

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 562 Session of 2021

INTRODUCED BY SCAVELLO, LANGERHOLC, BROWNE, ARGALL, STEFANO, J. WARD, BOSCOLA, BARTOLOTTA, MENSCH, SCHWANK AND PITTMAN, APRIL 14, 2021

AS AMENDED ON THIRD CONSIDERATION, DECEMBER 13, 2021

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 airport land development zones.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
14 the Tax Reform Code of 1971, is amended by adding an article to
15 read:

ARTICLE XIX-H

AIRPORT LAND DEVELOPMENT ZONES

18 Section 1901-H. Definitions.

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

1 "Affiliate." As follows:

2 (1) an entity which is part of the same affiliated group  
3 as defined in section 1504(a) of the Internal Revenue Code of  
4 1986 (Public Law 99-514, 26 U.S.C. § 1504(a)), as an airport  
5 land development zone employer; or

6 (2) an entity that would be part of the same affiliated  
7 group except that the entity or the airport land development  
8 zone employer is not a corporation.

9 "Airport." A publicly owned commercial service airport or an<--  
10 airport that is owned by the same entity that owns the publicly  
11 owned commercial service airport. A COMMERCIAL SERVICE AIRPORT <--  
12 OR A NONCOMMERCIAL SERVICE AIRPORT.

13 "Airport land development zone." As follows:

14 (1) An area of no more than 300 acres, consisting of  
15 parcels of real property that are owned by an A COMMERCIAL <--  
16 SERVICE airport or leased as provided under paragraph (2) <--  
17 (3), that WITH, as of December 31, 2020 2021, had no <--  
18 permanent vertical structures affixed or the buildings are <--  
19 vacant with no business BUILDINGS WITH BUSINESSES located in <--  
20 the structure STRUCTURES. <--

21 (2) A parcel of real property in the zone may be leased <--  
22 or ground leased to a third party, except that the airport  
23 must maintain ownership of the parcel for the life of the  
24 program in order to qualify. THE TOTAL ACRES FOR ALL <--  
25 COMMERCIAL SERVICE AIRPORTS IN THE PROGRAM MAY NOT EXCEED  
26 2,000 ACRES.

27 (2) AN AREA OF NO MORE THAN 50 ACRES, CONSISTING OF  
28 PARCELS OF REAL PROPERTY THAT ARE OWNED BY A NONCOMMERCIAL  
29 SERVICE AIRPORT OR LEASED UNDER PARAGRAPH (3), WITH, AS OF  
30 DECEMBER 31, 2021, NO PERMANENT VERTICAL STRUCTURES AFFIXED

1 OR VACANT BUILDINGS WITH BUSINESSES LOCATED IN THE  
2 STRUCTURES. THE TOTAL ACRES FOR ALL NONCOMMERCIAL SERVICE  
3 AIRPORTS IN THE PROGRAM MAY NOT EXCEED 2,000 ACRES.

4 (3) A PARCEL OF REAL PROPERTY IN THE ZONE MAY BE LEASED  
5 OR GROUND LEASED TO A THIRD PARTY WHILE CONTINUING TO BE  
6 OWNED BY A COMMERCIAL SERVICE AIRPORT OR A NONCOMMERCIAL  
7 SERVICE AIRPORT FOR THE DURATION OF THE PROGRAM.

8 "Airport land development zone employer." A person or entity  
9 subject to the taxes imposed under Article III, IV, VII, VIII or  
10 XV who employs at least one employee in an airport land  
11 development zone. The term shall include a pass-through entity.  
12 The term shall not include an employer engaged in construction  
13 improvements in an airport land development zone.

14 "Airport land development zone plan." The document submitted  
15 to the department that details the parcels included in the  
16 airport land development zone by an airport. The plan shall  
17 include the following:

18 (1) A legal description, identification number and  
19 acreage of each parcel included in the zone.

