
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 266 Session of
2019

INTRODUCED BY HUGHES, YUDICHAK, BREWSTER, FONTANA, SANTARSIERO,
COSTA, TARTAGLIONE AND FARNESE, FEBRUARY 7, 2019

REFERRED TO FINANCE, FEBRUARY 7, 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 manufacturing and investment tax credit,
11 further providing for definitions and for manufacturing tax
12 credit and providing for workforce development tax credit.

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

15 Section 1. The definition of "taxpayer" in section 1801-G of
16 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
17 Code of 1971, is amended and the section is amended by adding
18 definitions to read:

19 Section 1801-G. Definitions.

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

23 * * *

1 "Diverse and disadvantaged businesses." The term as defined
2 in 62 Pa.C.S. § 2201 (relating to definitions).

3 "Economically distressed municipality." A municipality that
4 meets any of the following criteria:

5 (1) Is a municipality which has been determined to be
6 financially distressed under section 203(f) of the act of
7 July 10, 1987 (P.L.246, No.47), known as the Municipalities
8 Financial Recovery Act.

9 (2) Is a city, borough, town or township with a market
10 value per capita below the fifth percentile of all such
11 cities, boroughs, towns and townships, as certified annually
12 by the State Tax Equalization Board.

13 (3) Is located in a county having a personal income per
14 capita below the 15th percentile of all counties, as
15 certified annually by the Department of Revenue.

16 (4) Is located in a county having an annual average
17 unemployment rate above the 70th percentile of all counties,
18 as determined annually by the Department of Labor and
19 Industry.

20 * * *

21 "Taxpayer." An entity or a group of entities that is engaged
22 in the mechanical, physical or chemical transformation of
23 materials, substances or components into new products that are
24 creations of new items of tangible personal property for sale.
25 To qualify as a "taxpayer," a group of entities must:

26 (1) be comprised of individual entities that are engaged
27 in a similar line of manufacturing;

28 (2) have a formal written agreement between each of the
29 individual entities comprising the group; and

30 (3) ensure that each individual entity accounts for at

1 least \$100,000 and not more than \$600,000 of the annual
2 taxable payroll requirement provided under section 1802-G.

3 * * *

4 Section 2. Section 1804-G of the act is amended to read:

5 Section 1804-G. Manufacturing tax credit.

6 (a) Maximum amount.--The department may award a
7 manufacturing tax credit of up to 5% of the taxpayer's increase
8 in annual taxable payroll if the annual taxable payroll
9 increases in year one by at least \$1,000,000 above the base year
10 amount from the creation of new jobs up to the amount specified
11 in the commitment letter.

12 (b) Determination.--The annual taxable payroll in year one
13 for a new job shall be the sum of the amount of annual taxable
14 payroll in year one for the new jobs created above the taxable
15 payroll in the base year.

16 (c) Certificate.--After verification by the department that
17 the taxpayer has increased the annual taxable payroll in year
18 one by at least \$1,000,000 above the base year amount from the
19 creation of new jobs up to the amount specified and any other
20 conditions required by the department and specified in the
21 commitment letter, the taxpayer shall receive a manufacturing
22 tax credit certificate and filing information.

23 (d) Applicable taxes.--A taxpayer may apply the
24 manufacturing tax credit to 100% of the taxpayer's qualified tax
25 liability.

26 (e) Term.--A taxpayer may claim the manufacturing tax credit
27 for a period determined by the department, not to exceed the
28 earlier of:

29 (1) five years from the date the taxpayer receives the
30 manufacturing tax credit certificate; or

1 (2) six years from the start date.

2 (f) Availability.--A manufacturing tax credit shall be made
3 available by the department on a first-come, first-served basis.

4 (g) Limitation.--The following shall apply:

5 (1) For [each] the fiscal year beginning [after June 30,
6 2017,] July 1, 2017, and ending June 30, 2018, \$4,000,000 in
7 manufacturing tax credits shall be made available to the
8 department and may be awarded by the department in accordance
9 with this part. [In any fiscal year, the department may
10 reissue, assign or award prior fiscal year manufacturing tax
11 credits which have been recaptured under section 1808-G(a) or
12 (b) and may award prior fiscal year manufacturing tax credits
13 not previously issued.]

