
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1437 Session of
2014

INTRODUCED BY FARNESE, BLAKE, STACK, SCHWANK, COSTA, WILEY AND
SOLOBAY, JUNE 18, 2014

REFERRED TO FINANCE, JUNE 18, 2014

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 the Pennsylvania port volume
11 increase 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-J

18 PENNSYLVANIA PORT VOLUME INCREASE TAX CREDIT

19 Section 1701-J. Short title.

20 This article shall be known as the Pennsylvania Port Volume
21 Increase Tax Credit Act.

22 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 "Base year." The calendar year prior to the taxable year.

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

7 "Pass-through entity." A partnership as defined in section
8 301(n.0) or a Pennsylvania S corporation as defined in section
9 301(n.1).

10 "Port cargo volume." The total amount of net tons of break-
11 bulk cargo, roll on roll off cargo or containerized cargo
12 measured in TEUs of cargo transported by way of a waterborne
13 ship or vehicle through a port facility.

14 "Port facility." A publicly or privately owned marine
15 terminal located within this Commonwealth used or to be used in
16 connection with the transportation or transfer of freight by way
17 of a waterborne ship to or from international destinations
18 outside this Commonwealth.

19 "Qualified tax liability." The liability for taxes imposed
20 under Articles III, IV or VI. The term shall not include any tax
21 withheld by an employer from an employee under Article III.

22 "Taxpayer." A person that is subject to tax under Article
23 III, IV or VI. The term shall include the shareholder, owner or
24 member of a pass-through entity that receives a tax credit.

25 "Tax credit." The port volume tax credit authorized under
26 this article.

27 "TEU" or "20-foot equivalent unit." A volumetric measure
28 based on the size of a container that is 20 feet long by eight
29 feet wide by eight feet, six inches high.

30 Section 1703-J. Tax credit.

1 (a) Authorized.--A taxpayer that moves cargo through a port
2 facility may apply for a credit against its qualified tax
3 liability in accordance with this article.

4 (b) Requirements.--The following shall apply to an
5 application submitted by a taxpayer for a tax credit:

6 (1) The tax credit may be claimed by the taxpayer only
7 for cargo owned by the taxpayer at the time the port facility
8 is used.

9 (2) The amount of cargo moved by the taxpayer through a
10 port facility for the taxable year for which the tax credit
11 is sought is at least 90% of the amount of cargo moved by the
12 taxpayer through a port facility in the base year, subject to
13 the following:

14 (i) The taxpayer may seek a waiver of the
15 requirements of this paragraph by filing an application
16 with the department.

17 (ii) In reviewing the application for waiver, the
18 department may take into account the circumstances that
19 lead to the decrease in cargo; the future projection of
20 cargo; the length of time the taxpayer has moved cargo
21 through the port facility; and the history of the type of
22 cargo moving through the port facility.

23 (c) Amount of credit.--

24 (1) A taxpayer that meets the requirements of this
25 section and is awarded a tax credit shall receive a credit in
26 the following amounts:

27 (i) for container cargo: \$50 for each TEU of
28 containerized cargo;

29 (ii) for break-bulk cargo: \$50 per each 12-metric
30 tons of break-bulk cargo; or

1 (iii) for roll on roll off cargo:

2 (A) \$25 per each unit of equipment that weighs
3 less than 10,000 pounds; or

4 (B) \$50 per each unit of equipment that weighs
5 10,000 pounds or more.

6 (2) In addition to the credit authorized in paragraph
7 (1), if a taxpayer increases the amount of cargo it moves
8 through a port facility by more than 5% over the base year,
9 the taxpayer shall be eligible for an additional credit based
10 on the increased cargo above the amount of cargo moved in the
11 base year. The authorized credit shall be in the following
12 amounts:

13 (i) for container cargo: \$5 for each TEU of
14 containerized cargo;

15 (ii) for break-bulk cargo: \$5 for every 12-metric
16 tons of break-bulk cargo; or

17 (iii) for roll on roll off cargo:

18 (A) \$2.50 per unit of equipment that weighs less
19 than 10,000 pounds; or

20 (B) \$5 per unit of equipment that weighs 10,000
21 pounds or more.

22 (3) A qualifying taxpayer may not receive more than
23 \$250,000 in tax credits in a taxable year.

24 Section 1704-J. Application.

25 (a) Filing.--A taxpayer must submit an application to the
26 department in a form and manner determined by the department.
27 The application shall be developed by the department and shall
28 include:

29 (1) The amount of the port cargo volume for the taxable
30 year stated both in net tons of break-bulk cargo, the number

1 of units broken out by pieces below 10,000 pounds and 10,000
2 pounds and above of roll on roll off cargo, or TEUs of
3 containerized cargo.

4 (2) The amount of port cargo volume for the base year
5 stated both in net tons of break-bulk cargo, the number of
6 units broken out by pieces below 10,000 pounds and 10,000
7 pounds and above of roll on roll off cargo, or TEUs of
8 containerized cargo.

9 (3) The amount of any tax credit utilized by the
10 taxpayer in prior years.

