

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 968 Session of 2013

INTRODUCED BY VULAKOVICH, SCARNATI, PILEGGI, BLAKE, BOSCOLA, BREWSTER, BROWNE, COSTA, ERICKSON, FARNESE, FERLO, FONTANA, HUGHES, RAFFERTY, SMITH, TOMLINSON, VOGEL, WARD, WAUGH AND WILEY, MAY 29, 2013

SENATOR BRUBAKER, FINANCE, AS AMENDED, DECEMBER 11, 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:

ARTICLE XVII-J

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 AN AUTHORITY <--
29 ESTABLISHED UNDER THE ACT OF DECEMBER 6, 1972 (P.L.1392,
30 NO.298), KNOWN AS THE THIRD CLASS CITY PORT AUTHORITY ACT, OR A

1 nonprofit entity which meets all of the following:

2 (1) ~~Is~~ FOR A NONPROFIT ENTITY, IS exempt from Federal <--
3 taxation under section 501(c)(3) of the Internal Revenue Code
4 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

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

6 (3) Has a board of directors which meets at least once
7 annually.

8 (4) Has completed a waterfront development plan.

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

17 "Waterfront development plan." A plan approved by the
18 Department of Community and Economic Development which meets all
19 of the following:

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

25 (2) Adheres to current environmental practices.

26 (3) Considers and integrates approaches that support
27 natural and native habitat.

28 (4) Considers and integrates architectural and landscape
29 design elements and standards.

30 "Waterfront development project." A project to develop a

1 waterfront site or area or a project which creates or improves
2 public access and connections to the waterfront. The term may
3 include:

4 (1) Streets and public rights-of-way.

5 (2) Waterfront parks, gardens and open spaces.

6 (3) Enhancement of access to public utilities.

7 (4) The promotion of erosion control, storm water
8 management and other environmental projects which promote
9 economic development.

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

12 (6) Amenities, including infrastructure and recreational
13 projects.

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

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

20 Section 1704-J. Qualification of waterfront development
21 organization.

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

23 (1) To qualify under this article, a waterfront
24 development organization shall meet all of the following
25 requirements:

26 (i) Submit information to the department which
27 enables the department to confirm that the organization
28 is exempt from Federal taxation under section 501(c)(3)
29 of the Internal Revenue Code of 1986 (Public Law 99-514,
30 26 U.S.C. § 1 et seq.).

1 (ii) Certify to the department, on a form provided
2 by the department, that the organization is eligible to
3 participate in the program established under this article
4 and agree to annually report by September 1 of each year
5 all of the following information:

6 (A) The number of waterfront development
7 projects funded, in total and by municipality, during
8 the immediately preceding year.

9 (B) The amount expended for waterfront
10 development projects, in total and by municipality,
11 during the immediately preceding year.

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

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

21 (E) The number of waterfront development
22 projects completed, in total and by municipality,
23 during the immediately preceding year.

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

28 (G) A copy of a compilation, review or audit of
29 the financial statements of the waterfront
30 development organization conducted by a certified

1 public accounting firm.

2 (2) The department shall distribute sample forms,
3 together with the forms on which the information under
4 paragraph (1)(ii) is to be certified, to each waterfront
5 development organization not later than May 1 of each year.

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

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

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

20 Section 1705-J. Waterfront development projects.

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

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

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

1 (i) The location of the waterfront development
2 project.

3 (ii) The type of waterfront development project.

4 (iii) A detailed description of the waterfront
5 development project, including any architectural and
6 engineering drawings.

7 (iv) The status of the waterfront development
8 project.

9 (v) The anticipated start date and completion date
10 for the waterfront development project.

11 (vi) The life expectancy of the waterfront
12 development project and a plan for project maintenance
13 following completion.

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

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

23 (ix) The manner in which the organization will do
24 all of the following:

25 (A) Verify eligibility of costs.

26 (B) Monitor progress of the waterfront
27 development project.

28 (C) Assure that contributions received are used
29 for the waterfront development project for which they
30 have been designated.

1 (x) Any other information required by the
2 department.

3 (2) The department, in conjunction with the Department
4 of Conservation and Natural Resources, shall review
5 applications received from waterfront development
6 organizations under paragraph (1).

7 (3) Within 60 days after receipt of an application, the
8 department shall notify the waterfront development
9 organization of its approval or disapproval of a waterfront
10 development project. If the application is disapproved, the
11 notice of disapproval shall include the reasons for
12 disapproval. A waterfront development organization shall have
13 30 days after receipt of a notice of disapproval to resubmit
14 the application.

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

20 (1) Certification that the waterfront development
21 project is complete.

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

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

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

28 Section 1706-J. Application for tax credit.

29 (a) General rule.--An eligible applicant shall apply to the
30 department for a tax credit under this article. An eligible

1 applicant shall receive a tax credit under this article if the
2 waterfront development organization that receives the
3 contribution from the eligible applicant appears on the list
4 established under section 1704-J and the department has approved
5 the waterfront development project for which the contribution is
6 to be used under section 1705-J(b).

