

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 368 Session of 2015

INTRODUCED BY WHITE, YAW, GREENLEAF, GORDNER, YUDICHAK, HUTCHINSON, VULAKOVICH, ALLOWAY, WOZNIAK, STEFANO, VOGEL, BROWNE AND BLAKE, JANUARY 30, 2015

SENATOR EICHELBERGER, FINANCE, AS AMENDED, JUNE 24, 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 waste-coal COAL REFUSE energy and <--
11 reclamation tax credit; and imposing duties on the Department <--
12 of Revenue and the Department of Community and Economic
13 Development, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND <--
14 THE DEPARTMENT OF REVENUE.

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

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

ARTICLE XVII J <--

WASTE COAL ENERGY AND RECLAMATION TAX CREDIT

21 Section 1701 J. Scope of article.

22 This article establishes a waste coal energy and reclamation

1 ~~tax credit.~~

2 ~~Section 1702 J. Definitions.~~

3 ~~The following words and phrases when used in this article~~
4 ~~shall have the meanings given to them in this section unless the~~
5 ~~context clearly indicates otherwise:~~

6 ~~"Company." A corporation, partnership, limited liability~~
7 ~~company, limited liability partnership, business trust,~~
8 ~~affiliate, unincorporated joint venture or other business entity~~
9 ~~doing business within this Commonwealth.~~

10 ~~"Department." The Department of Revenue of the Commonwealth,~~
11 ~~except as otherwise specifically indicated.~~

12 ~~"Pass through entity." Any of the following:~~

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

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

16 ~~(3) An unincorporated entity subject to section 307.21.~~

17 ~~"Qualified fuel." Waste coal, which shall include the~~
18 ~~combustion of waste coal in facilities in which the waste coal~~
19 ~~was disposed of or abandoned prior to July 31, 1982, or disposed~~
20 ~~of thereafter in a permitted coal refuse disposal site~~
21 ~~regardless of when disposed of, and used to generate~~
22 ~~electricity, or such other waste coal combustion meeting~~
23 ~~alternate eligibility requirements established by regulation.~~

24 ~~Facilities combusting waste coal shall use, at a minimum, a~~
25 ~~combined fluidized bed boiler and be outfitted with a limestone~~
26 ~~injection system and a fabric filter particulate removal system.~~

27 ~~"Qualified tax liability." The liability for taxes imposed~~
28 ~~under Articles III, IV, VI, VII, VIII, IX, XI and XV. The term~~
29 ~~does not include tax withheld under section 316.~~

30 ~~"Qualified taxpayer." A company that satisfies all of the~~

1 following:

2 ~~(1) Is an electric energy generator using qualified fuel~~
3 ~~for the generation of electric energy.~~

4 ~~(2) The qualified fuel is utilized for generation of~~
5 ~~electricity at a facility in this Commonwealth which has been~~
6 ~~placed in service before the effective date of this section.~~

7 ~~(3) Uses or facilitates the use of ash resulting from~~
8 ~~the combustion of qualified fuel to generate electricity at a~~
9 ~~reclamation project approved by the Department of~~
10 ~~Environmental Protection under the act of May 31, 1945~~
11 ~~(P.L.1198, No.418), known as the Surface Mining Conservation~~
12 ~~and Reclamation Act.~~

13 ~~"Tax credit." The waste coal energy and reclamation tax~~
14 ~~credit provided under this article.~~

15 ~~"Ton." Two thousand pounds as defined in section 4121(d) of~~
16 ~~the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.~~
17 ~~§ 4121(d)).~~

18 ~~Section 1703 J. Application and approval of tax credit.~~

19 ~~(a) Application.~~

20 ~~(1) A qualified taxpayer may apply to the department for~~
21 ~~a tax credit under this section.~~

22 ~~(2) The application must be submitted to the department~~
23 ~~by August 1, 2015, and by March 1 of each year thereafter for~~
24 ~~the tax credit claimed for qualified fuel used by the~~
25 ~~qualified taxpayer during the prior calendar year. The~~
26 ~~application must be on the form required by the department.~~

