
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2559 Session of
2020

INTRODUCED BY NEILSON, DERMODY, SNYDER, BERNSTINE, MULLERY,
GAYDOS, WILLIAMS, A. DAVIS, ULLMAN, BRIGGS, FREEMAN, MURT,
McCLINTON, O'MARA, SCHLOSSBERG, BRADFORD, HOHENSTEIN,
ROEBUCK, CEPHAS, MALAGARI, GALLOWAY, KOSIEROWSKI, HANBIDGE,
RAVENSTAHL, WEBSTER, BIZZARRO, KORTZ, GOODMAN, MADDEN,
CIRESI, DELLOSO, YOUNGBLOOD, D. MILLER, ZABEL, SANCHEZ,
BOYLE, McNEILL, LONGIETTI, HILL-EVANS, READSHAW, KINSEY,
MARKOSEK, ROZZI, TOMLINSON, WARREN, SCHWEYER, DeLUCA,
DRISCOLL, FRANKEL, NELSON, HARKINS AND MERSKI, MAY 28, 2020

REFERRED TO COMMITTEE ON FINANCE, MAY 28, 2020

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 construction job tax credit and
11 for compliance with prevailing wage for tax credits.

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-L

18 CONSTRUCTION JOB TAX CREDIT

19 Section 1701- L. Scope of article.

1 This article establishes a construction job tax credit.

2 Section 1702-L. Definitions.

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

6 "Company." A corporation, partnership, limited liability
7 company, limited liability partnership, business trust,
8 affiliate, unincorporated joint venture or other business entity
9 doing business within this Commonwealth.

10 "Completion date." The date on which the completion of the
11 construction of the project facility occurs, evidenced by an
12 occupancy permit or certificate of completion by project
13 engineer.

14 "Construction period." The period, not to exceed five years
15 unless approved by the department, during which the project
16 facility is constructed beginning with the start date and ending
17 with the completion date.

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

19 "Full-time equivalent construction job." A total of at least
20 2,080 hours worked, on a full-time or part-time basis, over a
21 consecutive 12-month period to construct a project facility
22 during the construction period, including paid leave, by at
23 least one employee or independent contractor of the qualified
24 taxpayer.

25 "Job tax credit." The construction job tax credit
26 established under this article.

27 "Manufacturing or processing." The performance of
28 manufacturing, fabricating, compounding, processing or other
29 operations, engaged in as a business, which places tangible
30 personal property in a form, composition or character different

1 from that in which the tangible personal property is acquired,
2 whether for sale or use by the manufacturer.

3 "New job." A full-time equivalent construction job created
4 by the construction of a project facility during the
5 construction period and paying the prevailing minimum wage rate
6 for each craft or classification as determined by the Department
7 of Labor and Industry under the Prevailing Wage Act.

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

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

10 (2) A Pennsylvania S corporation as defined under
11 section 301(n.1).

12 (3) An unincorporated entity subject to section 307.21.

13 "Prevailing Wage Act." The act of August 15, 1961 (P.L.987,
14 No.442), known as the Pennsylvania Prevailing Wage Act.

15 "Project facility." A manufacturing or processing facility
16 located in this Commonwealth requiring a private capital
17 investment of at least \$450,000,000 to construct.

18 "Qualified tax liability." The liability for taxes imposed
19 under Articles III, IV, VII, VIII, IX, XI and XV. The term does
20 not include tax withheld under section 316.1.

21 "Qualified taxpayer." A qualified taxpayer that satisfies
22 all of the following:

23 (1) Has constructed a project facility during the
24 construction period and operates the project facility in this
25 Commonwealth.

26 (2) Has created at least 200 new jobs during the
27 construction period at the project facility.

28 (3) Has made good faith efforts to recruit and employ,
29 and to encourage any contractors or subcontractors to recruit
30 and employ, workers from the local labor market for

1 employment at the project facility during the construction
2 period.

3 (4) Has sourced, from this Commonwealth, at least 50% of
4 the raw materials used for the construction of the project
5 facility during the construction period.

