

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1461 Session of
2013

INTRODUCED BY KILLION, DAVIS, O'BRIEN, READSHAW, KIRKLAND,
COHEN, LUCAS, MATZIE, KORTZ, FRANKEL, HARHAI, FABRIZIO,
CHRISTIANA, HARKINS, P. DALEY, FARRY, MARSHALL, MUSTIO,
SCHLOSSBERG, WATSON, GROVE, BIZZARRO AND HACKETT,
MAY 30, 2013

REFERRED TO COMMITTEE ON FINANCE, MAY 30, 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 waterfront development tax
11 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 WATERFRONT DEVELOPMENT TAX CREDIT

19 Section 1701-J. Scope of article.

20 This article establishes the waterfront development tax
21 credit.

1 Section 1702-J. Definitions.

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

5 "Business firm." An entity authorized to do business in this
6 Commonwealth and subject to taxes imposed under Article III, IV,
7 VI, VII, VIII, IX or XV or the tax under Article XVI of the act
8 of May 17, 1921 (P.L.682, No.284), known as The Insurance
9 Company Law of 1921. The term includes a pass-through entity.

10 "Contribution." A donation of cash or personal property made
11 pursuant to this article.

12 "Department." The Department of Community and Economic
13 Development of the Commonwealth.

14 "Eligible applicant." A business firm or individual meeting
15 all of the following:

16 (1) Has contributed to a waterfront development
17 organization.

18 (2) Is subject to a tax imposed by Article III, IV, VI,
19 VII, VIII, IX or XV or Article XVI of the act of May 17, 1921
20 (P.L.682, No.284), known as The Insurance Company Law of
21 1921.

22 "Pass-through entity." A partnership as defined in section
23 301(n.0), a single-member limited liability company treated as a
24 disregarded entity for Federal income tax purposes or a
25 Pennsylvania S corporation as defined in section 301(n.1).

26 "Waterfront." A site which is directly adjacent to a body of
27 water.

28 "Waterfront development organization." A nonprofit entity
29 which meets all of the following:

30 (1) Is exempt from Federal taxation under section 501(c)

1 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
2 26 U.S.C. § 1 et seq.).

3 (2) Has been in existence for a minimum of five years.

4 (3) Has a board of directors which meets at least once
5 annually.

6 (4) Has completed a waterfront development plan.

7 (5) Uses at least 95% of its annual contributions from
8 eligible applicants for projects authorized under this
9 article. For purposes of this definition, a nonprofit entity
10 "uses" its annual contributions when it expends or otherwise
11 encumbers those funds for expenditure during the then current
12 fiscal year of the nonprofit entity or during the next
13 succeeding fiscal year of the nonprofit entity.

14 "Waterfront development plan." A plan approved by the
15 Department of Community and Economic Development which meets all
16 of the following:

17 (1) Provides for the development or enhancement of
18 waterfront property which creates public access to the water,
19 increases property values, restores ecology and catalyzes
20 further financial investment and job creation to incentivize
21 future economic development.

22 (2) Adheres to current environmental practices.

23 (3) Considers and integrates approaches that support
24 natural and native habitat.

25 (4) Considers and integrates architectural and landscape
26 design elements and standards.

27 "Waterfront development project." A project to develop a
28 waterfront site or area or a project which creates or improves
29 public access and connections to the waterfront. The term may
30 include:

- 1 (1) Streets and public rights-of-way.
2 (2) Waterfront parks, gardens and open spaces.
3 (3) Enhancement of access to public utilities.
4 (4) The promotion of erosion control, storm water
5 management and other environmental projects which promote
6 economic development.

7 (5) Water transportation facilities for use by the
8 public, including water transit landings and boat docking.

9 (6) Amenities, including infrastructure and recreational
10 projects.

11 Section 1703-J. Waterfront Development Tax Credit Program.

12 The Waterfront Development Tax Credit Program is established
13 to encourage private investment in waterfront property which
14 creates public access to the water, increases property values,
15 restores ecology and catalyzes further financial investment and
16 job creation.

17 Section 1704-J. Qualification of waterfront development
18 organization.

19 (a) General rule.--The following shall apply:

20 (1) To qualify under this article, a waterfront
21 development organization shall meet all of the following
22 requirements:

23 (i) Submit information to the department which
24 enables the department to confirm that the organization
25 is exempt from Federal taxation under section 501(c)(3)
26 of the Internal Revenue Code of 1986 (Public Law 99-514,
27 26 U.S.C. § 1 et seq.).