20 ~~(2) Certification that demonstrates that any building on <--~~  
21 ~~a parcel included in the zone was vacant or the parcel had no~~  
22 ~~permanent, vertical structures affixed to the parcel before~~  
23 ~~December 31, 2020.~~

24 ~~(3) A map and pictures of each parcel included in the~~  
25 ~~plan.~~

26 ~~(4) A written description of planned and potential uses~~  
27 ~~for parcels in the zone.~~

28 (2) CERTIFICATION BY AN AIRPORT THAT ANY BUILDING IN THE <--  
29 ZONE WAS VACANT AND ANY PARCEL IN THE ZONE HAD NO PERMANENT,  
30 VERTICAL STRUCTURES AFFIXED TO THE PARCEL ON OR AFTER

1 DECEMBER 31, 2021.

2 (3) A MAP AND DIAGRAM OF EACH PARCEL INCLUDED IN THE  
3 PLAN.

4 "COMMERCIAL SERVICE AIRPORT." A PUBLICLY OWNED AIRPORT WITH  
5 AT LEAST 2,500 ANNUAL ENPLANEMENTS AND SCHEDULED AIR CARRIER  
6 SERVICE. THE TERM INCLUDES A PUBLIC USE AIRPORT IN A COUNTY OF  
7 THE FOURTH CLASS WITH A POPULATION OF BETWEEN 140,000 AND  
8 148,000 PEOPLE UNDER THE 2020 DECENNIAL CENSUS.

9 "Department." The Department of Community and Economic  
10 Development of the Commonwealth.

11 "Employee." An individual who meets all of the following:

12 (1) Is employed in this Commonwealth by an airport land  
13 development zone employer or its predecessor after the  
14 effective date of this section.

15 (2) Is employed for at least 35 hours per week by an  
16 airport land development zone employer.

17 (3) Spends at least 90% of the individual's working time  
18 for the airport land development zone employer at the airport  
19 land development zone location.

20 "Full-time equivalent employee." As follows:

21 (1) The whole number of employees, rounded down, that  
22 equals the sum of:

23 (i) the total paid hours, including paid time off  
24 and family leave under the Family and Medical Leave Act  
25 of 1993 (Public Law 103-3, 29 U.S.C. § 2601 et seq.), of  
26 all of an airport land development zone employer's  
27 employees classified as nonexempt during the airport land  
28 development zone employer's tax year divided by 2,000;  
29 and

30 (ii) a total number arrived at by adding, for each

1 airport land development zone employer's employees  
2 classified as exempt scheduled to work at least 35 hours  
3 per week, the fraction equal to the portion of the year  
4 the exempt employee was paid by the airport land  
5 development zone employer. Whether an employee shall be  
6 classified as exempt or nonexempt shall be determined  
7 under the Fair Labor Standards Act of 1938 (52 Stat.  
8 1060, 29 U.S.C. § 201 et seq.).

9 (2) The calculation under paragraph (1) shall exclude  
10 employees previously employed by an affiliate and employees  
11 previously employed by the airport land development zone  
12 employer outside of an airport land development zone.

13 "NONCOMMERCIAL SERVICE AIRPORT." AN AIRPORT THAT IS PUBLICLY <--  
14 OR PRIVATELY OWNED, OPEN TO THE PUBLIC, WITH LESS THAN 2,500  
15 ANNUAL ENPLANEMENTS AND WITHOUT SCHEDULED AIR CARRIER SERVICE.

16 "Pass-through entity." A partnership as defined in section  
17 301(n.0) or a Pennsylvania S corporation as defined in section  
18 301(n.1).

19 "Plan." An airport land development zone plan.

20 "Program." The Airport Land Development Zone Program  
21 established under section 1902-H.

22 "Qualified tax liability." A tax owed by an airport land  
23 development zone employer attributable to a business activity  
24 conducted within an airport land development zone for a tax year  
25 under Article III, IV, VII, VIII or XV.

