

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1326 Session of 2020

INTRODUCED BY BLAKE, HAYWOOD, SANTARSIERO, TARTAGLIONE, HUGHES, COSTA, MENSCH, BROWNE AND SCHWANK, SEPTEMBER 25, 2020

SENATOR HUTCHINSON, FINANCE, AS AMENDED, OCTOBER 6, 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," in tax credit eligibility, further providing for
11 definitions and for eligibility and providing for independent
12 audit for tax credits, for additional requirements for
13 certain tax credits, for independent audit for certain tax
14 benefits, for additional requirements for certain tax <--
15 benefits, for broker licensing, for tax credit
16 administration, for tax benefit administration and for
17 guidelines; in research and development tax credit, further
18 providing for credit for research and development expenses
19 and for report to General Assembly; in keystone innovation
20 zones, further providing for keystone innovation zone tax
21 credits and for annual report; and making editorial changes.

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

24 Section 1. The heading of Article XVII-A.1 of the act of
25 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
26 1971, is amended to read:

27 ARTICLE XVII-A.1

1 TAX CREDIT [ELIGIBILITY] ADMINISTRATION

2 Section 2. The definition of "tax credit" in section 1701-  
3 A.1 of the act is amended and the section is amended by adding  
4 definitions to read:

5 Section 1701-A.1. Definitions.

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

9 "Administering agency." The department, board or commission  
10 that administers a tax benefit or tax credit.

11 "Broker." Any person registered to engage in the business of  
12 effecting transactions in tax credits for the account of others,  
13 including assisting a taxpayer, business firm or other recipient  
14 to apply for, sell or purchase a tax credit. The term includes  
15 an entity and any partner, officer, director or affiliate of the  
16 entity or a person occupying a similar status or performing  
17 similar functions for the entity.

18 \* \* \*

19 "Tax benefit." A tax benefit authorized under any of the  
20 following:

21 (1) Article XVII-A.

22 (2) Article XVIII-C.

23 (3) Article XIX-B.

24 (4) Article XIX-D.

25 (5) Article XXIX-C.

26 (6) Article XXIX-D.

27 (7) The act of October 6, 1998 (P.L.705, No.92), known  
28 as the Keystone Opportunity Zone, Keystone Opportunity  
29 Expansion Zone and Keystone Opportunity Improvement Zone Act.

30 "Tax credit." A tax credit authorized under any of the

1 following:

2 (1) Article XVII-B.

3 (2) Article XVII-D.

4 (3) Article XVII-E.

5 (4) Article XVII-G.

6 (5) Article XVII-H.

7 (6) Article XVII-I.

8 (7) Article XVII-J.

9 (8) Article XVII-K.

10 (8.1) Article XVII-L.

11 (9) Article XVIII.

12 (10) Article XVIII-B.

13 (11) Article XVIII-D.

14 (12) Article XVIII-E.

15 (13) Article XVIII-F.

16 (14) Article XVIII-G.

17 (14.1) Article XVIII-H.

18 (15) Article XIX-A.

19 (16) Article XIX-E.

20 (16.1) Article XIX-C.

21 (16.2) Article XIX-F.

22 (17) Section 2010.

23 (18) Article XXIX-D.

24 (19) Article XX-B of the act of March 10, 1949 (P.L.30,  
25 No.14), known as the Public School Code of 1949.

26 (20) The act of December 1, 2004 (P.L.1750, No.226),  
27 known as the First Class Cities Economic Development District  
28 Act.

29 (21) 12 Pa.C.S. Ch. 34 (relating to Infrastructure and  
30 Facilities Improvement Program).

1 Section 3. Section 1702-A.1 of the act is amended to read:

2 Section 1702-A.1. Eligibility.

3 (a) Except as otherwise provided by law, before a tax credit  
4 or tax benefit can be awarded, the department or administering  
5 agency, as applicable, may make a finding that the taxpayer has  
6 filed all required State tax reports and returns for all  
7 applicable taxable years and paid any balance of State tax due  
8 as determined at settlement or assessment by the department,  
9 unless the tax due is currently under appeal.

10 (b) [(Reserved).] The department or administering agency,  
11 as applicable, may require returns, reports, documents,  
12 statements, applications or registrations for a tax benefit or  
13 tax credit to be filed electronically.