28 (ii) Certify to the department, on a form provided
29 by the department, that the organization is eligible to
30 participate in the program established under this article

1 and agree to annually report by September 1 of each year
2 all of the following information:

3 (A) The number of waterfront development
4 projects funded, in total and by municipality, during
5 the immediately preceding year.

6 (B) The amount expended for waterfront
7 development projects, in total and by municipality,
8 during the immediately preceding year.

9 (C) The number and nature of funding requests
10 received, in total and by municipality, including a
11 breakdown of waterfront development projects approved
12 and rejected, during the immediately preceding year.

13 (D) The number of project applications
14 processed, in total and by municipality, and the
15 amount of any application fees charged per project
16 application or in the aggregate through a third-party
17 processor.

18 (E) The number of waterfront development
19 projects completed, in total and by municipality,
20 during the immediately preceding year.

21 (F) A copy of the Federal Form 990 or other
22 Federal form of the waterfront development
23 organization which indicates the tax status of the
24 organization for Federal tax purposes, if any.

25 (G) A copy of a compilation, review or audit of
26 the financial statements of the waterfront
27 development organization conducted by a certified
28 public accounting firm.

29 (2) The department shall distribute sample forms,
30 together with the forms on which the information under

1 paragraph (1)(ii) is to be certified, to each waterfront
2 development organization not later than May 1 of each year.

3 (3) The department may not require any additional
4 information from a waterfront development organization to
5 meet the requirements of this section than is expressly
6 authorized under this subsection.

7 (b) Notification.--The department shall notify a waterfront
8 development organization if the organization meets the
9 requirements of this section for the current fiscal year not
10 later than 60 days after the waterfront development organization
11 has submitted the information required under this section.

12 (c) Publication.--The department shall annually publish a
13 list of each waterfront development organization approved under
14 this section in the Pennsylvania Bulletin. The list shall also
15 be posted and updated as necessary on the publicly accessible
16 Internet website of the department.

17 Section 1705-J. Waterfront development projects.

18 (a) General rule.--To qualify for a tax credit under this
19 article, contributions made to a waterfront development
20 organization shall be used by the organization for a waterfront
21 development project approved under this section.

22 (b) Approval.--The following shall apply:

23 (1) A waterfront development organization shall apply to
24 the department for approval of a waterfront development
25 project as eligible for a waterfront development tax credit
26 by submission to the department of an application including
27 all of the following information:

28 (i) The location of the waterfront development
29 project.

30 (ii) The type of waterfront development project.

1 (iii) A detailed description of the waterfront
2 development project, including any architectural and
3 engineering drawings.

4 (iv) The status of the waterfront development
5 project.

6 (v) The anticipated start date and completion date
7 for the waterfront development project.

8 (vi) The life expectancy of the waterfront
9 development project and a plan for project maintenance
10 following completion.

11 (vii) The estimated cost of the waterfront
12 development project, the total amount of contributions
13 received which have been designated for the waterfront
14 development project and the funding source to be used for
15 payment of unfunded costs, if any.

16 (viii) Analysis of the direct current and future
17 economic benefits derived from the waterfront development
18 project, including indirect and direct job creation
19 projections.

20 (ix) The manner in which the organization will do
21 all of the following:

22 (A) Verify eligibility of costs.

23 (B) Monitor progress of the waterfront
24 development project.

25 (C) Assure that contributions received are used
26 for the waterfront development project for which they
27 have been designated.

28 (x) Any other information required by the
29 department.

30 (2) The department, in conjunction with the Department

1 of Conservation and Natural Resources, shall review
2 applications received from waterfront development
3 organizations under paragraph (1).

4 (3) Within 60 days after receipt of an application, the
5 department shall notify the waterfront development
6 organization of its approval or disapproval of a waterfront
7 development project. If the application is disapproved, the
8 notice of disapproval shall include the reasons for
9 disapproval. A waterfront development organization shall have
10 30 days after receipt of a notice of disapproval to resubmit
11 the application.

12 (c) Completion.--Upon completion of a waterfront development
13 project approved under subsection (b), the waterfront
14 development organization shall submit written notice of project
15 completion to the department. The notice shall include all of
16 the following information:

17 (1) Certification that the waterfront development
18 project is complete.

19 (2) An upkeep and maintenance plan, if applicable to the
20 waterfront development project.

21 (3) Any other information required by the department.

22 (d) Inspection.--Waterfront development projects approved
23 under subsection (b) may be subject to inspection by the
24 department or its designated agent.