27 ~~(3) The department may require information necessary to~~
28 ~~document the amount of qualified fuel used.~~

29 ~~(b) Rate. The tax credit shall be equal to \$3.50 per ton of~~
30 ~~qualified fuel used to generate electricity in this Commonwealth~~

1 ~~by a qualified taxpayer.~~

2 ~~(c) Review and approval.~~

3 ~~(1) The department shall review and approve applications~~
4 ~~meeting the requirements of this article by August 20, 2015,~~
5 ~~and by March 20 of each year thereafter.~~

6 ~~(2) Upon approval, the department shall issue a~~
7 ~~certificate stating the amount of tax credit granted for~~
8 ~~qualified fuel used in the prior calendar year.~~

9 ~~Section 1704 J. Use of tax credits.~~

10 ~~(a) Application. The tax credit shall be applied against~~
11 ~~the qualified taxpayer's liability only after all other~~
12 ~~statutory tax credits and deductions available to the qualified~~
13 ~~taxpayer have been used.~~

14 ~~(b) Limitation. A qualified taxpayer that has been granted~~
15 ~~a tax credit under this article shall be ineligible for any~~
16 ~~other tax credit provided under this act.~~

17 ~~Section 1705 J. Carryover and carryback.~~

18 ~~A tax credit cannot be carried back. A tax credit can be~~
19 ~~carried forward up to three tax years following the tax year in~~
20 ~~which the tax credit is earned.~~

21 ~~Section 1706 J. Limitation on tax credits.~~

22 ~~(a) Amount. The total amount of tax credits approved by the~~
23 ~~department shall not exceed \$40,000,000 in any fiscal year.~~

24 ~~(b) Proration. If the total amount of tax credits applied~~
25 ~~for by all qualified taxpayers exceeds the amount allocated for~~
26 ~~those tax credits, then the tax credit to be received by each~~
27 ~~applicant shall be the product of the allocated amount~~
28 ~~multiplied by the quotient of the tax credits approved for the~~
29 ~~applicant divided by the total of all tax credits approved for~~
30 ~~all applicants.~~

~~(c) Restriction. Notwithstanding subsection (b), the department may not grant more than \$10,000,000 in tax credits to a single qualified taxpayer in any fiscal year.~~

~~Section 1707 J. Pass through entity.~~

~~(a) Election. If a pass through entity has an unused tax credit, it may elect in writing, according to procedures established by the department, to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholders, members or partners are entitled.~~

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

~~(1) the pass through entity; and~~

~~(2) a shareholder, member or partner of the pass through entity.~~

~~(c) Time. A transferee under subsection (a) must claim the tax credit in the calendar year in which the transfer is made.~~

~~Section 1708 J. Use of credits by affiliates.~~

~~In addition to reducing or eliminating the qualified tax liability of a qualified taxpayer, a tax credit shall be applied to reduce or eliminate the qualified tax liability of any "related party," as that term is defined in section 267 of the Internal Revenue Code of 1986 (Public Law 99 514, 26 U.S.C. § 267), to a qualified taxpayer.~~

~~Section 1709 J. Sale or assignment.~~

~~(a) Authorization. Except as authorized in subsection (d), if a qualified taxpayer holds a tax credit through the end of the third calendar year following the year in which the tax credit was granted, the qualified taxpayer may sell or assign a tax credit, in whole or in part.~~

1 ~~(b) Initial use. Except as provided in subsection (e),~~
2 ~~prior to sale of assignment of a tax credit a qualified taxpayer~~
3 ~~must first use a tax credit against the qualified tax liability~~
4 ~~incurred in the taxable year for which the tax credit was~~
5 ~~approved.~~

6 ~~(c) Application.~~

7 ~~(1) Except as authorized in subsection (d), to sell or~~
8 ~~assign a tax credit, a qualified taxpayer must file an~~
9 ~~application for the sale or assignment of the tax credit with~~
10 ~~the Department of Community and Economic Development. The~~
11 ~~application must be on a form required by the Department of~~
12 ~~Community and Economic Development.~~

