

No. 1986-79

AN ACT

HB 2596

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," providing for a job creation tax credit.

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

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

ARTICLE XVIII
JOB CREATION TAX CREDIT

Section 1801. Short Title.—*This article shall be known and may be cited as the Job Creation Tax Credit Law.*

Section 1802. Statement of Public Policy.—*It is hereby declared to be the public policy of the Commonwealth of Pennsylvania to encourage the expansion of employment within this Commonwealth. Cognizant of the fact that employers must pay a Federal unemployment compensation tax on the wages paid to their employes and that, until the Commonwealth's debt to the Federal Unemployment Trust Fund is repaid, Federal tax will increase each year, and cognizant of the relative burden this places upon employers to expand or locate employment in Pennsylvania rather than in another state where such employment would not be subject to additional Federal taxes, the General Assembly has determined that the stated public policy can best be achieved by providing a tax credit for employers equal to the additional amount of Federal unemployment compensation tax they incur when expanding employment within this Commonwealth for the duration of the period of the Commonwealth's indebtedness to the Federal Unemployment Compensation Trust Fund.*

Section 1803. Authorization of Credit.—*Every employer engaged in a for-profit business enterprise in the fields of agriculture, forestry and fisheries, mining, manufacturing, transportation, communications, electric, gas and sanitary services, wholesale trade, finance, insurance and real estate, and business services (as determined by the Department of Labor and Industry based upon the Standard Industrial Classification Manual) and subject to the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law," who provides new employment shall be eligible to receive a tax credit, as provided in this article, against any tax*

due from him under Article II, IV or VI of this act, and against any payment of estimated tax or payment of tentative tax due from him on account of said taxes.

Section 1804. Calculation of Tax Credit.—(a) *The amount of the tax credit available to an employer who provides new employment shall be equal to the amount by which the employer's excise tax liability for the calendar year pursuant to section 523(a) and (b) of the Federal Unemployment Tax Act (26 U.S.C. §§ 3301 and 3302) increases as a result of wages paid by him during the calendar year with respect to new employment as defined in this article. The amount of increase in an employer's excise tax liability determined pursuant to this subsection shall be calculated for the purposes of this article as one hundred forty dollars (\$140) for each new employe in 1986, one hundred sixty-one dollars (\$161) for each new employe in 1987 and one hundred sixty-eight dollars (\$168) for each new employe in 1988 and thereafter.*

(b) *For purposes of this article, new employment shall mean the difference between the employer's average monthly number of employes covered by the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the "Unemployment Compensation Law," during the calendar year and the employer's average monthly number of covered employes during the calendar quarter with the highest level of such employment during calendar year 1985. For purposes of this article, average monthly number of employes for the calendar year shall mean the sum of the total number of covered employes required to be reported for each month by the employer to the Department of Labor and Industry divided by twelve (12) months. Average monthly number of covered employes during the calendar quarter with the highest level of employment in 1985 shall mean the total number of covered employes required to be reported for each month of such calendar quarter divided by three (3) months. Where an employer maintains more than one place of employment in the same line of business within this Commonwealth, all of the employes at the several places of employment shall be combined in determining the average monthly number of covered employes. Where an employer maintains more than one place of employment within this Commonwealth and the several places of employment operate separate and distinct lines of business, the Secretary of Labor and Industry may authorize the determination of new employment to be made by separately combining employment at those places operating each of the employer's separate lines of business. New employment shall not include any increase in employment resulting from the relocation of employes from within this Commonwealth, including those transferred from one line of business to another, or increase in employment resulting from mergers, acquisitions, buy-outs, consolidations, reorganizations or the take-over, purchase or other similar transfer of ownership of any existing business located within this Commonwealth. In all cases, the Secretary of Labor and Industry shall verify for the Secretary of Revenue the employment figures used in the determination of new employment.*

Section 1805. Time to Take Tax Credit.—During the two (2) calendar years succeeding any calendar year in which an employer provides new employment as described in this article, the employer may use any tax credit to which he becomes entitled as a result of new employment provided during the previous calendar year. For purposes of this section, tax credits shall be deemed used if applied by the employer in payment of any qualifying tax, tentative tax or estimated tax which becomes due during the two (2) calendar years succeeding the year in which new employment was provided. For purposes of this article, a liability for estimated tax or tentative tax shall be deemed to exist to the extent of the tax finally determined to be due. Tax credits not used before the close of the second calendar year succeeding the year in which the new employment was provided shall lapse. Credits awarded pursuant to this article shall not be refundable.

Section 1806. Powers and Duties.—In addition to those created by any other act of the General Assembly, the Secretary of Revenue and the Secretary of Labor and Industry shall have the power and it shall be their duty to:

(1) Publish any rules and regulations which may be required to implement this act.

(2) Publish as a notice in the *Pennsylvania Bulletin*, no later than November 30, 1986, forms upon which taxpayers may apply for the tax credit authorized by this article.

(3) Within five (5) months after the close of any calendar year during which tax credits granted pursuant to this article were used, furnish to the members of the General Assembly an annual report providing, as to each employer who used credits during the preceding calendar year pursuant to this article, the employer's name, address, standard industrial classification code, the amount of new employment and the amount of tax credits granted.

(4) The provisions of section 408(b) of this act relating to confidentiality of information, and any other provisions of law preventing the disclosure of information required pursuant to clause (3) of this section, shall not apply when the information is divulged for the purposes of clause (3) of this section.

Section 1807. Procedures.—(a) Applications for tax credits shall be filed by employers not later than January 31, 1987, and each January 31 thereafter for credits due to new employment during the immediately previous calendar year.

(b) Not later than June 1, 1987, and each June 1 thereafter, each employer who has filed a complete application for credits pursuant to this article shall be notified regarding the amount of credits awarded to the employer. An application shall be deemed complete and processible only if it is signed and contains the taxpayer's name, address, identifying numbers and sufficient other information and documentation necessary to determine the amount of credits.

(c) Appeals of determinations made pursuant to this article shall be made pursuant to the administrative provisions of Article IV, except that the approval of the Office of Auditor General shall not be required.

Section 1808. Expiration of Tax Credit.—Any tax credit granted pursuant to this article must be used before the end of the calendar year succeeding the second calendar year during which the Commonwealth's indebtedness to the Federal Unemployment Compensation Trust Fund is repaid. No employer shall be eligible for a tax credit in respect of new employment provided during the calendar year succeeding the year during which the Commonwealth's indebtedness to the Federal Unemployment Compensation Trust Fund is repaid or for any year thereafter.

Section 1809. Sunset.—This article shall expire thirty-six (36) months after the close of the calendar year during which the Commonwealth's indebtedness to the Federal Unemployment Compensation Trust Fund is repaid.

Section 2. In the event any court of competent jurisdiction finds that the credit provided by Article XVIII, as added by this amendatory act, results in a determination that any tax imposed by Article II, IV or VI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, is unconstitutional, Article XVIII shall be deemed severable, and any such tax shall be imposed without the provision of credits as provided by Article XVIII. In the event any court of competent jurisdiction finds that any provision of Article XVIII is unconstitutional, the provisions of Article XVIII shall be deemed to be nonseverable.

Section 3. This act shall apply retroactively to taxable years beginning on or after January 1, 1986.

Section 4. This act shall take effect immediately.

APPROVED—The 2nd day of July, A. D. 1986.

DICK THORNBURGH