

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 1370 Session of  
2015

---

INTRODUCED BY GIBBONS, HEFFLEY, THOMAS, ROZZI, HARHAI, MILLARD,  
KOTIK, GODSHALL, READSHAW, GOODMAN, COHEN, IRVIN, MURT,  
OBERLANDER, DIAMOND, MAHONEY, SAINATO, D. COSTA, KORTZ,  
BURNS, SANKEY, TOOHIL, TOBASH, GERGELY, FARRY, DAVIS, ELLIS,  
KAUFER, RADER, BARRAR, MARSHALL, EVERETT, MULLERY, CARROLL,  
MALONEY, SAYLOR AND PETRARCA, JUNE 29, 2015

---

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
JUNE 29, 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 coal refuse energy and  
11 reclamation tax credit; and imposing duties on the Department  
12 of Community and Economic Development, the Department of  
13 Environmental Protection and the Department of Revenue.

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

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

19 ARTICLE XVII-J

20 COAL REFUSE ENERGY AND

21 RECLAMATION TAX CREDIT

1 Section 1701-J. Scope of article.

2 This article establishes a coal refuse energy and reclamation  
3 tax credit in recognition of the significant and tangible  
4 benefits to the environment and savings in Commonwealth funds  
5 provided by eligible facilities in reclaiming coal refuse piles  
6 and previously mined lands.

7 Section 1702-J. Definitions.

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

11 "Applicable annual period." The 12-month calendar year in  
12 which the combustion of qualified fuel and the beneficial use of  
13 ash is measured to determine the amount of credits requested  
14 under section 1703-J(b).

15 "Coal refuse." Any waste coal, rock, shale, slurry, culm,  
16 gob, boney, slate, clay and related materials associated with or  
17 near a coal seam that are either brought aboveground or  
18 otherwise removed from a coal mine in the process of mining coal  
19 or that are separated from coal during the cleaning or  
20 preparation operations. "Coal refuse" includes underground  
21 development wastes, coal processing wastes and excess spoil, but  
22 does not mean overburden from surface mining activities.

23 "Department." The Department of Community and Economic  
24 Development of the Commonwealth.

25 "Eligible facility." An electric generating facility placed  
26 in service before the effective date of this article consisting  
27 of one or more units placed in service before the effective date  
28 of this definition which generate electricity located on the  
29 same property which:

30 (1) combusts qualified fuel or fuel composed of at least

1 75% qualified fuel by BTU energy value in the applicable  
2 annual period;

3 (2) utilizes at a minimum a circulating fluidized bed  
4 combustion unit equipped with a limestone injection system  
5 for control of acid gasses and a fabric filter particulate  
6 emission control system; and

7 (3) beneficially uses ash produced by the facility in  
8 the applicable annual period to reclaim mining-affected sites  
9 in accordance with 25 Pa. Code Ch. 290 (relating to  
10 beneficial use of coal ash) in amounts equal to at least 50%  
11 of the ash produced by the facility in the applicable annual  
12 period.

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

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

15 (2) A Pennsylvania S corporation as defined in section  
16 301(n.1).

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

18 "Qualified fuel." Coal refuse.

19 "Qualified tax liability." The liability for taxes imposed  
20 under Article III, IV, VI, VII, VIII, IX, XI or XV. The term  
21 does not include tax withheld by an employer from an employee  
22 under Article III.

23 "Qualified taxpayer." A person that owns an eligible  
24 facility in this Commonwealth, or is a transferor, purchaser,  
25 affiliate or assignee of a person to which a tax credit  
26 certificate is issued under this article.

27 "Tax credit." The coal refuse energy and reclamation tax  
28 credit provided under this article.

29 "Tax credit rate." For qualified fuel combusted at an  
30 eligible facility in each calendar year, the rate of \$4.00 per

1 ton of qualified fuel used at an eligible facility.

2 "Ton." Two thousand pounds of qualified fuel, including  
3 inherent moisture, ash, sulphur and other noncalorific  
4 substances, but excluding excess moisture.

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

6 (a) Rate.--The tax credit shall be equal to the tax credit  
7 rate times the tons of qualified fuel used to generate  
8 electricity at an eligible facility in this Commonwealth by a  
9 qualified taxpayer. By February 1 of each year starting in 2016,  
10 or as soon as practical after data needed to adjust the tax  
11 credit rate is available, the department shall determine and  
12 publish notice of the adjusted tax credit rate for the prior  
13 calendar year. Regardless of when the notice is published, the  
14 revised tax credit rate will apply to the calendar year in which  
15 qualified fuel is used to generate electricity at an eligible  
16 facility. The tax credit rate, measured based on the amount of  
17 qualified fuel used, serves as a surrogate measure for  
18 environmental benefits, including water quality improvement, air  
19 pollution abatement and land restoration, derived from eligible  
20 facilities through the utilization of coal refuse and associated  
21 reclamation of coal refuse piles, and the beneficial use of coal  
22 ash for reclamation of mine-affected lands.

23 (b) Application.--

24 (1) A qualified taxpayer may apply to the department for  
25 a tax credit under this section. The application shall be on  
26 the form required by the department.

27 (2) The application must be submitted to the department  
28 by February 1 of each year for the tax credit claimed for  
29 qualified fuel used at an eligible facility during the prior  
30 calendar year.

1       (3) The department may require information necessary to  
2 document that a facility qualifies as an eligible facility  
3 and the amount of qualified fuel used to generate electricity  
4 at the eligible facility.

