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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1346 Session of 2014

INTRODUCED BY WHITE, KASUNIC, HUTCHINSON, GORDNER, YUDICHAK, GREENLEAF, ALLOWAY, BLAKE, YAW, SOLOBAY, BRUBAKER, TEPLITZ, BROWNE AND SCARNATI, APRIL 17, 2014

REFERRED TO FINANCE, APRIL 17, 2014

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," providing for a waste coal energy and reclamation tax credit; and imposing duties on the Department of Revenue and the Department of Community and Economic Development.

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

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

ARTICLE XVII-J

WASTE COAL ENERGY AND RECLAMATION TAX CREDIT

Section 1701-J. Scope of article.

This article establishes a waste coal energy and reclamation tax credit.

Section 1702-J. Definitions.

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

"Company." Any corporation, partnership, limited liability company, limited liability partnership, business trust, affiliate, unincorporated joint venture or other business entity doing business within this Commonwealth.

"Department." The Department of Revenue of the Commonwealth, except as otherwise specifically indicated.

"Pass-through entity." Any of the following:

(1) A partnership as defined in section 301(n.0).

(2) A Pennsylvania S corporation as defined in section 301(n.1).

(3) An unincorporated entity subject to section 307.21.

"Qualified fuel." Waste coal, which shall include the combustion of waste coal in facilities in which the waste coal was disposed of or abandoned prior to July 31, 1982, or disposed of thereafter in a permitted coal refuse disposal site regardless of when disposed of, and used to generate electricity, or such other waste coal combustion meeting alternate eligibility requirements established by regulation. Facilities combusting waste coal shall use, at a minimum, a combined fluidized bed boiler and be outfitted with a limestone injection system and a fabric filter particulate removal system.

"Qualified tax liability." The liability for taxes imposed under Articles III, IV, VI, VII, VIII, IX, XI and XV. The term does not include tax withheld under section 316.

"Qualified taxpayer." A company that satisfies all of the following:

(1) Is an electric energy generator using qualified fuel for the generation of electric energy.

(2) The qualified fuel is utilized for generation of electricity at a facility in this Commonwealth which has been placed in service before the effective date of this section.

(3) Uses or facilitates the use of ash resulting from the combustion of qualified fuel to generate electricity at a reclamation project approved by the Department of Environmental Protection under the act of May 31, 1945 (P.L.1198, No.418), known as the Surface Mining Conservation and Reclamation Act.

"Tax credit." The waste coal energy and reclamation tax credit provided under this article.

"Ton." Two thousand pounds as defined in section 4121(d) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 4121(d)).

Section 1703-J. Application and approval of tax credit.

(a) Rate.--The tax credit shall be equal to $3.50 per ton of qualified fuel used to generate electricity in this Commonwealth by a qualified taxpayer.

(b) Application.--

(1) A qualified taxpayer may apply to the department for a tax credit under this section.

(2) The application must be submitted to the department by August 1, 2014, and by March 1 of each year thereafter for the tax credit claimed for qualified fuel used by the qualified taxpayer during the prior calendar year. The application must be on the form required by the department.

(3) The department may require information necessary to document the amount of qualified fuel used.

(c) Review and approval.--

(1) The department shall review and approve applications meeting the requirements of this article by August 20, 2014, and by March 20 of each year thereafter.

(2) Upon approval, the department shall issue a certificate stating the amount of tax credit granted for qualified fuel used in the prior calendar year.

Section 1704-J. Use of tax credits.

(a) Application.--The tax credit shall be applied against the qualified taxpayer's liability only after all other statutory tax credits and deductions available to the qualified taxpayer have been used.

(b) Limitation.--A qualified taxpayer that has been granted a tax credit under this article shall be ineligible for any other tax credit provided under this act.

Section 1705-J. Carryover and carryback.

A tax credit cannot be carried back. A tax credit can be carried forward up to three tax years following the tax year in which the tax credit is earned.

Section 1706-J. Limitation on tax credits.

(a) Amount.--The total amount of tax credits approved by the department shall not exceed $40,000,000 in any fiscal year.

(b) Proration.--If the total amount of tax credits applied for by all qualified taxpayers exceeds the amount allocated for those tax credits, then the tax credit to be received by each applicant shall be the product of the allocated amount multiplied by the quotient of the tax credits approved for the applicant divided by the total of all tax credits approved for all applicants.

