

No. 1999-63

AN ACT

HB 1848

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," further providing for the calculation of the manufacturing, processing, research and development capital stock and franchise tax exemptions; continuing and expanding a tax credit to employers who hire certain individuals; and making a repeal.

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

Section 1. Section 602(b) of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended May 12, 1999 (P.L.26, No.4), is amended to read:

Section 602. Imposition of Tax.—* * *

(b) (1) Every foreign entity from which a report is required under section 601 hereof, shall be subject to and pay to the department annually, a franchise tax which is the greater of (i) the amount computed by multiplying each dollar of the capital stock value as defined in section 601(a) by the appropriate rate of tax as set forth in subsection (h); or (ii) the minimum tax set forth in subsection (i), upon a taxable value to be determined in the following manner. The capital stock value shall be ascertained in the manner prescribed in section 601(a) of this article. The taxable value shall then be determined by employing the relevant apportionment factors set forth in Article IV: Provided, That the manufacturing, processing, research and development exemptions contained under section 602(a) shall also apply to foreign corporations. **[and in determining the relevant apportionment factors the numerator of the property, payroll, or sales factors shall not include any property, payroll or sales attributable to manufacturing, processing, research or development activities in the Commonwealth: and Provided further, That, except] In determining the relevant apportionment factors, the following shall apply:**

(i) for all taxable years other than specifically set forth in subclause (ii), the numerator of the property, payroll or sales factors shall not include any property, payroll or sales attributable to manufacturing, processing, research or development activities in the Commonwealth;

(ii) for the taxable years beginning after December 31, 1998, and beginning before January 1, 2001, the numerator of the property or payroll

factors shall not include any property or payroll attributable to manufacturing, processing, research or development activities in the Commonwealth, and any property or payroll attributable to manufacturing, processing, research or development activities outside of the Commonwealth shall also be excluded from the numerator of the property or payroll factors. Except for the imposition of the minimum tax set forth in subsection (i), the provisions of this section shall not apply to the taxation of so much of the capital stock value attributable to student loan assets owned or held by an entity created for the securitization of student loans or by a trustee on its behalf. Any foreign corporation, joint-stock association, limited partnership or company subject to the tax prescribed herein may elect to compute and pay its tax under section 602(a): Provided, That any foreign corporation, joint-stock association, limited partnership or company electing to compute and pay its tax under section 602(a) shall be treated as if it were a domestic corporation for the purpose of determining which of its assets are exempt from taxation and for the purpose of determining the proportion of the value of its capital stock which is subject to taxation.

(2) The provisions of this article shall apply to the taxation of entities organized for manufacturing, processing, research or development purposes, but shall not apply to such entities as enjoy and exercise the right of eminent domain.

* * *

Section 2. Section 1701-A of the act, amended or added December 19, 1985 (P.L.356, No.102) and July 1, 1989 (P.L.109, No.23), is amended to read:

[Section 1701-A. Employment Incentive Payments.—(a) Any corporation, bank, savings institution, company, insurance company, or mutual thrift institution employing persons, who prior to their employment were recipients of aid to families with dependent children or who are classified as chronically or transitionally needy, pursuant to section 432 of the act of June 13, 1967 (P.L.31, No.21), known as the “Public Welfare Code,” shall be entitled to employment incentive payments to be provided as a credit against taxes imposed by Article IV, VII, VIII, IX or XV of this act, and any person, partnership or proprietorship employing such persons shall be entitled to payments to be provided as a credit against taxes imposed by Article III of this act. For the purposes of computing any tax liabilities against which the credit may be applied, deductions from taxable income shall be reduced by employment incentive payments. Employment incentive payments unused as a tax credit in any taxable year may be carried over against tax liabilities of the employer in the three immediately subsequent taxable years.

(b) An employment incentive payment may be claimed by an employer who hires any person who is receiving aid to families with dependent children or who is classified as chronically or transitionally

needy at the time of employment except that payments shall not be provided for:

(1) The employment of any person who displaces any other individual from employment, except persons discharged for cause as certified by the Office of Employment Security.

(2) The employment of any person closely related, as defined by paragraphs (1) through (8) of section 152(a) of the Internal Revenue Code, to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly more than fifty per cent of the outstanding stock of the corporation, bank, savings institution, company, insurance company, or mutual thrift institution.

(3) The employment of an individual for whom the employer is simultaneously receiving federally or State funded job training payments.

(4) The employment of an individual as a domestic or other household employe in the home of the employer.

(c) (1) The employment incentive payment shall be the sum of thirty per cent of the first six thousand dollars (\$6,000) of qualified first year wages for such year, twenty per cent of the first six thousand dollars (\$6,000) of qualified second year wages for such year and ten per cent of the first six thousand dollars (\$6,000) of the qualified third year wages for such year.

(2) If the employer provides or pays for day care services for the children of the employe, the employer shall be eligible to receive an additional employment incentive payment of up to six hundred dollars (\$600) during the first year of employment, five hundred dollars (\$500) during the second year of employment and four hundred dollars (\$400) during the third year of employment.

