
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1173 Session of
2019

INTRODUCED BY FREEMAN, JAMES, SOLOMON, BERNSTINE, BARRAR,
SCHLOSSBERG, KINSEY, SAMUELSON, MILLARD, SAINATO, MURT, HILL-
EVANS, VITALI, HARKINS, NEILSON, GILLEN, KORTZ, MOUL, ROZZI,
RADER, PASHINSKI AND STURLA, APRIL 10, 2019

REFERRED TO COMMITTEE ON FINANCE, APRIL 10, 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 historic preservation incentive tax credit,
11 further providing for definitions and for tax credit
12 certificates, establishing the Historic Rehabilitation Tax
13 Credit Administration Account, further providing for
14 carryover, carryback and assignment of credit and for pass-
15 through entity, providing for annual report to General
16 Assembly, further providing for application of Internal
17 Revenue Code and for limitation and providing for recapture.

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

20 Section 1. Sections 1702-H, 1703-H, 1705-H(d) and (e) and
21 1706-H of the act of March 4, 1971 (P.L.6, No.2), known as the
22 Tax Reform Code of 1971, are amended to read:

23 Section 1702-H. Definitions.

24 The following words and phrases when used in this article

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Commission." The Pennsylvania Historical and Museum
4 Commission.

5 "Completed project." The completion of the [restoration]
6 rehabilitation of a qualified historic structure in accordance
7 with a qualified rehabilitation plan and the receipt of an
8 occupancy certificate for the structure.

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

10 "Internal Revenue Code." The Internal Revenue Code of 1986
11 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

12 "Qualified expenditures." The costs and expenses incurred by
13 a qualified taxpayer in the [restoration] rehabilitation of a
14 qualified historic structure pursuant to a qualified
15 rehabilitation plan and which are defined as qualified
16 rehabilitation expenditures under section 47(c)(2) of the
17 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
18 47(c)(2)).

19 "Qualified historic structure." A [commercial] building
20 located in this Commonwealth that qualifies as a certified
21 historic structure under section 47(c)(3) of the Internal
22 Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 47(c)(3)).

23 "Qualified rehabilitation plan." A plan to rehabilitate a
24 qualified historic structure that is approved by the
25 Pennsylvania Historical and Museum Commission as being
26 consistent with the standards for rehabilitation and guidelines
27 for rehabilitation of historic buildings as adopted by the
28 United States Secretary of the Interior.

29 "Qualified tax liability." Tax liability imposed on a
30 taxpayer under Article III, IV, VI, VII, VIII, IX, XI or XV,

1 excluding any tax withheld by an employer under Article III.

2 "Qualified taxpayer." Any natural person, corporation,
3 business trust, limited liability company, partnership, limited
4 liability partnership, association or any other form of legal
5 business entity that:

6 (1) Is subject to a tax imposed under Article III, IV,
7 VI, VII, VIII, IX, XI or XV, excluding any tax withheld by an
8 employer under Article III.

9 (2) Owns a qualified historic structure.

10 "Region." A community action team region as established by
11 the Department of Community and Economic Development.

12 "Workforce housing." A completed project in which at least
13 5% of the units meet the Department of Housing and Urban
14 Development's definition of "affordable" for individuals earning
15 80% of the area median income for a period of seven years after
16 the building is placed in service.

17 Section 1703-H. Tax credit certificates.

18 (a) Application.--

19 (1) A qualified taxpayer may apply to the Department of
20 Community and Economic Development for a tax credit
21 certificate under this section.

22 (2) The application shall be on the form required by the
23 Department of Community and Economic Development [and], shall
24 include a qualified rehabilitation plan[.], shall state
25 whether the project meets the definition of "workforce
26 housing" and, if applicable, shall include the plan for the
27 project to meet the definition of "workforce housing."

28 [(3) The application shall be filed on or before
29 February 1 for qualified expenditures incurred and to be
30 incurred in connection with the completed project.]

1 (3) The Department of Community and Economic Development
2 shall establish an application processing fee. The fee
3 structure shall be tiered based on the amount of tax credits
4 requested and in no case shall exceed \$2,000.

