

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 884 Session of 2013

INTRODUCED BY LAWRENCE, DENLINGER, TURZAI, SAYLOR, REED, STERN, BLOOM, TALLMAN, KAUFFMAN, DUNBAR, BAKER, BARRAR, AUMENT, MILLARD, C. HARRIS, ROSS, MOUL, M. K. KELLER, MILLER, GINGRICH, EVERETT, GROVE, CUTLER, ROCK, MILNE, BENNINGHOFF, GILLEN, SANKEY, MACKENZIE, CLYMER AND GABLER, APRIL 17, 2013

REFERRED TO COMMITTEE ON FINANCE, APRIL 17, 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," in sales tax, further providing for definitions
 11 and for credit against tax; in personal income tax, further
 12 providing for classes of income; in corporate net income tax,
 13 further providing for definitions; in realty transfer tax,
 14 further providing for definitions, for imposition and for
 15 acquired company; and further providing for coal waste
 16 removal and ultraclean fuels tax credit.

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

19 Section 1. Sections 201(ddd) and 206 of the act of March 4,
 20 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971,
 21 amended or added December 23, 2003 (P.L.250, No.46), are amended
 22 to read:

23 Section 201. Definitions.--The following words, terms and

1 phrases when used in this Article II shall have the meaning
2 ascribed to them in this section, except where the context
3 clearly indicates a different meaning:

4 * * *

5 [(ddd) "Call center." The physical location in this
6 Commonwealth:

7 (1) where at least one hundred and fifty employes are
8 employed to initiate or answer telephone calls;

9 (2) where there are at least two hundred telephone lines;

10 and

11 (3) which utilizes an automated call distribution system for
12 customer telephone calls in one or more of the following
13 activities:

14 (A) customer service and support;

15 (B) technical assistance;

16 (C) help desk service;

17 (D) providing information;

18 (E) conducting surveys;

19 (F) revenue collections; or

20 (G) receiving orders or reservations.

21 For purposes of this clause, a physical location may include
22 multiple buildings utilized by a taxpayer located within this
23 Commonwealth.]

24 Section 206. Credit Against Tax.--(a) A credit against the
25 tax imposed by section 202 shall be granted with respect to
26 tangible personal property or services purchased for use outside
27 the Commonwealth equal to the tax paid to another state by
28 reason of the imposition by such other state of a tax similar to
29 the tax imposed by this article: Provided, however, That no such
30 credit shall be granted unless such other state grants

1 substantially similar tax relief by reason of the payment of tax
2 under this article or under the Tax Act of 1963 for Education.

3 [(b) A credit against the tax imposed by section 202 on
4 telecommunications services shall be granted to a call center
5 for gross receipts tax paid by a telephone company on the
6 receipts derived from the sale of incoming and outgoing
7 interstate telecommunications services to the call center under
8 section 1101(a)(2). The following apply:

9 (1) A telephone company, upon request, shall notify a call
10 center of the amount of gross receipts tax paid by the telephone
11 company on the receipts derived from the sale of incoming and
12 outgoing interstate telecommunications services to the call
13 center.

14 (2) A call center that is eligible for the credit in this
15 subsection may apply for a tax credit as set forth in this
16 subsection.

17 (3) By February 15, a taxpayer must submit an application to
18 the department for gross receipts tax paid on the receipts
19 derived from the sale of incoming and outgoing interstate
20 telecommunications services incurred in the prior calendar year.

21 (4) By April 15 of the calendar year following the close of
22 the calendar year during which the gross receipts tax was
23 incurred, the department shall notify the applicant of the
24 amount of the applicant's tax credit approved by the department.

25 (5) The total amount of tax credits provided for in this
26 subsection and approved by the department shall not exceed
27 thirty million dollars (\$30,000,000) in any fiscal year. If the
28 total amount of tax credits applied for by all applicants
29 exceeds the amount allocated for those credits, then the credit
30 to be received by each applicant shall be determined as follows:

1 (i) Divide:
2 (A) the tax credit applied for by the applicant; by
3 (B) the total of all tax credits applied for by all
4 applicants.

5 (ii) Multiply:
6 (A) the quotient under subparagraph (i); by
7 (B) the amount allocated for all tax credits.]