14 Section 4. The act is amended by adding sections to read:  
15 Section 1703-A.1. Independent audit for tax credits.

16 (a) Except as otherwise provided by law, before a tax credit  
17 can be awarded, sold or assigned, the applicant may be required  
18 to hire an independent auditor to prepare audited financial  
19 statements. The department may require the audited financial  
20 statements due to material misrepresentations made on a tax  
21 credit application or if the administering agency suspects the  
22 applicant is committing fraudulent activity. The department may  
23 require that the audited financial statements contain  
24 information as the department requires.

25 (b) The independent audit under subsection (a) shall be  
26 conducted by a certified public accountant.

27 Section 1704-A.1. Additional requirements for tax credits.

28 (a) Except as otherwise provided by law, before a tax credit  
29 may be awarded, sold or assigned, the department, in  
30 consultation with the administering agency, may:

1       (1) Require the submission of all of the following with  
2 a tax credit application:

3           (i) Photo identification of the applicant's chief  
4 executive officer and authorized representative  
5 responsible for submitting the tax credit application.  
6 Photo identification shall include the individual's name  
7 and address.

8           (ii) Bank account statements relating to the  
9 business.

10          (iii) Business records, such as receipts and  
11 expenditures.

12          (iv) Business origination documents, such as  
13 articles of incorporation, partnership or reference to  
14 documents under this subparagraph in records of the  
15 Department of State or similar entity in another  
16 jurisdiction.

17       (2) Require that the applicant meet for an in-person  
18 interview with representatives or agents of the department to  
19 verify the application and materials provided under this  
20 section.

21       (3) Require the business to agree to submit to scheduled  
22 and unscheduled site inspections by the administering agency  
23 or the representatives and agents of the department.

24       (b) The administering agency may require all representatives  
25 and agents of the administering agency who assist businesses  
26 with applications for tax credits to:

27           (1) Obtain appropriate training from the administering  
28 agency for conducting on-site visits for the purposes of  
29 verifying compliance with all requirements relating to  
30 application for and issuance of a tax credit.

1       (2) Advise a business that has been issued a tax credit  
2       of the responsibility of the business in filing reports  
3       concerning use of the tax credit as provided by law.

4       (3) Conduct scheduled and unscheduled visits to the  
5       sites of tax credit awardees to ensure compliance with the  
6       requirements of the tax credit.

7       (c) A successful applicant who is awarded a tax credit shall  
8       file an annual report with the department detailing how the tax  
9       credit was used or if the tax credits were sold. The report  
10       shall include the following and any other information the  
11       department deems necessary:

12       (1) Itemization of expenses and income generated by the  
13       business to which the tax credit applied.

14       (2) A report of how money associated with the tax credit  
15       was used.

16       (3) If sold, the broker used in the transaction of sale.  
17       Section 1705-A.1. Independent audit for tax benefits.

18       (a) Except as otherwise provided by law, before a tax  
19       benefit can be awarded, sold or assigned, the applicant may be  
20       required to hire an independent auditor to prepare audited  
21       financial statements. The department may require the submission  
22       of audited financial statements. Audited financial statements  
23       shall be required if the administering agency suspects the  
24       applicant is committing fraudulent activity or that a material  
25       misrepresentation was made on the tax benefit application. The  
26       department may require that the audited financial statements  
27       contain information as the department requires.

28       (b) The independent audit under subsection (a) shall be  
29       conducted by a certified public accountant.  
30       Section 1706-A.1. Additional requirements for tax benefits.

1 (a) Except as otherwise provided by law, before a tax  
2 benefit may be awarded, sold or assigned, the department, in  
3 consultation with the administering agency, may:

4 (1) Require the submission of all of the following with  
5 a tax benefit application:

6 (i) Photo identification of the applicant's chief  
7 executive officer and authorized representative  
8 responsible for submitting the tax credit application.  
9 Photo identification shall include the individual's name  
10 and address.

11 (ii) Bank account statements relating to the  
12 business.

13 (iii) Business records, such as receipts and  
14 expenditures.

15 (iv) Business origination documents, such as  
16 articles of incorporation, partnership or reference to  
17 documents under this subparagraph in records of the  
18 Department of State or similar entity in another  
19 jurisdiction.

20 (2) Require that the applicant meet for an in-person  
21 interview with representatives or agents of the department to  
22 verify the application and materials provided under this  
23 section.

24 (3) Require the business to agree to submit to scheduled  
25 and unscheduled site inspections by the administering agency  
26 or the representatives or agents of the department.

