

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 456 Session of 2013

INTRODUCED BY BLAKE, STACK, GORDNER, YUDICHAK, TARTAGLIONE, KASUNIC, FONTANA, ERICKSON, TEPLITZ, FARNESE, SMITH, BREWSTER, PILEGGI, SOLOBAY, BROWNE, COSTA, WASHINGTON, MENSCH, HUGHES, FERLO, WHITE, BOSCOLA, BRUBAKER, DINNIMAN, WARD AND ARGALL, APRIL 1, 2013

SENATOR BRUBAKER, FINANCE, AS AMENDED, JUNE 19, 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 the Innovate in PA Program.

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

13 Section 1. The heading of Article XVIII-C of the act of
14 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of
15 1971, added July 9, 2008 (P.L.922, No.66), is amended to read:

ARTICLE XVIII-C

[(RESERVED)]

INNOVATE IN PA TAX CREDIT

19 Section 2. The act is amended by adding sections to read:

20 Section 1801-C. Scope of article.

1 This article relates to the Innovate in PA Tax Credit.

2 Section 1802-C. Legislative intent.

3 It is the intent of this article to invest in innovation as a
4 catalyst for economic growth. Investment, in the Ben Franklin
5 Technology Development Authority, the Ben Franklin Technology
6 Partners, the Partnerships for Regional Economic Performance, <--
7 REGIONAL BIOTECHNOLOGY RESEARCH CENTERS, the department and
8 venture capital funds will advance the competitiveness of this
9 Commonwealth's companies in the global economy. It is the goal
10 of this article to maximize the available funding from a minimum
11 amount of ~~\$157,500,000~~ \$168,750,000 and up to and exceeding <--
12 \$190,000,000.

13 Section 1803-C. Definitions.

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

17 "Allocation amount." The total amount of tax credits
18 purchased by a qualified taxpayer.

19 "Authority." The Ben Franklin Technology Development
20 Authority established to manage and fund programs in this
21 Commonwealth that support the development of technology as
22 described in the act of June 22, 2001 (P.L.569, No.38), known as
23 The Ben Franklin Technology Development Authority Act.

24 "Ben Franklin Technology Partners Program." A program under
25 the Ben Franklin Technology Development Authority that funds
26 four regionally based economic development organizations
27 dedicated to a common mission of technology commercialization.

28 "Capital." The amount of money that a purchaser invests
29 under the Innovate in PA Program.

30 "Department." The Department of Community and Economic

1 Development of the Commonwealth.

2 "Fund." The Innovate in PA Fund.

3 "Impact investment." An investment intended to solve social
4 or environmental challenges while generating financial profit.
5 Impact investing recognizes that investments have social and
6 environmental returns in addition to financial returns and
7 attempts to maximize the three returns rather than one at the
8 expense of others.

9 "Insurance premium tax liability." Any liability incurred by
10 an insurance company under Article IX.

11 "Program." The Innovate in PA Program.

12 "Qualified taxpayer." Any of the following that has
13 insurance premium tax liability and contributes capital to
14 purchase premium tax credits under this article:

15 (1) An insurance company authorized to do business in
16 this Commonwealth.

17 (2) A holding company that has at least one insurance
18 company subsidiary authorized to do business in this
19 Commonwealth.

20 "Recipient." An entity that receives a distribution of funds
21 under section 1811-C(c).

22 "REGIONAL BIOTECHNOLOGY RESEARCH CENTER." A REGIONAL <--
23 BIOTECHNOLOGY CENTER ESTABLISHED UNDER CHAPTER 17 OF THE ACT OF
24 JUNE 26, 2001 (P.L.755, NO.77), KNOWN AS THE TOBACCO SETTLEMENT
25 ACT.

26 "Tax credit." A credit against insurance premium tax
27 liability offered to or held by a qualified taxpayer under this
28 article.

