
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 643 Session of
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FEBRUARY 24, 2021

REFERRED TO COMMITTEE ON FINANCE, FEBRUARY 24, 2021

AN ACT

1 Providing for food desert opportunity zones and for food desert
2 opportunity zone tax credits and imposing powers and duties
3 on the Department of Community and Economic Development and
4 the Department of Revenue.

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15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 CHAPTER 1
18 PRELIMINARY PROVISIONS

19 Section 101. Short title.

20 This act shall be known and may be cited as the Food Desert
21 Opportunity Zone Act.

22 Section 102. Definitions.

23 The following words and phrases when used in this act shall
24 have the meanings given to them in this section unless the
25 context clearly indicates otherwise:

26 "Department." The Department of Community and Economic
27 Development of the Commonwealth.

28 "Food desert." A low-income census tract where a substantial
29 number or share of residents have low access to a healthy food
30 retail outlet.

1 "Healthy food retail outlet." A supermarket or large grocery
2 store.

3 "Low access to a healthy food retail outlet." The following:

4 (1) More than one mile from a supermarket or large
5 grocery store in urban areas.

6 (2) More than 10 miles from a supermarket or large
7 grocery store in rural areas.

8 "Low-income census tract." A census tract where:

9 (1) the poverty rate for that tract is at least 20%;

10 (2) for tracts not located within a metropolitan area,
11 the median family income for the tract does not exceed 80% of
12 Statewide median family income; or

13 (3) for tracts located within a metropolitan area, the
14 median family income for the tract does not exceed 80% of the
15 greater of Statewide median family income or the metropolitan
16 area median family income.

17 "Tax credit." A food desert opportunity tax credit under
18 section 501.

19 "Zone." A food desert opportunity zone established under
20 section 301(a).

21 CHAPTER 3

22 FOOD DESERT OPPORTUNITY ZONES

23 Section 301. Food desert opportunity zones.

24 (a) Establishment.--A program providing for food desert
25 opportunity zones is established within the department.

26 (b) Criteria for zone.--A zone shall be comprised of a low-
27 income census tract where at least 33% of the tract's population
28 or a minimum of 500 people in the tract have low access to a
29 healthy food retail outlet.

30 (c) Zone authorization.--The department shall authorize not

1 more than 12 zones in this Commonwealth. Healthy food retail
2 outlets within a zone that are qualified under this act shall be
3 entitled to a tax credit for a period not to exceed five years
4 beginning January 1, 2022, and ending on or before December 31,
5 2026.

6 Section 302. Application.

7 (a) Initial application.--One or more political subdivisions
8 in a low-income census tract, or a designee of one or more
9 political subdivisions, may apply to the department to designate
10 the low-income census tract as a zone.

11 (b) Participation limitation.--A political subdivision shall
12 not be a part of more than one proposed zone, unless the
13 department agrees that two zones will bring additional benefit
14 to the residents of the political subdivision.

15 (c) Application limitation.--A political subdivision may
16 submit only one application to the department for the
17 authorization of a zone.

18 (d) Form and manner.--The application shall be in a form and
19 manner as prescribed by the department.

20 Section 303. Review.

21 (a) Action of department.--The department, in consultation
22 with the Department of Revenue, shall review all completed
23 applications submitted under section 302. An application for
24 authorization of a zone must be received by the department on or
25 before September 30, 2021, in order to be considered by the
26 department.

27 (b) Process.--The department shall authorize up to 12 zones
28 from applications meeting the criteria in section 301(b) based
29 upon need and likelihood of success. The department may not
30 alter the geographic boundaries of a zone.

1 (c) Authorizations.--The department shall authorize all
2 zones by November 30, 2021.

3 (d) Effective date of designation.--The designation of a
4 zone under this section shall take effect January 1, 2022.