5       (4) In the review of applications for tax credits, the  
6 department shall consult with the Department of Environmental  
7 Protection with respect to whether a facility qualifies as an  
8 eligible facility and to review the eligible facility's  
9 calculation of the amount of qualified fuel used to generate  
10 electricity.

11 (c) Review and approval.--

12       (1) The department shall review and approve applications  
13 meeting the requirements of this article by March 20 of each  
14 year.

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. The calendar  
18 year in which the qualified fuel was used as set forth in the  
19 application shall be designated as the initial year in which  
20 the tax credits may be used. The tax credits may be used in  
21 any tax year beginning in the designated calendar year and  
22 thereafter as provided in section 1704-J.

23 Section 1704-J. Carryover and carryback.

24 A tax credit cannot be carried back or used to claim refunds.  
25 A tax credit can be carried forward up to 15 tax years following  
26 the tax year in which the tax certificate may initially be used  
27 by a qualified taxpayer.

28 Section 1705-J. Limitation on tax credits.

29       (a) Amount.--The total amount of tax credits issued by the  
30 department shall not exceed \$45,000,000 in any fiscal year.

1 (b) Proration.--If the total amount of tax credits applied  
2 for by all qualified taxpayers exceeds the amount allocated for  
3 those tax credits, then the tax credit to be received by each  
4 applicant shall be the product of the allocated amount  
5 multiplied by the quotient of the tax credits approved for the  
6 applicant divided by the total of all tax credits approved for  
7 all applicants.

8 (c) Restriction.--Notwithstanding subsection (b), the  
9 department shall not grant more than \$10,000,000 in tax credits  
10 to a single eligible facility in any fiscal year.

11 Section 1706-J. Pass-through entity.

12 (a) Election.--If a tax credit certificate is issued to a  
13 pass-through entity, it may elect in writing, according to  
14 procedures established by the department, to transfer all or a  
15 portion of the credit to shareholders, members or partners in  
16 proportion to the share of the entity's distributive income to  
17 which the shareholders, members or partners are entitled, or in  
18 any other manner designated by the pass-through entity.

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

21 (1) the pass-through entity; and

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

24 (c) Time.--A transferee under subsection (a) may only use a  
25 tax credit during a tax year from which use of the credit is  
26 authorized under sections 1703-J(c) (2) and 1705-J.

27 Section 1707-J. Use of credits by affiliates.

28 In addition to reducing or eliminating the qualified tax  
29 liability of a qualified taxpayer, a tax credit under this  
30 article shall be applied to reduce or eliminate the qualified

1 tax liability of any related party, as that term is defined in  
2 section 267 of the Internal Revenue Code of 1986 (Public Law 99-  
3 514, 26 U.S.C. § 1 et seq.), to a qualified taxpayer. An  
4 affiliate may only use a tax credit during a tax year for which  
5 use of the credit is authorized under sections 1703-J(c)(2) and  
6 1704-J.

7 Section 1708-J. Sale or assignment.

8 (a) Authorization.--Upon approval by the Department of  
9 Revenue, a qualified taxpayer may sell or assign a tax credit,  
10 in whole or in part.

11 (b) Application.--

12 (1) To sell or assign a tax credit, a qualified taxpayer  
13 must file an application for the sale or assignment of the  
14 tax credit with the Department of Revenue. The application  
15 must be on a form required by the Department of Revenue.

16 (2) The Department of Revenue shall approve a sale or  
17 assignment if the transferee or purchaser has:

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

20 (ii) paid any balance of State tax due as determined  
21 by assessment or determination by the Department of  
22 Revenue and not under timely appeal.

23 Section 1709-J. Purchasers and assignees.

24 (a) Time.--The purchaser or assignee under section 1708-J  
25 may only use a tax credit during a tax year for which use of the  
26 credit is authorized under sections 1703-J(c)(2) and 1704-J.

27 (b) Amount.--The amount of the tax credit that a purchaser  
28 or assignee under section 1708-J may use against any one  
29 qualified tax liability may not exceed 75% of any of the  
30 qualified tax liabilities of the purchaser or assignee for the

1 taxable year for which the tax credit pertains.

2 Section 1710-J. Administration.

3 (a) Audits and assessments.--The department has the  
4 following powers:

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

7 (2) To issue an assessment against a qualified taxpayer  
8 for an improperly issued tax credit. The procedures,  
9 collection, enforcement and appeals of any assessment made  
10 under this section shall be governed by Article IV.

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

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

14 By October 1, 2016, and October 1 of each year thereafter,  
15 the department shall submit a report on the tax credit provided  
16 by this article to the chairman and minority chairman of the  
17 Appropriations Committee of the Senate, the chairman and  
18 minority chairman of the Finance Committee of the Senate, the  
19 chairman and minority chairman of the Appropriations Committee  
20 of the House of Representatives and the chairman and minority  
21 chairman of the Finance Committee of the House of  
22 Representatives. The report must include:

23 (1) the names of the qualified taxpayers utilizing the  
24 tax credit as of the date of the report and the amount of tax  
25 credits approved for, utilized by or sold or assigned by a  
26 qualified taxpayer; and

27 (2) data concerning the benefits provided to the  
28 Commonwealth in terms of the quantity of coal refuse utilized  
29 by qualifying facilities and volume of coal ash generated by  
30 qualifying facilities which is beneficially used to reclaim



1 mine-affected lands.

2 Section 1712-J. Expiration.

3 This article shall expire December 31, 2026.

4 Section 1713-J. Applicability.

5 The tax credit established under this article shall be  
6 effective for taxable years beginning on or after January 1,  
7 2016.

8 Section 2. This act shall take effect immediately.