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

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

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

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

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

24 (E) COMPLIANCE PROVISIONS.--BEFORE AN APPLICATION IS <--
25 APPROVED, THE DEPARTMENT OF REVENUE MUST MAKE A FINDING THAT THE
26 APPLICANT HAS FILED ALL REQUIRED STATE TAX REPORTS AND RETURNS
27 FOR ALL APPLICABLE TAX YEARS AND PAID ANY BALANCE OF STATE TAX
28 DUE AS DETERMINED AT SETTLEMENT, ASSESSMENT OR DETERMINATION BY
29 THE DEPARTMENT OF REVENUE.

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

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

10 (b) Additional amount.--The Department of Revenue shall
11 grant a tax credit of up to 90% of the total amount contributed
12 during the taxable year if the eligible applicant provides a
13 written commitment to provide the waterfront development
14 organization with the same amount of contribution for two
15 consecutive tax years. The eligible applicant shall provide the
16 written commitment to the department at the time of application
17 for the tax credit.

18 (c) Combination of tax credits.--An eligible applicant may
19 receive tax credits from the Department of Revenue in any tax
20 year for any combination of contributions under subsection (a)
21 or (b).

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

23 (1) If a pass-through entity does not intend to use all
24 approved tax credits under this article, it may elect in
25 writing to transfer all or a portion of the tax credit to its
26 shareholders, members or partners, in proportion to the share
27 of the entity's distributive income to which the shareholder,
28 member or partner is entitled, for use in the taxable year in
29 which the contribution is made or in the taxable year
30 immediately following the year in which the contribution is

1 made. The election shall designate the year in which the
2 transferred credits are to be used and shall be made
3 according to procedures established by the Department of
4 Revenue.

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

8 (3) The shareholder, member or partner of a pass-through
9 entity may not carry forward, carry back, obtain a refund of
10 or sell or assign the tax credit.

11 (e) Restriction on applicability of credits.--No tax credits
12 granted under this article shall be applied against any tax
13 withheld by an employer from an employee under Article III.

14 Section 1708-J. Limitations.

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

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

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

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

25 (2) In the case of a credit granted to a pass-through
26 entity which elects to transfer the tax credit according to
27 section 1707-J(d), a tax credit granted for any one taxable
28 year and transferred to a shareholder, member or partner may
29 not exceed the tax liability of the shareholder, member or
30 partner.

1 (d) Use.--A tax credit not used by the eligible applicant in
2 the taxable year the contribution was made or in the year
3 designated by the shareholder, member or partner to whom the
4 credit was transferred under section 1707-J(d) may not be
5 carried forward or carried back and is not refundable or
6 transferable.

7 Section 1709-J. Lists.

8 The Department of Revenue shall provide a list of all
9 waterfront development organizations receiving contributions
10 from eligible applicants granted a tax credit under this article
11 to the General Assembly not later than June 30 of each year.

12 SECTION 1710-J. RECAPTURE OF TAX CREDITS.

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13 (A) REPAYMENT.--IF A WATERFRONT DEVELOPMENT ORGANIZATION
14 FAILS TO COMPLETE A WATERFRONT DEVELOPMENT PROJECT UNDER SECTION
15 1705-J, THE WATERFRONT DEVELOPMENT ORGANIZATION SHALL REPAY TO
16 THE COMMONWEALTH ANY TAX CREDITS GRANTED UNDER THIS ARTICLE FOR
17 ANY CONTRIBUTIONS TO THE WATERFRONT DEVELOPMENT ORGANIZATION.

18 (B) ASSESSMENT AND COLLECTION.--IF THE WATERFRONT
19 DEVELOPMENT ORGANIZATION FAILS TO REPAY THE AMOUNT DUE UNDER
20 SUBSECTION (A) WITHIN 30 DAYS OF THE DATE OF A DEMAND LETTER
21 FROM THE DEPARTMENT, THE DEPARTMENT SHALL NOTIFY THE DEPARTMENT
22 OF REVENUE WITHIN 60 DAYS OF THE DATE OF THE DEMAND LETTER FROM
23 THE DEPARTMENT. THE DEPARTMENT OF REVENUE MAY ISSUE AN
24 ASSESSMENT AGAINST THE WATERFRONT DEVELOPMENT ORGANIZATION FOR
25 THE AMOUNT NOT REPAYED. THE ASSESSMENT AND COLLECTION OF THIS
26 AMOUNT SHALL BE MADE PURSUANT TO THE PROVISIONS OF ARTICLE II.
27 IF THE WATERFRONT DEVELOPMENT ORGANIZATION FAILS TO PAY THE
28 ASSESSMENT, THE BOARD OF DIRECTORS MAY BE HELD JOINTLY AND
29 SEVERABLY LIABLE FOR THE UNPAID AMOUNT.

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