

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 112 Session of 2015

INTRODUCED BY WOZNIAK, BLAKE, WILEY, FONTANA, TEPLITZ,  
TARTAGLIONE, BREWSTER, COSTA AND HAYWOOD, MAY 14, 2015

REFERRED TO FINANCE, MAY 14, 2015

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 manufacturing tax credit; and  
11 prohibiting agreements under and repealing the Promoting  
12 Employment Across Pennsylvania Act.

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 XVIII-G

19 MANUFACTURING TAX CREDIT

20 Section 1801-G. Definitions.

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

1 "Annual taxable payroll." The total amount of wages paid by  
2 an employer for the base year or year one, as applicable, from  
3 which personal income tax under Article III is withheld.

4 "Base year." The four calendar quarters preceding the start  
5 date.

6 "Department." The Department of Community and Economic  
7 Development of the Commonwealth.

8 "Manufacturing tax credit." A tax credit for which the  
9 department has issued a certificate under this article.

10 "New job." A full-time job created in year one which has an  
11 average wage at least equal to the county average wage where the  
12 job is located and which includes employer-provided health  
13 benefits.

14 "Pass-through entity." A partnership as defined in section  
15 301 (n.0) or a Pennsylvania S Corporation as defined in section  
16 301 (n.1).

17 Qualified tax liability." A taxpayer's tax liability under  
18 Article III, IV, VI, VII, VIII, IX, XI or XV.

19 "Start date." The first day of the calendar quarter in which  
20 an application is submitted to the department unless the  
21 applicant requests and the department agrees to a later start  
22 date.

23 "Taxpayer." An entity that is engaged in the mechanical,  
24 physical or chemical transformation of materials, substances or  
25 components into new products that are creations of new items of  
26 tangible personal property for sale.

27 "Wages." Remuneration paid by an employer to an individual  
28 with respect to the individual's employment.

29 "Year one." The four calendar quarters immediately following  
30 the start date.

1 Section 1802-G. Eligibility.

2 In order to be eligible to receive a manufacturing tax  
3 credit, a taxpayer must demonstrate to the department the  
4 following:

5 (1) The ability of the taxpayer to create an increase in  
6 the taxpayer's annual taxable payroll in year one by at least  
7 \$1,000,000 above the amount in the base year solely through  
8 the creation of new jobs and to maintain the increase for a  
9 period of at least five years from the start date.

10 (2) The ability to maintain new jobs for a period of at  
11 least five years from the start date.

12 (3) The intent to maintain existing operations in this  
13 Commonwealth for a period of at least five years from the  
14 start date.

15 Section 1803-G. Procedure.

16 (a) Application.--A taxpayer applying to claim a  
17 manufacturing tax credit must complete and submit to the  
18 department a manufacturing tax credit application on a form and  
19 in a manner as determined by the department.

20 (b) Creation of new jobs.--In order to receive a  
21 manufacturing tax credit, the taxpayer must agree to create in  
22 year one new jobs that increase the taxpayer's annual taxable  
23 payroll above the base year annual taxable payroll by  
24 \$1,000,000. The taxpayer must agree to retain the new jobs and  
25 increase in payroll for at least five years from the start date.

26 (c) Approval.--If the department approves the taxpayer's  
27 application, the department and the taxpayer shall execute a  
28 commitment letter containing the following:

29 (1) A description of the new jobs created.

30 (2) The number of new jobs to be created.

1           (3) The amount of private capital investment in the  
2           creation of new jobs.

3           (4) The increase in year one of the annual taxable  
4           payroll for new jobs above the base year amount of annual  
5           taxable payroll.

6           (5) The maximum manufacturing tax credit amount the  
7           taxpayer may claim.

8           (6) A signed statement that the taxpayer intends to  
9           maintain existing operations in this Commonwealth for at  
10          least five years from the start date.

11          (7) Any other information as the department deems  
12          appropriate.

13          (d) Commitment letter.--After a commitment letter has been  
14          signed by both the Commonwealth and the taxpayer, the taxpayer  
15          must increase the annual taxable payroll in year one by at least  
16          \$1,000,000 above the base year amount from the creation of new  
17          jobs up to the amount specified in the commitment letter. If the  
18          taxpayer does not increase the annual taxable payroll as  
19          provided under this subsection, the commitment letter shall be  
20          revoked and deemed to be null and void.

