

No. 2008-79

AN ACT

SB 1412

Amending the act of October 6, 1998 (P.L.705, No.92), entitled, as amended, "An act providing for the creation of keystone opportunity zones and keystone opportunity expansion zones to foster economic opportunities in this Commonwealth, to facilitate economic development, stimulate industrial, commercial and residential improvements and prevent physical and infrastructure deterioration of geographic areas within this Commonwealth; authorizing expenditures; providing tax exemptions, tax deductions, tax abatements and tax credits; creating additional obligations of the Commonwealth and local governmental units; and prescribing powers and duties of certain State and local departments, agencies and officials," defining "unoccupied parcel"; providing for extensions for unoccupied parcels, for additional keystone opportunity expansion zones, for substitution of parcels outside a subzone and for payments; prohibiting illegal alien labor in zones; and further providing for sales and use tax, for corporate net income tax and for local earned income net profits taxes, local sales and use tax and business privilege taxes.

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

Section 1. Section 103 of the act of October 6, 1998 (P.L.705, No.92), known as the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act, is amended by adding a definition to read:

Section 103. Definitions.

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

* * *

"Unoccupied parcel." *A parcel that is not occupied on the effective date of this definition. Construction activity on a parcel shall not constitute occupation of the parcel.*

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

Section 301.3. Extension for unoccupied parcels.

(a) Extension.—The department may approve an application to extend the exemptions, deductions, abatements and credits under this act as follows:

(1) One of the following:

(i) For a parcel in a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone that is an unoccupied parcel on the effective date of this section, for a period of seven years from the expiration date of the zone.

(ii) For a parcel in a keystone opportunity zone or keystone opportunity expansion zone that is an unoccupied parcel on the

effective date of this section, for a period of ten years from the date of occupancy, provided that the parcel is occupied on or before December 31, 2015.

(2) The extension of exemptions, deductions, abatements or credits authorized under this section, except exemptions for sales and use tax under section 511(a) or 705(a), shall take effect only upon occupancy.

(b) Real estate tax abatement.—The owner of an unoccupied parcel in a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone that has expired but that receives an extension of tax abatement eligibility following the original expiration date of the keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone under subsection (a) shall not receive an abatement of real property tax until the parcel becomes occupied or developed.

(c) Application.—Except as provided in subsection (d), in order to extend the tax benefits for unoccupied parcels under subsection (a), the department must receive an application from a political subdivision or its designee no later than June 30, 2009. The application must contain the information required under section 302(a)(1), (2), (3), (5) and (6). The application must include all ordinances, resolutions or other required action adopted by all political subdivisions in which the unoccupied parcel is located adopting the extension of all tax exemptions, deductions, abatements and credits authorized under Chapter 7. The department, in consultation with the Department of Revenue, shall review the application and, if approved, issue a certification of all tax exemptions, deductions, abatements or credits under this part for the unoccupied parcel within three months of receipt of the application. The certification shall be effective on the day following the expiration date of the existing subzone.

(d) Applications for certain zones.—For a keystone opportunity zone that expires December 31, 2008, an application may be submitted to the department to temporarily delay the expiration of the exemptions, deductions, abatements and credits for the zone until June 30, 2009. The application must be submitted by November 30, 2008, and include all ordinances, resolutions or other required action from all affected political subdivisions approving the requested delay in the expiration of the keystone opportunity zone. The department shall certify the delay in the expiration by December 31, 2008. If the expiration of a keystone opportunity zone is delayed under this subsection, a political subdivision or its designee may apply for an extension pursuant to subsection (c), provided that the application shall be submitted by May 1, 2009, and approved by the department no later than June 30, 2009. If an extension is granted under subsection (c), the extension shall be deemed to be effective January 1, 2009.

(e) Expiration.—All extensions of an unoccupied parcel certified under subsection (a)(1)(i) shall expire no later than seven years following the

expiration date of the existing keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone. All extensions of an unoccupied parcel certified under subsection (a)(1)(ii) shall expire no later than ten years following the date of occupancy of the unoccupied parcel.

Section 301.4. Additional keystone opportunity expansion zones.