13 ~~(2) To approve an application, the Department of~~
14 ~~Community and Economic Development must receive a finding~~
15 ~~from the department that the applicant has:~~

16 ~~(i) filed all required State tax reports and returns~~
17 ~~for all applicable taxable years; and~~

18 ~~(ii) paid any balance of State tax due as determined~~
19 ~~by assessment or determination by the department and not~~
20 ~~under timely appeal.~~

21 ~~(d) Approval. Upon approval by the Department of Community~~
22 ~~and Economic Development, a qualified taxpayer may sell or~~
23 ~~assign, in whole or in part, a tax credit.~~

24 ~~(e) Expedited sale or assignment.~~

25 ~~(1) Notwithstanding subsections (a) and (b), a qualified~~
26 ~~taxpayer may immediately sell or assign, in whole or in part,~~
27 ~~a tax credit approved for a taxable year beginning in 2014.~~

28 ~~(2) Nothing in this subsection may be construed to mean~~
29 ~~that the tax credits sold or assigned under this subsection~~
30 ~~are not subject to the provisions of section 1711 J.~~

1 ~~Section 1710 J. Purchasers and assignees.~~

2 ~~(a) Time. The purchaser or assignee under section 1709 J~~
3 ~~must claim the tax credit no later than the last day of the~~
4 ~~third calendar year following in the calendar year in which the~~
5 ~~purchase or assignment is made.~~

6 ~~(b) Amount. The amount of the tax credit that a purchaser~~
7 ~~or assignee under section 1709 J may use against any one~~
8 ~~qualified tax liability may not exceed 75% of any of the~~
9 ~~qualified tax liabilities for the taxable year.~~

10 ~~(c) Resale and reassignment.~~

11 ~~(1) A purchaser under section 1709 J may not sell or~~
12 ~~assign the purchased tax credit.~~

13 ~~(2) An assignee under section 1709 J may not sell or~~
14 ~~assign the assigned tax credit.~~

15 ~~(d) Notice. The purchaser or assignee under section 1709 J~~
16 ~~shall notify the department of the seller or assignor of the tax~~
17 ~~credit in compliance with procedures specified by the~~
18 ~~department.~~

19 ~~Section 1711 J. Administration.~~

20 ~~(a) Audits and assessments. The department has the~~
21 ~~following powers:~~

22 ~~(1) To audit a qualified taxpayer claiming a tax credit~~
23 ~~to ascertain the validity of the amount claimed.~~

24 ~~(2) To issue an assessment against a qualified taxpayer~~
25 ~~for an improperly issued tax credit. The procedures,~~
26 ~~collection, enforcement and appeals of any assessment made~~
27 ~~under this section shall be governed by Article II.~~

28 ~~(b) Guidelines. The department shall develop written~~
29 ~~guidelines for the implementation of this article.~~

30 ~~Section 1712 J. Annual report to General Assembly.~~

1 ~~By October 1, 2016, and October 1 of each year thereafter,~~
2 ~~the department shall submit a report on the tax credit to the~~
3 ~~chairman and minority chairman of the Appropriations Committee~~
4 ~~of the Senate, the chairman and minority chairman of the Finance~~
5 ~~Committee of the Senate, the chairman and minority chairman of~~
6 ~~the Appropriations Committee of the House of Representatives and~~
7 ~~the chairman and minority chairman of the Finance Committee of~~
8 ~~the House of Representatives. The report shall include the names~~
9 ~~of the qualified taxpayers utilizing the tax credit as of the~~
10 ~~date of the report and the amount of tax credits approved for,~~
11 ~~utilized by or sold or assigned by a qualified taxpayer.~~

12 ~~Section 1713 J. Expiration.~~

13 ~~This article shall expire December 31, 2023.~~

14 ~~Section 1714 J. Applicability.~~

15 ~~The tax credit shall be effective for taxable years beginning~~
16 ~~on or after January 1, 2014.~~

17 ~~Section 2. This act shall take effect immediately.~~

18 ARTICLE XVII-J

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19 COAL REFUSE ENERGY AND

20 RECLAMATION TAX CREDIT

21 SECTION 1701-J. SCOPE OF ARTICLE.

22 THIS ARTICLE ESTABLISHES A COAL REFUSE ENERGY AND RECLAMATION
23 TAX CREDIT, IN RECOGNITION OF THE SIGNIFICANT AND TANGIBLE
24 BENEFITS TO THE ENVIRONMENT AND SAVINGS IN COMMONWEALTH FUNDS
25 PROVIDED BY ELIGIBLE FACILITIES IN RECLAIMING COAL REFUSE PILES
26 AND PREVIOUSLY MINED LANDS.

