

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1437 Session of 2019

INTRODUCED BY M. K. KELLER, GALLOWAY, CAUSER, EVERETT, GREINER, HERSHEY, JONES, JOZWIAK, KLUNK, MILLARD, PASHINSKI, PICKETT, PUSKARIC, PYLE, ROTHMAN, SCHMITT, SNYDER, STRUZZI, TOOHL, ZIMMERMAN, OWLETT, GLEIM, CALTAGIRONE AND HARKINS, MAY 8, 2019

SENATOR HUTCHINSON, FINANCE, IN SENATE, AS AMENDED, JUNE 23, 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 rural jobs and investment tax credit, further
11 providing for definitions, for rural growth funds, for <--
12 requirements, for rural growth fund failure to comply, for
13 reporting obligations, for business firms, for tax credit
14 certificates, for claiming the tax credit, for prohibitions, <--
15 AND for revocation of tax credit certificates and for exit. <--

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

18 Section 1. The definitions of "principal business <--
19 operations," "qualified tax liability," "rural business" and
20 "rural growth investment" in section 1822-G of the act of March
21 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are
22 amended and the section is amended by adding definitions to

1 read:

2 SECTION 1. THE DEFINITION OF "QUALIFIED TAX LIABILITY" IN <--  
3 SECTION 1822-G OF THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN  
4 AS THE TAX REFORM CODE OF 1971, IS AMENDED TO READ:

5 Section 1822-G. Definitions.

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

9 \* \* \*

10 ~~"Full time equivalent employee." The quotient obtained by <--~~  
11 ~~dividing the total number of hours for which employees were~~  
12 ~~compensated for employment over the preceding 12 month period by~~  
13 ~~2,080.~~

14 \* \* \*

15 ~~"Jobs created." Full time equivalent employee positions~~  
16 ~~that:~~

17 ~~(1) Are created by the rural business.~~

18 ~~(2) Are currently located in this Commonwealth.~~

19 ~~(3) Were not located in this Commonwealth at the time of~~  
20 ~~the rural growth investment in the rural business.~~

21 ~~(4) Pay at least 150% of the Federal or State minimum~~  
22 ~~wage, whichever is greater.~~

23 ~~"Jobs retained." Full time equivalent employee positions~~  
24 ~~that:~~

25 ~~(1) Are located in this Commonwealth.~~

26 ~~(2) Existed before the initial rural growth investment~~  
27 ~~in the rural business.~~

28 ~~(3) Pay at least 150% of the Federal or State minimum~~  
29 ~~wage, whichever is greater.~~

30 ~~(4) Would have been lost or moved out of this~~

1 ~~Commonwealth had a rural growth investment not been made, as~~  
2 ~~certified in writing by an executive officer of the rural~~  
3 ~~business and approved by the department.~~

4 ~~"Principal business operations." The place or places where~~  
5 ~~at least 60% of a rural business' employees work or where~~  
6 ~~employees that are paid at least 60% of the business' payroll~~  
7 ~~work. An out of State business that has agreed to relocate~~  
8 ~~employees or an in State business that has agreed to hire~~  
9 ~~employees using the proceeds of a rural growth investment to~~  
10 ~~establish principal business operations in a rural area in this~~  
11 ~~Commonwealth shall be deemed to have the principal business~~  
12 ~~operations in this new location if the business satisfies this~~  
13 ~~definition within 180 days after receiving the rural growth~~  
14 ~~investment, unless the department agrees to a later date.~~

15 ~~"Qualified tax liability." The liability for taxes imposed~~  
16 ~~under Article VII, VIII, IX or XV, the tax under Article XVI of~~  
17 ~~the act of May 17, 1921 (P.L.682, No.284), known as The~~  
18 ~~Insurance Company Law of 1921, or amounts imposed under section~~  
19 ~~212 of the act of May 17, 1921 (P.L.789, No.285), known as The~~  
20 ~~Insurance Department Act of 1921 and any other retaliatory tax~~  
21 ~~imposed on a business firm in this Commonwealth.~~