11 (4) The amount of any tax credit carried over from prior
12 years.

13 (5) Any other information required by the department.

14 (b) Submission and review.--

15 (1) A taxpayer seeking a tax credit under this article
16 shall submit an application to the department by March 1 of
17 the calendar year after the calendar year in which the port
18 cargo volume occurs.

19 (2) The department shall authorize tax credits on a
20 first-come, first-served basis.

21 (c) Notification of Department of Revenue.--Upon approval of
22 the application by the department, the department shall notify
23 the Department of Revenue, which shall issue to an applicant a
24 tax certificate that sets forth the amount of the tax credit
25 approved for the eligible applicant.

26 Section 1705-J. Carryover, carryback and assignment of credit.

27 (a) General rule.--If the taxpayer cannot use the entire
28 amount of the tax credit for the taxable year in which the tax
29 credit is first approved, then the excess may be carried over to
30 succeeding taxable years and used as a credit against the

1 qualified tax liability of the taxpayer for those taxable years.
2 Each time the tax credit is carried over to a succeeding taxable
3 year, it shall be reduced by the amount that was used as a
4 credit during the immediately preceding taxable year. The tax
5 credit provided may be carried over and applied to succeeding
6 taxable years for no more than three taxable years following the
7 first taxable year for which the taxpayer was entitled to claim
8 the credit.

9 (b) Application.--A tax credit approved by the department in
10 a taxable year first shall be applied against the taxpayer's
11 qualified tax liability for the current taxable year as of the
12 date on which the credit was approved before the tax credit can
13 be applied against any tax liability under subsection (a).

14 (c) No carryback or refund.--A taxpayer is not entitled to
15 carry back or obtain a refund of all or any portion of an unused
16 tax credit granted to the taxpayer.

17 (d) Sale or assignment.--

18 (1) A taxpayer, upon application to and approval by the
19 department, may sell or assign, in whole or in part, a tax
20 credit granted to the taxpayer.

21 (2) The department and the Department of Revenue shall
22 jointly promulgate regulations for the approval of
23 applications under this subsection.

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

30 (4) Notwithstanding any other provision of law, the

1 Department of Revenue shall settle, assess or determine the
2 tax of an applicant under this subsection within 90 days of
3 the filing of all required final returns or reports in
4 accordance with section 806.1(a)(5) of the act of April 9,
5 1929 (P.L.343, No.176), known as The Fiscal Code.

6 (e) Purchasers and assignees.--Except as set forth in
7 subsection (g), the following apply:

8 (1) The purchaser or assignee of all or a portion of a
9 tax credit under subsection (d) shall immediately claim the
10 credit in the taxable year in which the purchase or
11 assignment is made.

12 (2) The amount of the tax credit that a purchaser or
13 assignee may use against any one qualified tax liability may
14 not exceed 50% of such qualified tax liability for the
15 taxable year.

16 (3) The purchaser or assignee may not carry forward,
17 carry back or obtain a refund of or sell or assign the tax
18 credit.

19 (4) The purchaser or assignee shall notify the
20 Department of Revenue of the seller or assignor of the tax
21 credit in compliance with procedures specified by the
22 Department of Revenue.

23 (f) Limited carryforward of tax credits by a purchaser or
24 assignee.--A purchaser or assignee may carry forward all or any
25 unused portion of a tax credit purchased or assigned for no more
26 than three taxable years following the first taxable year for
27 which the taxpayer was entitled to claim the credit.

28 Section 1706-J. Department guidelines and regulations.

29 The department shall develop written guidelines for the
30 implementation of the provisions of this article. The guidelines

1 shall be in effect until such time as the department promulgates
2 regulations for the implementation of the provisions of this
3 article. The department shall promulgate regulations for the
4 implementation of this article within two years of the effective
5 date of this section.

6 Section 1707-J. Reports to General Assembly.

7 (a) Annual report.--By October 1, 2015, and October 1 of
8 each year thereafter, the department shall submit a report on
9 the tax credit to the chairman and minority chairman of the
10 Appropriations Committee of the Senate, the chairman and
11 minority chairman of the Community, Economic and Recreational
12 Development Committee of the Senate, the chairman and minority
13 chairman of the Appropriations Committee of the House of
14 Representatives and the chairman and minority chairman of the
15 Commerce Committee of the House of Representatives.

16 (b) Content of report.--The report must include:

17 (1) The names of the qualified taxpayers utilizing the
18 tax credit as of the date of the report.

19 (2) The amount of tax credits approved for, utilized by
20 or sold or assigned by a qualified taxpayer.

21 (3) The total increase in port cargo volume in this
22 Commonwealth over the preceding year.

23 (4) Any recommendations for changes in the calculation
24 of the credit or administration of this article.

25 (c) Publication.--Notwithstanding any law providing for the
26 confidentiality of tax records, the information contained in the
27 report shall be public information and shall be posted on the
28 department's publicly accessible Internet website.

29 Section 1708-J. Limitation on credits.

30 The total amount of tax credits approved by the department

1 under this article shall not exceed \$5,000,000 in any calendar
2 year.

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