(a) Establishment.—

(1) *In addition to any designations under section 301.1, the department may designate up to 15 additional keystone opportunity expansion zones in accordance with this section. Each additional keystone opportunity expansion zone shall:*

(i) *Not be less than ten acres in size, unless contiguous to an existing zone.*

(ii) *Not exceed, in the aggregate, a total of 350 acres.*

(iii) *Be comprised of parcels that meet any of the following criteria:*

(A) *Are deteriorated, underutilized or unoccupied on the effective date of this clause.*

(B) *Are occupied by a business that:*

(I) *Creates or retains at least 1,400 full-time jobs in this Commonwealth within three years of the designation of the keystone opportunity expansion zone; and*

(II) *Makes a capital investment of at least \$750,000,000 in the additional keystone opportunity enhancement zone within three years of the designation of the keystone opportunity expansion zone.*

(2) *The department shall immediately notify political subdivisions located within the area designated.*

(b) Authorization.—*Persons and businesses within an additional keystone opportunity expansion zone authorized under subsection (a) shall be entitled to all tax exemptions, deductions, abatements or credits set forth under this act, except exemptions for sales and use tax under section 511(a) or 705(a), for a period of ten years beginning January 1, 2010, and ending on December 31, 2020. Exemptions for sales and use taxes under sections 511 and 705 shall commence upon designation of the zone by the department.*

(c) Application.—*In order to receive a designation under subsection (a), the department must receive an application from a political subdivision or its designee no later than May 1, 2009. The application must contain the information required under section 302(a)(1), (2)(i) and (ix) and (6). The application must include all ordinances, resolutions or other required action adopted by all political subdivisions in which the keystone opportunity expansion zone is located providing the tax exemptions, deductions, abatements and credits authorized under Chapter 7. The department, in consultation with the Department of Revenue, shall review*

the application and, if approved, issue a certification of all tax exemptions, deductions, abatements or credits under this part for the additional keystone opportunity expansion zone within three months of receipt of the application. The department shall act on an application under this subsection by June 30, 2009.

Section 301.5. Expansion for new parcels.

(a) Expansion.—A political subdivision or its designee may apply for an expansion to add up to 15 acres of deteriorated property to an existing keystone opportunity expansion zone, keystone opportunity improvement zone or a subzone of a keystone opportunity zone for parcels that are contiguous to the existing zone or subzone.

(b) Application.—In order to receive a designation under this section, the department must receive an application from a political subdivision or its designee no later than December 31, 2008. The application must contain the information required under section 302(a)(1), (2)(i) and (ix), (5) and (6). The application must include all ordinances, resolutions or other required action adopted by all political subdivisions in which the keystone opportunity expansion zone, keystone opportunity improvement zone or a subzone of a keystone opportunity zone is located adopting all tax exemptions, deductions, abatements and credits authorized under Chapter 7 to the expanded area. The department, in consultation with the Department of Revenue, shall review the application and, if approved, issue a certification of all tax exemptions, deductions, abatements or credits under this act for the expansion authorized under subsection (a) within two months of the receipt of the application.

(c) Applications for certain zones.—For a keystone opportunity zone that expires December 31, 2008, but is seeking an extension under section 301.3, the application shall include the request for an expansion under subsection (a). The application must be submitted by December 31, 2008, and include all ordinances, resolutions or other required action from all affected political subdivisions approving the addition of the acreage. If the expiration of a keystone opportunity zone is delayed under this subsection, a political subdivision or its designee may apply for an extension under section 301.3 and an expansion under this section. If an extension is granted under section 301.3, the extension and the expansion shall be deemed to be effective January 1, 2009.

(d) Authorization.—Persons or businesses within the expanded area shall be entitled to all tax exemptions, deductions, abatements or credits set forth under this act, except for sales and use taxes under section 511(a) or 705(a), for the period set forth in subsection (e). Exemptions for sales and use taxes under sections 511 and 705 shall commence upon approval of the expansion by the department.

(e) Expiration.—All expansions under this section shall expire on the same date as the keystone opportunity expansion zone, keystone opportunity improvement zone or subzone of a keystone opportunity zone.

Section 301.6. Substitution of parcels outside a subzone.

(a) Approval.—If a portion of an existing subzone is affected by a governmental prohibition of an environmental nature which has a substantial adverse effect on development, the department may approve a substitution of other parcels for those affected acres in the existing subzone, creating a new subzone if the new subzone is substantially similar in acreage size and is within five miles and in the same county as the original subzone.

