
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1039 Session of
2013

INTRODUCED BY HUTCHINSON, JUNE 20, 2013

REFERRED TO FINANCE, JUNE 20, 2013

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 a waste coal energy and reclamation
11 tax credit; and imposing duties on the Department of Revenue
12 and the Department of Community and Economic Development.

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

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

18 ARTICLE XVII-J

19 WASTE COAL ENERGY AND RECLAMATION TAX CREDIT

20 Section 1701-J. Scope of article.

21 This article establishes a waste coal energy and reclamation
22 tax credit.

23 Section 1702-J. 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 "Bilateral contract." An agreement provided for under
5 section 210 of the Public Utility Regulatory Policies Act of
6 1978 (Public Law 95-617, 16 U.S.C. § 824a-3), reached by two
7 parties, each acting in its own independent self-interest, as a
8 result of negotiations free of undue influence, duress or
9 favoritism, in which the qualified taxpayer agrees to sell and
10 the electric distribution company agrees to buy a quantity of
11 electric energy at a specified price for a specified period of
12 time under terms agreed to by both parties.

13 "Company." Any corporation, partnership, limited liability
14 company, limited liability partnership, business trust,
15 affiliate, unincorporated joint venture or other business
16 entity, doing business within this Commonwealth.

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

18 "Electric distribution company." The public utility
19 providing facilities for the jurisdictional transmission and
20 distribution of electricity to retail customers, except building
21 or facility owners or operators that manage the internal
22 distribution system serving such building or facility and that
23 supply electric power and other related electric power services
24 to occupants of the building or facility.

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

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

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

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

30 "Qualified fuel." Waste coal as that term is used in the

1 definition of "alternative energy sources" in section 2 of the
2 act of November 30, 2004 (P.L.1672, No.213), known as the
3 Alternative Energy Portfolio Standards Act.

4 "Qualified tax liability." The liability for taxes imposed
5 under Articles III, IV, VI, VII, VIII, IX, XI and XV. The term
6 does not include tax withheld under section 316.

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

9 (1) Is an electric energy supplier.

10 (2) Utilizes qualified fuel for the generation of
11 electricity at a facility in this Commonwealth which has been
12 placed in service before the effective date of this article.

13 (3) Has in place a bilateral contract with an electric
14 distribution company that is in effect before the effective
15 date of this article.

16 (4) Uses or facilitates the use of ash resulting from
17 the combustion of qualified fuel to generate electricity at a
18 reclamation project approved by the Department of
19 Environmental Protection under the act of May 31, 1945
20 (P.L.1198, No.418), known as the Surface Mining Conservation
21 and Reclamation Act.

22 "Tax credit." The waste coal energy and reclamation tax
23 credit provided under this article.

24 "Ton." Two thousand pounds as defined in section 4121(d) of
25 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.
26 § 4121(d)).

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

28 (a) Rate.--The tax credit shall be equal to \$20 per ton of
29 qualified fuel used to generate electricity in this Commonwealth
30 by a qualified taxpayer.

1 (b) Application.--

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

4 (2) The application must be submitted to the department
5 by August 1, 2013, and by March 1 of each year thereafter,
6 for the tax credit claimed for qualified fuel used by the
7 qualified taxpayer during the prior calendar year. The
8 application must be on the form required by the department.

9 (3) The department may require information necessary to
10 document the amount of qualified fuel used.

11 (c) Review and approval.--

12 (1) The department shall review and approve or
13 disapprove the applications by August 20, 2013, and by March
14 20 of each year thereafter.

15 (2) Upon approval, the department shall issue a
16 certificate stating the amount of tax credit granted for
17 qualified fuel used in the prior calendar year.

18 Section 1704-J. Use of tax credits.

19 (a) Initial use.--Except as provided in section 1706-J(d),
20 prior to sale or assignment of a tax credit under section 1706-
21 J, a qualified taxpayer must first use a tax credit against the
22 qualified tax liability incurred in the taxable year for which
23 the tax credit was approved.

24 (b) Application.--The tax credit shall be applied against
25 the qualified taxpayer's liability only after all other
26 statutory tax credits and deductions available to the qualified
27 taxpayer have been used.

28 (c) Limit.--A qualified taxpayer that has been granted a tax
29 credit under this article shall be ineligible for any other tax
30 credit provided under this act.