27 SECTION 1702-J. DEFINITIONS.

28 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ARTICLE
29 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
30 CONTEXT CLEARLY INDICATES OTHERWISE:

1 "APPLICABLE ANNUAL PERIOD." THE 12-MONTH CALENDAR YEAR IN
2 WHICH THE COMBUSTION OF QUALIFIED FUEL AND THE BENEFICIAL USE OF
3 ASH IS MEASURED TO DETERMINE THE AMOUNT OF CREDITS REQUESTED
4 UNDER SECTION 1703-J(B).

5 "COAL REFUSE." ANY WASTE COAL, ROCK, SHALE, SLURRY, CULM,
6 GOB, BONEY, SLATE, CLAY AND RELATED MATERIALS ASSOCIATED WITH OR
7 NEAR A COAL SEAM THAT ARE EITHER BROUGHT ABOVEGROUND OR
8 OTHERWISE REMOVED FROM A COAL MINE IN THE PROCESS OF MINING COAL
9 OR THAT ARE SEPARATED FROM COAL DURING THE CLEANING OR
10 PREPARATION OPERATIONS. "COAL REFUSE" INCLUDES UNDERGROUND
11 DEVELOPMENT WASTES, COAL PROCESSING WASTES AND EXCESS SPOIL, BUT
12 DOES NOT MEAN OVERBURDEN FROM SURFACE MINING ACTIVITIES.

13 "DEPARTMENT." THE DEPARTMENT OF COMMUNITY AND ECONOMIC
14 DEVELOPMENT OF THE COMMONWEALTH.

15 "ELIGIBLE FACILITY." AN ELECTRIC GENERATING FACILITY PLACED
16 IN SERVICE BEFORE THE EFFECTIVE DATE OF THIS ARTICLE CONSISTING
17 OF ONE OR MORE UNITS PLACED IN SERVICE BEFORE THE EFFECTIVE DATE
18 OF THIS ARTICLE THAT GENERATE ELECTRICITY LOCATED ON THE SAME
19 PROPERTY AND THAT:

20 (1) COMBUSTS QUALIFIED FUEL OR FUEL COMPOSED OF AT LEAST
21 75% QUALIFIED FUEL BY BTU ENERGY VALUE IN THE APPLICABLE
22 ANNUAL PERIOD;

23 (2) UTILIZES AT A MINIMUM A CIRCULATING FLUIDIZED BED
24 COMBUSTION UNIT OR PRESSURIZED FLUIDIZED BED COMBUSTION UNIT
25 EQUIPPED WITH A LIMESTONE INJECTION SYSTEM FOR CONTROL OF
26 ACID GASSES AND A FABRIC FILTER PARTICULATE EMISSION CONTROL
27 SYSTEM; AND

28 (3) BENEFICIALLY USES ASH PRODUCED BY THE FACILITY IN
29 THE APPLICABLE ANNUAL PERIOD TO RECLAIM MINING-AFFECTED SITES
30 IN ACCORDANCE WITH 25 PA. CODE CH. 290 (RELATING TO

1 BENEFICIAL USE OF COAL ASH) IN AMOUNTS EQUAL TO AT LEAST 50%
2 OF THE ASH PRODUCED BY THE FACILITY IN THE APPLICABLE ANNUAL
3 PERIOD.

4 "PASS-THROUGH ENTITY." ANY OF THE FOLLOWING:

5 (1) A PARTNERSHIP AS DEFINED IN SECTION 301(N.0).

