
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 866 Session of
2019

INTRODUCED BY YUDICHAK, BLAKE, BAKER, COSTA AND BREWSTER,
SEPTEMBER 30, 2019

REFERRED TO FINANCE, SEPTEMBER 30, 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," providing for energy and fertilizer manufacturing
11 tax credit.

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

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

17 ARTICLE XVII-L

18 ENERGY AND FERTILIZER MANUFACTURING TAX CREDIT

19 Section 1701-L. Scope of article.

20 This article establishes an energy and fertilizer
21 manufacturing tax credit.

22 Section 1702-L. Definitions.

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

4 "Ammonia." A compound of nitrogen and hydrogen, NH₃, that is
5 a colorless gas with a characteristic pungent smell that
6 dissolves in water and gives a strongly alkaline solution.

7 "Company." A corporation, partnership, limited liability
8 company, limited liability partnership, business trust,
9 affiliate, unincorporated joint venture or other business entity
10 doing business in this Commonwealth.

11 "Department." The Department of Revenue of the Commonwealth.

12 "Downstream company." Includes a company that uses chemical
13 products or chemical compounds manufactured or processed by a
14 qualified taxpayer as a raw material in the company's production
15 process in this Commonwealth.

16 "Gallon." A United States liquid gallon equal to a volume of
17 231 cubic inches and equal to 3.785411784 liters or 0.13368
18 cubic feet, where volumetric measurements made at ambient
19 flowing conditions are typically adjusted for composition and to
20 standard conditions using established industry standard
21 practices.

22 "Methane." A colorless, odorless flammable gas that is the
23 product of biological decomposition of organic matter.

24 "Methanol." A toxic, colorless flammable liquid alcohol,
25 CH₃OH, made by oxidizing methane.

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

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

28 (2) A Pennsylvania S corporation as defined in section
29 301(n.1).

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

1 "Qualified product." Methane used in creation of ammonia,
2 methanol and urea.

3 "Qualified tax liability." The liability for taxes imposed
4 under Articles III, IV, VI, VII, VIII, IX, XI and XV. The term
5 does not include tax withheld under section 316.1.

6 "Qualified taxpayer." A company that satisfies all of the
7 following:

8 (1) Purchases and uses Pennsylvania methane in the
9 manufacture of petrochemicals or fertilizers at a facility in
10 this Commonwealth that has been placed in service on or after
11 the effective date of this article.

12 (2) Had made a capital investment of at least
13 \$1,000,000,000 in order to construct the facility and place
14 the facility into service in this Commonwealth.

15 (3) Has created at least 1,000 full-time equivalent jobs
16 during the construction phase in order to construct the
17 facility and place it into service in this Commonwealth.

18 "Tax credit." The energy and fertilizer manufacturing tax
19 credit provided under this article.

20 "Upstream company." Includes a company that is engaged in
21 the exploration, development, production, processing, refining
22 or transportation of natural gas, natural gas liquids or
23 petroleum in this Commonwealth.

24 "Urea." A colorless crystalline compound, H₂NCONH₂, that is
25 the main nitrogenous breakdown product of protein metabolism in
26 mammals and is excreted in urine.

27 Section 1703-L. Application and approval of tax credit.

28 (a) Rate.--The tax credit shall be equal to \$0.05 per gallon
29 of qualified product that is purchased and used in the
30 manufacturing of petrochemicals or fertilizers in this

1 Commonwealth by a qualified taxpayer.

2 (b) Application.--

3 (1) A qualified taxpayer may apply to the department for
4 a tax credit under this section.

5 (2) The application must be submitted to the department
6 by March 1 for the tax credit claimed for qualified products
7 purchased and used in manufacturing of petrochemicals or
8 fertilizers by the qualified taxpayer during the prior
9 calendar year. The application must be on the form required
10 by the department.

11 (3) The department may require information necessary to
12 document the amount of qualified products purchased and used
13 in the manufacture of petrochemicals or fertilizers.

14 (c) Review and approval.--

15 (1) The department shall review and approve or
16 disapprove the applications by March 20.

17 (2) Upon approval, the department shall issue a
18 certificate stating the amount of tax credit granted for
19 qualified products purchased and used in the manufacture of
20 petrochemicals or fertilizers in the prior calendar year.