29 "Venture Investment Program." A program under the Ben
30 Franklin Technology Development Authority dedicated to

1 increasing the availability of venture capital in this
2 Commonwealth.

3 Section 1804-C. Tax credit.

4 A qualified taxpayer may purchase tax credits from the
5 department IN ACCORDANCE WITH THIS ARTICLE and may apply the tax <--
6 credits against its insurance premium tax liability in
7 accordance with this article.

8 Section 1805-C. Duties.

9 (a) Sale of tax credits.--The department, shall have the
10 authority to sell up to \$225,000,000 in tax credits to qualified
11 taxpayers. The sale of the tax credits shall be in accordance
12 with section 1808-C.

13 (b) Time of sale.--The sale authorized under subsection (a)
14 may not occur before October 1, 2013.

15 (C) TRANSFER OF AMOUNTS.--IN A FISCAL YEAR IN WHICH A TAX <--
16 CREDIT IS CLAIMED UNDER THIS ARTICLE, THE STATE TREASURER SHALL,
17 PRIOR TO JUNE 30 OF THE FISCAL YEAR, TRANSFER INTO THE REVENUE
18 ACCOUNT ESTABLISHED UNDER SECTION 402(B) OF THE ACT OF DECEMBER
19 18, 1984 (P.L.1005, NO.205), KNOWN AS THE MUNICIPAL PENSION PLAN
20 FUNDING STANDARD AND RECOVERY ACT, FOR DISTRIBUTION IN
21 ACCORDANCE WITH THE MUNICIPAL PENSION PLAN FUNDING STANDARD AND
22 RECOVERY ACT THE FOLLOWING AMOUNTS:

23 (1) AN AMOUNT EQUAL TO THE AMOUNT OF TAX CREDITS APPLIED
24 AGAINST THE INSURANCE PREMIUM TAX LIABILITY CLAIMED BY THE
25 QUALIFIED TAXPAYERS UNDER THIS ARTICLE IN THE FISCAL YEAR;
26 AND

27 (2) AN AMOUNT EQUAL TO THE INCOME LOST BY THE REVENUE
28 ACCOUNT ESTABLISHED UNDER SECTION 402(B) OF THE MUNICIPAL
29 PENSION PLAN FUNDING STANDARD AND RECOVERY ACT BECAUSE OF THE
30 TAX CREDIT CLAIMS GRANTED BY THIS ARTICLE.

1 Section 1806-C. Use of tax credits by qualified taxpayers.

2 (a) Use against insurance premium tax liability.--A
3 qualified taxpayer that purchases tax credits under section
4 1805-C may claim the credits beginning in calendar year 2017
5 against insurance premium tax liability incurred for a taxable
6 year that begins on or after January 1, 2016.

7 (b) Application to department.--A qualified taxpayer seeking
8 to use purchased tax credits may submit an application to the
9 department in a manner prescribed by the department.

10 (c) Construction.--The following shall apply:

11 (1) A qualified taxpayer may not be required to reduce
12 the amount of insurance premium tax included by the taxpayer
13 in connection with rate-making for any insurance contract
14 written in this Commonwealth because of a reduction of the
15 taxpayer's insurance premium tax liability derived from the
16 tax credit purchased under this article.

17 (2) If, under the insurance laws of this Commonwealth,
18 the assets of the qualified taxpayer are examined or
19 considered, the taxpayer's balance of tax credits shall be
20 treated as an admitted asset subject to the same financial
21 rating as held by the Commonwealth.

22 (d) Limitations.--The following shall apply:

23 (1) The total amount of tax credits applied against
24 insurance premium tax liability by all qualified taxpayers in
25 a fiscal year may not exceed \$45,000,000 per year beginning
26 in calendar year 2017.

27 (2) The credit to be applied in any one year may not
28 exceed the insurance premium tax liability of the qualified
29 taxpayer for that taxable year.

