

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1015 Session of 2013

INTRODUCED BY M. K. KELLER, MAJOR, MILLARD, GIBBONS, CUTLER, KAUFFMAN, C. HARRIS, HEFFLEY, SONNEY, KNOWLES, BAKER, PICKETT, GRELL, KORTZ, MARSICO, BARRAR, HICKERNELL, BISHOP, GINGRICH, HARHART, SAYLOR, KAVULICH, ELLIS, EVANKOVICH, O'NEILL, SCHLEGEL CULVER, PYLE, EVERETT, STEVENSON, DENLINGER, MOUL, BROOKS AND KULA, MARCH 18, 2013

REFERRED TO COMMITTEE ON FINANCE, MARCH 18, 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 farm equipment
11 conversion tax credit.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XVII-J

18 NATURAL GAS FARM EQUIPMENT CONVERSION TAX CREDIT

19 Section 1701-J. Scope of the article.

20 This article relates to the natural gas farm equipment

1 conversion tax credit.

2 Section 1702-J 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 "Applicant." An individual who meets the eligibility
7 requirements for the tax credit issued under this article.

8 "Application." A natural gas farm equipment conversion tax
9 credit application.

10 "Dedicated liquefied natural gas equipment." A piece of
11 equipment that is produced by an original equipment manufacturer
12 or a small volume manufacturer that operates on 90% or more
13 compressed natural gas fuel and 10% or less on gasoline or
14 diesel fuel.

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

16 "Farm equipment." Equipment that is considered tangible
17 personal property, including vehicles, which is directly used in
18 farming, dairying or agriculture when engaged in as a business
19 enterprise.

20 "Incremental cost." The excess cost of a new natural gas
21 farm equipment over the price for gasoline or diesel fuel farm
22 equipment of the same model. The term includes the cost to
23 retrofit farm equipment to operate on natural gas.

24 "Natural gas conversion plan." A taxpayer's plan to convert
25 existing gasoline or diesel farm equipment to compressed or
26 liquefied natural gas-fueled farm equipment.

27 "Owner." A person, other than a lienholder, having the
28 property right in or title to farm equipment. The term includes
29 a person entitled to the use and possession of farm equipment
30 subject to a security interest in another person. The term does

1 not include a lessee under a lease not intended as security.

2 "Pass-through entity." A partnership as defined in section
3 301(n.0) or a Pennsylvania S corporation as defined in section
4 301(n.1).

5 "Qualified tax liability." The liability for taxes imposed
6 under Article III, IV, VI, VII or IX. The term shall not include
7 tax withheld by an employer from an employee under Article III.

8 "Qualified taxpayer." A natural person, corporation,
9 business trust, limited liability company, partnership, limited
10 liability partnership, association or other form of legal
11 business entity that:

12 (1) Is subject to a tax imposed under Article III, IV,
13 VI, VII, VIII, IX, XI or XV, except for tax withheld by an
14 employer under Article III.

15 (2) Meets the definition of owner.

16 "Start date." The date on which a farm equipment owner may
17 begin the process of converting a gasoline or diesel-fueled farm
18 equipment to natural gas powered farm equipment.

19 "Tax credit." The natural gas farm equipment conversion tax
20 credit provided under this article.

21 Section 1703-J. Qualified natural gas conversion plan.

22 In order for a natural gas conversion plan to be qualified,
23 the conversion plan shall do all of the following:

24 (1) Provide detailed information on the equipment to be
25 converted.

26 (2) Provide the time frame for the conversion.

27 (3) Provide detailed information on the financial
28 viability of the conversion plan.

29 (4) Include other information required by the Department
30 of Community and Economic Development.

1 Section 1704-J. Application for tax credit certificate.

2 (a) Application.--A qualified taxpayer may apply to the
3 Department of Community and Economic Development for a tax
4 credit certificate under this section. The application must be
5 on a form required by the Department of Community and Economic
6 Development and shall include all of the following information:

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

8 (2) A certified copy of the natural gas conversion plan.

9 (3) Documentation that all equipment included in the
10 natural gas conversion plan is farm equipment.

11 (4) Any information required by the Department of
12 Community and Economic Development.

13 (b) Review and approval.--

14 (1) The Department of Community and Economic Development
15 shall review and approve applications according to the order
16 applications are received and the availability of natural gas
17 farm equipment conversion tax credits.

18 (2) The Department of Community and Economic Development
19 shall notify the applicant within 30 days of receipt of the
20 application of its determination.