5 (e) Extension.--The department may extend the deadline for
6 the receipt of applications for zones until December 31, 2021,
7 if all 12 zones have not been authorized and the extension is
8 necessary to allow eligible political subdivisions to apply. The
9 department shall authorize additional zones under this
10 subsection by February 28, 2022. The authorization shall take
11 effect January 1, 2022, or if the authorization occurs after
12 January 1, 2022, that subsequent authorization shall for all
13 purposes be retroactive to January 1, 2022. The zone
14 authorization shall end as provided in section 301(c).
15 Section 304. Qualified healthy food retail outlet.

16 (a) Qualifications.--In order to qualify each year for a tax
17 credit under Chapter 5, a healthy food retail outlet shall own
18 or lease real property in a zone from which the healthy food
19 retail outlet actively conducts business. The qualified healthy
20 food retail outlet shall receive certification from the
21 department that the healthy food retail outlet is located and is
22 in the active conduct of business within the zone. The healthy
23 food retail outlet shall obtain annual renewal of the
24 certification from the department to continue to qualify under
25 this section.

26 (b) Relocation.--Any healthy food retail outlet that
27 relocates from outside a zone shall not receive a tax credit
28 provided under Chapter 5 unless the healthy food retail outlet
29 does one of the following:

30 (1) increases full-time employment by at least 20% in

1 the first full year of operation within the zone;

2 (2) makes a capital investment in the property located
3 within the zone equivalent to at least 10% of the gross
4 revenues of that healthy food retail outlet in the
5 immediately preceding calendar or fiscal year; or

6 (3) enters into a lease agreement for property located
7 within the zone:

8 (i) for a term equivalent to at least the duration
9 of the zone; and

10 (ii) with aggregate payment under the lease
11 agreement equivalent to at least 5% of the gross revenues
12 of that healthy food retail outlet in the immediately
13 preceding calendar or fiscal year.

14 (c) Waiver of requirements.--The department, in consultation
15 with the Department of Revenue, may waive or modify the
16 requirements under subsection (b), as appropriate.
17 Section 305. Desertification.

18 (a) Application.--One or more political subdivisions, or a
19 designee of one or more political subdivisions, may apply to the
20 department to decertify and remove the designation of a zone.
21 The application shall be in a form and manner prescribed by the
22 department.

23 (b) Process.--The department may grant the request to
24 decertify and remove the designation of a zone after completed
25 applications have been submitted by all qualified political
26 subdivisions in which the zone is located.

27 CHAPTER 5

28 TAX CREDIT

29 Section 501. Food desert opportunity tax credit.

30 (a) Credits.--For tax years beginning on and after January

1 1, 2022, a qualified healthy food retail outlet may apply to the
2 Department of Revenue for a tax credit against the tax imposed
3 by Article III of the act of March 4, 1971 (P.L.6, No.2), known
4 as the Tax Reform Code of 1971, for the taxable year. The
5 Department of Revenue shall prescribe the form and manner to
6 obtain the tax credit.

7 (b) Application of credit.--A qualified healthy food retail
8 outlet shall apply for a tax credit by January 15 for the
9 previous calendar year.

10 (c) Apportionment.--The Department of Revenue shall
11 apportion a tax credit for a qualified healthy food retail
12 outlet that has not operated in a zone for a full fiscal year.

13 (d) Tax credit determinations.--The tax credit shall be
14 determined by multiplying the monthly average of all full-time
15 jobs at a qualified healthy food retail outlet by the allowance.
16 The allowance for purposes of the tax credit shall be \$1,250 per
17 job.

18 (e) Notification of credit.--By March 15, the Department of
19 Revenue shall notify a qualified healthy food retail outlet of
20 the amount of the qualified healthy food retail outlet's tax
21 credit approved.

22 (f) Limitation on amount of credit.--The tax credit shall
23 not exceed 50% of the tax liability of the qualified healthy
24 food retail outlet under Article III of the Tax Reform Code of
25 1971 for the taxable year. A qualified healthy food retail
26 outlet may not carry back or carry forward a tax credit received
27 under this section.

28 (g) Allocation.--The total amount of tax credits approved by
29 the Department of Revenue shall not exceed \$1,000,000 annually.
30 If the tax credits exceed the \$1,000,000 cap in a given year,

1 the tax credits will be allocated on a pro rata basis.