30 ~~(e) Hold harmless provision. In any year that a tax credit <--~~

1 ~~is claimed under this article, the General Assembly shall do all~~
2 ~~of the following:~~

3 ~~(1) Transfer an amount equal to the amount of any tax~~
4 ~~credit claimed by a foreign fire insurance company against~~
5 ~~taxes that otherwise would be distributed in accordance with~~
6 ~~Chapter 7 of the act of December 18, 1984 (P.L.1005, No.205),~~
7 ~~known as the Municipal Pension Plan Funding Standard and~~
8 ~~Recovery Act, to the fund as defined in section 702 of the~~
9 ~~Municipal Pension Plan Funding Standard and Recovery Act.~~

10 ~~(2) Transfer an amount equal to the amount of any tax~~
11 ~~credit claimed by a foreign casualty insurance company~~
12 ~~against taxes that otherwise would be distributed and used~~
13 ~~for police pension, retirement or disability purposes as~~
14 ~~provided by the act of May 12, 1943 (P.L.259, No.120),~~
15 ~~referred to as the Foreign Casualty Insurance Premium Tax~~
16 ~~Allocation Law, for distribution in accordance with the~~
17 ~~Foreign Casualty Insurance Premium Tax Allocation Law.~~

18 ~~(3) Ensure that the programs under paragraphs (1) and~~
19 ~~(2) do not experience a negative fiscal impact due to a~~
20 ~~foreign fire insurance company or a foreign casualty~~
21 ~~insurance company claiming a tax credit authorized under this~~
22 ~~article.~~

23 Section 1807-C. Sale, carryover and carryback.

24 (a) Carryover.--If the qualified taxpayer cannot use the
25 entire amount of the tax credit for the taxable year in which
26 the taxpayer is eligible for the credit, the excess may be
27 carried over to succeeding taxable years and used as a credit
28 against the qualified tax liability of the taxpayer for those
29 taxable years, provided that the credit may not be carried over
30 to any taxable year that begins after December 31, 2025.

1 (b) Sale.--No sooner than 30 days after providing the
2 Insurance Department and the department written notice of the
3 intent to transfer tax credits, a qualified taxpayer may
4 transfer tax credits held without restriction to any entity that
5 is a qualified taxpayer in good standing with the Insurance
6 Department and that agrees to assume all of the transferor's
7 obligations with respect to the tax credit.

8 (c) Carryback.--A qualified taxpayer may not carry back a
9 tax credit.

10 Section 1808-C. Sale of tax credits to qualified taxpayers.

11 (a) Conduct of sale.--The sale of tax credits authorized
12 under section 1805-C(a) shall be conducted in accordance with
13 this section.

14 (b) Process.--The department may sell the tax credits
15 authorized under this article or may contract with an
16 independent third party to conduct a bidding process among
17 qualified taxpayers to purchase the credits. In raising capital
18 for the program, the department shall have the discretion to
19 distribute credits using a market-driven approach or any
20 approach that maximizes the yield to the Commonwealth.

21 (c) Application.--A qualified taxpayer seeking to purchase
22 tax credits may apply to the department in the manner prescribed
23 by the department.

24 (d) Bidding process.--Using procedures adopted by the
25 department or, if applicable, by an independent third party,
26 each qualified taxpayer that submits an application shall make a
27 timely and irrevocable offer, subject only to the department's
28 issuance to the taxpayer of tax credit certificates, to make
29 specified contributions of capital to the department on dates
30 specified by the department.

1 (e) Contents of offer.--The offer under subsection (d) must
2 include all of the following:

3 (1) The requested amount of tax credits, which may not
4 be less than \$500,000.

5 (2) The qualified taxpayer's capital contribution for
6 each tax credit dollar requested, which may not be less than
7 the greater of either of the following:

8 (i) ~~Seventy~~ SEVENTY-FIVE percent of the requested <--
9 dollar amount of tax credits.

10 (ii) The percentage of the requested dollar amount
11 of tax credits that the department and, if applicable,
12 the independent third party, determines to be consistent
13 with market conditions as of the offer date.