26 "Zone." An airport land development zone.  
27 Section 1902-H. Airport Land Development Zone Program.

28 The Airport Land Development Zone Program is established to  
29 encourage and promote the creation of new jobs on land and  
30 buildings owned by airports within this Commonwealth. The <--

1 ~~program shall accelerate economic activity at and around~~  
2 ~~airports on undeveloped land or vacant buildings owned by~~  
3 ~~Pennsylvania airports., WHILE ACCELERATING ECONOMIC ACTIVITY AT~~ <--  
4 ~~AND AROUND AIRPORTS ON UNDEVELOPED LAND OR VACANT BUILDINGS~~  
5 ~~OWNED BY AIRPORTS THAT CAN PROVIDE NEW REVENUE SOURCES FOR~~  
6 ~~AIRPORTS.~~

7 Section 1903-H. Application and plan.

8 (a) Application.--Within four months of the effective date  
9 of this section, the department shall publish guidelines and an  
10 application for the program. <--

11 ~~(b) Time for filing plan. Each airport shall have up to 12~~  
12 ~~months from the date the guidelines and application are~~  
13 ~~published by the department to develop and file a plan. If an~~  
14 ~~airport fails to file a plan within the time period, the airport~~  
15 ~~shall be ineligible for the program.~~

16 ~~(c) Approval of plan. Upon receipt of an airport land~~  
17 ~~development zone plan submitted by an airport under subsection~~  
18 ~~(b), the department shall have 60 calendar days to review the~~  
19 ~~plan for appropriateness and conformity with this article and~~  
20 ~~approve or deny the plan. If the proposed plan conforms with~~  
21 ~~this article, the department shall approve the plan. If the~~  
22 ~~proposed plan does not conform or is not appropriate, the~~  
23 ~~department shall notify, in writing, the airport and the airport~~  
24 ~~shall have 60 days to revise the plan to make the plan conform~~  
25 ~~with this article.~~

26 ~~(d) Notification. If an airport land development zone plan~~  
27 AIRPORTS. <--

28 (B) FILING PLAN.--THE DEPARTMENT SHALL BEGIN ACCEPTING PLANS  
29 FROM EACH AIRPORT 30 DAYS AFTER THE DEPARTMENT PUBLISHES THE  
30 GUIDELINES AND APPLICATION.

1 (C) APPROVAL OF PLAN.--UPON RECEIPT OF A PLAN SUBMITTED BY  
2 AN AIRPORT UNDER SUBSECTION (B), THE DEPARTMENT SHALL HAVE 60  
3 CALENDAR DAYS TO REVIEW THE PLAN FOR APPROPRIATENESS AND  
4 CONFORMITY. IF THE PROPOSED PLAN CONFORMS WITH THIS ARTICLE, THE  
5 DEPARTMENT SHALL APPROVE THE PLAN. IF THE PROPOSED PLAN DOES NOT  
6 CONFORM, THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN WRITING.  
7 THE AIRPORT MAY REVISE THE PLAN TO MAKE THE PLAN CONFORM WITH  
8 THIS ARTICLE. UPON RECEIPT OF THE REVISED PLAN, THE DEPARTMENT  
9 SHALL HAVE 60 DAYS TO APPROVE THE REVISED PLAN.

10 (D) ACREAGE LIMIT.--IN THE EVENT THE AREA COVERED BY THE  
11 AGGREGATE APPLICATIONS RECEIVED BY THE DEPARTMENT WOULD CAUSE  
12 THE AREA COVERED UNDER THE PROGRAM TO EXCEED THE 2,000 ACRE ZONE  
13 LIMIT, APPLICATIONS SHALL BE APPROVED BY THE DEPARTMENT IN THE  
14 ORDER RECEIVED.

15 (E) NOTIFICATION.--WHEN A PLAN submitted by an airport under  
16 subsection (b) is approved, the department shall notify the  
17 Department of Revenue of parcels included in the zone within 60  
18 days of approval.