8 Section 2. Section 303(a)(2) of the act, added August 31,
9 1971 (P.L.362, No.93), is amended and subsection (a)(3) is
10 amended by adding a subparagraph to read:

11 Section 303. Classes of Income.--(a) The classes of income
12 referred to above are as follows:

13 * * *

14 (2) Net profits. The net income from the operation of a
15 business, profession, or other activity, after provision for all
16 costs and expenses incurred in the conduct thereof, determined
17 either on a cash or accrual basis in accordance with accepted
18 accounting principles and practices but without deduction of
19 taxes based on income. For purposes of calculating net income
20 under this paragraph, to the extent a taxpayer properly deducts
21 an amount under section 195(b)(1)(A) of the Internal Revenue
22 Code of 1986 (26 U.S.C. § 195(b)(1)(A)), as amended, and the
23 regulations promulgated under section 195(b)(1)(A) of the
24 Internal Revenue Code of 1986, the taxpayer shall be permitted a
25 deduction in equal amount in the same taxable year.

26 (3) Net gains or income from disposition of property. Net
27 gains or net income, less net losses, derived from the sale,
28 exchange or other disposition of property, including real
29 property, tangible personal property, intangible personal
30 property or obligations issued on or after the effective date of

1 this amendatory act by the Commonwealth; any public authority,
2 commission, board or other agency created by the Commonwealth;
3 any political subdivision of the Commonwealth or any public
4 authority created by any such political subdivision; or by the
5 Federal Government as determined in accordance with accepted
6 accounting principles and practices. For the purpose of this
7 article:

8 * * *

9 (viii) The term "net gains or net income, less net losses"
10 shall not include gain or loss from the exchange of property
11 which is not recognized for Federal income tax purposes under
12 section 1031 of the Internal Revenue Code of 1986 (26 U.S.C. §
13 1031), as amended, and the regulations promulgated under section
14 1031 of the Internal Revenue Code of 1986. For purposes of
15 determining basis under subparagraph (i), section 1031(d) of the
16 Internal Revenue Code of 1986 (26 U.S.C. § 1031(d)), as amended,
17 and the regulations promulgated under section 1031 of the
18 Internal Revenue Code of 1986 shall apply.

19 * * *

20 Section 3. Section 401(3)4(c)(1)(A) and (2)(B) of the act
21 are amended by adding subparagraphs to read:

22 Section 401. Definitions.--The following words, terms, and
23 phrases, when used in this article, shall have the meaning
24 ascribed to them in this section, except where the context
25 clearly indicates a different meaning:

26 * * *

27 (3) "Taxable income." * * *

28 4. * * *

29 (c) (1) The net loss deduction shall be the lesser of:

30 (A) * * *

1 (V) For taxable years beginning after December 31, 2013, the
2 greater of twenty-five per cent of taxable income as determined
3 under subclause 1 or, if applicable, subclause 2 or four million
4 dollars (\$4,000,000);

5 (VI) For taxable years beginning after December 31, 2014,
6 the greater of thirty per cent of taxable income as determined
7 under subclause 1 or, if applicable, subclause 2 or five million
8 dollars (\$5,000,000); or

9 * * *

10 (2) * * *

11 (B) The earliest net loss shall be carried over to the
12 earliest taxable year to which it may be carried under this
13 schedule. The total net loss deduction allowed in any taxable
14 year shall not exceed:

15 * * *

16 (V) The greater of twenty-five per cent of taxable income as
17 determined under subclause 1 or, if applicable, subclause 2 or
18 four million dollars (\$4,000,000) for taxable years beginning
19 after December 31, 2013.

20 (VI) The greater of thirty per cent of taxable income as
21 determined under subclause 1 or, if applicable, subclause 2 or
22 five million dollars (\$5,000,000) for taxable years beginning
23 after December 31, 2014.