2 Section 502. Transferability.

3 A tax credit awarded to a qualified healthy food retail
4 outlet is nontransferable and cannot be applied, used or
5 assigned to any other person, business or tax account.

6 Section 503. Recapture.

7 (a) General rule.--If a qualified healthy food retail outlet
8 located within a zone received a tax credit and subsequently
9 relocates outside of the zone within the first five years of
10 locating in the zone, the qualified healthy food retail outlet
11 shall refund the Commonwealth in accordance with the following:

12 (1) If the qualified healthy food retail outlet
13 relocates within three years from the date of first locating
14 in a zone, 66% of the tax credits awarded to the qualified
15 healthy food retail outlet shall be refunded to the
16 Commonwealth.

17 (2) If the qualified healthy food retail outlet
18 relocates within three to five years from the date of first
19 locating in a zone, 33% of the tax credits awarded to the
20 qualified healthy food retail outlet shall be refunded to the
21 Commonwealth.

22 (3) If the qualified healthy food retail outlet was
23 located within a facility operated by a nonprofit
24 organization to assist in the creation and development of a
25 start-up business, no tax credit shall be refunded.

26 (b) Waiver.--The department, in consultation with the
27 Department of Revenue, may waive or modify recapture
28 requirements under subsection (a) if the department determines
29 that the relocation was due to circumstances beyond the control
30 of the qualified healthy food retail outlet, including, but not

1 limited to:

- 2 (1) natural disaster;
- 3 (2) unforeseen industry trends; or
- 4 (3) loss of a major supplier or market.

5 Section 504. Delinquent or deficient State or local taxes.

6 (a) General rule.--The following shall apply:

7 (1) A qualified healthy food retail outlet may not claim
8 or receive a tax credit unless the qualified healthy food
9 retail outlet is in full compliance with all State and local
10 tax laws, ordinances and resolutions.

11 (2) A qualified healthy food retail outlet may not claim
12 or receive a tax credit if any person or business with a 20%
13 or greater interest in the qualified healthy food retail
14 outlet is not in full compliance with all State and local tax
15 laws, ordinances and resolutions.

16 (b) Later compliance and eligibility.--A qualified healthy
17 food retail outlet that is not eligible to claim a tax credit
18 due to noncompliance with any State or local tax law may become
19 eligible if the qualified healthy food retail outlet
20 subsequently comes into full compliance with all State and local
21 tax laws to the satisfaction of the Department of Revenue or the
22 political subdivision within the calendar year in which the
23 noncompliance first occurred. If full compliance is not attained
24 by February 5 of the calendar year following the calendar year
25 during which noncompliance first occurred, the qualified healthy
26 food retail outlet is precluded from claiming a tax credit for
27 that calendar year, whether or not full compliance is achieved
28 subsequently.

29 Section 505. Code compliance.

30 (a) General rule.--A qualified healthy food retail outlet

1 shall be precluded from claiming a tax credit if the qualified
2 healthy food retail outlet owns real property in a zone and the
3 real property is not in compliance with all applicable State and
4 local zoning, building and housing laws, ordinances or codes.

5 (b) Opportunity to achieve compliance.--A qualified healthy
6 food retail outlet that is not in compliance under subsection
7 (a) shall have until December 31 of the calendar year following
8 designation of the real property as part of a zone, to be in
9 compliance in order to claim a tax credit for that year. If full
10 compliance is not attained by December 31 of that calendar year,
11 the qualified healthy food retail outlet is precluded from
12 claiming a tax credit for that calendar year, whether or not
13 compliance is achieved in a subsequent calendar year. The
14 Department of Revenue may extend the time period in which a
15 qualified healthy food retail outlet must come into compliance
16 with a local ordinance or building code for a period not to
17 exceed one year if the Department of Revenue determines that the
18 qualified healthy food retail outlet has made and shall continue
19 to make a good faith effort to come into compliance and that an
20 extension will enable the qualified healthy food retail outlet
21 to achieve full compliance. Political subdivisions in a zone
22 shall notify the Department of Revenue in writing of all
23 qualified healthy food retail outlets not in compliance with
24 this subsection within 30 days following the end of each
25 calendar year.