6 (2) A PENNSYLVANIA S CORPORATION AS DEFINED IN SECTION
7 301(N.1).

8 (3) AN UNINCORPORATED ENTITY SUBJECT TO SECTION 307.21.

9 "QUALIFIED FUEL." COAL REFUSE.

10 "QUALIFIED TAX LIABILITY." THE LIABILITY FOR TAXES IMPOSED
11 UNDER ARTICLE III, IV, VI, VII, VIII, IX, XI OR XV. THE TERM
12 DOES NOT INCLUDE TAX WITHHELD BY AN EMPLOYER FROM AN EMPLOYEE
13 UNDER ARTICLE III.

14 "QUALIFIED TAXPAYER." A PERSON THAT OWNS AN ELIGIBLE
15 FACILITY IN THIS COMMONWEALTH, OR IS A TRANSFEROR, PURCHASER,
16 AFFILIATE OR ASSIGNEE OF A PERSON TO WHICH A TAX CREDIT
17 CERTIFICATE IS ISSUED UNDER THIS ARTICLE.

18 "TAX CREDIT." THE COAL REFUSE ENERGY AND RECLAMATION TAX
19 CREDIT PROVIDED UNDER THIS ARTICLE.

20 "TAX CREDIT RATE." FOR QUALIFIED FUEL COMBUSTED AT AN
21 ELIGIBLE FACILITY IN EACH CALENDAR YEAR, THE RATE OF \$4 PER TON
22 OF QUALIFIED FUEL USED AT THE ELIGIBLE FACILITY.

23 "TON." TWO THOUSAND POUNDS OF QUALIFIED FUEL, INCLUDING
24 INHERENT MOISTURE, ASH, SULPHUR AND OTHER NONCALORIFIC
25 SUBSTANCES, BUT EXCLUDING EXCESS MOISTURE.

26 SECTION 1703-J. APPLICATION AND APPROVAL OF TAX CREDIT.

27 (A) RATE.--THE TAX CREDIT SHALL BE EQUAL TO THE TAX CREDIT
28 RATE TIMES THE TONS OF QUALIFIED FUEL USED TO GENERATE
29 ELECTRICITY AT AN ELIGIBLE FACILITY IN THIS COMMONWEALTH BY A
30 QUALIFIED TAXPAYER. BY FEBRUARY 1 OF EACH YEAR STARTING IN 2016,

1 OR AS SOON AS PRACTICAL AFTER DATA NEEDED TO ADJUST THE TAX
2 CREDIT RATE IS AVAILABLE, THE DEPARTMENT SHALL DETERMINE AND
3 PUBLISH NOTICE OF THE ADJUSTED TAX CREDIT RATE FOR THE PRIOR
4 CALENDAR YEAR. REGARDLESS OF WHEN THE NOTICE IS PUBLISHED, THE
5 REVISED TAX CREDIT RATE WILL APPLY TO THE CALENDAR YEAR IN WHICH
6 QUALIFIED FUEL IS USED TO GENERATE ELECTRICITY AT AN ELIGIBLE
7 FACILITY. THE TAX CREDIT RATE, MEASURED BASED ON THE AMOUNT OF
8 QUALIFIED FUEL USED, SERVES AS A SURROGATE MEASURE FOR
9 ENVIRONMENTAL BENEFITS, INCLUDING WATER QUALITY IMPROVEMENT, AIR
10 POLLUTION ABATEMENT AND LAND RESTORATION, DERIVED FROM ELIGIBLE
11 FACILITIES THROUGH THE UTILIZATION OF COAL REFUSE AND ASSOCIATED
12 RECLAMATION OF COAL REFUSE PILES, AND THE BENEFICIAL USE OF COAL
13 ASH FOR RECLAMATION OF MINE-AFFECTED LANDS.

14 (B) APPLICATION.--

15 (1) A QUALIFIED TAXPAYER MAY APPLY TO THE DEPARTMENT FOR
16 A TAX CREDIT UNDER THIS SECTION. THE APPLICATION SHALL BE ON
17 THE FORM REQUIRED BY THE DEPARTMENT.

