

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 551 Session of 2019

INTRODUCED BY ORTITAY, JAMES, B. MILLER, NEILSON, PYLE, IRVIN, KEEFER, ZIMMERMAN, MILLARD AND DeLUCA, FEBRUARY 25, 2019

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 25, 2019

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," in research and development tax credit, further  
 11 providing for carryover, carryback, refund and assignment of  
 12 credit; in entertainment production tax credit, further  
 13 providing for carryover, carryback and assignment of credit  
 14 and for carryover, carryback and assignment of tax credit; in  
 15 resource enhancement and protection tax credit, further  
 16 providing for Resource Enhancement and Protection Tax Credit  
 17 Program; in historic preservation incentive tax credit,  
 18 further providing for carryover, carryback and assignment of  
 19 credit; in waterfront development tax credit, further  
 20 providing for tax credit; in Innovate in PA tax credit,  
 21 further providing for sale, carryover and carryback; in  
 22 manufacturing and investment tax credit, further providing  
 23 for sale or assignment; in neighborhood assistance tax  
 24 credit, further providing for tax credit; in keystone special  
 25 development zone program, further providing for Keystone  
 26 Special Development Zone tax credit; in keystone innovation  
 27 zones, further providing for keystone innovation zone tax  
 28 credits; and repealing provisions relating to sale or  
 29 assignment of coal refuse energy and reclamation tax credit.

30 The General Assembly of the Commonwealth of Pennsylvania

31 hereby enacts as follows:

1 Section 1. Sections 1704-B(d), 1714-D(e) and 1755-D(e) of  
2 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
3 Code of 1971, are amended to read:

4 Section 1704-B. Carryover, Carryback, Refund and Assignment  
5 of Credit.--\* \* \*

6 [(d) A taxpayer, upon application to and approval by the  
7 Department of Community and Economic Development, may sell or  
8 assign, in whole or in part, a research and development tax  
9 credit granted to the taxpayer under this article. The  
10 Department of Community and Economic Development shall establish  
11 guidelines for the approval of applications under this  
12 subsection.]

13 \* \* \*

14 Section 1714-D. Carryover, carryback and assignment of credit.

15 \* \* \*

16 [(e) Sale or assignment.--The following shall apply:

17 (1) A taxpayer, upon application to and approval by the  
18 department, may sell or assign, in whole or in part, a tax  
19 credit granted to the taxpayer under this subarticle.

20 (2) The department and the Department of Revenue shall  
21 jointly promulgate regulations for the approval of  
22 applications under this subsection.

23 (3) Before an application is approved, the Department of  
24 Revenue must make a finding that the applicant has filed all  
25 required State tax reports and returns for all applicable  
26 taxable years and paid any balance of State tax due as  
27 determined at settlement, assessment or determination by the  
28 Department of Revenue.

29 (4) Notwithstanding any other provision of law, the  
30 Department of Revenue shall settle, assess or determine the

1 tax of an applicant under this subsection within 90 days of  
2 the filing of all required final returns or reports in  
3 accordance with section 806.1(a)(5) of the act of April 9,  
4 1929 (P.L.343, No.176), known as The Fiscal Code.]

5 \* \* \*

6 Section 1755-D. Carryover, carryback and assignment of credit.

7 \* \* \*

8 [(e) Sale or assignment.--The following shall apply:

9 (1) A taxpayer, upon application to and approval by the  
10 department, may sell or assign, in whole or in part, a tax  
11 credit granted to the taxpayer under this subarticle.

12 (2) The department and the Department of Revenue shall  
13 jointly promulgate regulations for the approval of  
14 applications under this subsection.

15 (3) Before an application is approved, the Department of  
16 Revenue must make a finding that the applicant has filed all  
17 required State tax reports and returns for all applicable  
18 taxable years and paid any balance of State tax due as  
19 determined at settlement, assessment or determination by the  
20 Department of Revenue.

21 (4) Notwithstanding any other provision of law, the  
22 Department of Revenue shall settle, assess or determine the  
23 tax of an applicant under this subsection within 90 days of  
24 the filing of all required final returns or reports in  
25 accordance with section 806.1(a)(5) of the act of April 9,  
26 1929 (P.L.343, No.176), known as The Fiscal Code.]

27 \* \* \*

28 Section 2. Section 1775-D(d) of the act, added October 30,  
29 2017 (P.L.672, No.43), is amended to read:

30 Section 1775-D. Carryover, carryback and assignment of tax

1 credit.