1 Section 1705-J. Carryover, carryback and refund.

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

4 Section 1706-J. Sale or assignment.

5 (a) Authorization.--Except as authorized in subsection (d),
6 if a qualified taxpayer holds a tax credit through the end of
7 the calendar year in which the tax credit was granted, the
8 qualified taxpayer may sell or assign a tax credit, in whole or
9 in part.

10 (b) Application.--

11 (1) Except as authorized in subsection (d), to sell or
12 assign a tax credit, a qualified taxpayer must file an
13 application for the sale or assignment of the tax credit with
14 the Department of Community and Economic Development. The
15 application must be on a form required by the Department of
16 Community and Economic Development.

17 (2) To approve an application, the Department of
18 Community and Economic Development must receive a finding
19 from the department that the applicant has:

20 (i) filed all required State tax reports and returns
21 for all applicable taxable years; and

22 (ii) paid any balance of State tax due as determined
23 by assessment or determination by the department and not
24 under timely appeal.

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

28 (d) Expedition.--Notwithstanding subsections (a) and (b), a
29 qualified taxpayer may immediately sell or assign, in whole or
30 in part, a tax credit approved for a taxable year beginning in

1 2012. Nothing in this subsection shall be construed to mean that
2 the tax credits sold or assigned under this subsection are not
3 subject to the provisions of section 1710-J.

4 Section 1707-J. Purchasers and assignees.

5 (a) Time.--The purchaser or assignee under section 1706-J
6 must claim the tax credit in the calendar year in which the
7 purchase or assignment is made.

8 (b) Amount.--The amount of the tax credit that a purchaser
9 or assignee under section 1706-J may use against any one
10 qualified tax liability may not exceed 50% of any of the
11 qualified tax liabilities for the taxable year.

12 (c) Resale and reassignment.--

13 (1) A purchaser under section 1706-J may not sell or
14 assign the purchased tax credit.

15 (2) An assignee under section 1706-J may not sell or
16 assign the assigned tax credit.

17 (d) Notice.--The purchaser or assignee under section 1706-J
18 shall notify the department of the seller or assignor of the tax
19 credit in compliance with procedures specified by the
20 department.

21 Section 1708-J. Limitation on tax credits.

22 (a) Amount.--The total amount of tax credits approved by the
23 department shall not exceed \$30,000,000 in any fiscal year.

24 (b) Proration.--If the total amount of tax credits applied
25 for by all qualified taxpayers exceeds the amount allocated for
26 those tax credits, then the tax credit to be received by each
27 applicant shall be the product of the allocated amount
28 multiplied by the quotient of the tax credits approved for the
29 applicant divided by the total of all tax credits approved for
30 all applicants.

1 (c) Restriction.--Notwithstanding subsection (b), the
2 department shall not grant more than \$10,000,000 in tax credits
3 to a single qualified taxpayer in any fiscal year.

4 Section 1709-J. Pass-through entity.

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

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

13 (1) the pass-through entity; and

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

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

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

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

24 Section 1710-J. Administration.

25 (a) Audits and assessments.--The department has the
26 following powers:

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

29 (2) To issue an assessment against a qualified taxpayer
30 for an improperly issued tax credit. The procedures,

1 collection, enforcement and appeals of any assessment made
2 under this section shall be governed by Article II.

3 (b) Guidelines.--The department shall develop written
4 guidelines for the implementation of this article.

5 Section 1711-J. Annual report to General Assembly.

6 By October 1, 2014, and October 1 of each year thereafter,
7 the department shall submit a report on the tax credit provided
8 by this article to the chairman and minority chairman of the
9 Appropriations Committee of the Senate, the chairman and
10 minority chairman of the Finance Committee of the Senate, the
11 chairman and minority chairman of the Appropriations Committee
12 of the House of Representatives and the chairman and minority
13 chairman of the Finance Committee of the House of
14 Representatives. The report must include the names of the
15 qualified taxpayers utilizing the tax credit as of the date of
16 the report and the amount of tax credits approved for, utilized
17 by or sold or assigned by a qualified taxpayer.

18 Section 1712-J. Expiration.

19 This article shall expire December 31, 2020.

20 Section 1713-J. Applicability.

21 The tax credit established under this article shall be
22 effective for taxable years beginning on or after January 1,
23 2012.

24 Section 2. This act shall take effect immediately.