24 * * *

25 Section 4. The definitions of "document," "real estate" and
26 "real estate company" in section 1101-C of the act, amended July
27 2, 1986 (P.L.318, No.77), are amended to read:

28 Section 1101-C. Definitions.--The following words when used
29 in this article shall have the meanings ascribed to them in this
30 section:

1 * * *

2 "Document." Any deed, instrument or writing which conveys,
3 transfers, devises, vests, confirms or evidences any transfer or
4 devise of title to real estate in this Commonwealth, but does
5 not include wills, mortgages, deeds of trust or other
6 instruments of like character given as security for a debt and
7 deeds of release thereof to the debtor, land contracts whereby
8 the legal title does not pass to the grantee until the total
9 consideration specified in the contract has been paid or any
10 cancellation thereof unless the consideration is payable over a
11 period of time exceeding thirty years or instruments which
12 solely grant, vest or confirm a public utility easement.
13 "Document" shall also include a declaration of acquisition
14 required to be presented for recording under section 1102-C.5 of
15 this article.

16 * * *

17 "Real estate."

18 (1) Any lands, tenements or hereditaments [within this
19 Commonwealth], including, without limitation, buildings,
20 structures, fixtures, mines, minerals, oil, gas, quarries,
21 spaces with or without upper or lower boundaries, trees and
22 other improvements, immovables or interests which by custom,
23 usage or law pass with a conveyance of land, but excluding
24 permanently attached machinery and equipment in an industrial
25 plant.

26 (2) A condominium unit.

27 (3) A tenant-stockholder's interest in a cooperative housing
28 corporation, trust or association under a proprietary lease or
29 occupancy agreement.

30 "Real estate company." A corporation or association which

1 [is] meets any of the following:

2 (1) Is primarily engaged in the business of holding,
3 selling or leasing real estate ninety per cent or more of the
4 ownership interest in which is held by thirty-five or fewer
5 persons and which:

6 [(1)] (i) derives sixty per cent or more of its annual gross
7 receipts from the ownership or disposition of real estate; or

8 [(2)] (ii) holds real estate, the value of which comprises
9 [ninety] fifty per cent or more of the value of its entire
10 tangible asset holdings exclusive of tangible assets which are
11 freely transferable and actively traded on an established
12 market.

13 (2) Owns a direct or indirect interest in a real estate
14 company. An indirect ownership interest is an interest in a
15 corporation or association whose purpose is the ownership of a
16 real estate company either by itself or as part of a tiered
17 structure of corporations or associations.

18 * * *

19 Section 5. Section 1102-C of the act, amended July 2, 1986
20 (P.L.318, No.77), is amended to read:

21 Section 1102-C. Imposition of Tax.--Every person who makes,
22 executes, delivers, accepts or presents for recording any
23 document or in whose behalf any document is made, executed,
24 delivered, accepted or presented for recording, shall be subject
25 to pay for and in respect to the transaction or any part
26 thereof, or for or in respect of the vellum parchment or paper
27 upon which such document is written or printed, a State tax at
28 the rate of one per cent of the value of the real estate within
29 this Commonwealth represented by such document, which State tax
30 shall be payable at the earlier of the time the document is

1 presented for recording or within thirty days of acceptance of
2 such document or within thirty days of becoming an acquired
3 company.

4 Section 6. Section 1102-C.5(a) of the act, amended July 2,
5 2012 (P.L.751, No.85), is amended to read:

6 Section 1102-C.5. Acquired Company.--(a) A real estate
7 company is an acquired company upon a change in the ownership
8 interest in the company, however effected, if the change:

9 (1) does not affect the continuity of the company; and

10 (2) of itself or together with prior changes has the effect
11 of transferring, directly or indirectly, ninety per cent or more
12 of the total ownership interest in the company within a period
13 of three years.

14 (3) For the purposes of paragraph (2), a transfer occurs
15 within a period of three years of another transfer or transfers
16 if, during the period[:

17 (i) the transferring party provides a legally binding
18 commitment, enforceable at a future date, to execute the
19 transfer;

20 (ii) the terms of the transfer are fixed and not subject to
21 negotiation; and

22 (iii) the transferring party receives full consideration, in
23 any form, in exchange for the transfer.], the transferring party
24 provides the transferee a legally binding commitment or option,
25 enforceable at a future date, to execute the transfer.

26 * * *

27 Section 7. Article XVIII-A of the act, added May 12, 1999
28 (P.L.26, No.4), is repealed:

29 [ARTICLE XVIII-A

30 COAL WASTE REMOVAL AND ULTRACLEAN FUELS

TAX CREDIT

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Section 1801-A. Short Title.--This article shall be known and may be cited as the "Coal Waste Removal and Ultraclean Fuels Act."