18 (2) THE APPLICATION MUST BE SUBMITTED TO THE DEPARTMENT
19 BY FEBRUARY 1 OF EACH YEAR FOR THE TAX CREDIT CLAIMED FOR
20 QUALIFIED FUEL USED AT AN ELIGIBLE FACILITY DURING THE PRIOR
21 CALENDAR YEAR.

22 (3) THE DEPARTMENT MAY REQUIRE INFORMATION NECESSARY TO
23 DOCUMENT THAT A FACILITY QUALIFIES AS AN ELIGIBLE FACILITY
24 AND THE AMOUNT OF QUALIFIED FUEL USED TO GENERATE ELECTRICITY
25 AT THE ELIGIBLE FACILITY.

26 (4) IN THE REVIEW OF APPLICATIONS FOR TAX CREDITS, THE
27 DEPARTMENT SHALL CONSULT WITH THE DEPARTMENT OF ENVIRONMENTAL
28 PROTECTION WITH RESPECT TO WHETHER A FACILITY QUALIFIES AS AN
29 ELIGIBLE FACILITY AND TO REVIEW THE ELIGIBLE FACILITY'S
30 CALCULATION OF THE AMOUNT OF QUALIFIED FUEL USED TO GENERATE

1 ELECTRICITY.

2 (C) REVIEW AND APPROVAL.--

3 (1) THE DEPARTMENT SHALL REVIEW AND APPROVE APPLICATIONS
4 MEETING THE REQUIREMENTS OF THIS ARTICLE BY MARCH 20 OF EACH
5 YEAR.

6 (2) UPON APPROVAL, THE DEPARTMENT SHALL ISSUE A
7 CERTIFICATE STATING THE AMOUNT OF TAX CREDIT GRANTED FOR
8 QUALIFIED FUEL USED IN THE PRIOR CALENDAR YEAR. THE CALENDAR
9 YEAR IN WHICH THE QUALIFIED FUEL WAS USED AS SET FORTH IN THE
10 APPLICATION SHALL BE DESIGNATED AS THE INITIAL YEAR IN WHICH
11 THE TAX CREDITS MAY BE USED. THE TAX CREDITS MAY BE USED IN
12 ANY TAX YEAR BEGINNING IN THE DESIGNATED CALENDAR YEAR AND
13 THEREAFTER AS PROVIDED IN SECTION 1704-J.

14 SECTION 1704-J. CARRYOVER AND CARRYBACK.

15 A TAX CREDIT CANNOT BE CARRIED BACK OR USED TO CLAIM REFUNDS.
16 A TAX CREDIT CAN BE CARRIED FORWARD UP TO 15 TAX YEARS FOLLOWING
17 THE TAX YEAR IN WHICH THE TAX CERTIFICATE MAY INITIALLY BE USED
18 BY A QUALIFIED TAXPAYER.

19 SECTION 1705-J. LIMITATION ON TAX CREDITS.

20 (A) AMOUNT.--THE TOTAL AMOUNT OF TAX CREDITS ISSUED BY THE
21 DEPARTMENT SHALL NOT EXCEED \$45,000,000 IN ANY FISCAL YEAR.

22 (B) PRORATION.--IF THE TOTAL AMOUNT OF TAX CREDITS APPLIED
23 FOR BY ALL QUALIFIED TAXPAYERS EXCEEDS THE AMOUNT ALLOCATED FOR
24 THOSE TAX CREDITS, THEN THE TAX CREDIT TO BE RECEIVED BY EACH
25 APPLICANT SHALL BE THE PRODUCT OF THE ALLOCATED AMOUNT
26 MULTIPLIED BY THE QUOTIENT OF THE TAX CREDITS APPROVED FOR THE
27 APPLICANT DIVIDED BY THE TOTAL OF ALL TAX CREDITS APPROVED FOR
28 ALL APPLICANTS.