22 \* \* \*

23 ~~"Rural business." A business that, at the time of the~~ <--  
24 ~~initial rural growth investment in the business by a rural~~  
25 ~~growth fund, meets the following conditions:~~

26 ~~(1) Has fewer than [250] 150 employees and not more than~~  
27 ~~\$15,000,000 in net income as determined by generally accepted~~  
28 ~~accounting principles for the preceding calendar year.~~

29 ~~(2) Has principal business operations in one or more~~  
30 ~~rural areas in this Commonwealth.~~

1           ~~(3) Is engaged in industries related to manufacturing,~~  
2           ~~plant sciences, services or technology or, if not engaged in~~  
3           ~~those industries, the department makes a determination that~~  
4           ~~the investment will be highly beneficial to the economic~~  
5           ~~growth of this Commonwealth.~~

6           \* \* \*

7           ~~"Rural growth investment." A capital or equity investment in~~  
8           ~~a rural business or any loan to a rural business with a stated~~  
9           ~~maturity at least one year after the date of issuance. A secured~~  
10           ~~loan or a revolving line of credit provided to a rural business~~  
11           ~~is a rural growth investment only if the growth fund obtains an~~  
12           ~~affidavit from the president or chief executive officer or~~  
13           ~~equivalent position of the rural business attesting that the~~  
14           ~~rural business sought and was denied similar financing from a~~  
15           ~~commercial bank.~~

16           ~~"State repayment amount." The amount by which the rural~~  
17           ~~growth fund's credit eligible capital contributions exceed the~~  
18           ~~product obtained by multiplying \$30,000 by the aggregate number~~  
19           ~~of jobs created and jobs retained reported in annual reports~~  
20           ~~under section 1827 G(b).~~

21           \* \* \*

22           ~~Section 2. Sections 1824 G(b) (2) and (3), (d) (4) and (e),~~  
23           ~~1825 G(a) (2), 1826 G(a), 1827 G, 1828 G(c), 1829 G(b) (2.1) and~~  
24           ~~(3), 1830 G, 1832 G(c), 1833 G(a) and 1834 G(a) of the act are~~  
25           ~~amended to read:~~

26           SECTION 2. SECTION 1824-G(D) (2) AND (F) OF THE ACT ARE           <--  
27           AMENDED TO READ:

28           Section 1824-G. Rural growth funds.

29           \* \* \*

30           ~~(b) Information. An application to qualify as a rural~~           <--

1 ~~growth fund shall include all of the following:~~

2       ~~\* \* \*~~

3       ~~(2) Documents and other evidence sufficient to prove to~~  
4 ~~the satisfaction of the department that the applicant meets~~  
5 ~~all of the following criteria:~~

6           ~~(i) The applicant or an affiliate of the applicant~~  
7 ~~is licensed as a rural business investment company under~~  
8 ~~the Consolidated Farm and Rural Development Act (Public~~  
9 ~~Law 87-128, 75 Stat. 307) or as a small business~~  
10 ~~investment company under the Small Business Investment~~  
11 ~~Act of 1958 (Public Law 85-699, 72 Stat. 689).~~

12           ~~(ii) Evidence that as of the date the application is~~  
13 ~~submitted, the applicant or affiliates of the applicant~~  
14 ~~have invested at least \$100,000,000 in nonpublic~~  
15 ~~companies located in rural areas of this Commonwealth or~~  
16 ~~other states.~~

17           ~~(iii) At least one principal in a rural business~~  
18 ~~investment company or a small business investment company~~  
19 ~~has been an officer or employee of the applicant or of an~~  
20 ~~affiliate of the applicant for at least four years prior~~  
21 ~~to the date the application is submitted.~~

22       ~~(3) An estimate of the number of jobs [that will be]~~  
23 ~~created or retained in this Commonwealth [as a result of]~~  
24 ~~that will result from the applicant's rural growth~~  
25 ~~investments.~~