5 (4) The proceeds of the fee under paragraph (3) shall be
6 deposited into the Historic Rehabilitation Tax Credit
7 Administration Account, which is established as a special
8 fund in the State Treasury. The money in the account shall be
9 appropriated on a continuing basis to the Department of
10 Community and Economic Development and used by the commission
11 and the Department of Community and Economic Development to
12 offset the costs of the review of tax credit applications and
13 awarding of tax credit certificates.

14 (5) The Department of Community and Economic Development
15 shall begin accepting applications for credit certificates on
16 October 1 and close the initial application period on October
17 31.

18 (b) Review, recommendation and approval.--

19 (1) The Department of Community and Economic Development
20 shall forward applications received under this section to the
21 commission for review.

22 [(2) The commission shall review the proposed
23 rehabilitation plan, verify that the building is a qualified
24 historic structure and recommend approval or disapproval to
25 the Department of Community and Economic Development within
26 30 days of receipt of the application. The commission shall
27 notify the qualified taxpayer within 15 days of its
28 determination.]

29 (2.1) The commission shall review the proposed
30 rehabilitation plan in each application, verify that the

1 building is a qualified historic structure and by December 1
2 provide the Department of Community and Economic Development
3 a list of eligible projects.

4 (2.2) The Department of Community and Economic
5 Development shall allocate the credits and release a list of
6 allocated projects within 15 days. Applicants with approved
7 allocations shall be provided with an award letter.

8 (2.3) Any amount of tax credit certificates up to the
9 annual program limit of \$30,000,000 not awarded within the
10 initial application period shall be available on a first-
11 come, first-served basis through a process determined by the
12 Department of Community and Economic Development.

13 (3) The commission shall notify the Department of
14 Community and Economic Development of verification of a
15 completed project and notify the Department of Community and
16 Economic Development of the amount of qualified expenditures
17 incurred by the taxpayer in connection with the completed
18 project.

19 (4) If the Department of Community and Economic
20 Development has approved the application and received
21 notification of a completed project, it shall issue the
22 qualified taxpayer a tax credit certificate [by April 1]
23 within 45 days of the receipt of an approved, completed
24 project. A tax credit certificate issued under this section
25 shall not exceed [25%] either:

26 (i) twenty-five percent of qualified expenditures
27 determined by the commission to have been incurred by the
28 qualified taxpayer in connection with the completed
29 project[.]; or

30 (ii) thirty percent of qualified expenditures

1 determined by the commission to have been incurred by the
2 qualified taxpayer in connection with a completed
3 workforce housing project.

4 (5) In granting tax credit certificates under this
5 article, the Department of Community and Economic
6 Development:

7 (i) Shall not grant more than [~~\$3,000,000~~]
8 \$30,000,000 in tax credit certificates in any fiscal year
9 exclusive of any tax credit certificates not awarded or
10 returned from previous fiscal years.

11 (ii) Shall not grant more than [~~\$500,000~~] \$2,500,000
12 in tax credit certificates to a single qualified taxpayer
13 in any fiscal year.

14 (iii) Shall assure that credits are awarded in an
15 equitable manner to each region in this Commonwealth.
16 However, credits allocated to a region that are unclaimed
17 shall be promptly reallocated to eligible projects in
18 other regions.

19 (6) Tax credits under this article shall be made
20 available on a first-come, first-served basis within the
21 limitation established under subsection (b) (5).

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

23 * * *

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

25 (1) A qualified taxpayer or a purchaser or assignee of
26 the tax credit or a shareholder, member or partner of a pass-
27 through entity that was transferred the tax credit or a
28 portion of the tax credit from such pass-through entity
29 subject to section 1706-H, upon application to and approval
30 by the Department of Community and Economic Development, may

1 sell or assign[, in whole or in part,] a tax credit granted
2 to the qualified taxpayer under this article[.] without
3 regard to its actual ability to use the credit against its
4 qualified tax liability. Any sale or assignment, whether by a
5 qualified taxpayer or a purchaser or assignee of the tax
6 credit or a shareholder, member or partner of a pass-through
7 entity, pursuant to this paragraph, may be of the whole tax
8 credit or any part or parts thereof.