21          Section 1804-G. Manufacturing tax credit.

22          (a) Maximum amount.--The department may award a  
23          manufacturing tax credit of up to 5% of the taxpayer's increase  
24          in annual taxable payroll, if the annual taxable payroll  
25          increases in year one by at least \$1,000,000 above the base year  
26          amount from the creation of new jobs up to the amount specified  
27          in the commitment letter.

28          (b) Determination.--The annual taxable payroll in year one  
29          for a new job shall be the sum of the amount of annual taxable  
30          payroll in year one for the new jobs created above the taxable

1 payroll in the base year.

2 (c) Certificate.--After verification by the department that  
3 the taxpayer has increased the annual taxable payroll in year  
4 one by at least \$1,000,000 above the base year amount from the  
5 creation of new jobs up to the amount specified and any other  
6 conditions required by the department and specified in the  
7 commitment letter, the taxpayer shall receive a manufacturing  
8 tax credit certificate and filing information.

9 (d) Applicable taxes.--A taxpayer may apply the  
10 manufacturing tax credit to 100% of the taxpayer's qualified tax  
11 liability.

12 (e) Term.--A taxpayer may claim the manufacturing tax credit  
13 for a period determined by the department, not to exceed the  
14 earlier of:

15 (1) five years from the date the taxpayer receives the  
16 manufacturing tax credit certificate; or

17 (2) six years from the start date.

18 (f) Availability.--A manufacturing tax credit shall be made  
19 available by the department on a first-come, first-served basis.

20 (g) Limitation.--Each fiscal year, \$5,000,000 in  
21 manufacturing tax credits shall be made available to the  
22 department and may be awarded by the department in accordance  
23 with this article. In any fiscal year, the department may  
24 reissue, assign or award prior fiscal year manufacturing tax  
25 credits which have been recaptured under section 1808-G(a) or  
26 (b) and may award prior fiscal year manufacturing tax credits  
27 not previously issued.

28 Section 1805-G. Limitations.

29 The following apply to manufacturing tax credits:

30 (1) If the taxpayer cannot use the entire amount of the

1 manufacturing tax credit for the taxable year in which the  
2 manufacturing tax credit is first approved, the excess may be  
3 carried over to succeeding taxable years and used as a credit  
4 against the qualified tax liability of the taxpayer for the  
5 taxable years. Each time the manufacturing tax credit is  
6 carried over to a succeeding taxable year, the manufacturing  
7 tax credit shall be reduced by the amount of the  
8 manufacturing tax credit used as a credit during the  
9 immediately preceding taxable year. The manufacturing tax  
10 credit may be carried over and applied to succeeding taxable  
11 years for no more than three taxable years following the  
12 first taxable year for which the taxpayer was entitled to  
13 claim the credit.

14 (2) A manufacturing tax credit approved by the  
15 department in a taxable year first shall be applied against  
16 the taxpayer's qualified tax liability for the current  
17 taxable year as of the date on which the credit was approved  
18 before the manufacturing tax credit can be applied against  
19 any tax liability under paragraph (1).

20 (3) A taxpayer shall not be entitled to carry back or  
21 obtain a refund of all or any portion of an unused  
22 manufacturing tax credit granted to the taxpayer under this  
23 article.

24 Section 1806-G. Sale or assignment.

25 (a) Application.--A taxpayer, upon application to and  
26 approval by the department, may sell or assign, in whole or in  
27 part, a manufacturing tax credit granted to the taxpayer. The  
28 following shall apply:

29 (1) The department and the Department of Revenue shall  
30 jointly issue guidelines for the approval of applications

1 under this paragraph.

2 (2) Before an application is approved, the Department of  
3 Revenue must make a finding that the applicant has filed all  
4 required State tax reports and returns for all applicable  
5 taxable years and paid any balance of State tax due as  
6 determined at settlement, assessment or determination by the  
7 Department of Revenue.

8 (3) Notwithstanding any other provision of law, the  
9 Department of Revenue must settle, assess or determine the  
10 tax of an applicant under this paragraph within 90 days of  
11 the filing of each required final return or report in  
12 accordance with section 806.1(a)(5) of the act of April 9,  
13 1929 (P.L.343, No.176), known as The Fiscal Code.