21 Section 1704-L. Use of tax credits.

22 (a) Initial use.--Prior to sale or assignment of a tax
23 credit under section 1706-L, a qualified taxpayer must first use
24 a tax credit against the qualified tax liability incurred in the
25 taxable year for which the tax credit was approved.

26 (b) Eligibility.--The tax credit may be applied against up
27 to 20% of the qualified taxpayer's qualified tax liabilities
28 incurred in the taxable year for which the tax credit was
29 approved.

30 (c) Application.--The tax credit shall be applied against

1 the qualified taxpayer's liability only after all other
2 statutory tax credits and deductions available to the qualified
3 taxpayer have been used.

4 (d) Limit.--A qualified taxpayer that has been granted a tax
5 credit under this article shall be ineligible for any other tax
6 credit provided under this act.

7 Section 1705-L. Carryover, carryback and refund.

8 A tax credit cannot be carried back, carried forward or be
9 used to obtain a refund.

10 Section 1706-L. Sale or assignment.

11 (a) Authorization.--If a qualified taxpayer holds a tax
12 credit through the end of the calendar year in which the tax
13 credit was granted, the qualified taxpayer may sell or assign a
14 tax credit, in whole or in part.

15 (b) Application.--

16 (1) To sell or assign a tax credit, a qualified taxpayer
17 must file an application for the sale or assignment of the
18 tax credit with the Department of Community and Economic
19 Development. The application must be on a form required by
20 the Department of Community and Economic Development.

21 (2) To approve an application, the Department of
22 Community and Economic Development must receive:

23 (i) a finding from the department that the applicant
24 has:

25 (A) filed all required State tax reports and
26 returns for all applicable taxable years; and

27 (B) paid any balance of State tax due as
28 determined by assessment or determination by the
29 department and not under timely appeal; and

30 (ii) in the case of a sale or assignment to a

1 company that is not an upstream company or downstream
2 company, a certification from the qualified taxpayer that
3 the qualified taxpayer has offered to sell or assign the
4 tax credit:

5 (A) exclusively to a downstream company for a
6 period of 30 days following approval of the tax
7 credit under section 1703-L(c); and

8 (B) to an upstream company or downstream company
9 for a period of 30 days following expiration of the
10 period under clause (A).

11 (c) Approval.--Upon approval by the Department of Community
12 and Economic Development, a qualified taxpayer may sell or
13 assign, in whole or in part, a tax credit.

14 Section 1707-L. Purchasers and assignees.

15 (a) Time.--The purchaser or assignee under section 1706-L
16 must claim the tax credit in the calendar year in which the
17 purchase or assignment is made.

18 (b) Amount.--The amount of the tax credit that a purchaser
19 or assignee under section 1706-L may use against any one
20 qualified tax liability may not exceed 50% of any of the
21 qualified tax liabilities for the taxable year.

22 (c) Resale and assignment.--

23 (1) A purchaser under section 1706-L may not sell or
24 assign the purchased tax credit.

25 (2) An assignee under section 1706-L may not sell or
26 assign the assigned tax credit.

27 (d) Notice.--The purchaser or assignee under section 1706-L
28 shall notify the department of the seller or assignor of the tax
29 credit in compliance with procedures specified by the
30 department.

1 Section 1708-L. Pass-through entity.

2 (a) Election.--If a pass-through entity has an unused tax
3 credit, the pass-through entity may elect, in writing, according
4 to procedures established by the department, to transfer all or
5 a portion of the credit to shareholders, members or partners in
6 proportion to the share of the entity's distributive income to
7 which the shareholders, members or partners are entitled.

8 (b) Limitation.--The same unused tax credit under subsection
9 (a) may not be claimed by:

10 (1) the pass-through entity; and

11 (2) a shareholder, member or partner of the pass-through
12 entity.

13 (c) Amount.--The amount of the tax credit that a transferee
14 under subsection (a) may use against any one qualified tax
15 liability may not exceed 20% of any qualified tax liabilities
16 for the taxable year.

17 (d) Time.--A transferee under subsection (a) must claim the
18 tax credit in the calendar year in which the transfer is made.

19 (e) Sale and assignment.--A transferee under subsection (a)
20 may not sell or assign the tax credit.

21 Section 1709-L. Administration.

22 (a) Audits and assessments.--The department has the
23 following powers:

24 (1) To audit a qualified taxpayer claiming a tax credit
25 to ascertain the validity of the amount claimed.