2 \* \* \*

3 [(d) Sale or assignment.--The following shall apply:

4 (1) A recipient, upon application to and approval by the  
5 department, may sell or assign, in whole or in part, a tax  
6 credit granted to the recipient under this subarticle.

7 (2) The department and the Department of Revenue shall  
8 jointly promulgate regulations for the approval of  
9 applications under this subsection.

10 (3) Before an application is approved, the Department of  
11 Revenue must make a finding that the recipient has filed all  
12 required State tax reports and returns for all applicable  
13 taxable years and paid any balance of State tax due as  
14 determined at settlement, assessment or determination by the  
15 Department of Revenue.

16 (4) Notwithstanding any other provision of law, the  
17 Department of Revenue shall settle, assess or determine the  
18 tax of a taxpayer under this subsection within 60 days of the  
19 filing of all required final returns or reports in accordance  
20 with section 806.1(a)(5) of the act of April 9, 1929  
21 (P.L.343, No.176), known as The Fiscal Code.]

22 \* \* \*

23 Section 3. Sections 1703-E(d) and 1705-H(d) of the act are  
24 amended to read:

25 Section 1703-E. Resource Enhancement and Protection Tax Credit  
26 Program.

27 \* \* \*

28 [(d) Sale or assignment of credit.--

29 (1) An eligible applicant, upon application to and  
30 approval by the commission, may sell or assign, in whole or

1 in part, a tax credit granted to the eligible applicant under  
2 this article if no claim for allowance of the credit is filed  
3 within one year from the date the credit is granted by the  
4 department under section 1708-E. The commission, in  
5 consultation with the department, shall establish guidelines  
6 for the approval of applications under this subsection.

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

18 (3) Before an application is approved, the department  
19 must make a finding that the applicant has filed all required  
20 State tax reports and returns for all applicable taxable  
21 years and paid any balance of State tax due as determined at  
22 settlement, assessment or determination by the department.

23 (4) Notwithstanding any other provision of law, the  
24 department shall settle, assess or determine the tax of an  
25 applicant under this subsection within 90 days of the filing  
26 of all required final returns or reports in accordance with  
27 section 806.1(a)(5) of the act of April 9, 1929 (P.L.343,  
28 No.176), known as The Fiscal Code.]

29 \* \* \*

30 Section 1705-H. Carryover, carryback and assignment of credit.

1 \* \* \*

2 [(d) Sale or assignment.--The following shall apply:

3 (1) A qualified taxpayer, upon application to and  
4 approval by the Department of Community and Economic  
5 Development, may sell or assign, in whole or in part, a tax  
6 credit granted to the qualified taxpayer under this article.

7 (2) Before an application is approved, the department  
8 must find that the applicant has filed all required State tax  
9 reports and returns for all applicable taxable years and paid  
10 any balance of State tax due as determined at settlement,  
11 assessment or determination by the department.]

12 \* \* \*

13 Section 4. Section 1710-J of the act is repealed:

14 [Section 1710-J. Sale or assignment.

15 (a) Authorization.--Upon approval by the Department of  
16 Revenue, a qualified taxpayer may sell or assign, in whole or in  
17 part, a tax credit granted to the taxpayer under this article.

18 (b) Application.--The following shall apply:

19 (1) To sell or assign a tax credit, a qualified taxpayer  
20 must file an application for the sale or assignment of the  
21 tax credit with the Department of Revenue. The application  
22 must be on a form required by the Department of Revenue.

23 (2) The Department of Revenue shall approve a sale or  
24 assignment if the purchaser or assignee has:

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

27 (ii) paid any balance of State tax due as determined  
28 by assessment or determination by the Department of  
29 Revenue and not under timely appeal.]

30 Section 5. Section 1706-K(d) (1), 1807-F(b), 1806-G(a), 1904-

1 A(d), 1903-C(d.1) (1) and (2), and 1906-F(f) of the act amended  
2 to read:

3 Section 1706-K. Tax credit.

4 \* \* \*

5 (d) Sale or assignment of tax credits.--

6 [(1) A taxpayer, upon application to and approval by the  
7 department, may sell or assign, in whole or in part, a  
8 waterfront development tax credit granted to the business  
9 firm under this article if no claim for allowance of the  
10 credit is filed within one year from the date the credit is  
11 granted by the Department of Revenue under section 1707-K.  
12 The department and the Department of Revenue shall jointly  
13 promulgate guidelines for the approval of applications under  
14 this subsection.]