(c) Restriction.--Notwithstanding subsection (b), the department may not grant more than $10,000,000 in tax credits to a single qualified taxpayer in any fiscal year.

Section 1707-J. Pass-through entity.

(a) Election.--If a pass-through entity has an unused tax credit, it may elect in writing, according to procedures established by the department, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholders, members or partners are entitled.

(b) Limitation.--The same unused tax credit under subsection (a) may not be claimed by:

(1) the pass-through entity; and

(2) a shareholder, member or partner of the pass-through entity.

(c) Time.--A transferee under subsection (a) must claim the tax credit in the calendar year in which the transfer is made.

Section 1708-J. Use of credits by affiliates.

In addition to reducing or eliminating the qualified tax liability of a qualified taxpayer, a tax credit shall be applied to reduce or eliminate the qualified tax liability of any "related party," as that term is defined in section 267 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 267), to a qualified taxpayer.

Section 1709-J. Sale or assignment.

(a) Authorization.--Except as authorized in subsection (d), if a qualified taxpayer holds a tax credit through the end of the third calendar year following the year in which the tax credit was granted, the qualified taxpayer may sell or assign a tax credit, in whole or in part.

(b) Initial use.--Except as provided in subsection (e), prior to sale of assignment of a tax credit a qualified taxpayer must first use a tax credit against the qualified tax liability incurred in the taxable year for which the tax credit was approved.

(c) Application.--

(1) Except as authorized in subsection (d), to sell or assign a tax credit, a qualified taxpayer must file an application for the sale or assignment of the tax credit with the Department of Community and Economic Development. The application must be on a form required by the Department of Community and Economic Development.

(2) To approve an application, the Department of Community and Economic Development must receive a finding from the department that the applicant has:

(i) filed all required State tax reports and returns for all applicable taxable years; and

(ii) paid any balance of State tax due as determined by assessment or determination by the department and not under timely appeal.

(d) Approval.--Upon approval by the Department of Community and Economic Development, a qualified taxpayer may sell or assign, in whole or in part, a tax credit.

(e) Expedited sale or assignment.--

(1) Notwithstanding subsections (a) and (b), a qualified taxpayer may immediately sell or assign, in whole or in part, a tax credit approved for a taxable year beginning in 2013.

(2) Nothing in this subsection shall be construed to mean that the tax credits sold or assigned under this subsection are not subject to the provisions of section 1711-J.

Section 1710-J. Purchasers and assignees.

(a) Time.--The purchaser or assignee under section 1709-J must claim the tax credit no later than the last day of the third calendar year following in the calendar year in which the purchase or assignment is made.

(b) Amount.--The amount of the tax credit that a purchaser or assignee under section 1709-J may use against any one qualified tax liability may not exceed 75% of any of the qualified tax liabilities for the taxable year.

(c) Resale and reassignment.--

(1) A purchaser under section 1709-J may not sell or assign the purchased tax credit.

(2) An assignee under section 1709-J may not sell or assign the assigned tax credit.

(d) Notice.--The purchaser or assignee under section 1709-J shall notify the department of the seller or assignor of the tax credit in compliance with procedures specified by the department.

Section 1711-J. Administration.

(a) Audits and assessments.--The department has the following powers:

(1) To audit a qualified taxpayer claiming a tax credit to ascertain the validity of the amount claimed.

(2) To issue an assessment against a qualified taxpayer for an improperly issued tax credit. The procedures, collection, enforcement and appeals of any assessment made under this section shall be governed by Article II.

(b) Guidelines.--The department shall develop written guidelines for the implementation of this article.

Section 1712-J. Annual report to General Assembly.

By October 1, 2015, and October 1 of each year thereafter, the department shall submit a report on the tax credit to the chairman and minority chairman of the Appropriations Committee of the Senate, the chairman and minority chairman of the Finance Committee of the Senate, the chairman and minority chairman of the Appropriations Committee of the House of Representatives and the chairman and minority chairman of the Finance Committee of the House of Representatives. The report shall include the names of the qualified taxpayers utilizing the tax credit as of the date of the report and the amount of tax credits approved for, utilized by or sold or assigned by a qualified taxpayer.

Section 1713-J. Expiration.

This article shall expire December 31, 2022.

Section 1714-J. Applicability.

The tax credit shall be effective for taxable years beginning on or after January 1, 2013.

Section 2. This act shall take effect immediately.