Section 1802-A. Definitions.--The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Department" means the Department of Revenue of the Commonwealth.

"Developer" means the owner-operator of a facility, as defined in this section, or the operator of the facility that has sold the facility in new condition to a third party from whom that operator has simultaneously leased back the facility for a minimum period of twelve years.

"Facility" includes all plant and equipment purchased or constructed by or on behalf of the developer which is used within this Commonwealth by the developer to produce one or more qualified fuels.

"Internal Revenue Code" means the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

"Qualified fuels" means those fuels produced from nontraditional coal culm and silt feedstocks as defined in section 29(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 29(c)).

"Qualifying property" means tangible personal property and other forms of tangible property which qualify for investment tax credit treatment and which meet all of the following requirements:

- (1) Be acquired through a purchase, as defined under section

1 179(d)(2) of the Internal Revenue Code (26 U.S.C. § 179(d)(2)),
2 or constructed by the developer for its own use.

3 (2) Be depreciable under section 167 of the Internal Revenue
4 Code (26 U.S.C. § 167).

5 (3) Have a useful life of greater than or equal to four
6 years.

7 (4) Be located within this Commonwealth.

8 (5) Be used by the developer in the production of qualified
9 fuels.

10 (6) Be acquired by purchase or constructed on or after
11 January 1, 2000, and before January 1, 2013.

12 (7) Not be the subject of any tax credit otherwise available
13 to the developer under this act.

14 "Tax credit base" means only the cost or other basis of
15 qualifying property that is properly transferred to the
16 facility's basis for depreciation for Federal income tax
17 purposes between January 1, 2000, and December 31, 2012.

18 Section 1803-A. Investment Tax Credits Program.--(a) A
19 developer of a new facility for the production of one or more
20 qualified fuels shall be allowed an investment tax credit
21 against the taxes imposed under Articles II, IV and VI of this
22 act. The amount of the credit shall be computed as a percentage
23 applied to the cost or other basis for Federal income tax
24 purposes of qualifying property.

25 (b) (1) The investment tax credit shall be computed as
26 fifteen per cent of the tax credit base.

27 (2) The maximum investment tax credit available for
28 application, whether claimed by one or more taxpayers, shall not
29 exceed fifteen per cent of the capital cost of the facility.

30 (3) Any amount of allowable investment tax credit not used

1 in the tax year for which the credit was claimed can be carried
2 forward by the claiming taxpayer to succeeding years until the
3 full amount of allowable credit has been used.

4 (c) (1) The developer, upon notice to the department as
5 specified by the department, may sell or assign, in whole or in
6 part, any investment tax credit afforded under this section to
7 one or more taxpayers if no claim for allowance of such credit
8 has been filed.

9 (2) A taxpayer recipient by purchase or assignment of any
10 portion of the developer's investment tax credit under paragraph
11 (1) shall initially claim such credit, upon notice to the
12 department of the derivative basis of the credit in compliance
13 with procedures specified by the department, for the tax year in
14 which the purchase or assignment is made, but in no event
15 subsequent to the filing of an income tax return for the year
16 2012.

17 (3) Any taxpayer who acquires any portion of the developer's
18 investment tax credit by sale or assignment for value and
19 without notice by the developer of any irregularity or
20 invalidity shall not suffer any disallowance of the credit or
21 the imposition of any adjustment or fraud penalty attributable
22 to conduct by the developer.

23 (d) (1) If prior to the expiration of any qualifying
24 property's useful life, as used to calculate depreciation for
25 Federal income tax purposes, the developer, upon mandatory
26 notice to the department in compliance with procedures specified
27 by the department, disposes of any qualifying property, in a
28 transaction other than a sale-leaseback transaction, upon which
29 the department has previously allowed an investment tax credit
30 claimed by any taxpayer, a portion of all such credit shall be

1 recaptured and added to the developer's tax liability for the
2 tax year in which the qualifying property is disposed.