6 (5) For all aspects of construction, demolition,
7 alteration and modification of the project facility, has
8 utilized only contractors that participate in an approved
9 apprenticeship and training program that is registered with
10 the United States Department of Labor or the Department of
11 Labor and Industry of the Commonwealth that has graduated
12 registered apprentices to journeyperson status in at least
13 three of the previous five years immediately preceding
14 commencement of construction on the project facility.

15 "Start date." As determined by the department, the date on
16 which a qualified taxpayer may begin creating new jobs which may
17 be eligible for a job tax credit.

18 Section 1703-L. Eligibility.

19 In order to be eligible to receive a job tax credit, a
20 company shall comply with the Prevailing Wage Act for each new
21 job and shall demonstrate the following to the department:

22 (1) The company meets the requirements of a qualified
23 taxpayer.

24 (2) The company's financial stability and the project
25 facility's financial viability.

26 (3) The intent to substantially maintain the project
27 facility operations in this Commonwealth for a period of at
28 least 10 years from the completion date.

29 (4) An affirmation that the decision to expand or locate
30 in this Commonwealth was due in large part to the

1 availability of the job tax credit.

2 (5) An affirmation that neither the company, nor any of
3 its principal owners, proprietors, partners, officers, parent
4 or subsidiary organizations, directors or agents, has been
5 charged with a violation of, has entered a guilty plea
6 regarding, has been adjudicated guilty or is subject to a
7 consent decree or administrative or judicial order regarding
8 any of the following within the past five years immediately
9 preceding the date of its bid submission:

10 (i) the National Labor Relations Act (49 Stat. 449,
11 29 U.S.C. §§ 151-169);

12 (ii) the Equal Employment Opportunities Act (42
13 U.S.C. § 2000e et seq.);

14 (iii) the Americans with Disabilities Act of 1990
15 (Public Law 101-336, 104 Stat. 327, 42 U.S.C. § 12101 et
16 seq.);

17 (iv) the Occupational Safety and Health Act of 1970
18 (Public Law 91-596, 29 U.S.C. § 651 et seq.);

19 (v) the National Apprenticeship Act (29 U.S.C. §
20 50), also known as the Fitzgerald Act;

21 (vi) the act of June 2, 1915 (P.L.736, No.338),
22 known as the Workers' Compensation Act;

23 (vii) the act of December 5, 1936 (2nd Sp.Sess.,
24 1937 P.L.2897, No.1), known as the Unemployment
25 Compensation Law;

26 (viii) the act of June 1, 1937 (P.L.1168, No.294),
27 known as the Pennsylvania Labor Relations Act;

28 (ix) the act of October 27, 1955 (P.L.744, No.222),
29 known as the Pennsylvania Human Relations Act;

30 (x) the act of July 14, 1961 (P.L.604, No.304),

1 known as The Apprenticeship and Training Act;

2 (xi) the act of August 15, 1961 (P.L.987, No.442),

3 known as the Pennsylvania Prevailing Wage Act; or

4 (xii) the act of January 17, 1968 (P.L.11, No.5),

5 known as The Minimum Wage Act of 1968.

6 Section 1704-L. Application process.

7 (a) Application.--A company shall complete and submit to the
8 department a job tax credit application on a form prescribed by
9 the department. The application must contain the following:

10 (1) A description of the project.

11 (2) The estimated number of new jobs to be created.

12 (3) The estimated number of permanent direct full-time
13 jobs to be created after the completion date at the project
14 facility and maintained by the company.

15 (4) The amount of private capital investment in the
16 project facility.

17 (5) A signed statement that the company intends to
18 substantially maintain its operation at the project facility
19 for a period of 10 years from the completion date.

20 (6) A signed statement that at least 50% of the raw
21 materials used by the company for the construction of the
22 project facility during the construction period are sourced
23 from this Commonwealth.

24 (7) Any other information the department deems
25 appropriate.