26       ~~\* \* \*~~

27       (d) Notice of approval or disapproval.--

28       \* \* \*

29       ~~(4) An applicant may resubmit the application within 30 <--~~  
30 ~~days after receipt of a notice of disapproval[.] and provide~~

~~additional information to complete, clarify or cure defects identified in the application by the department. The department shall consider that application submitted before any pending applications submitted after the date the application was originally submitted.~~

~~(c) Request for determination. A rural growth fund, before making a rural growth investment, may request from the department a written opinion as to whether the business in which the rural growth fund [proposed] proposes to invest is a rural business. The department shall notify the rural growth fund of the determination within 15 days after receipt of the request. If the department fails to notify a rural growth fund of the determination within 15 days, the business in which the rural growth fund proposes to invest shall be considered a rural business.~~

~~\* \* \*~~

~~Section 1825 G. Requirements.~~

~~(a) Collections. Upon receiving approval under section 1824 G, a rural growth fund must do all of the following within 60 days:~~

~~\* \* \*~~

~~(2) Collect one or more investments of cash that, when added to the contributions collected under paragraph (1), equal the rural growth fund's investment authority. At least 10% of the rural growth fund's investment authority shall be comprised of equity investments contributed, directly or indirectly, by affiliates of the rural growth fund, including employees, officers and directors of the affiliates.~~

~~\* \* \*~~

~~Section 1826 G. Rural growth fund failure to comply.~~

1       ~~(a) Revocation. If a rural growth fund fails to meet the~~  
2 ~~requirements of section 1825 G, the rural growth fund's approval~~  
3 ~~shall be revoked, and, the corresponding investment authority~~  
4 ~~and credit eligible capital contributions may not be included in~~  
5 ~~determining the limits on total investment authority and credit~~  
6 ~~eligible capital contributions prescribed in sections 1824 G(f)~~  
7 ~~and 1828 G(c), respectively.~~

8       \* \* \*

9       ~~Section 1827 G. Reporting obligations.~~

10       ~~(a) Initial report. Each rural growth fund shall submit a~~  
11 ~~report to the department on or before the fifth business day~~  
12 ~~after the second anniversary of the closing date. The report~~  
13 ~~shall provide documentation as to the rural growth fund's rural~~  
14 ~~growth investments and include the following information:~~

15               ~~(1) A bank statement evidencing each rural growth~~  
16 ~~investment.~~

17               ~~(2) The name, location and industry of each business~~  
18 ~~receiving a rural growth investment, including either the~~  
19 ~~determination letter issued by the department under section~~  
20 ~~1824 G(e) or other evidence that the business qualified as a~~  
21 ~~rural business at the time the investment was made.~~

22               ~~(3) [The number of jobs created or retained as a result~~  
23 ~~of the fund's rural growth investments as of the last day of~~  
24 ~~the preceding calendar year.]~~

25               ~~(4)] Any other information required by the department.~~

26       ~~(b) Annual report. No later than March 1 of each year~~  
27 ~~following the [year in which the report required under~~  
28 ~~subsection (a) is due,] closing date the rural growth fund shall~~  
29 ~~submit an annual report to the department that includes the~~  
30 ~~following information:~~

1           ~~(1) The number of jobs created [or retained as a result~~  
2 ~~of the fund's rural growth investments as of the last day of~~  
3 ~~the preceding calendar year.] and retained at each rural~~  
4 ~~business. The number of jobs created and retained shall be~~  
5 ~~calculated as follows:~~

6           ~~(i) The number of jobs created by a rural business~~  
7 ~~is calculated each year by subtracting the number of~~  
8 ~~full time equivalent employee positions in this~~  
9 ~~Commonwealth at the time of the initial rural growth~~  
10 ~~investment in the rural business from the monthly average~~  
11 ~~of those employment positions for that year. If the~~  
12 ~~number calculated is less than zero, the number shall be~~  
13 ~~reported as zero. The monthly average of full time~~  
14 ~~equivalent employee positions for a year is calculated by~~  
15 ~~adding together the number of full time equivalent~~  
16 ~~employee positions existing on the last day of each month~~  
17 ~~of the year and dividing by 12.~~