3 (2) The portion of the investment tax credit previously
4 allowed, which is subject to recapture from the developer, shall
5 be equal to a fraction whose numerator is the number of years
6 remaining to fully depreciate for Federal income tax purposes
7 the qualifying property disposed and whose denominator is the
8 total number of years over which the property otherwise would
9 have been subject to depreciation by the developer.

10 (3) In calculating the recapture percentage, the year of
11 disposition of the qualifying property is considered a year of
12 remaining depreciation.

13 (e) The department shall verify the validity of any claim
14 for allowance of any investment tax credit afforded under this
15 section and, in the case of a fraudulent claim, may assess
16 against the developer a penalty of one hundred and twenty-five
17 per cent of the credit improperly claimed.

18 (f) The tax credits authorized by this section shall not
19 exceed eighteen million dollars (\$18,000,000) in the aggregate
20 during any year.

21 Section 1804-A. Contract Required.--(a) In order for a
22 developer to claim investment tax credits under this article,
23 the developer must enter into a contract with the Commonwealth
24 that provides as follows:

25 (1) The term of the contract shall be twenty-five years,
26 beginning with the first tax year in which the investment tax
27 credits are claimed.

28 (2) The developer shall make periodic payments to the
29 Commonwealth, which payments may not exceed in the aggregate
30 forty-six million eight hundred thousand dollars (\$46,800,000)

1 over the term of the contract.

2 (3) The periodic payments shall occur every five years and
3 each payment shall be nine million three hundred sixty thousand
4 dollars (\$9,360,000), except as provided in paragraphs (4), (5)
5 and (6).

6 (4) For the first five-year period, the amount specified in
7 paragraph (3) shall be reduced by:

8 (i) An amount equal to the business losses of the developer,
9 if any, relating to the facility that are sustained in the first
10 and second years of the contract, provided such amount does not
11 exceed three million seven hundred forty-four thousand dollars
12 (\$3,744,000) for both years.

13 (ii) Allowable offsets identified in subsection (b),
14 provided that such offsets do not exceed nine million three
15 hundred sixty thousand dollars (\$9,360,000).

16 (5) For the remaining five-year periods, the amount
17 specified in paragraph (3) shall be reduced by the amount of
18 allowable offsets identified in subsection (b), provided that
19 such offsets do not exceed nine million three hundred sixty
20 thousand dollars (\$9,360,000) during any five-year period.

21 (6) To the extent the amount of allowable offsets during any
22 five-year period exceeds nine million three hundred sixty
23 thousand dollars (\$9,360,000), the excess may be carried over
24 and added to the allowable offsets taken in the following five-
25 year period, provided that the excess is applied first.

26 (b) For purposes of this section, "allowable offset"
27 includes all of the following:

28 (1) An amount equal to the corporate net income tax, capital
29 stock and franchise tax and personal income tax related to the
30 construction, ownership and operation of the facility.

1 (2) An amount equal to all personal income tax withheld from
2 the developer's employes.

3 (3) An amount equal to all sales and use tax related to the
4 operation and construction of the facility.

5 (4) The amount paid by the developer of any new tax enacted
6 by the Commonwealth following the effective date of this
7 article.

8 Section 1805-A. Requirements.--Tax credits authorized by
9 this article shall not be granted unless the developer has
10 obtained an investment tax credit from the Federal Government or
11 an investment by a person other than an agency or
12 instrumentality of the Commonwealth, or any combination thereof,
13 in an amount equal to or greater than the tax credit granted by
14 this article.]

15 Section 8. The following shall apply:

16 (1) A tax credit may not be granted under section 206(b)
17 of the act after June 30, 2013.

18 (2) The amendment or addition of sections 303(a)(2) and
19 401 of the act shall apply to tax years beginning after
20 December 31, 2013.

21 (3) The addition of section 303(a)(3)(viii) shall apply
22 to tax years beginning after December 31, 2015.

23 Section 9. This act shall take effect as follows:

24 (1) The following shall take effect January 1, 2014, or
25 immediately, whichever is later:

26 (i) The amendments to the definitions of "document,"
27 "real estate" and "real estate company" in section 1101-C
28 of the act.

29 (ii) The amendments to sections 1102-C and
30 1102-C.5(a) of the act.

1 (2) The remainder of this act shall take effect
2 immediately.