19 ~~(e) (F) Change.--An airport may change the airport land~~ <--  
20 ~~development APPROVED plan by subdividing a parcel, changing the~~ <--  
21 ~~legal description of a parcel, moving the zone designation to~~  
22 ~~another qualifying parcel OWNED BY AN AIRPORT or making physical~~ <--  
23 ~~changes to a vacant building in the zone by adding to the~~  
24 ~~building's size or reducing the building's size after the plan~~  
25 ~~has been approved. If an airport chooses to make the changes,~~  
26 ~~the airport shall notify the department and the Department of~~  
27 ~~Revenue of the change. The department shall issue a document~~ <--  
28 ~~confirming the parcel changes and provide a new list of parcels.~~  
29 CHANGES. THE DEPARTMENT SHALL ISSUE A DOCUMENT CONFIRMING THE <--  
30 CHANGES TO THE AIRPORT'S ZONE.

1 Section 1904-H. Airport land development zone tax credit.

2 (a) Tax credit.--An airport land development zone employer  
3 may claim a tax credit against a qualified tax liability as  
4 provided under this article.

5 (b) Process.--

6 (1) An airport land development zone employer shall  
7 notify the department of the airport land development zone  
8 employer's qualification for a tax credit under this section  
9 by February 15 for tax credits earned during a taxable year <--  
10 ending in the prior calendar year.

11 (2) The notification under paragraph (1) shall contain  
12 the following:

13 (i) The name, address and taxpayer identification  
14 number of the airport land development zone employer.

15 (ii) Verification that the airport land development  
16 zone employer is an airport land development zone  
17 employer located in an airport land development zone.  
18 Verification under this subparagraph can be in the form  
19 of an executed lease or a business license from the host  
20 municipality.

21 (iii) The names, addresses and Social Security  
22 numbers of each employee for which the credit is claimed.

23 (iv) Verification that each employee identified in  
24 subparagraph (iii) spent at least 90% of the employee's  
25 working time for the airport land development zone  
26 employer at the employer's airport land development zone  
27 location.

28 (v) Any other information required by the  
29 department.

30 (3) To qualify for the credit, the Department of Revenue

1 must certify that the airport land development zone employer  
2 is current with all tax liabilities.

3 (4) By March 15 of each year, the department shall <--  
4 send the airport land development zone employer who submitted  
5 the notification a certificate of the airport land  
6 development zone employer's qualification for the credit. The  
7 airport land development zone employer shall present the  
8 certificate to the Department of Revenue when filing the  
9 airport land development zone employer's return claiming the  
10 credit.

11 (c) Amount.--The amount of the tax credit an airport land  
12 development zone employer may earn in any tax year shall be  
13 equal to \$2,100 for each full-time equivalent employee in excess  
14 of the number of full-time equivalent employees employed by the  
15 airport land development zone employer prior to January 1, 2021.

16 (d) Application of tax credits.--An airport land development  
17 zone employer must first use the airport land development zone  
18 employer's airport land development zone tax credit against the  
19 airport land development zone employer's qualified tax  
20 liability.

21 (d.1) Sale or assignment of tax credit.--

22 (1) If the airport land development zone employer is  
23 entitled to a credit in any year that exceeds the airport  
24 land development zone employer's qualified tax liability for  
25 that year, upon application to and approval by the  
26 department, an airport land development zone employer that  
27 has been awarded a tax credit may sell or assign, in whole or  
28 in part, the tax credit granted to the airport land  
29 development zone employer. The application must be on the  
30 form required by the department and must include or

1 demonstrate all of the following:

2 (i) The applicant's name and address.

3 (ii) A copy of the tax credit certificate previously  
4 issued by the department.

5 (iii) A statement as to whether any part of the tax  
6 credit has been applied to tax liability of the applicant  
7 and the amount so applied.

8 (iv) Any other information required by the  
9 department.