18           ~~(ii) The number of jobs retained by a rural business~~  
19 ~~is calculated each year based on the monthly average of~~  
20 ~~full time equivalent employee positions for that year.~~  
21 ~~The monthly average of full time equivalent employee~~  
22 ~~positions for a year is calculated by adding together the~~  
23 ~~number of full time equivalent employee positions~~  
24 ~~existing on the last day of each month of the year and~~  
25 ~~dividing by 12. The reported number of jobs retained for~~  
26 ~~a year may not exceed the number reported on the annual~~  
27 ~~report under this subsection. The rural growth fund shall~~  
28 ~~reduce the number of jobs retained for a year if~~  
29 ~~employment at the rural business drops below the number~~  
30 ~~reported on the annual report.~~



1 ~~(1.1) If not provided under subsection (a) (2), the name~~  
2 ~~and location of each business receiving a rural growth~~  
3 ~~investment, including either the determination letter issued~~  
4 ~~by the department under section 1824 G(e) or other evidence~~  
5 ~~that the business qualified as a rural business at the time~~  
6 ~~the investment was made.~~

7 ~~(2) The average [annual salary] hourly wage of the jobs~~  
8 ~~reported in paragraph (1).~~

9 ~~(3) Any other information required by the department.~~

10 (2) A NOTICE OF APPROVAL SHALL SPECIFY THE AMOUNT OF THE <--  
11 APPLICANT'S INVESTMENT AUTHORITY AS DETERMINED BY THE  
12 DEPARTMENT AFTER REVIEWING THE INFORMATION SUBMITTED IN  
13 ACCORDANCE WITH SUBSECTION (B) AND THE AMOUNT OF CREDIT-  
14 ELIGIBLE CONTRIBUTION AUTHORITY ALLOCATED TO EACH BUSINESS  
15 FIRM THAT SUBMITTED AN AFFIDAVIT IN THE APPLICATION. AT LEAST  
16 SIXTY PERCENT OF A GROWTH FUND'S INVESTMENT AUTHORITY SHALL  
17 BE COMPRISED OF CREDIT-ELIGIBLE CAPITAL CONTRIBUTIONS.

18 \* \* \*

19 (F) LIMITATION.--THE DEPARTMENT MAY NOT APPROVE MORE THAN  
20 ~~[\$100,000,000]~~ \$50,000,000 IN INVESTMENT AUTHORITY UNDER THIS  
21 PART.

22 SECTION 2.1. SECTIONS 1828-G(C), 1829-G(B) (3), 1830-G AND  
23 1833-G(A) OF THE ACT, AMENDED JUNE 28, 2019 (P.L.50, NO.13), ARE  
24 AMENDED TO READ:

25 Section 1828-G. Business firms.

26 \* \* \*

27 (c) Limitation.--The department may not approve more than  
28 ~~[\$4,000,000]~~ [\$30,000,000] \$60,000,000 in credit-eligible <--  
29 capital contributions under this part.

30 Section 1829-G. Tax credit certificates.

1 \* \* \*

2 (b) Review, recommendation and approval.--

3 \* \* \*

4 ~~(2.1) [A tax credit] Tax credits awarded under this~~ <--  
5 ~~section to a business firm shall not exceed [90%] the amount~~  
6 ~~of the credit eligible capital contributions made by [a] the~~  
7 ~~business firm.~~

8 (3) In awarding tax credit certificates under this part,  
9 the department:

10 (i) Beginning with fiscal year ~~[2017-2018] 2019-2020~~ <--  
11 ~~[2019-2020] 2020-2021~~, may not award tax credit <--  
12 certificates that would result in the utilization of more  
13 than ~~[\$1,000,000] \$12,000,000~~ \$6,000,000 in tax credits <--  
14 in any fiscal year, except for tax credits carried  
15 forward.