15 \* \* \*

16 Section 1807-F. Sale, carryover and carryback.

17 \* \* \*

18 [(b) Sale.--No sooner than 30 days after providing the  
19 Insurance Department and the department written notice of the  
20 intent to transfer tax credits, a qualified taxpayer may  
21 transfer tax credits held without restriction to any entity that  
22 is a qualified taxpayer in good standing with the Insurance  
23 Department and that agrees to assume all of the transferor's  
24 obligations with respect to the tax credit.]

25 \* \* \*

26 Section 1806-G. Sale or assignment.

27 [(a) Application.--A taxpayer, upon application to and  
28 approval by the department, may sell or assign, in whole or in  
29 part, a manufacturing tax credit granted to the taxpayer. The  
30 following shall apply:

1 (1) The department and the Department of Revenue shall  
2 jointly issue guidelines for the approval of applications  
3 under this paragraph.

4 (2) Before an application is approved, the Department of  
5 Revenue must make a finding that the applicant has filed all  
6 required State tax reports and returns for all applicable  
7 taxable years and paid any balance of State tax due as  
8 determined at settlement, assessment or determination by the  
9 Department of Revenue.

10 (3) Notwithstanding any other provision of law, the  
11 Department of Revenue must settle, assess or determine the  
12 tax of an applicant under this paragraph within 90 days of  
13 the filing of each required final return or report in  
14 accordance with section 806.1(a)(5) of the act of April 9,  
15 1929 (P.L.343, No.176), known as The Fiscal Code.]

16 \* \* \*

17 Section 1904-A. Tax Credit.--\* \* \*

18 [(d) A taxpayer, upon application to and approval by the  
19 Department of Community and Economic Development, may sell or  
20 assign, in whole or in part, a neighborhood assistance tax  
21 credit granted to the business firm under this article if no  
22 claim for allowance of the credit is filed within one year from  
23 the date the credit is granted by the Department of Revenue  
24 under section 1905-A. The Department of Community and Economic  
25 Development and the Department of Revenue shall jointly  
26 promulgate guidelines for the approval of applications under  
27 this subsection.]

28 \* \* \*

29 Section 1903-C. Keystone Special Development Zone tax credit.

30 \* \* \*



1 (d.1) Sale or assignment of tax credit.--

2 [(1) If the Keystone Special Development Zone employer  
3 is entitled to a credit in any year that exceeds its  
4 qualified tax liability for that year, upon application to  
5 and approval by the department, a Keystone Special  
6 Development Zone employer which has been awarded a tax credit  
7 may sell or assign, in whole or in part, the tax credit  
8 granted to the Keystone Special Development Zone employer.  
9 The application must be on the form required by the  
10 department and must include or demonstrate all of the  
11 following:

12 (i) The applicant's name and address.

13 (ii) A copy of the tax credit certificate previously  
14 issued by the department.

15 (iii) A statement as to whether any part of the tax  
16 credit has been applied to tax liability of the applicant  
17 and the amount so applied.

18 (iv) Any other information required by the  
19 department.

20 (2) The department shall review the application and,  
21 upon being satisfied that all requirements have been met,  
22 shall approve the application and shall notify the Department  
23 of Revenue.]

24 \* \* \*

25 Section 1906-F. Keystone innovation zone tax credits.

26 \* \* \*

27 [(f) Sale or assignment of tax credit.--

28 (1) Upon application to and approval by the department,  
29 a KIZ company which has been awarded a tax credit may sell or  
30 assign, in whole or in part, the tax credit granted to the

1 KIZ company. The application must be on the form required by  
2 the department and must include or demonstrate all of the  
3 following:

4 (i) The applicant's name and address.

5 (ii) A copy of the tax credit certificate previously  
6 issued by the department.

7 (iii) A statement as to whether any part of the tax  
8 credit has been applied to tax liability of the applicant  
9 and the amount so applied.

10 (iv) Any other information required by the  
11 department.

12 (2) The department shall review the application and,  
13 upon being satisfied that all requirements have been met, the  
14 department may approve the application and shall notify the  
15 Department of Revenue.]

16 \* \* \*

17 Section 6. This act shall take effect immediately.