10 (2) The department shall review the application and, if  
11 all requirements have been met, approve the application and  
12 notify the Department of Revenue.

13 (3) The purchaser or assignee of all or a portion of an  
14 airport land development zone tax credit under this section  
15 shall claim the credit in the taxable year in which the  
16 purchase or assignment is made. The purchaser or assignee of  
17 a tax credit may use the tax credit against any tax liability  
18 of the purchaser or assignee under Article III, IV, VII, VIII  
19 or XV. The amount of the tax credit used may not exceed 75%  
20 of the purchaser's or assignee's tax liability for the  
21 taxable year. The purchaser or assignee may not carry over,  
22 carry back, obtain a refund of or assign the airport land  
23 development zone credit. The purchaser or assignee shall  
24 notify the department and the Department of Revenue of the  
25 seller or assignor of the airport land development zone tax  
26 credit in compliance with procedures specified by the  
27 department.

28 (e) Use and carryforward.--

29 (1) An airport land development zone employer may earn  
30 the tax credit allowed under this article in any tax year

1 beginning in 2021 and for a period of up to 10 tax years  
2 during the 20-year period beginning July 1, ~~2021~~ 2022, and <--  
3 ending June 30, ~~2040~~ 2041. <--

4 (2) An airport land development zone employer may carry  
5 forward for up to 10 years a tax credit earned under this  
6 article:

7 (i) which the airport land development zone employer  
8 is unable to use; or

9 (ii) which the airport land development zone  
10 employer does not sell or assign.

11 (3) Tax credits carried forward under paragraph (2)  
12 shall be used on a first-in, first-out basis.

13 (f) Dual-use prohibited.--Each year, an airport land  
14 development zone employer may only earn tax credits under  
15 subsection (c) or (d) or under the act of October 6, 1998  
16 (P.L.705, No.92), known as the Keystone Opportunity Zone,  
17 Keystone Opportunity Expansion Zone and Keystone Opportunity  
18 Improvement Zone Act. An airport land development zone employer  
19 may not claim a credit under both this section and Article  
20 XVIII-B.

21 (g) Pass-through entities.--

22 (1) If an airport land development zone employer is a  
23 pass-through entity and has an unused tax credit under  
24 subsection (c), (d) or (e), the airport land development zone  
25 employer may elect in writing, according to procedures  
26 established by the Department of Revenue, to transfer all or  
27 a portion of the credit to shareholders, members or partners  
28 in proportion to the share of the entity's distributive  
29 income to which the shareholder, member or partner is  
30 entitled.

1       (2) An airport land development zone employer that is a  
2 pass-through entity and a shareholder, member or partner of  
3 that airport land development zone employer may not both  
4 claim the airport land development zone tax credit earned by  
5 the airport land development zone employer for any tax year.

6       (3) A shareholder, member or partner of an airport land  
7 development zone employer that is a pass-through entity to  
8 whom a credit is transferred under this subsection shall  
9 immediately claim the credit in the taxable year in which the  
10 transfer is made.

11       (h) Transfer.--A tax credit or tax credit carryforward that  
12 an airport land development zone employer is entitled to use may  
13 be transferred to a successor entity of the airport land  
14 development zone employer.

15       (i) Penalties.--The following apply:

16       (1) A company which receives airport land development  
17 zone tax credits and fails to substantially maintain the  
18 operations related to the airport land development zone tax  
19 credits in this Commonwealth for a period of five years from  
20 the date the company first submits an airport land  
21 development zone tax credit certificate to the Department of  
22 Revenue shall be required to refund to the Commonwealth the  
23 total amount of credits granted.

24       (2) The department may waive the penalty under paragraph  
25 (1) if it is determined that a company's operations were not  
26 maintained or the new jobs were not created because of  
27 circumstances beyond the company's control. Circumstances  
28 shall include natural disasters, unforeseen industry trends  
29 or a loss of a major supplier or market.

30       Section 2. This act shall take effect in ~~60~~ 30 days.

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