16 (ii) May not award more than ~~[\$4,000,000]~~ <--  
17 ~~[\$30,000,000] \$60,000,000~~ in tax credit certificates, in <--  
18 the aggregate, under this part.

19 Section 1830-G. Claiming the tax credit.

20 (a) Presentation.--Beginning July 1, ~~[2017] 2019~~ [2019] <--  
21 2020, upon presenting a tax credit certificate to the Department  
22 of Revenue, a business firm may claim a tax credit of up to  
23 ~~[25%] 20%~~ 20% of the amount awarded under section 1829-G for <--  
24 each of the taxable years that includes the third, fourth, fifth  
25 ~~and~~ z, sixth ~~and seventh~~ AND SEVENTH anniversaries of the <--  
26 closing date, exclusive of any tax credit amounts carried over  
27 under section 1831-G(b).

28 (b) Allowance.--The Department of Revenue shall allow a tax  
29 credit against any tax due under Article VII, VIII, IX or XV,  
30 the tax under Article XVI of the act of May 17, 1921 (P.L.682,

1 No.284), known as The Insurance Company Law of 1921, amounts  
2 imposed under section 212 of the act of May 17, 1921 (P.L.789,  
3 No.285), known as The Insurance Department Act of 1921, any  
4 retaliatory taxes imposed by this Commonwealth or any tax  
5 substituted in lieu of one of the taxes under this subsection.

6 ~~Section 1832-G. Prohibitions.~~ <--

7 \* \* \*

8 ~~(c) Business activities. Neither a rural growth fund nor~~  
9 ~~any business firm that invests in the rural growth fund shall be~~  
10 ~~an affiliate of or have a pecuniary interest in a rural business~~  
11 ~~that receives a rural growth investment from the rural growth~~  
12 ~~fund prior to the rural growth fund's initial rural growth~~  
13 ~~investment in the rural business.~~

14 Section 1833-G. Revocation of tax credit certificates.

15 (a) Revocation.--The department shall revoke a tax credit  
16 certificate awarded under section 1829-G if any of the following  
17 occur with respect to a rural growth fund before the rural <--  
18 growth RURAL GROWTH fund exits the program under section 1834-G: <--

19 (1) The rural growth fund in which the credit-eligible  
20 capital contribution was made does not invest all of its  
21 investment authority in rural growth investments in this  
22 Commonwealth within ~~[two]~~ three THREE years of the closing <--  
23 date with at least 25% of its investment authority initially  
24 invested in rural businesses engaged in manufacturing.

25 (2) The rural growth fund, after satisfying the  
26 conditions of paragraph (1), fails to maintain rural growth  
27 investments equal to 100% of its investment authority until  
28 the ~~[sixth]~~ seventh SEVENTH anniversary of the closing date. <--

29 For the purposes of this paragraph, ~~[an]~~ a rural growth A <--  
30 RURAL GROWTH investment is "maintained" even if the rural <--

1 ~~growth~~ RURAL GROWTH investment is sold or repaid so long as <--  
2 the rural growth fund reinvests an amount equal to the  
3 capital returned or recovered by the ~~rural growth~~ RURAL <--  
4 GROWTH fund from the original ~~rural growth~~ RURAL GROWTH <--  
5 investment, exclusive of any profits realized, in other rural  
6 growth investments in this Commonwealth within 12 months of  
7 the receipt of the capital. Amounts received periodically by  
8 a rural growth fund shall be treated as continually invested  
9 in rural growth investments if the amounts are reinvested in  
10 one or more rural growth investments by the end of the  
11 following calendar year. A rural growth fund is not required  
12 to reinvest capital returned from rural growth investments  
13 after the ~~[fifth] sixth~~ SIXTH anniversary of the closing <--  
14 date, and the rural growth investments shall be considered  
15 held continuously by the rural growth fund through the  
16 ~~[sixth] seventh~~ SEVENTH anniversary of the closing date. <--

17 (3) The rural growth fund, before exiting the program in  
18 accordance with section 1834-G, makes a distribution or  
19 payment that results in the rural growth fund having less  
20 than 100% of its investment authority invested in rural  
21 growth investments in this Commonwealth or available for  
22 investment in rural growth investments and held in cash and  
23 other marketable securities.