14 (b) Use by purchaser or assignee.--The purchaser or assignee  
15 of all or a portion of a manufacturing tax credit under  
16 subsection (a) must immediately claim the credit in the taxable  
17 year in which the purchase or assignment is made.

18 (1) The amount of the manufacturing tax credit that a  
19 purchaser or assignee may use against any one qualified tax  
20 liability may not exceed 50% of the qualified tax liability  
21 for the taxable year.

22 (2) The purchaser or assignee may not carry forward,  
23 carry back or obtain a refund of or sell or assign the  
24 manufacturing tax credit.

25 (3) The purchaser or assignee shall notify the  
26 Department of Revenue of the seller or assignor of the  
27 manufacturing tax credit in compliance with procedures  
28 specified by the Department of Revenue.

29 Section 1807-G. Pass-through entity.

30 (a) General rule.--If a pass-through entity has any unused

1 tax credits under section 1805-G, the entity may elect in  
2 writing, according to procedures established by the Department  
3 of Revenue, to transfer all or a portion of the credit to  
4 shareholders, members or partners in proportion or the share of  
5 the entity's distributive income to which the shareholder,  
6 member or partner is entitled.

7 (b) Limitation.--A pass-through entity and a shareholder,  
8 member or partner of a pass-through entity may not claim the  
9 credit under subsection (a) for the same new job.

10 (c) Application.--A shareholder, member or partner of a  
11 pass-through entity to whom a credit is transferred under  
12 subsection (a) shall immediately claim the credit in the taxable  
13 year in which the transfer is made. The shareholder, member or  
14 partner may not carry forward, carry back, obtain a refund of or  
15 sell or assign the credit.

16 Section 1808-G. Penalties.

17 (a) Failure to maintain operations.--A taxpayer which  
18 receives a manufacturing tax credit and fails to maintain  
19 existing operations related to the manufacturing tax credits in  
20 this Commonwealth for a period of at least five years from the  
21 start date must refund to the Commonwealth the total amount of  
22 manufacturing tax credits granted. The Department of Revenue may  
23 issue an assessment, including interest, additions and  
24 penalties, for the total amount of each manufacturing tax credit  
25 to be refunded to the Commonwealth.

26 (b) Failure to maintain jobs.--A taxpayer which receives a  
27 manufacturing tax credit and fails to maintain new jobs along  
28 with the increase in taxable payroll for a period of at least  
29 five years from the start date must refund to the Commonwealth  
30 the total amount of manufacturing tax credits granted. The



1 Department of Revenue may issue an assessment, including  
2 interest, additions and penalties, for the total amount of  
3 manufacturing tax credits to be refunded to the Commonwealth.

4 (c) Waiver.--The department may waive the penalties under  
5 subsections (a) and (b) if it is determined that a company's  
6 existing operations were not maintained or the new jobs and  
7 increase to payroll were not created because of circumstances  
8 beyond the company's control. Circumstances shall include  
9 natural disasters, unforeseen industry trends or a loss of a  
10 major supplier or market.

11 Section 1807-G. Guidelines.

12 The department shall develop and publish guidelines necessary  
13 to implement this article.

14 Section 2. Notwithstanding section 314 of the act of October  
15 25, 2012 (P.L.1664, No.206), known as the Promoting Employment  
16 Across Pennsylvania Act, no agreement under the Promoting  
17 Employment Across Pennsylvania Act may be entered into after  
18 June 30, 2015.

19 Section 3. Repeals are as follows:

20 (1) The General Assembly declares that the repeal under  
21 paragraph (2) is necessary to effectuate the addition of  
22 Article XVIII-G of the act.

23 (2) The act of October 25, 2012 (P.L.1664, No.206),  
24 known as the Promoting Employment Across Pennsylvania Act, is  
25 repealed.

26 Section 4. This act shall take effect as follows:

27 (1) This section and section 2 of this act shall take  
28 effect immediately.

29 (2) Section 3 of this act shall take effect July 1,  
30 2015, or immediately, whichever is later.

1           (3) The remainder of this act shall take effect in 90  
2    days.