

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 16, 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 Community and Economic
5 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 "Natural gas vehicle." A motor vehicle that has a gross
11 vehicle weight of at least 33,000 pounds, is produced by an
12 original equipment manufacturer and operates:

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

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

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

18 "Pass-through entity." A partnership as defined in section
19 301(n.0) or a Pennsylvania S corporation as defined in section
20 301(n.1).

21 "Qualified expense." The expense paid by a taxpayer for a
22 natural gas vehicle.

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

26 "Tax credit." The natural gas vehicle tax credit established
27 by this article.

28 "Taxpayer." An entity subject to tax under Article III, IV
29 or VI. ~~The term shall include the shareholder of a Pennsylvania~~ <--
30 S corporation that receives a research and development tax

1 credit.

2 Section 1903-B. Eligibility for and amount of tax credit.

3 A taxpayer who incurs a qualified expense in a taxable year
4 may apply to the department for a tax credit as provided in this
5 article. The amount of the tax credit may not exceed the lesser
6 of 50% of the incremental cost of the natural gas vehicle or
7 \$12,500.

8 Section 1904-B. Application and approval of tax credit.

9 (a) Application.--By September 15, a taxpayer must submit an
10 application to the department for each qualified expense
11 incurred in the taxable year that ended in the prior calendar
12 year. The application must be on a form required by the
13 department and shall include all of the following information:

14 (1) The name and address of the applicant.

15 (2) Documentation that the taxpayer is subject to tax
16 under Article III, IV or VI for the taxable year the
17 applicant is claiming the tax credit.

18 (3) Documentation of the qualified expense.

19 (4) Any other information required by the department.

20 (b) Review and approval.--

21 (1) The department shall review and approve or
22 disapprove the applications received under subsection (a) by
23 December 15 of the same calendar year as the application.

24 (2) If the application is approved, the department shall
25 VERIFY WITH THE DEPARTMENT OF REVENUE THAT THE TAXPAYER HAS <--
26 FILED ALL REQUIRED STATE TAX REPORTS AND RETURNS FOR ALL
27 APPLICABLE TAX YEARS AND PAID ANY BALANCE OF STATE TAX DUE AS
28 DETERMINED AT SETTLEMENT, ASSESSMENT OR DETERMINATION BY THE
29 DEPARTMENT OF REVENUE AND notify the taxpayer of the amount
30 of the tax credit approved and issue the qualified taxpayer a

1 tax credit certificate within 15 days of the approval.
2 Section 1905-B. Carryover, carryback, refund and assignment of
3 credit.

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

5 (1) If the taxpayer cannot use the entire amount of the
6 tax credit for the taxable year in which the tax credit is
7 first approved, then the excess may be carried over to
8 succeeding taxable years and used as a credit against the
9 qualified tax liability of the taxpayer for those taxable
10 years.

11 (2) Each time that the tax credit is carried over to a
12 succeeding taxable year, it is to be reduced by the amount
13 that was used as a credit during the immediately preceding
14 taxable year.

15 (3) The tax credit may be carried over and applied to
16 succeeding taxable years for no more than five taxable years
17 following the first taxable year for which the taxpayer was
18 entitled to claim the credit.

19 (4) A tax credit approved by the department for a
20 qualified expense in a taxable year first shall be applied
21 against the taxpayer's qualified tax liability for the
22 current taxable year as of the date on which the tax credit
23 was approved before the tax credit is applied against any tax
24 liability under paragraph (1).

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

27 (6) A taxpayer, upon application to and approval by the
28 department, may sell or assign, in whole or in part, a tax
29 credit granted to the taxpayer. The department, IN
30 CONJUNCTION WITH THE DEPARTMENT OF REVENUE, shall establish

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1 guidelines for the approval of applications under this
2 paragraph.

3 (7) The purchaser or assignee of a portion of a tax
4 credit under paragraph (6) shall immediately claim the credit
5 in the taxable year in which the purchase or assignment is
6 made. The amount of the tax credit that a purchaser or
7 assignee may use against any one qualified tax liability may
8 not exceed 75% of the qualified tax liability for the taxable
9 year. The purchaser or assignee may not carry over, carry
10 back, obtain a refund of or assign the tax credit. The
11 purchaser or assignee shall notify the department of the
12 seller or assignor of the tax credit in compliance with
13 procedures specified by the department.

14 (8) BEFORE AN APPLICATION IS APPROVED UNDER PARAGRAPH <--
15 (6), THE DEPARTMENT OF REVENUE SHALL MAKE A FINDING THAT THE
16 APPLICANT HAS FILED ALL REQUIRED STATE TAX REPORTS AND
17 RETURNS FOR ALL APPLICABLE TAX YEARS AND PAID ANY BALANCE OF
18 STATE TAX DUE AS DETERMINED AT SETTLEMENT, ASSESSMENT OR
19 DETERMINATION BY THE DEPARTMENT OF REVENUE.

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 1906-B. PASS-THROUGH ENTITY.

