT SHALL BE
18 REPAID IF A TAXPAYER DOES ANY OF THE FOLLOWING:

19 (1) CLAIMS ONE OR MORE TAX CREDITS AND FAILS TO MEET ANY
20 OF THE CRITERIA REQUIRED UNDER SECTION 1904-B.

21 (2) SELLS THE VEHICLE WITHIN FIVE YEARS FROM THE DATE OF
22 ISSUANCE OF THE TAX CREDIT CERTIFICATE.

23 (B) PENALTY.--IF IT IS DETERMINED THAT THE FAILURE OR ERROR
24 UNDER SUBSECTION (A) OCCURRED AS A RESULT OF FRAUD PERPETRATED
25 BY THE TAXPAYER, THE TAXPAYER, IN ADDITION TO BEING REQUIRED TO
26 REPAY THE AMOUNT OF ALL TAX CREDITS CLAIMED, SHALL BE SUBJECT TO
27 OTHER APPROPRIATE PENALTIES AND REMEDIES AS MAY BE PROVIDED IN
28 THIS ACT OR IN OTHER APPLICABLE LAW.

29 SECTION 1909-B. REPORT.

30 NO LATER THAN JUNE 1, 2014, AND EACH JUNE 1 THEREAFTER, THE

1 DEPARTMENT SHALL SUBMIT A REPORT ON THE NATURAL GAS VEHICLE TAX
2 CREDITS GRANTED UNDER THIS ARTICLE. THE REPORT SHALL INCLUDE THE
3 NAMES OF TAXPAYERS WHO UTILIZED THE CREDIT AS OF THE DATE OF THE
4 REPORT AND THE AMOUNT OF CREDITS APPROVED. THE REPORT MAY
5 INCLUDE RECOMMENDATIONS FOR CHANGES IN THE CALCULATION OR
6 ADMINISTRATION OF THE NATURAL GAS VEHICLE TAX CREDIT AND OTHER
7 INFORMATION AS THE DEPARTMENT DEEMS APPROPRIATE. THE REPORT
8 SHALL BE SUBMITTED TO ALL OF THE FOLLOWING:

9 (1) THE CHAIRMAN AND MINORITY CHAIRMAN OF THE
10 APPROPRIATIONS COMMITTEE OF THE SENATE.

11 (2) THE CHAIRMAN AND MINORITY CHAIRMAN OF THE
12 APPROPRIATIONS COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

13 (3) THE CHAIRMAN AND MINORITY CHAIRMAN OF THE FINANCE
14 COMMITTEE OF THE SENATE.

15 (4) THE CHAIRMAN AND THE MINORITY CHAIRMAN OF THE
16 FINANCE COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

17 SECTION 1910-B. GUIDELINES.

18 THE DEPARTMENT, IN CONJUNCTION WITH THE DEPARTMENT OF
19 REVENUE, SHALL PROMULGATE GUIDELINES NECESSARY FOR THE
20 IMPLEMENTATION AND ADMINISTRATION OF THIS ARTICLE.

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