14 (3) Any other information the department or, if
15 applicable, independent third party requires.

16 (f) Notice of approval.--Each qualified taxpayer that
17 submits an application under this section shall receive a
18 written notice from the department indicating whether or not it
19 has been approved as a purchaser of tax credits and, if so, the
20 amount of tax credits allocated.

21 (g) Limitation.--No tax credits may be sold if the bidding
22 process, upon completion, has failed to yield at least
23 \$50,000,000 in revenue.

24 Section 1809-C. Payment for tax credits purchased and
25 certificates.

26 (a) Payment of capital.--Capital committed by a qualified
27 taxpayer shall be paid to the department for deposit into the
28 fund. Nothing under this section shall prohibit the department
29 from establishing an installment payment schedule for capital
30 payments to be made by the qualified taxpayer.

1 (b) Issuance of tax credit certificates.--On receipt of
2 payment of capital, the department shall issue to each qualified
3 taxpayer a tax credit certificate representing a fully vested
4 credit against insurance premium tax liability.

5 (c) Certificate issued in accordance with bidding process.--
6 The department shall issue tax credit certificates to qualified
7 taxpayers in accordance with the bidding process selected by the
8 department or the independent third party.

9 (d) Contents.--The tax credit certificate shall state all of
10 the following:

11 (1) The total amount of premium tax credits that the
12 qualified taxpayer may claim.

13 (2) The amount of capital that the qualified taxpayer
14 has contributed or agreed to contribute in return for the
15 issuance of the tax credit certificate.

16 (3) The dates on which the tax credits will be available
17 for use by the qualified taxpayer.

18 (4) Any penalties or other remedies for noncompliance.

19 (5) The procedures to be used for transferring the tax
20 credits.

21 (6) Any other requirements the department considers
22 necessary.

23 Section 1810-C. Failure to make contribution of capital and
24 reallocation.

25 (a) Prohibition.--A tax credit certificate under section
26 1809-C may not be issued to any qualified taxpayer that fails to
27 make a contribution of capital within the time the department
28 specifies.

29 (b) Penalty.--A qualified taxpayer that fails to make a
30 contribution of capital within the time the department specifies

1 shall be subject to a penalty equal to 10% of the amount of
2 capital that remains unpaid. The penalty shall be paid to the
3 department within 30 days after demand.

4 (c) Reallocation.--The department may offer to reallocate
5 the defaulted capital among other qualified taxpayers, so that
6 the result after reallocation is the same as if the initial
7 allocation had been performed without considering the tax credit
8 allocation to the defaulting qualified taxpayer.

9 (d) Contribution.--If the reallocation of capital under
10 subsection (c) results in the contribution by another qualified
11 taxpayer of the amount of capital not contributed by the
12 defaulting qualified taxpayer, the department may waive the
13 penalty provided under subsection (b).

14 (e) Transfer.--A qualified taxpayer that fails to make a
15 contribution of capital within the time specified may avoid the
16 imposition of the penalty by transferring the allocation of tax
17 credits to a new or existing qualified taxpayer within 30 days
18 after the due date of the defaulted installment. Any transferee
19 of an allocation of tax credits of a defaulting qualified
20 taxpayer under this subsection shall agree to make the required
21 contribution of capital within 30 days after the date of the
22 transfer.

23 Section 1811-C. Innovate in PA Program.

24 (a) Establishment.--The Innovate in PA Program is
25 established within the authority.

26 (b) Fund.--The authority shall have the power and duty to
27 establish the Innovate in PA Fund within this authority.

28 (c) Distribution.--The department shall distribute the net
29 proceeds received by the department as a result of the sale of
30 tax credits under section 1805-C(a) as follows:

1 (1) Seventy SIXTY-SIX percent of net proceeds received <--
2 by the department shall be transferred to the authority for
3 deposit into the fund for distribution as follows:

4 (i) Thirty-three and one-half percent shall be
5 distributed to the Ben Franklin Technology Partners
6 Program for use according to program guidelines.