27 (b) The administering agency may require all representatives  
28 and agents of the administering agency who assist businesses  
29 with applications for tax benefit to:

30 (1) Obtain appropriate training from the administering

1 agency for conducting on-site visits for the purposes of  
2 verifying compliance with all requirements relating to  
3 application for and issuance of a tax benefit.

4 (2) Advise a business that has been issued a tax benefit  
5 of the responsibility of the business for filing reports  
6 concerning use of the tax benefit as provided by law.

7 (3) Conduct scheduled and unscheduled visits to the  
8 sites of tax benefit awardees to ensure compliance with the  
9 requirements of the tax benefit.

10 (c) A successful applicant who is awarded a tax benefit  
11 shall file an annual report with the department detailing how  
12 the tax benefit was used or if the tax benefits were sold. The  
13 report shall include, but is not limited to, the following:

14 (1) Itemization of expenses and income generated by the  
15 business to which the tax benefit applied.

16 (2) A report of how money associated with the tax  
17 benefit was used.

18 (3) If sold, the broker used in the transaction of sale.  
19 Section 1707-A.1. Broker registration.

20 (a) All brokers shall be registered under this section. Any  
21 agent or other party representing a broker or assisting a broker  
22 in effecting the application for, purchase of or sale of a tax  
23 credit or tax benefit shall be registered under this section.

24 (b) The department, in consultation with the Department of  
25 COMMUNITY AND Economic Development, shall establish guidelines <--  
26 providing for the application and registration of brokers under  
27 this article. The guidelines shall require, but not be limited  
28 to, the following:

29 (1) Name and address of the broker showing that the  
30 broker resides in this Commonwealth.



1           (2) Name and address of the business with which the  
2 broker is employed or otherwise associated that is located in  
3 this Commonwealth.

4           (3) The broker be at least 18 years of age.

5           (4) Minimum educational requirements, qualifications and  
6 experience necessary for the issuance of a registration under  
7 this article.

8           (5) A criminal background check prepared by the  
9 Pennsylvania State Police that demonstrates the broker has  
10 not been convicted of any felony offense or an offense that  
11 involved fraud or misrepresentation in this Commonwealth or  
12 any other jurisdiction.

13           (6) A list of any professional licenses that have been  
14 issued to the broker and whether the broker is in good  
15 standing with the licensing authority.

16           (7) Verification that the application is submitted under  
17 18 Pa.C.S. §§ 4903 (relating to false swearing) and 4904  
18 (relating to unsworn falsification to authorities).

19           (8) Payment of any required application, licensing and  
20 registration fees.

21           (9) Tax clearance showing all satisfaction of all State  
22 and local taxes.

23           (c) A broker shall obtain an initial or renewed registration  
24 by filing an application with the department, providing  
25 information and documentation and paying all fees as required by  
26 the department.

27           (d) A registration issued under this section shall include a  
28 unique registration number for the registrant and be valid for  
29 two years from the date of issue. A registration issued under  
30 this section may be suspended or revoked by the department for

1 good cause.

2 (e) A broker denied a registration, or whose registration is  
3 suspended or revoked, may appeal the department's determination  
4 in the same manner as provided by Article XXVII.

5 (f) Brokers effecting the sale of a tax credit or tax  
6 benefit or assisting a taxpayer, business firm or other  
7 recipient to apply for or purchase a tax credit or tax benefit,  
8 shall attach to the application a certification that the  
9 statements and representations made in the application are true  
10 and correct and subject to the penalties as set forth in 18  
11 Pa.C.S. § 4903 or 4904 and shall include the broker's unique  
12 registration number issued by the department.

13 (g) The department may require the payment of an application  
14 fee to review and process a registration.

15 (h) A broker registered under this section shall post a bond  
16 of \$50,000 with the department.

17 Section 1708-A.1. Tax credit administration.

18 (a) The department shall have the following powers:

19 (1) To audit a taxpayer, business firm or other  
20 recipient of a tax credit, including the purchaser of a tax  
21 credit.

22 (2) To issue an assessment against a taxpayer, business  
23 firm or other recipient of a tax credit or beneficiary of a  
24 tax credit if the department determines that the tax credit  
25 was improperly issued or the benefits of the tax credit were  
26 improperly conferred. If a tax credit is sold to a bona fide  
27 purchaser for value, the department may only issue an  
28 assessment against the party selling the tax credit and the  
29 broker signing the certification required by section 1707-  
30 A.1(f). The seller and the broker shall be jointly and

1 severally liable for the amount due.