(3) Total employment incentive payments shall not exceed ninety per cent of total taxes paid by the employer against which the incentive payments may be claimed as a credit. Qualified wages must be cash remuneration to the employe, including any amounts deducted or withheld.

(d) To be eligible for employment incentive payments, the employment must continue for at least one year unless the employe voluntarily leaves the employment of the employer, becomes disabled or is terminated for cause. If the employe leaves his position voluntarily, becomes disabled, or is terminated for cause in less than one year, the employment incentive payment shall be reduced by the proportion of the year not worked. Employment initiated during the year may be claimed as an employment incentive payment in the subsequent year.

(e) The Department of Revenue, in cooperation with the Department of Public Welfare and the Department of Labor and Industry, shall administer the provisions of this section, promulgate appropriate rules, regulations and forms for that purpose and make such determinations as may be required. Determinations made with respect to the

employment incentive payment provided in this section may be reviewed and appealed in the manner provided by law for other corporate or personal tax credits. The Department of Public Welfare shall conduct a program of employer education to inform employers of the benefits available under this section as well as to inform them of any similar tax credits for hiring welfare recipients available under Federal law.

(f) The total amount of employment incentive payments authorized by this section shall not exceed twenty-five million dollars (\$25,000,000) in any fiscal year. To insure that credits are not claimed in excess of this amount, an employer may claim the incentive payments only upon presentation of an authorizing certificate. Certificates will be issued to the employer by the Department of Public Welfare upon presentation to the Department of Public Welfare of evidence of a qualifying offer of employment. If necessary to avoid certificate issuances in excess of the maximum authorized amount for any fiscal year, the department shall advise the Department of Public Welfare of the total number of certificates which may be issued in each calendar quarter. The Department of Public Welfare may issue certificates through the Office of Employment Security and may promulgate regulations to allocate certificates.

(g) Employment incentive payments shall not be available for employes hired after June 30, 1993, unless reenacted by the General Assembly. Not later than September 1, 1990, and September 1 each year thereafter, the Department of Public Welfare shall report to the General Assembly on the effectiveness of incentive payments to encourage the employment of cash assistance recipients and recommend whether changes are needed in the program and whether the program should be continued. The report shall contain information, including the number of authorizing certificates issued by the Department of Public Welfare, the number of authorizing certificates accepted by the Department of Revenue from employers as evidence of qualified hires, the number and dollar amounts of tax credits approved by the Department of Revenue in each tax year, the average hourly starting wage of employes hired and the category of assistance received previously by employes hired. The report shall also include an analysis of the types of businesses identified as either corporations or individuals or partnerships which have had tax credits approved by the Department of Revenue and the types of employment positions into which employes have been hired as indicated by Standard Occupational Classification Codes. The report shall describe outreach and publicity efforts by the Department of Public Welfare. The report shall contain similar information about the day care tax credit authorized in subsection (c)(2). Credits may be claimed against taxes payable for tax years beginning January 1, 1989, and thereafter, and may be claimed for employes hired on or after January 1, 1989.]

Section 3. The act is amended by adding sections to read:

Section 1702-A. Definitions.—*The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:*

“Eligible individual” means any of the following:

(1) A person who at any time within the twelve months preceding the date of hire received general assistance.

(2) A person who at any time within the twelve months preceding the date of hire received temporary assistance to needy families.

(3) A person who:

(i) has a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment; and

(ii) is referred to the employer upon completion of or while receiving rehabilitative services pursuant to an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973 (Public Law 93-112, 29 U.S.C. § 701 et seq.), or a program of vocational rehabilitation carried out under Title I of the Veterans’ Rehabilitation and Education Amendments of 1980 (Public Law 96-466, 94 Stat. 2171).

“Employment incentive payment” means the employment incentive payment credit provided by this article.

“Pass-through entity” means any of the following:

(1) A partnership, limited partnership, limited liability company, business trust or other unincorporated entity that for Federal income tax purposes is taxable as a partnership.

(2) A Pennsylvania S corporation.

“Qualified first-year wages” means the qualified wages attributable to service rendered by an eligible individual during the one-year period beginning with the day the eligible individual begins work for the employer.

“Qualified second-year wages” means the qualified wages attributable to service rendered by an eligible individual during the one-year period beginning one year after the eligible individual begins work for the employer.

“Qualified tax liability” means the liability for taxes imposed under Article III, IV, VII, VIII, IX or XV of this act. The term includes the liability for taxes imposed under Article III of this act on the owner or owners of a pass-through entity. The term does not include amounts withheld or required to be withheld from employees under Article III of this act.

“Qualified third-year wages” means the qualified wages attributable to service rendered by an eligible individual during the one-year period beginning two years after the eligible individual begins work for the employer.

“Qualified wages” means wages as that term is defined in section 51A(b)(5) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 51A(b)(5)).

“Taxpayer” means a person or entity subject to tax under Article III, IV, VII, VIII, IX or XV of this act. This term includes a pass-through entity.

Section 1703-A. Employment Incentive Payments.—(a) A taxpayer who employs an eligible individual shall be entitled to employment incentive payments as provided by this article.