26 Section 506. Appeals.

27 A qualified healthy food retail outlet shall be deemed to be
28 in compliance with any State or local tax for purposes of this
29 chapter if the qualified healthy food retail outlet has made a
30 timely administrative or judicial appeal for that particular tax

1 or has entered into and is in compliance with a duly authorized
2 deferred payment plan with the Department of Revenue or
3 political subdivision for that particular tax.

4 Section 507. Notice requirements.

5 (a) Requirement.--After compliance reviews have been
6 conducted by appropriate Commonwealth and local authorities, the
7 department shall notify each zone applicant by regular mail each
8 year of the department's approval or denial of the zone
9 application. No qualified healthy food retail outlet zone is
10 entitled a tax credit unless the zone receives approval from the
11 department.

12 (b) Notice.--The department shall provide a one-time
13 notification to every current zone real property owner by June
14 1, 2021. Failure to receive departmental notification under this
15 section shall not extend or restrict any benefits or rights real
16 property owners possess under this act.

17 (c) Transmittal.--The department or its designated official
18 shall, within 15 business days of receipt of a zone application
19 made under this act, forward a copy of the application to
20 appropriate Commonwealth and local authorities for review and
21 processing.

22 Section 508. Application time.

23 (a) General rule.--Except as provided under subsection (b),
24 an applicant for a tax credit must file an application in a
25 manner prescribed by the department by December 31 of each
26 calendar year for which the applicant claims a tax.

27 (b) Extension or waiver.--Upon request of the applicant, the
28 department may extend or waive the application deadline for good
29 cause shown.

30 (c) Approval.--A tax credit may not be claimed or received

1 for that calendar year until approval has been granted by the
2 department.

3 CHAPTER 7

4 MISCELLANEOUS PROVISIONS

5 Section 701. Illegal activity.

6 Any funds or other forms of consideration received by a
7 qualified healthy food retail outlet conducting any type of
8 illegal activity shall not be eligible for a tax credit or any
9 other benefits that are created under this act.

10 Section 702. Rules and regulations.

11 The following shall apply:

12 (1) The Department of Revenue may promulgate regulations
13 necessary to effectuate the provisions of this act.

14 (2) The department may promulgate regulations necessary
15 to effectuate the provisions of this act.

16 Section 703. Compliance.

17 A qualified healthy food retail outlet eligible for a tax
18 credit shall comply with all reporting, filing and compliance
19 requirements under the act of March 4, 1971 (P.L.6, No.2), known
20 as the Tax Reform Code of 1971, unless otherwise provided for in
21 this act.

22 Section 704. Penalties.

23 (a) Civil penalty.--The following shall apply:

24 (1) In addition to any penalties authorized by the act
25 of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code
26 of 1971, for violations of that act, the Department of
27 Revenue may impose an additional administrative penalty not
28 to exceed \$10,000 for any act or violation of this act,
29 including the filing of any false statement, return or
30 document.

1 (2) The department may impose a civil penalty not to
2 exceed \$10,000 for a violation of this act, including the
3 filing of any false statement, return or document.

4 (b) Criminal penalty.--In addition to any criminal penalty
5 under the Tax Reform Code of 1971, a qualified healthy food
6 retail outlet that knowingly violates any of the provisions of
7 this act commits a misdemeanor of the third degree.

8 Section 705. Construction.

9 This act shall be interpreted to ensure that all provisions
10 relating to tax credits are strictly construed in favor of the
11 Commonwealth.

12 Section 706. Applicability.

13 The provisions of this act shall be applied prospectively. A
14 qualified healthy food retail outlet may not claim a tax credit
15 until the qualified healthy food retail outlet becomes qualified
16 under this act.

17 Section 707. Effective date.

18 This act shall take effect in 60 days.