25 Section 1706-J. Application for tax credit.

26 (a) General rule.--An eligible applicant shall apply to the
27 department for a tax credit under this article. An eligible
28 applicant shall receive a tax credit under this article if the
29 waterfront development organization that receives the
30 contribution from the eligible applicant appears on the list

1 established under section 1704-J and the department has approved
2 the waterfront development project for which the contribution is
3 to be used under section 1705-J(b).

4 (b) Time.--The following shall apply:

5 (1) Except as otherwise provided in paragraph (2), the
6 department may accept applications for tax credits under this
7 article not earlier than July 1 of each fiscal year.

8 (2) The application of any eligible applicant for tax
9 credits available during a fiscal year as part of the second
10 year of a two-year commitment or as a renewal of a two-year
11 commitment which was fulfilled in the previous fiscal year
12 may be accepted not earlier than May 15 preceding the start
13 of the fiscal year.

14 (c) Availability of tax credits.--Tax credits under this
15 article shall be made available by the department on a first-
16 come, first-served basis within the limitation established under
17 section 1708-J.

18 (d) Contribution.--A contribution by an eligible applicant
19 shall be made not later than 60 days following the approval of
20 an application under this section.

21 Section 1707-J. Grant of tax credit and amount.

22 (a) General rule.--In accordance with section 1708-J(a), the
23 Department of Revenue shall grant a tax credit against any tax
24 due under Article III, IV, VI, VII, VIII, IX or XV or under
25 Article XVI of the act of May 17, 1921 (P.L.682, No.284), known
26 as The Insurance Company Law of 1921, to an eligible applicant
27 providing proof of a contribution to a waterfront development
28 organization in the taxable year in which the contribution is
29 made. The tax credit shall not exceed 75% of the total amount
30 contributed by the eligible applicant during the taxable year.

1 (b) Additional amount.--The Department of Revenue shall
2 grant a tax credit of up to 90% of the total amount contributed
3 during the taxable year if the eligible applicant provides a
4 written commitment to provide the waterfront development
5 organization with the same amount of contribution for two
6 consecutive tax years. The eligible applicant shall provide the
7 written commitment to the department at the time of application
8 for the tax credit.

9 (c) Combination of tax credits.--An eligible applicant may
10 receive tax credits from the Department of Revenue in any tax
11 year for any combination of contributions under subsection (a)
12 or (b).

13 (d) Pass-through entity.--The following shall apply:

14 (1) If a pass-through entity does not intend to use all
15 approved tax credits under this article, it may elect in
16 writing to transfer all or a portion of the tax credit to its
17 shareholders, members or partners, in proportion to the share
18 of the entity's distributive income to which the shareholder,
19 member or partner is entitled, for use in the taxable year in
20 which the contribution is made or in the taxable year
21 immediately following the year in which the contribution is
22 made. The election shall designate the year in which the
23 transferred credits are to be used and shall be made
24 according to procedures established by the Department of
25 Revenue.

26 (2) A pass-through entity and a shareholder, member or
27 partner of a pass-through entity shall not claim the tax
28 credit under this article for the same contribution.

29 (3) The shareholder, member or partner of a pass-through
30 entity may not carry forward, carry back, obtain a refund of

1 or sell or assign the tax credit.

2 (e) Restriction on applicability of credits.--No tax credits
3 granted under this article shall be applied against any tax
4 withheld by an employer from an employee under Article III.
5 Section 1708-J. Limitations.

6 (a) Aggregate amount.--The total aggregate amount of all tax
7 credits under this article shall not exceed \$10,000,000 in any
8 fiscal year.

9 (b) Activities.--No tax credit shall be granted for
10 activities that are a part of an eligible applicant's normal
11 course of business.

12 (c) Tax liability.--The following shall apply:

13 (1) Except as provided in paragraph (2), a tax credit
14 granted under this article for any one taxable year may not
15 exceed the tax liability of an eligible applicant.

16 (2) In the case of a credit granted to a pass-through
17 entity which elects to transfer the tax credit according to
18 section 1707-J(d), a tax credit granted for any one taxable
19 year and transferred to a shareholder, member or partner may
20 not exceed the tax liability of the shareholder, member or
21 partner.

22 (d) Use.--A tax credit not used by the eligible applicant in
23 the taxable year the contribution was made or in the year
24 designated by the shareholder, member or partner to whom the
25 credit was transferred under section 1707-J(d) may not be
26 carried forward or carried back and is not refundable or
27 transferable.

28 Section 1709-J. Lists.

29 The Department of Revenue shall provide a list of all
30 waterfront development organizations receiving contributions

1 from eligible applicants granted a tax credit under this article
2 to the General Assembly not later than June 30 of each year.

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