14 (2) For each fiscal year beginning after June 30, 2018,
15 the following shall apply:

16 (i) Ten million five hundred thousand dollars in
17 manufacturing tax credits shall be made available to the
18 department and may be awarded by the department in
19 accordance with this part. In any fiscal year, the
20 department may reissue, assign or award prior fiscal year
21 manufacturing tax credits which have been recaptured
22 under section 1808-G(a) or (b) and may award prior fiscal
23 year manufacturing tax credits not previously issued.

24 (ii) No less than \$2,500,000 of the tax credits
25 authorized under this part shall be restricted to
26 taxpayers that are diverse and disadvantaged businesses
27 or are claiming a credit for new jobs created in an
28 economically distressed municipality. For taxpayers
29 comprised of a group of entities to meet the requirements
30 of this paragraph, a majority of the increase in the

1 taxpayers' annual taxable payroll must be attributable to
2 entities that are diverse and disadvantaged businesses or
3 have created new jobs in economically distressed
4 municipalities.

5 Section 3. Article XVIII-G of the act is amended by adding a
6 part to read:

7 PART III

8 WORKFORCE DEVELOPMENT TAX CREDIT

9 Section 1841-G. Definitions.

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

13 "Department." The Department of Community and Economic
14 Development of the Commonwealth.

15 "Diverse and disadvantaged businesses." The term as defined
16 in 62 Pa.C.S. § 2201 (relating to definitions).

17 "Economically distressed municipality." A municipality that
18 meets any of the following criteria:

19 (1) Is a municipality which has been determined to be
20 financially distressed under section 203(f) of the act of
21 July 10, 1987 (P.L.246, No.47), known as the Municipalities
22 Financial Recovery Act.

23 (2) Is a city, borough, town or township with a market
24 value per capita below the fifth percentile of all such
25 cities, boroughs, towns and townships, as certified annually
26 by the State Tax Equalization Board.

27 (3) Is located in a county having a personal income per
28 capita below the 15th percentile of all counties, as
29 certified annually by the Department of Revenue.

30 (4) Is located in a county having an annual average

1 unemployment rate above the 70th percentile of all counties,
2 as determined annually by the Department of Labor and
3 Industry.

4 "Employee." A new hire or existing employee for whom a
5 taxpayer makes a workforce development investment to prepare the
6 new hire or existing employee to perform a full-time job in the
7 manufacturing sector which has an average wage at least equal to
8 the county average wage where the job is located and which
9 includes employer-provided health benefits.

10 "Manufacturing." The mechanical, physical or chemical
11 transformation of materials, substances or components into new
12 products that are creations of new items of tangible personal
13 property for sale.

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

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

16 (2) A Pennsylvania S corporation as defined in section
17 301(n.1).

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

19 "Qualified tax liability." A taxpayer's tax liability under
20 Article III, IV, VI, VII, VIII, IX, XI or XV.

21 "Taxpayer." An entity that is engaged in the business of
22 manufacturing in this Commonwealth.

23 "Workforce development." Information access, lifelong
24 learning and employee training and retraining programs. The term
25 includes:

26 (1) vocational education programs;

27 (2) programs in community colleges, technical colleges
28 and postsecondary education institutions authorized to grant
29 diplomas and certificates and specialized associate,
30 associate, baccalaureate and advanced degrees; and

1 (3) transitional support and work support services or
2 activities which enable a taxpayer's new hires and current
3 employees to engage in or prepare for job related functions.

4 "Workforce development tax credit." A tax credit for which
5 the department has issued a certificate under this part.

6 Section 1842-G. Eligibility.

7 In order to be eligible to receive a workforce development
8 tax credit, a taxpayer must demonstrate to the department the
9 following:

10 (1) A workforce development investment in its employees
11 of at least \$50,000.

12 (2) The ability to maintain the jobs for which the
13 workforce development investment was made for a period of at
14 least five years from the start date.