21 (3) If an application is approved, the Department of
22 Community and Economic Development shall issue the qualified
23 taxpayer a tax credit certificate within 15 days of the
24 approval.

25 (4) A tax credit certificate issued under this section
26 may not exceed 75% of the incremental cost established in the
27 qualified natural gas conversion plan.

28 (5) In granting tax credits under this article, the
29 Department of Community and Economic Development may not
30 grant more than:

1 (i) \$25,000,000 in tax credit certificates in a
2 fiscal year; and

3 (ii) \$75,000 in tax credit certificates to a single
4 qualified taxpayer in a fiscal year.

5 Section 1705-J. Carryover, application of tax credit,
6 carryback, refund and assignment.

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

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

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

27 (d) Sale or assignment.--A taxpayer, upon application to and
28 approval by the Department of Community and Economic
29 Development, in consultation with the department, may sell or
30 assign, in whole or in part, a tax credit granted to the

1 taxpayer under this chapter if the taxpayer does not have a
2 qualified tax liability against which the tax credit may be
3 applied in the current taxable year. The Department of Community
4 and Economic Development shall establish guidelines, in
5 consultation with the department, for the approval of
6 applications under this subsection. Prior to approval of an
7 application, the department shall make a finding that the
8 taxpayer and its assignee have filed all required State tax
9 reports and returns for all taxable years and paid any balance
10 of State tax due as determined by the department.

11 (e) Purchasers and assignees.--

12 (1) The purchaser or assignee of all or a portion of a
13 tax credit under subsection (d) shall immediately claim the
14 credit in the taxable year in which the purchase or
15 assignment is made, except that the purchaser or assignee may
16 carry over unused tax credits to the succeeding taxable year
17 for up to two years.

18 (2) The amount of the tax credit that a purchaser or
19 assignee may use against any one qualified tax liability may
20 not exceed 75% of the qualified tax liability for the taxable
21 year. The purchaser or assignee may not carry back or obtain
22 a refund of or sell or assign the tax credit.

23 (3) The purchaser or assignee shall notify the
24 Department of Community and Economic Development, and the
25 Department of Community and Economic Development shall notify
26 the department of the seller or assignor of the tax credit in
27 compliance with procedures specified by the Department of
28 Community and Economic Development, in consultation with the
29 department.

30 Section 1706-J. Shareholder, owner or member pass-through.

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

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

17 (c) Additional credit.--

18 (1) Except as provided under paragraph (2), the tax
19 credit provided under subsections (a) or (b) shall be in
20 addition to any other tax credit to which a shareholder,
21 owner or member of a pass-through entity is otherwise
22 entitled under this chapter.

23 (2) A pass-through entity and a shareholder, owner or
24 member of a pass-through entity may not claim a tax credit
25 under this chapter for the same qualified investment.

26 Section 1707-J. Penalties.

27 (a) Failure to maintain operations.--A qualified taxpayer
28 that receives a tax credit and fails to maintain or operate 80%
29 of the natural gas farm equipment for which they received the
30 tax credits in this Commonwealth for a period of five years from

1 the start date shall refund to the Commonwealth the total amount
2 of credits granted.

3 (b) Failure to complete the qualified natural gas conversion
4 plan.--A qualified taxpayer which receives a tax credit and
5 fails to complete the qualified natural gas conversion plan
6 within four years shall refund to the Commonwealth the total
7 amount of credits granted.

8 (c) Waiver.--The department may waive the penalties under
9 subsections (a) and (b) if it is determined that the failure to
10 maintain or operate farm equipment in this Commonwealth or the
11 noncompletion of a qualified natural gas conversion plan was due
12 to circumstances beyond the qualified taxpayer's control.
13 Circumstances shall include natural disasters, unforeseen
14 industry trends or a loss of a major supplier or market. The
15 qualified taxpayer must promptly notify the department of
16 circumstances beyond their control which would delay completion
17 of the plan.

18 Section 1708-J. Time limitations.

19 A qualified taxpayer shall not be entitled to a natural gas
20 farm equipment tax credit for taxable years ending after
21 December 31, 2020.

22 Section 1709-J. Guidelines.

23 The Department of Community and Economic Development, in
24 conjunction with the department, shall develop written
25 guidelines for the implementation and administration of this
26 article. The guidelines shall be posted on the Department of
27 Community and Economic Development's publicly accessible
28 website.

29 Section 2. The addition of Article XVII-J of the act shall
30 apply to taxable years beginning after December 31, 2013.

1 Section 3. This act shall take effect immediately.