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17 (A) GENERAL RULE.--IF A PASS-THROUGH ENTITY HAS ANY UNUSED
18 TAX CREDIT UNDER SECTION 1905-B, IT MAY ELECT IN WRITING,
19 ACCORDING TO PROCEDURES ESTABLISHED BY THE DEPARTMENT OF
20 REVENUE, TO TRANSFER ALL OR A PORTION OF THE CREDIT TO
21 SHAREHOLDERS, MEMBERS OR PARTNERS, IN PROPORTION TO THE SHARE OF
22 THE ENTITY'S DISTRIBUTIVE INCOME TO WHICH THE SHAREHOLDER,
23 MEMBER OR PARTNER IS ENTITLED.

24 (B) LIMITATION.--A PASS-THROUGH ENTITY AND A SHAREHOLDER,
25 MEMBER OR PARTNER OF A PASS-THROUGH ENTITY SHALL NOT CLAIM THE
26 CREDIT UNDER SUBSECTION (A) FOR THE SAME QUALIFIED EXPENSE.

27 (C) APPLICATION.--A SHAREHOLDER, MEMBER OR PARTNER OF A
28 PASS-THROUGH ENTITY TO WHOM A CREDIT IS TRANSFERRED UNDER
29 SUBSECTION (A) SHALL IMMEDIATELY CLAIM THE CREDIT IN THE TAXABLE
30 YEAR IN WHICH THE TRANSFER IS MADE. THE SHAREHOLDER, MEMBER OR

1 PARTNER MAY NOT CARRY FORWARD, CARRY BACK, OBTAIN A REFUND OF OR
2 SELL OR ASSIGN THE CREDIT.

3 Section 1907-B. Limitation on tax credits.

4 (a) General rule.--In granting tax credit certificates under
5 this article, the department shall not grant more than:

6 (1) Thirty million dollars in tax credit certificates in
7 any fiscal year.

8 (2) One million dollars in tax credit certificates to a
9 single taxpayer in any fiscal year.

10 (b) Prorata distribution.--If the total amount of tax
11 credits applied for by all taxpayers, exceeds the amount
12 allocated for those tax credits, then the tax credit to be
13 received by each applicant shall be the product of the allocated
14 amount multiplied by the quotient of the tax credit applied for
15 by the applicant divided by the total of all tax credits applied
16 for by all applicants, the algebraic equivalent of which is:

17 taxpayer's tax credit = amount allocated for those
18 credits X (tax credit applied for by the applicant/total
19 of all tax credits applied for by all applicants).

20 (c) Applicability.--A taxpayer shall not be entitled to a
21 tax credit under this article for taxable years ending after
22 December 31, 2016, unless the tax credit is permitted under
23 section 1905-B. The termination date in section 41(h) of the <--
24 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
25 41(h)) does not apply to a taxpayer who is eligible for the tax
26 credit under this article for the taxable year in which the
27 qualified expense is incurred. A TAXPAYER SHALL NOT BE ENTITLED <--
28 TO A TAX CREDIT UNDER THIS ARTICLE IF THE TAXPAYER RECEIVES A
29 TAX CREDIT FOR THE SAME NATURAL GAS VEHICLE UNDER ANY OTHER
30 PROGRAM ADMINISTERED BY THE COMMONWEALTH.

1 Section 1908-B. Repayment and penalties.

2 (a) Repayment.--The total amount of tax credit shall be
3 repaid if a taxpayer does any of the following:

4 (1) Claims one or more tax credits and fails to meet any
5 of the criteria required under section 1904-B.

6 (2) Sells the vehicle within five years from the date of
7 issuance of the tax credit certificate. THIS PARAGRAPH SHALL <--
8 NOT APPLY IF THE TAXPAYER SELLS THE VEHICLE IN EXCHANGE FOR A
9 VEHICLE WHICH WOULD ALSO QUALIFY FOR THE TAX CREDIT.

10 (b) Penalty.--If it is determined that the failure or error
11 under subsection (a) occurred as a result of fraud perpetrated
12 by the taxpayer, the taxpayer, in addition to being required to
13 repay the amount of all tax credits claimed, shall be subject to
14 other appropriate penalties and remedies as may be provided in
15 this act or in other applicable law.

16 Section 1909-B. Report.

17 No later than June 1, 2014, and each June 1 thereafter, the
18 department shall submit a report on the natural gas vehicle tax
19 credits granted under this article. The report shall include the
20 names of taxpayers who utilized the credit as of the date of the
21 report and the amount of credits approved. The report may
22 include recommendations for changes in the calculation or
23 administration of the natural gas vehicle tax credit and other
24 information as the department deems appropriate. The report
25 shall be submitted to all of the following:

26 (1) The chairman and minority chairman of the
27 Appropriations Committee of the Senate.

28 (2) The chairman and minority chairman of the
29 Appropriations Committee of the House of Representatives.

30 (3) The chairman and minority chairman of the Finance

1 Committee of the Senate.

2 (4) The chairman and the minority chairman of the
3 Finance Committee of the House of Representatives.

4 Section 1910-B. Guidelines.

5 The department, in conjunction with the Department of
6 Revenue, shall promulgate guidelines necessary for the
7 implementation and administration of this article.

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