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

14 (e) Purchasers and assignees.--[The purchaser or assignee of
15 all or a portion of a tax credit obtained under section 1703-H
16 shall immediately claim the credit in the taxable year in which
17 the purchase or assignment is made. The purchaser or assignee
18 may not carry forward, carry back or obtain a refund of or sell
19 or assign the tax credit. The purchaser or assignee shall notify
20 the department of the seller or assignor of the tax credit in
21 compliance with procedures specified by the department.]

22 (1) If a purchaser or assignee of all or a portion of a
23 tax credit obtained under section 1703-H cannot use the
24 entire amount of the tax credit for the taxable year in which
25 the tax credit was purchased or assigned, the excess may be
26 carried over to succeeding taxable years and used as a credit
27 against the qualified tax liability of the purchaser or
28 assignee for those taxable years.

29 (2) Each time the tax credit is carried over to a
30 succeeding taxable year, the tax credit shall be reduced by

1 the amount that was used as a credit during the immediately
2 preceding taxable year.

3 (3) The tax credit obtained by the purchaser or assignee
4 may be carried over and applied to succeeding taxable years
5 for not more than seven taxable years following the first
6 taxable year for which the original qualified taxpayer was
7 entitled to claim the credit.

8 (4) The purchaser or assignee may not carry back the
9 credit or obtain a refund.

10 (5) The purchaser or assignee shall be permitted to make
11 a further sale or assignment of the credit. The purchaser or
12 assignee shall notify the department of the seller or
13 assignor of the tax credit in compliance with procedures
14 specified by the department.

15 Section 1706-H. Pass-through entity.

16 (a) General rule.--If a pass-through entity has any unused
17 tax credit under section 1705-H, it may elect, in writing,
18 according to procedures established by the department, to
19 transfer all or a portion of the credit to its shareholders,
20 members or partners in [proportion to the share of the entity's
21 distributive income to which the shareholder, member or partner
22 is entitled.] any manner agreed to by the shareholders, members
23 or partners without regard to their sharing or other economic
24 attributes. A shareholder, member or partner that is transferred
25 a tax credit or a portion of a tax credit may elect to sell or
26 assign that credit under the provisions of section 1705-H(d).

27 (b) Limitation.--A pass-through entity and a shareholder,
28 member or partner of a pass-through entity shall not claim the
29 credit under subsection (a) for the same qualified expenditures.

30 (c) Application.--[A shareholder, member or partner of a

1 pass-through entity to whom a credit is transferred under
2 subsection (a) shall immediately claim the credit in the taxable
3 year in which the transfer is made. The shareholder, member or
4 partner may not carry forward, carry back, obtain a refund of or
5 sell or assign the credit.]

6 (1) If a shareholder, member or partner of a pass-
7 through entity that is transferred a tax credit or a portion
8 of a tax credit under subsection (a) cannot use the entire
9 amount of the tax credit for the taxable year in which the
10 tax credit is transferred, the excess may be carried over to
11 succeeding taxable years and used as a credit against the
12 qualified tax liability of the shareholder, member or partner
13 for those taxable years.

14 (2) Each time the tax credit is carried over to a
15 succeeding taxable year, the tax credit shall be reduced by
16 the amount that was used as a credit during the immediately
17 preceding taxable year.

18 (3) The tax credit transferred to a shareholder, member
19 or partner may be carried over and applied to succeeding
20 taxable years for not more than seven taxable years following
21 the first taxable year for which the original qualified
22 taxpayer was entitled to claim the credit.

23 (4) A shareholder, member or partner may not carry back
24 the credit or obtain a refund.

25 (5) A shareholder, member or partner may sell or assign
26 the tax credit or a portion of a tax credit without regard to
27 its ability to use the tax credit against qualified tax
28 liability.