(b) Application and approval.—Applications to substitute parcels under this section shall be made to the department no later than May 31, 2009. Applications under this section shall be made to the department in accordance with section 302(a)(1), (2), (3), (5) and (6). The department shall certify the substitutions by June 30, 2009.

Section 310. Payments.

The following shall apply to an agreement between a business and a political subdivision entered into after the effective date of this section in exchange for the approval of, or otherwise relating to, the establishment of a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone under this act, to include an extension under section 301.2:

(1) Except as otherwise required or authorized by law, a business may not provide payments to a political subdivision in exchange for the approval of, or otherwise relating to, the designation or extension of a keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone in excess of 110% of the amount of real property taxes payable to the political subdivision for the tax year immediately prior to the year in which the designation or extension is granted. The limitation on payments set forth under this paragraph may increase by the percentage increase in the payments that would occur if the property was not exempt from local real property taxes.

(2) Except as provided under paragraph (3), payments made under paragraph (1) may be increased based on a taxpayer assessment appeal or as necessary to correct any errors or omissions in the county's assessment records. Payments may be increased following a county-wide reassessment based on improvements to the property made prior to the approval of the designation or expansion.

(3) Payments may not be increased for the duration of the designation or expansion based on an increase in the assessed value of property due to improvements to the property made subsequent to designation.

(4) Any agreement to make payments under this section shall be in writing and approved by a majority vote of the governing body of the political subdivision at a meeting that is subject to 65 Pa.C.S. Ch. 7 (relating to open meetings).

Section 311. Prohibition on illegal alien labor.

(a) **General rule.**—No person or business that receives a tax exemption, deduction, abatement or credit under this act shall knowingly permit the labor services of an illegal alien under a contract to which the person or business is a party in the applicable keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone. A person shall be deemed to have knowingly employed or knowingly permitted the prohibited services if he shall have active knowledge of or have reason to know that such services have been provided under the contract in the applicable keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone.

(b) **Reimbursement.**—As a condition of the receipt of a tax exemption, deduction, abatement or credit under this act, the department or political subdivision that awards the tax exemption, deduction, abatement of credit under this act shall require full repayment of the value or amount of the tax exemption, deduction, abatement or credit if subsection (c) applies.

(c) **Violations.**—

(1) Repayment under subsection (b) is required if any of the following apply:

(i) The person or business that received the tax exemption, deduction, abatement or credit under this act is sentenced under Federal law for an offense involving knowing use of labor by an illegal alien under the contract in the applicable keystone opportunity zone, keystone opportunity expansion zone or keystone improvement zone.

(ii) All of the following apply:

(A) A contractor to a person or business that received the tax exemption, deduction, abatement or credit under this act is sentenced under Federal law for an offense involving knowing use of labor by an illegal alien on the contract.

(B) The person knew or had reason to know of the contractor's knowing use of labor by an illegal alien on the contract.

(2) Any person who is required to repay the department or political subdivision under this section shall be ineligible to apply for any tax exemption, deduction, abatement or credit under this act for a period of two years.

(3) It shall be an affirmative defense to a violation of this section, if the person or business contracts with a contractor to provide labor under the contract in the applicable keystone opportunity zone, keystone opportunity expansion zone or keystone opportunity improvement zone and establishes that the person has required the contractor to certify compliance with the requirements of section 274A of the Immigration Reform and Control Act of 1986 (Public Law 99-603, 8 U.S.C. § 1324A) with respect to the hiring, recruiting or referral for employment of an

alien in the United States and has notified the appropriate Federal authority, if the person knew that the contractor used labor by an illegal alien.

(d) Definition.—As used in this section, “illegal alien” means a noncitizen of the United States who is violating Federal immigration laws and is providing compensated labor within this Commonwealth.

Section 3. Section 511 of the act, amended December 9, 2002 (P.L.1727, No.217), is amended to read:

Section 511. Sales and use tax.

(a) Exemption.—Sales at retail of services or tangible personal property, other than motor vehicles, to a qualified business *or a construction contractor pursuant to a construction contract with a qualified business, landowner or lessee* for the exclusive use, consumption and utilization of the tangible personal property or service by the qualified business at [its] *the qualified business’s, landowner’s or lessee’s* facility located within a subzone, improvement subzone or expansion subzone are exempt from the sales and use tax imposed under Article II of the Tax Reform Code of 1971. No person shall be allowed an exemption for sales conducted prior to designation of the real property as part of a subzone or expansion subzone.