2 (b) The procedures, collection, enforcement and appeals of  
3 any assessment made under this section shall be governed by Part  
4 X of Article III, except that the limitations on assessment and  
5 collection in section 348 shall not apply.

6 (c) The department shall issue an assessment under this  
7 section subject to the following limitations:

8 (1) Within three years of the date the tax credit is  
9 awarded or within three years of the date the tax credit is  
10 sold, whichever is later.

11 (2) If the taxpayer obtains a tax credit by fraud, the  
12 department may issue an assessment at any time.

13 Section 1709-A.1. Tax benefit administration.

14 (a) The department shall have the following powers:

15 (1) To audit a taxpayer, business firm or other  
16 recipient of a tax benefit.

17 (2) To issue an assessment against a taxpayer, business  
18 firm or other recipient of a tax benefit if the department  
19 determines that the tax benefit was improperly issued or  
20 improperly conferred.

21 (b) The procedures, collection, enforcement and appeals of  
22 any assessment made under this section shall be governed by Part  
23 X of Article III, except that the limitations on assessment and  
24 collection in section 348 shall not apply.

25 (c) The department shall issue an assessment under this  
26 section subject to the following limitations:

27 (1) Within three years of the date the tax benefit is  
28 awarded.

29 (2) If the taxpayer obtains a tax benefit by fraud, the  
30 department may issue an assessment at any time.

1 Section 1710-A.1. Guidelines.

2 The department shall develop written guidelines for the  
3 implementation of this article.

4 Section 5. Sections 1703-B(a) and (c), 1711-B, 1906-F(b) and  
5 1908-F of the act are amended to read:

6 Section 1703-B. Credit for Research and Development  
7 Expenses.--(a) A taxpayer who incurs Pennsylvania qualified  
8 research and development expense in a taxable year may apply for  
9 a research and development tax credit as provided in this  
10 article. By [September 15] December 1, a taxpayer must submit an  
11 application to the department for Pennsylvania qualified  
12 research and development expense incurred in the taxable year  
13 that ended in the prior calendar year.

14 \* \* \*

15 (c) By [December 15] June 1 of the second calendar year  
16 following the close of the taxable year during which the  
17 Pennsylvania qualified research and development expense was  
18 incurred, the department shall notify the taxpayer of the amount  
19 of the taxpayer's research and development tax credit approved  
20 by the department.

21 Section 1711-B. Report to General Assembly.--The secretary  
22 shall submit an annual report to the General Assembly indicating  
23 the effectiveness of the credit provided by this article no  
24 later than [March 15] October 1 following the calendar year in  
25 which the credits were approved. The report shall include the  
26 names of all taxpayers utilizing the credit as of the date of  
27 the report and the amount of credits approved and utilized by  
28 each taxpayer. Notwithstanding any law providing for the  
29 confidentiality of tax records, the information contained in the  
30 report shall be public information. The report may also include

1 any recommendations for changes in the calculation or  
2 administration of the credit.

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

4 \* \* \*

5 (b) Application for tax credit.--A KIZ company may file an  
6 application for a tax credit with the department. An application  
7 under this subsection must be filed by [September 15 of each  
8 year for the prior taxable year, beginning September 15, 2006.]  
9 December 1 for the prior tax year. The application must be  
10 submitted on a form required by the department and must be  
11 accompanied by a certification from the KIZ coordinator that the  
12 KIZ company falls within a targeted industry segment identified  
13 in the strategic plan adopted by the KIZ partnership, and meet  
14 any other requirements specified by the department. The  
15 department shall review the application and, upon being  
16 satisfied that all requirements have been met, the department  
17 shall issue a tax credit certificate to the KIZ company. All  
18 certificates shall be awarded by [December 15] June 1 of each  
19 year following the calendar year of application.

20 \* \* \*

21 Section 1908-F. Annual report.

22 The department shall submit an annual report to the Secretary  
23 of the Senate and the Chief Clerk of the House of  
24 Representatives indicating the effectiveness of the keystone  
25 innovation zone tax credit provided by this article by [December  
26 31 of each year, beginning December 31, 2007.] October 1 of each  
27 year following the calendar year of application. Notwithstanding  
28 any law providing for the confidentiality of tax records, the  
29 report shall include the names of all taxpayers awarded the  
30 credits, all taxpayers utilizing the credits, the amount of

1 credits approved and utilized by each taxpayer and the locations  
2 of the KIZ companies awarded the credits. The report shall be a  
3 public document.

4 Section 6. This act shall take effect in 60 days.