29 Section 2. The act is amended by adding a section to read:
30 Section 1707.1-H. Annual report to General Assembly.

1 (a) Report on tax credit.--By October 1, 2020, and October 1
2 of each year thereafter, the Department of Community and
3 Economic Development shall submit a report on the tax credit
4 under this article to:

5 (1) The chairperson and minority chairperson of the
6 Appropriations Committee of the Senate.

7 (2) The chairperson and minority chairperson of the
8 Appropriations Committee of the House of Representatives.

9 (3) The chairperson and minority chairperson of the
10 Finance Committee of the Senate.

11 (4) The chairperson and minority chairperson of the
12 Finance Committee of the House of Representatives.

13 (b) Report content.--The report shall include:

14 (1) The list of projects that have been awarded tax
15 credits.

16 (2) The amount of Federal rehabilitation tax credits
17 received by each completed project.

18 (3) The amount of State historic preservation incentive
19 tax credits awarded per project.

20 (4) Total project costs and the amount of private
21 investment in each completed project.

22 (5) The total number of completed projects placed into
23 service in the past year that were vacant for at least 12
24 months prior to commencement of redevelopment work.

25 (6) The total number of completed projects placed into
26 service in the past year that had not paid property taxes for
27 at least 12 months prior to the commencement of redevelopment
28 work.

29 (7) The total number of temporary construction jobs and
30 permanent jobs created by completed projects placed into

1 service in the prior year.

2 (8) The amount of completed workforce housing projects
3 placed into service in the prior year.

4 (c) Information to be posted on public Internet website.--
5 Notwithstanding any law providing for the confidentiality of tax
6 records, the information in the report shall be public
7 information and shall be posted on the Department of Community
8 and Economic Development's publicly accessible Internet website.

9 (d) Review of tax credit program.--The Department of
10 Community and Economic Development, in cooperation with the
11 commission, shall undertake a review of the Historic
12 Preservation Incentive Tax Credit Program to determine the
13 effectiveness of the program in preserving and rehabilitating
14 the Commonwealth's historic structures and the impact these
15 preservation efforts have in stimulating investment in this
16 Commonwealth. The results of the review shall be included in the
17 annual report due October 1, 2025.

18 Section 3. Sections 1708-H and 1709-H of the act are amended
19 to read:

20 Section 1708-H. Application of Internal Revenue Code.

21 The provisions of section 47 of the Internal Revenue Code and
22 the regulations promulgated regarding those provisions shall
23 apply to the department's interpretation and administration of
24 the credit provided under this article without regard to ratably
25 allocating the credit over a five-year period as required by
26 section 47(a) of the Internal Revenue Code. References to the
27 Internal Revenue Code shall mean the sections of the Internal
28 Revenue Code as existing on any date of interpretation of this
29 article, except, if those sections of the Internal Revenue Code
30 referenced in this article are repealed or terminated,

1 references to the Internal Revenue Code shall mean those
2 sections last having full force and effect without regard to
3 ratably allocating the credit over a five-year period as
4 required by section 47(a) of the Internal Revenue Code. If after
5 repeal or termination the Internal Revenue Code sections are
6 revised or reenacted, references in this article to Internal
7 Revenue Code sections shall mean those revised or reenacted
8 sections.

9 Section 1709-H. Limitation.

10 Taxpayers shall not be entitled to apply for historic
11 preservation tax credits after [the seventh fiscal year
12 following the effective date of this article] February 1, 2031.

13 Section 4. The act is amended by adding a section to read:
14 Section 1710-H. Recapture.

15 In the event that a tax credit or a portion of a tax credit
16 is subject to recapture and the tax credit has been purchased,
17 assigned or transferred, the State shall pursue its recapture
18 remedies and rights against the qualified taxpayer that applied
19 for the credit. No redress shall be sought against an assignee,
20 purchaser or transferee of the tax credit if the assignee,
21 purchaser or transferee acquired the tax credit by way of an
22 arm's-length transaction, for value and without notice of
23 violation, fraud or misrepresentation.

24 Section 5. This act shall take effect in 60 days.