26 (2) To issue an assessment against a qualified taxpayer
27 for an improperly issued tax credit. The procedures,
28 collection, enforcement and appeals of an assessment made
29 under this section shall be governed by Article II.

30 (b) Guidelines and regulations.--The department shall

1 develop written guidelines for the implementation of this
2 article. The guidelines shall be in effect until the department
3 promulgates regulations for the implementation of the provisions
4 of this article.

5 Section 1710-L. Reports to General Assembly.

6 (a) Annual report.--By October 1, 2020, and each October 1
7 thereafter, the department shall submit a report on the tax
8 credit provided under this article to the chairperson and
9 minority chairperson of the Appropriations Committee of the
10 Senate, the chairperson and minority chairperson of the
11 Appropriations Committee of the House of Representatives, the
12 chairperson and minority chairperson of the Finance Committee of
13 the Senate and the chairperson and minority chairperson of the
14 Finance Committee of the House of Representatives. The report
15 must include the names of the qualified taxpayers utilizing the
16 tax credit as of the date of the report and the amount of tax
17 credits approved for, utilized by or sold or assigned by a
18 qualified taxpayer.

19 (b) Reconciliation report.--On May 1, 2030, the Department
20 of Community and Economic Development shall submit to the
21 Secretary of the Senate and the Chief Clerk of the House of
22 Representatives a reconciliation report on the effectiveness of
23 this article. The report shall include, at a minimum, the
24 following information for the preceding 10 years:

25 (1) The name and business address of all qualified
26 taxpayers who have been granted tax credits under this
27 article.

28 (2) The amount of tax credits granted to each qualified
29 taxpayer.

30 (3) The total number of jobs created by the qualified

1 taxpayer, upstream company and downstream company and any
2 companies that provide goods, utilities or other services
3 that support the business operations of the qualified
4 taxpayer, upstream company and downstream company. This
5 paragraph includes the average annual salary and hourly wage
6 information.

7 (4) The amount of taxes paid under Article II by the
8 qualified taxpayer, upstream company and downstream company
9 and any companies that provide goods, utilities or other
10 services that support the business operations of the
11 qualified taxpayer, upstream company and downstream company.

12 (5) The amount of taxes withheld from employees or paid
13 by members, partners or shareholders of the pass-through
14 entities under Article III of the qualified taxpayer,
15 upstream company and downstream company and any companies
16 that provide goods, utilities or other services that support
17 the business operations of the qualified taxpayer, upstream
18 company and downstream company.

19 (6) The amount of taxes paid under Article IV by the
20 qualified taxpayer, upstream company and downstream company
21 and any companies that provide goods, utilities or other
22 services that support the business operations of the
23 qualified taxpayer, upstream company and downstream company.

24 (7) The amount of taxes paid under Article VI by the
25 qualified taxpayer, upstream company and downstream company
26 and any companies that provide goods, utilities or other
27 services that support the business operations of the
28 qualified taxpayer, upstream company and downstream company.

29 (8) The amount of taxes paid under Article XI by the
30 qualified taxpayer, upstream company and downstream company

1 and any companies that provide goods, utilities or other
2 services that support the business operations of the
3 qualified taxpayer, upstream company and downstream company.

4 (9) The amount of any other State or local taxes paid by
5 the qualified taxpayer, upstream company and downstream
6 company and any companies that provide goods, utilities or
7 other services that support the business operations of the
8 qualified taxpayer, upstream company and downstream company.

9 (10) Any other information pertaining to the economic
10 impact of this article on this Commonwealth.

11 (c) Reduction.--If the reconciliation report issued under
12 subsection (b) reveals that the total amount of the tax credits
13 granted under this article exceeds the total amount of tax
14 revenue reported under subsection (b)(4), (5), (6), (7), (8) and
15 (9), the report must include any recommendation for changes in
16 the calculation of the credit.

17 (d) Publication.--The reports required by this section shall
18 be public records and shall be available electronically on the
19 publicly accessible Internet website of either the department or
20 the Department of Community and Economic Development. The
21 reports required under this section shall not contain
22 "confidential proprietary information" as the term is defined in
23 section 102 of the act of February 14, 2008 (P.L.6, No.3), known
24 as the Right-to-Know Law.

25 Section 1711-L. Expiration.

26 This article shall expire December 31, 2050.

27 Section 2. This act shall take effect in 60 days.