29 (C) RESTRICTION.--NOTWITHSTANDING SUBSECTION (B), THE
30 DEPARTMENT SHALL NOT GRANT MORE THAN \$10,000,000 IN TAX CREDITS

1 TO A SINGLE ELIGIBLE FACILITY IN ANY FISCAL YEAR.

2 SECTION 1706-J. PASS-THROUGH ENTITY.

3 (A) ELECTION.--IF A TAX CREDIT CERTIFICATE IS ISSUED TO A
4 PASS-THROUGH ENTITY, IT MAY ELECT IN WRITING, ACCORDING TO
5 PROCEDURES ESTABLISHED BY THE DEPARTMENT, TO TRANSFER ALL OR A
6 PORTION OF THE CREDIT TO SHAREHOLDERS, MEMBERS OR PARTNERS IN
7 PROPORTION TO THE SHARE OF THE ENTITY'S DISTRIBUTIVE INCOME TO
8 WHICH THE SHAREHOLDERS, MEMBERS OR PARTNERS ARE ENTITLED, OR IN
9 ANY OTHER MANNER DESIGNATED BY THE PASS-THROUGH ENTITY.

10 (B) LIMITATION.--THE SAME UNUSED TAX CREDIT UNDER SUBSECTION
11 (A) MAY NOT BE CLAIMED BY:

12 (1) THE PASS-THROUGH ENTITY; AND

13 (2) A SHAREHOLDER, MEMBER OR PATRON OF THE PASS-THROUGH
14 ENTITY.

15 (C) TIME.--A TRANSFEREE UNDER SUBSECTION (A) MAY ONLY USE A
16 TAX CREDIT DURING A TAX YEAR FROM WHICH USE OF THE CREDIT IS
17 AUTHORIZED UNDER SECTIONS 1703-J(C) (2) AND 1705-J.

18 SECTION 1707-J. USE OF CREDITS BY AFFILIATES.

19 IN ADDITION TO REDUCING OR ELIMINATING THE QUALIFIED TAX
20 LIABILITY OF A QUALIFIED TAXPAYER, A TAX CREDIT UNDER THIS
21 ARTICLE SHALL BE APPLIED TO REDUCE OR ELIMINATE THE QUALIFIED
22 TAX LIABILITY OF ANY RELATED PARTY, AS THAT TERM IS DEFINED IN
23 SECTION 267 OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-
24 514, 26 U.S.C. § 1 ET SEQ.), TO A QUALIFIED TAXPAYER. AN
25 AFFILIATE MAY ONLY USE A TAX CREDIT DURING A TAX YEAR FOR WHICH
26 USE OF THE CREDIT IS AUTHORIZED UNDER SECTIONS 1703-J(C) (2) AND
27 1704-J.

28 SECTION 1708-J. SALE OR ASSIGNMENT.

29 (A) AUTHORIZATION.--UPON APPROVAL BY THE DEPARTMENT OF
30 REVENUE, A QUALIFIED TAXPAYER MAY SELL OR ASSIGN A TAX CREDIT,

1 IN WHOLE OR IN PART.

2 (B) APPLICATION.--

3 (1) TO SELL OR ASSIGN A TAX CREDIT, A QUALIFIED TAXPAYER
4 MUST FILE AN APPLICATION FOR THE SALE OR ASSIGNMENT OF THE
5 TAX CREDIT WITH THE DEPARTMENT OF REVENUE. THE APPLICATION
6 MUST BE ON A FORM REQUIRED BY THE DEPARTMENT OF REVENUE.

7 (2) THE DEPARTMENT OF REVENUE SHALL APPROVE A SALE OR
8 ASSIGNMENT IF THE TRANSFEREE OR PURCHASER HAS:

9 (I) FILED ALL REQUIRED STATE TAX REPORTS AND RETURNS
10 FOR ALL APPLICABLE TAXABLE YEARS; AND

11 (II) PAID ANY BALANCE OF STATE TAX DUE AS DETERMINED
12 BY ASSESSMENT OR DETERMINATION BY THE DEPARTMENT OF
13 REVENUE AND NOT UNDER TIMELY APPEAL.