15 (3) The intent to maintain existing operations in this
16 Commonwealth for a period of at least five years from the
17 start date.

18 Section 1843-G. Procedure.

19 (a) Application.--A taxpayer applying to claim a workforce
20 development tax credit must complete and submit to the
21 department a workforce development tax credit application on a
22 form and in a manner as determined by the department.

23 (b) Approval.--If the department approves the taxpayer's
24 application, the department and the taxpayer shall execute a
25 commitment letter containing the following:

26 (1) A description of the jobs that require an investment
27 in workforce development.

28 (2) The number of jobs for which the taxpayer made a
29 workforce development investment.

30 (3) The amount of taxpayer's private capital invested in

1 workforce development.

2 (4) A description of the workforce development training
3 undergone by the taxpayer's employees.

4 (5) The maximum workforce development tax credit amount
5 the taxpayer may claim.

6 (6) A signed statement that the taxpayer intends to
7 maintain existing operations in this Commonwealth for at
8 least five years from the start date.

9 (7) Any other information as the department deems
10 appropriate.

11 (c) Commitment letter.--After a commitment letter has been
12 signed by both the Commonwealth and the taxpayer, the taxpayer
13 must maintain the jobs for which the workforce development
14 investment was made for a period of at least five years and
15 continue operations in this Commonwealth for a period of five
16 years. If the taxpayer does not maintain the jobs for which the
17 workforce development investment was made or ceases operations
18 in this Commonwealth as provided for under this subsection, the
19 commitment letter shall be revoked and deemed to be null and
20 void.

21 Section 1844-G. Workforce development tax credit.

22 (a) Maximum amount.--The department may award a workforce
23 development tax credit of up to \$100,000 or 50% of the
24 taxpayer's workforce development investment specified in
25 section 1843-G, whichever is less.

26 (b) Certificate.--After verification by the department that
27 the taxpayer has made an eligible workforce development
28 investment of at least \$50,000 and any other conditions required
29 by the department and specified in the commitment letter, the
30 taxpayer shall receive a workforce development tax credit

1 certificate and filing information.

2 (c) Applicable taxes.--A taxpayer may apply the workforce
3 development tax credit to 100% of the taxpayer's qualified tax
4 liability.

5 (d) Availability.--A workforce development tax credit shall
6 be made available by the department on a first-come, first-
7 served basis.

8 (e) Limitation.--The following shall apply:

9 (1) For each fiscal year beginning after June 30, 2018,
10 \$2,000,000 in workforce development tax credits shall be made
11 available to the department and may be awarded by the
12 department in accordance with this part. In any fiscal year,
13 the department may reissue, assign or award prior fiscal year
14 workforce development tax credits which have been recaptured
15 under section 1848-G(a) or (b) and may award prior fiscal
16 year workforce development tax credits not previously issued.

17 (2) For each fiscal year beginning after June 30, 2018,
18 no less than \$250,000 of the workforce development tax
19 credits authorized under this part shall be restricted to
20 taxpayers that are diverse and disadvantaged businesses or
21 are claiming a credit for workforce development in an
22 economically distressed municipality.

23 Section 1845-G. Limitations.

24 The following shall apply to workforce development tax
25 credits:

26 (1) If a taxpayer cannot use the entire amount of the
27 workforce development tax credit for the taxable year in
28 which the workforce development tax credit is first approved,
29 the excess may be carried over to succeeding taxable years
30 and used as a credit against the qualified tax liability of

1 the taxpayer for the taxable years. Each time the workforce
2 development tax credit is carried over to a succeeding
3 taxable year, the workforce development tax credit shall be
4 reduced by the amount of the workforce development tax credit
5 used as a credit during the immediately preceding taxable
6 year. The workforce development tax credit may be carried
7 over and applied to succeeding taxable years for no more than
8 three taxable years following the first taxable year for
9 which the taxpayer was entitled to claim the credit.

10 (2) A workforce development tax credit approved by the
11 department in a taxable year shall first be applied against a
12 taxpayer's qualified tax liability for the current taxable
13 year as of the date on which the credit was approved before
14 the workforce development tax credit can be applied against
15 any tax liability under paragraph (1).