24 ~~[(4) The rural growth fund invests more than 20% of its <--  
25 investment authority in the same rural business, including  
26 amounts invested in affiliates of the rural business.]~~

27 (4) THE RURAL GROWTH FUND INVESTS MORE THAN 20% OF ITS <--  
28 INVESTMENT AUTHORITY, EXCLUSIVE OF RECEIPTS OR REDEEMED RURAL  
29 GROWTH INVESTMENTS, IN THE SAME RURAL BUSINESS, INCLUDING  
30 AMOUNTS INVESTED IN AFFILIATES OF THE RURAL BUSINESS.

1 (5) The rural growth fund makes a rural growth  
2 investment in a rural business that directly or indirectly  
3 through an affiliate owns, has the right to acquire an  
4 ownership interest, makes a loan to or makes an investment in  
5 the rural growth fund, an affiliate of the rural growth fund  
6 or an investor in the rural growth fund. This paragraph does  
7 not apply to investments in publicly traded securities by a  
8 rural business or an owner or affiliate of a rural business.  
9 For purposes of this paragraph, a rural growth fund shall not  
10 be considered an affiliate of a rural business solely as a  
11 result of its rural growth investment. ~~The amount by which a~~ <--  
12 ~~rural growth investment in a rural business, exclusive of~~  
13 ~~receipts or redeemed rural growth investments, exceeds 20% of~~  
14 ~~a rural growth fund's investment authority may not count~~  
15 ~~toward the satisfaction of the requirements of subsections~~  
16 ~~(a) (1) and (2).~~ [THE AMOUNT BY WHICH A RURAL GROWTH <--  
17 INVESTMENT IN A RURAL BUSINESS, EXCLUSIVE OF RECEIPTS OR  
18 REDEEMED RURAL GROWTH INVESTMENTS, EXCEEDS 20% OF A RURAL  
19 GROWTH FUND'S INVESTMENT AUTHORITY MAY NOT COUNT TOWARD THE  
20 SATISFACTION OF THE REQUIREMENTS OF SUBSECTIONS (A) (1) AND  
21 (2).]

22 \* \* \*

23 ~~Section 1834 G. Exit.~~ <--

24 ~~(a) Application for exit. On or after the [sixth] seventh~~  
25 ~~anniversary of the closing date, a rural growth fund may apply~~  
26 ~~to the department to exit the Rural Jobs and Investment Tax~~  
27 ~~Credit Program and no longer be subject to regulation under this~~  
28 ~~part. A rural growth fund shall calculate the State repayment~~  
29 ~~amount in its application for exit and if the product is greater~~  
30 ~~than the rural growth fund's credit eligible capital~~

1 ~~contributions, the State repayment amount shall equal zero. The~~  
2 ~~department shall respond to the application within 30 days after~~  
3 ~~receipt and confirm the State repayment amount. In evaluating~~  
4 ~~the application, the fact that no tax credit certificates have~~  
5 ~~been revoked and that the rural growth fund has not received a~~  
6 ~~notice of revocation that has not been cured under section 1833~~  
7 ~~G(b) shall be sufficient evidence to show that the rural growth~~  
8 ~~fund is eligible for exit. The department may not deny an~~  
9 ~~application submitted under this subsection without reasonable~~  
10 ~~cause. If the application is denied, the department shall issue~~  
11 ~~a notice which shall include the reasons for the denial. If the~~  
12 ~~rural growth fund owes a State repayment amount, the rural~~  
13 ~~growth fund may not be permitted to make distributions or~~  
14 ~~payments in excess of the investment authority until the rural~~  
15 ~~growth fund first remits the State repayment amount to the~~  
16 ~~department. All amounts received by the department under this~~  
17 ~~section shall be credited to the general revenue fund.~~

18       \* \* \*

19       Section 3. This act shall take effect in 60 days.