26 (b) Approval.--If the department approves the company's
27 application, the department shall reserve job tax credits not to
28 exceed the estimated number of new jobs specified in the
29 application of the qualified taxpayer.

30 Section 1705-L. Job tax credits.

1 (a) Maximum amount.--A qualified taxpayer may claim a job
2 tax credit of \$20,000 per new job created against its qualified
3 tax liability.

4 (b) Determination of new jobs created.--

5 (1) The qualified taxpayer shall provide the department
6 with the following information for each new job created:

7 (i) identification of the employer of record,
8 including name, address and Federal employer
9 identification number;

10 (ii) job titles;

11 (iii) employee or independent contractor
12 identification, including name, address and Social
13 Security number;

14 (iv) hours worked during the construction period;

15 (v) classification, craft and hourly rate of wage
16 paid to each employee or independent contractor; and

17 (vi) any other information deemed necessary by the
18 department.

19 (c) Job tax credit term.--A qualified taxpayer may claim the
20 job tax credit for each new job created, as awarded and
21 authorized by the department, except that a job tax credit may
22 not be claimed for more than five years from the date the job
23 tax credit is awarded.

24 (d) Availability of job tax credits.--Each fiscal year,
25 \$20,000,000 in job tax credits shall be made available to the
26 department and may be awarded by the department in accordance
27 with this article.

28 (e) Limit.--A qualified taxpayer that has been granted a job
29 tax credit under this article shall be ineligible for any other
30 tax credit provided under this act.

1 Section 1706-L. Prohibitions.

2 The department shall determine the start date. The start date
3 may not precede the effective date of this section. A company
4 may not receive a job tax credit for a new job created prior to
5 the start date or after the completion date.

6 Section 1707-L. Penalties.

7 (a) Failure to maintain operations.--A qualified taxpayer
8 that receives job tax credits and fails to substantially
9 maintain the project facility operations as determined by the
10 department for a period of at least 10 years from the completion
11 date shall be required to refund to the Commonwealth the total
12 amount of credits granted.

13 (b) Failure to comply with the Prevailing Wage Act.--If the
14 Department of Labor and Industry determines that a qualified
15 taxpayer that received a job tax credit failed to comply with
16 the Prevailing Wage Act, the qualified taxpayer must refund to
17 the Commonwealth the total amount of credits granted.

18 (c) Waiver.--The department may waive the penalties outlined
19 in subsection (a) if the department determines that a qualified
20 taxpayer's operations were not substantially maintained for 10
21 years from the completion date because of circumstances beyond
22 the qualified taxpayer's control.

23 Section 1708-L. Use of credits.

24 (a) Utilization.--A qualified taxpayer shall first use a job
25 tax credit against the qualified tax liability incurred in the
26 taxable year for which the job tax credit was awarded.

27 (b) Authorization.--If a qualified taxpayer holds a job tax
28 credit through the end of the calendar year in which the job tax
29 credit was granted, the qualified taxpayer may sell or assign
30 the remaining job tax credits.

1 (c) Application.--

2 (1) To sell or assign a job tax credit, a qualified
3 taxpayer shall file an application for the sale or assignment
4 of the job tax credit with the department. The application
5 must be on a form required by the department.

6 (2) To approve an application, the department must
7 confirm that the proposed purchaser or assignee has filed all
8 required State tax reports and returns for all applicable
9 taxable years and paid any balance of State tax due as
10 determined at settlement or assessment by the department,
11 unless the tax due is currently under appeal.

12 (d) Approval.--Upon approval by the department, a qualified
13 taxpayer may sell or assign, in whole or in part, a job tax
14 credit.

15 Section 1709-L. Purchasers and assignees.

16 (a) Time.--The purchaser or assignee approved under section
17 1708-L shall claim the job tax credit in the calendar year in
18 which the purchase or assignment is made.

19 (b) Amount.--An approved purchaser or assignee under section
20 1708-L may apply the job tax credit against 100% of the
21 purchaser's or assignee's qualified tax liabilities for the
22 taxable year.