16 (3) A taxpayer shall not be entitled to carry back or
17 obtain a refund of all or any portion of an unused workforce
18 development tax credit granted to the taxpayer under this
19 part.

20 Section 1846-G. Sale or assignment.

21 (a) Application.--A taxpayer, upon application to and
22 approval by the department, may sell or assign, in whole or in
23 part, a workforce development tax credit granted to the
24 taxpayer. The following shall apply:

25 (1) The department and the Department of Revenue shall
26 jointly issue guidelines for the approval of applications
27 under this subsection.

28 (2) Before an application is approved, the Department of
29 Revenue must make a finding that the applicant has filed all
30 required State tax reports and returns for all applicable

1 taxable years and paid any balance of State tax due as
2 determined at settlement, assessment or determination by the
3 Department of Revenue.

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

10 (b) Use by purchaser or assignee.--The purchaser or assignee
11 of all or a portion of a workforce development tax credit under
12 subsection (a) must immediately claim the credit in the taxable
13 year in which the purchase or assignment is made. The following
14 shall apply:

15 (1) The amount of the workforce development tax credit
16 that a purchaser or assignee may use against any one
17 qualified tax liability may not exceed 50% of the qualified
18 tax liability for the taxable year.

19 (2) The purchaser or assignee may not carry forward,
20 carry back or obtain a refund of or sell or assign the
21 workforce development tax credit.

22 (3) The purchaser or assignee shall notify the
23 Department of Revenue of the seller or assignor of the
24 workforce development tax credit in compliance with
25 procedures specified by the Department of Revenue.

26 Section 1847-G. Pass-through entity.

27 (a) General rule.--If a pass-through entity has any unused
28 tax credits under section 1845-G, the entity may elect in
29 writing, according to procedures established by the Department
30 of Revenue, to transfer all or a portion of the credit to

1 shareholders, members or partners in proportion of the share of
2 the entity's distributive income to which the shareholder,
3 member or partner is entitled.

4 (b) Limitation.--A pass-through entity and a shareholder,
5 member or partner of a pass-through entity may not claim the
6 credit under subsection (a) for the same workforce development
7 investment.

8 (c) Application.--A shareholder, member or partner of a
9 pass-through entity to whom a credit is transferred under
10 subsection (a) shall immediately claim the credit in the taxable
11 year in which the transfer is made. The shareholder, member or
12 partner may not carry forward, carry back, obtain a refund of or
13 sell or assign the credit.

14 Section 1848-G. Penalties.

15 (a) Failure to maintain operations.--A taxpayer that
16 receives a workforce development tax credit and fails to
17 maintain existing operations related to the workforce
18 development tax credits in this Commonwealth for a period of at
19 least five years from the date the certificate is issued under
20 section 1844-G(b) must refund to the Commonwealth the total
21 amount of workforce development tax credits granted. The
22 Department of Revenue may issue an assessment, including
23 interest, additions and penalties, for the total amount of each
24 workforce development tax credit to be refunded to the
25 Commonwealth.

26 (b) Failure to maintain jobs.--A taxpayer which receives a
27 workforce development tax credit and fails to maintain the jobs
28 related to the workforce development tax credits for a period of
29 at least five years from the date the certificate is issued
30 under section 1844-G(b) must refund to the Commonwealth the

1 total amount of workforce development tax credits granted. The
2 Department of Revenue may issue an assessment, including
3 interest, additions and penalties, for the total amount of
4 workforce development tax credits to be refunded to the
5 Commonwealth.

6 (c) Waiver.--The department may waive the penalties under
7 subsections (a) and (b) if it is determined that a taxpayer's
8 existing operations and jobs were not maintained because of
9 circumstances beyond the taxpayer's control. Circumstances shall
10 include natural disasters, unforeseen industry trends or a loss
11 of a major supplier or market.

12 Section 1849-G. Guidelines.

13 The department shall develop and publish guidelines necessary
14 to implement this part.

15 Section 4. This act shall take effect in 60 days.