7 (ii) Five and one-half percent shall be distributed
8 by the authority for technology-based economic
9 development programs designed to support
10 entrepreneurship, including, but not limited to,
11 university-based entrepreneurial programs and new or
12 existing programs designed to support early stage
13 technology companies through seed grants or programming.

14 (iii) Sixty percent shall be distributed to the
15 Venture Investment Program for use according to program
16 guidelines including traditional venture investments or
17 impact investments. The authority may consider impact
18 investments based on performance. Impact investments may
19 not exceed 15% of the Venture Investment Program
20 distribution under this subparagraph.

21 (iv) One percent shall be retained by the authority
22 for administrative costs. At the end of the fiscal year,
23 the funds distributed under this subparagraph that are
24 not expended by the authority shall be rededicated to the
25 fund.

26 (2) Thirty TWENTY-NINE percent of net proceeds shall be <--
27 retained by the department in a restricted receipts account
28 for distribution as follows:

29 (i) Ninety-five percent shall be distributed to the
30 Partnerships for Regional Economic Performance Program in

1 accordance with guidelines issued by the department.

2 (ii) Four percent shall be distributed by the
3 department for initiatives related to:

4 (A) policy-development;

5 (B) program creation or enhancements; and

6 (C) strategic planning efforts in the
7 advancement of the life sciences industry in this
8 Commonwealth.

9 (iii) One percent shall be retained by the
10 department for administrative costs.

11 (3) FIVE PERCENT TO THE HEALTH ACCOUNT ESTABLISHED UNDER <--
12 SECTION 303(B) OF THE ACT OF JUNE 26, 2001 (P.L.755, NO.77),
13 KNOWN AS THE TOBACCO SETTLEMENT ACT, FOR DISTRIBUTION IN
14 EQUAL PROPORTIONS TO EACH REGIONAL BIOTECHNOLOGY RESEARCH
15 CENTER.

16 Section 1812-C. Guidelines.

17 The department, in consultation with the authority AND EACH <--
18 REGIONAL BIOTECHNOLOGY RESEARCH CENTER, shall promulgate
19 guidelines implementing this article.

20 Section 1813-C. Report.

21 (a) Duties.--On or before January 1, 2015, and January 1 of
22 each subsequent year, the department, in consultation with the
23 authority AND EACH REGIONAL BIOTECHNOLOGY RESEARCH CENTER, shall <--
24 do the following:

25 (1) Submit a report on the implementation of the program
26 to all of the following:

27 (i) The Governor.

28 (ii) The chairman and minority chairman of the
29 Appropriations Committee of the Senate.

30 (iii) The chairman and minority chairman of the

1 Appropriations Committee of the House of Representatives.

2 (2) Publish the report under paragraph (1) on the
3 department's publicly accessible Internet website.

4 (b) Contents.--The report under subsection (a) shall include
5 the following:

6 (1) The name of the purchaser of premium tax credits.

7 (2) The amount of premium tax credits allocated to the
8 purchaser.

9 (3) The amount of capital the purchaser contributed for
10 the issuance of the tax credit certificate.

11 (4) The amount of any tax credits that have been
12 transferred under section 1810-C(e).

13 (5) The amount of funds received by the recipients
14 during the previous year.

15 (6) The cumulative amount of capital received by the
16 department in connection with the sale of the tax credits.

17 (7) The amount of capital remaining uninvested at the
18 end of the preceding calendar year.

19 (8) The names and locations of businesses receiving
20 capital from the recipients, the reason for the investment
21 and the amount of the investment.

22 (9) The total number of jobs created in this
23 Commonwealth by the investment and the average wages paid for
24 the jobs.

25 (10) The total number of jobs retained in this
26 Commonwealth as a result of the investment and the average
27 wages paid for the jobs.

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