23 (c) Resale and reassignment.--

24 (1) An approved purchaser under section 1708-L may not
25 sell or assign the purchased job tax credit.

26 (2) An approved assignee under section 1708-L may not
27 sell or assign the assigned job tax credit.

28 (d) Notice.--The purchaser or assignee under section 1708-L
29 shall notify the department of the seller or assignor of the job
30 tax credit in compliance with procedures specified by the

1 department.

2 Section 1710-L. Pass-through entity.

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

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

12 (1) the pass-through entity; and

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

15 (c) Amount.--A transferee under subsection (a) may apply
16 the job tax credit against 100% of the transferee's qualified
17 tax liabilities for the taxable year.

18 (d) Time.--A transferee under subsection (a) shall claim the
19 job tax credit in the calendar year in which the transfer is
20 made.

21 (e) Sale and assignment.--A transferee under subsection (a)
22 may not sell or assign the job tax credit.

23 Section 1711-L. Administration.

24 (a) Audits and assessments.--The department shall have the
25 following powers:

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

28 (2) To issue an assessment against a qualified taxpayer
29 for an improperly awarded job tax credit. The procedures,
30 collection, enforcement and appeals of any assessment made

1 under this section shall be governed by Article IV.

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

4 Section 1712-L. Reports to General Assembly.

5 (a) Annual report.--No later than one year after the job tax
6 credits are first awarded under this article, and October 1 of
7 each year thereafter, the department shall submit a report on
8 the job tax credit provided by this article to the chairperson
9 and minority chairperson of the Appropriations Committee of the
10 Senate, the chairperson and minority chairperson of the Finance
11 Committee of the Senate, the chairperson and minority
12 chairperson of the Appropriations Committee of the House of
13 Representatives and the chairperson and minority chairperson of
14 the Finance Committee of the House of Representatives. The
15 report must include the names of the qualified taxpayers that
16 were awarded the credit, the amount of the credit awarded to
17 each qualified taxpayer and the amount of credit sold or
18 assigned by a qualified taxpayer.

19 (b) Reconciliation report.--On May 1, 2023, the department
20 shall submit to the Secretary of the Senate and the Chief Clerk
21 of the House of Representatives a reconciliation report on the
22 effectiveness of this article. The report shall include, at a
23 minimum, the following information for the preceding five years:

24 (1) The name and business address of all qualified
25 taxpayers who have been awarded job tax credits under this
26 article.

27 (2) The amount of job tax credits awarded to each
28 qualified taxpayer.

29 (3) The total number of new jobs created by the
30 qualified taxpayer, including the average annual salary and

1 hourly wage information.

2 (4) The amount of qualified taxes paid by qualified
3 taxpayers.

4 (5) The amount of taxes under Article III withheld from
5 employees or paid by members, partners or shareholders of the
6 pass-through entities of the qualified taxpayer.

7 (c) Publication.--The reports required under this section
8 shall be public records and shall be available electronically on
9 the department's publicly accessible Internet website. The
10 reports required under this section shall not contain
11 "confidential proprietary information" as defined in section 102
12 of the act of February 14, 2008 (P.L.6, No.3), known as the
13 Right-to-Know Law.

14 Section 1713-L. Prevailing wage.

15 (a) Public funds.--A tax credit awarded after the effective
16 date of this section shall constitute public funds as
17 contemplated by the Prevailing Wage Act and a taxpayer awarded
18 tax credits after the effective date of this section must comply
19 with all provisions of the Prevailing Wage Act for all aspects
20 of construction, demolition, alteration and modification of the
21 project facility for which tax credits are sought.

22 (b) Definition.--As used in this section, the term "tax
23 credit" means a tax incentive program in existence on the
24 effective date of this section allowing a taxpayer to reduce its
25 tax liability by meeting certain program requirements or a
26 similar program created on or after the effective date of this
27 section.

28 Section 2. This act shall take effect immediately.