(b) No employment incentive payment shall be provided for:

(1) The employment of a person who displaces any other individual from employment except persons discharged for cause as certified by the Department of Labor and Industry.

(2) The employment of a person closely related, as defined by clauses (1) through (8) of section 152(a) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 152(a)(1) through (8)), to the taxpayer or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50% of the outstanding stock of the taxpayer.

(3) Wages paid to an individual during the time period for which the employer received federally funded or State funded job training payments for that individual.

(c) The employment incentive payment shall be calculated on an annual basis as provided in clauses (1) and (2):

(1) The employment incentive payment shall be the sum of thirty per cent of the first nine thousand dollars (\$9,000) of qualified first-year wages, twenty per cent of the first nine thousand dollars (\$9,000) of qualified second-year wages and ten per cent of the first nine thousand dollars (\$9,000) of qualified third-year wages.

(2) A taxpayer eligible to receive a credit under clause (1) shall be eligible to receive an additional employment incentive payment as provided in this clause if:

(i) the taxpayer provides or pays for day care services for the children of an eligible individual; or

(ii) the taxpayer provides or pays for transportation services that enable an eligible individual to travel to and from work.

The additional employment incentive payments under this clause¹ shall be the expenses incurred by the taxpayer for services listed in subclauses (i) and (ii), but in no case shall the additional employment incentive payment for each eligible individual exceed eight hundred dollars (\$800) during the first year of employment, six hundred dollars (\$600) during the second year of employment or four hundred dollars (\$400) during the third year of employment.

(d) The employment incentive payment shall be utilized as a credit against a qualified tax liability to which the taxpayer is subject. The employment incentive payment applicable to a pass-through entity shall be allocated in the same manner as income is allocated.

¹“paragraph” in enrolled bill.

(e) (1) *Except in cases where an eligible individual voluntarily leaves the employment of the taxpayer, becomes disabled or is terminated for cause, no taxpayer shall be entitled to receive an employment incentive payment if the eligible individual is employed by the taxpayer for less than one year.*

(2) *If the eligible individual leaves the employment of the taxpayer voluntarily, becomes disabled or is terminated for cause in less than one year, the employment incentive payment shall be reduced by the proportion of the year not worked.*

(f) *The total employment incentive payment credit shall not exceed ninety per cent of the total taxes paid by the employer against which the employment incentive payments may be claimed as a credit.*

(g) *Employment incentive payments unused as a tax credit in a taxable year may be carried over against a qualified tax liability in the ten immediately subsequent taxable years.*

(h) *For the purposes of computing a tax liability against which the employment incentive payments may be applied, deductions from taxable income shall be reduced by the employment incentive payments.*

Section 1704-A. Administration and Regulations.—*The department, in cooperation with the Department of Public Welfare and the Department of Labor and Industry, shall administer the provisions of this article, promulgate appropriate rules, regulations and forms for that purpose and make such determinations as may be required. Determinations made with respect to the employment incentive payment provided in this section may be reviewed and appealed in the manner provided by law for other corporate or personal tax credits.*

Section 1705-A. Limitation on Credits.—*The total amount of employment incentive payments authorized by this article shall not exceed twenty-five million dollars (\$25,000,000) in any fiscal year. To insure that credits are not claimed in excess of this amount, a taxpayer may claim the incentive payments only upon presentation of an authorizing certificate. Certificates will be issued to the taxpayer by the Department of Labor and Industry upon presentation to the Department of Labor and Industry of evidence of a qualifying offer of employment. If necessary to avoid certificate issuances in excess of the maximum authorized amount for any fiscal year, the department shall advise the Department of Labor and Industry of the total number of certificates which may be issued in each calendar quarter.*

Section 1706-A. Time Limitations and Report.—*Employment incentive payments shall not be available for employees hired after December 31, 2004, unless reenacted by the General Assembly. Not later than July 1, 2004, the Secretary of Public Welfare shall report to the General Assembly on the effectiveness of incentive payments to encourage the employment of general assistance and temporary assistance to needy families recipients and recommend whether the program should be continued. Credits may be*

claimed against taxes payable for tax years beginning January 1, 2000, and thereafter, and may be claimed for employees hired after December 31, 1999.

Section 4. The amendment of section 602(b) of the act shall apply to taxable years beginning after December 31, 1998.

Section 5. It is the intent of the General Assembly that the addition of sections 1702-A through 1706-A of the act shall be deemed to be a continuation and expansion of the employment incentive payments program authorized in section 491 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code. Accordingly:

(1) Nothing in this act shall be construed to preclude consideration of applications for credits filed under section 1701-A of the act or section 491 of the Public Welfare Code, which applications were filed prior to or on the effective date of this act.

(2) Nothing in this act shall be construed to preclude the utilization of credits which were approved but not applied under section 1701-A of the act or section 491 of the Public Welfare Code after the effective date of this act.

Section 6. Section 491 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, is repealed insofar as it is inconsistent with this act.

Section 7. This act shall take effect January 1, 2000.

APPROVED—The 15th day of December, A.D. 1999.

THOMAS J. RIDGE