[(b) Construction contracts.—For any construction contract performed in a subzone, improvement subzone or expansion subzone, the exemption provided in subsection (a) shall only apply to the sale at retail or use of building machinery and equipment to a qualified business, or to a construction contractor pursuant to a construction contract with a qualified business, for the exclusive use, consumption and utilization by the qualified business at its facility in a subzone, improvement subzone or expansion subzone. For the purposes of the subzone, improvement subzone or expansion subzone exemption, building machinery and equipment shall include distribution equipment purchased for the exclusive use, consumption and utilization in a subzone, improvement subzone or expansion subzone facility.]

Section 4. Section 515(d) introductory paragraph and (3) of the act, amended December 23, 2003 (P.L.360, No.51), are amended to read:

Section 515. Corporate net income tax.

(d) Income apportionment.—The taxable income of a corporation that is a qualified business shall be apportioned to the subzone, improvement subzone or expansion subzone by multiplying the Pennsylvania taxable income by a fraction, the numerator of which is the property factor plus the payroll factor **[plus the sales factor]** and the denominator of which is **[three] two**, in accordance with the following:

[(3) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in the subzone, improvement subzone or expansion subzone during the tax period and the denominator of

which is the total sales of the taxpayer in this Commonwealth during the tax period.

(i) Sales of tangible personal property are in the subzone, improvement subzone or expansion subzone if the property is delivered or shipped to a purchaser that takes possession within the subzone, improvement subzone or expansion subzone regardless of the F.O.B. point or other conditions of the sale.

(ii) Sales other than sales of tangible personal property are in the subzone, improvement subzone or expansion subzone if:

(A) the income-producing activity is performed in the subzone, improvement subzone or expansion subzone; or

(B) the income-producing activity is performed both within and without the subzone, improvement subzone or expansion subzone and a greater proportion of the income-producing activity is performed in the subzone, improvement subzone or expansion subzone than in any other location, based on costs of performance.]

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Section 5. Section 703 of the act is amended by adding a subsection to read:

Section 703. Local earned income and net profits taxes; business privilege taxes.

* * *

(g) Determination of exemption.—For the purposes of determining an exemption under this section, a tax on or measured by any of the following shall be attributed to business activity conducted within a subzone, improvement zone or expansion zone by applying the apportionment factors under section 515(d):

(1) Business gross receipts.

(2) Gross or net income.

(3) Gross or net profits.

Section 6. Section 705 of the act, amended December 9, 2002 (P.L.1727, No.217), is amended to read:

Section 705. Local sales and use tax.

(a) General rule.—The political subdivision shall exempt sales at retail of services or tangible personal property, except motor vehicles, to a qualified business *or a construction contractor pursuant to a construction contract with a qualified business, landowner or lessee* for the exclusive use, consumption and utilization of the tangible personal property or service by the qualified business at [its] *the qualified business's, landowner's or lessee's* facility located within a subzone, improvement subzone or expansion subzone from a city or county tax on purchase price authorized under Article XXXI-B of the act of July 28, 1953 (P.L.723, No.230), known as the Second Class County Code, as amended, and the act of June 5, 1991 (P.L.9, No.6), known as the Pennsylvania Intergovernmental Cooperation Authority Act for

Cities of the First Class, as amended. No exemption may be granted for sales occurring prior to designation of the real property as part of a subzone or expansion subzone.

(b) [Construction contracts.—For any construction contract performed in a subzone, improvement subzone or expansion subzone, the exemption provided in subsection (a) shall only apply to the sale at retail or use of building machinery and equipment to a qualified business, or to a construction contractor pursuant to a construction contract with a qualified business, for the exclusive use, consumption and utilization by the qualified business at its facility in a subzone, improvement subzone or expansion subzone. For the purposes of the subzone, improvement subzone or expansion subzone exemption, building machinery and equipment shall include distribution equipment purchased for the exclusive use, consumption and utilization in a subzone, improvement subzone or expansion subzone facility.] (Reserved).

(c) Definition.—Sales at retail of tangible personal property and services shall be defined in accordance with Article II of the Tax Reform Code of 1971.

Section 7. The amendment of sections 515 and 703 of the act shall apply to taxable years beginning after December 31, 2008.

Section 8. This act shall take effect in 60 days.

APPROVED—The 10th day of July, A.D. 2008.

EDWARD G. RENDELL