14 SECTION 1709-J. PURCHASERS AND ASSIGNEES.

15 (A) TIME.--THE PURCHASER OR ASSIGNEE UNDER SECTION 1708-J
16 MAY ONLY USE A TAX CREDIT DURING A TAX YEAR FOR WHICH USE OF THE
17 CREDIT IS AUTHORIZED UNDER SECTIONS 1703-J(C) (2) AND 1704-J.

18 (B) AMOUNT.--THE AMOUNT OF THE TAX CREDIT THAT A PURCHASER
19 OR ASSIGNEE UNDER SECTION 1708-J MAY USE AGAINST ANY ONE
20 QUALIFIED TAX LIABILITY MAY NOT EXCEED 75% OF ANY OF THE
21 QUALIFIED TAX LIABILITIES OF THE PURCHASER OR ASSIGNEE FOR THE
22 TAXABLE YEAR FOR WHICH THE TAX CREDIT PERTAINS.

23 SECTION 1710-J. ADMINISTRATION.

24 (A) AUDITS AND ASSESSMENTS.--THE DEPARTMENT HAS THE
25 FOLLOWING POWERS:

26 (1) TO AUDIT A QUALIFIED TAXPAYER CLAIMING A TAX CREDIT
27 TO ASCERTAIN THE VALIDITY OF THE AMOUNT CLAIMED.

28 (2) TO ISSUE AN ASSESSMENT AGAINST A QUALIFIED TAXPAYER
29 FOR AN IMPROPERLY ISSUED TAX CREDIT. THE PROCEDURES,
30 COLLECTION, ENFORCEMENT AND APPEALS OF ANY ASSESSMENT MADE

1 UNDER THIS SECTION SHALL BE GOVERNED BY ARTICLE IV.

2 (B) GUIDELINES.--THE DEPARTMENT SHALL DEVELOP WRITTEN
3 GUIDELINES FOR THE IMPLEMENTATION OF THIS ARTICLE.

4 SECTION 1711-J. ANNUAL REPORT TO GENERAL ASSEMBLY.

5 BY OCTOBER 1, 2016, AND OCTOBER 1 OF EACH YEAR THEREAFTER,
6 THE DEPARTMENT SHALL SUBMIT A REPORT ON THE TAX CREDIT PROVIDED
7 BY THIS ARTICLE TO THE CHAIRMAN AND MINORITY CHAIRMAN OF THE
8 APPROPRIATIONS COMMITTEE OF THE SENATE, THE CHAIRMAN AND
9 MINORITY CHAIRMAN OF THE FINANCE COMMITTEE OF THE SENATE, THE
10 CHAIRMAN AND MINORITY CHAIRMAN OF THE APPROPRIATIONS COMMITTEE
11 OF THE HOUSE OF REPRESENTATIVES AND THE CHAIRMAN AND MINORITY
12 CHAIRMAN OF THE FINANCE COMMITTEE OF THE HOUSE OF
13 REPRESENTATIVES. THE REPORT MUST INCLUDE:

14 (1) THE NAMES OF THE QUALIFIED TAXPAYERS UTILIZING THE
15 TAX CREDIT AS OF THE DATE OF THE REPORT AND THE AMOUNT OF TAX
16 CREDITS APPROVED FOR, UTILIZED BY OR SOLD OR ASSIGNED BY A
17 QUALIFIED TAXPAYER; AND

18 (2) DATA CONCERNING THE BENEFITS PROVIDED TO THE
19 COMMONWEALTH IN TERMS OF THE QUANTITY OF COAL REFUSE UTILIZED
20 BY QUALIFYING FACILITIES AND VOLUME OF COAL ASH GENERATED BY
21 QUALIFYING FACILITIES WHICH IS BENEFICIALLY USED TO RECLAIM
22 MINE-AFFECTED LANDS.

23 SECTION 1712-J. EXPIRATION.

24 THIS ARTICLE SHALL EXPIRE DECEMBER 31, 2026.

25 SECTION 1713-J. APPLICABILITY.

26 THE TAX CREDIT ESTABLISHED UNDER THIS ARTICLE SHALL BE
27 EFFECTIVE FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1,
28 2016.

29 SECTION 2. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.