

CHAPTER 47  
FORMERLY  
SENATE BILL NO. 40

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE PERTAINING TO BUSINESS TAX CREDITS AND DEDUCTIONS AND CLEAN ENERGY TECHNOLOGY DEVICE MANUFACTURING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. The General Assembly finds that Delaware's economic development incentives are a valuable State resource. Furthermore, the General Assembly finds that, because these incentives are a limited resource, it is critical that the State adopt policies and administrative practices that maximize their flexibility and effectiveness. It is the General Assembly's intent to achieve such a result through the implementation of the New Job Creation Credit. The New Job Creation Credit is designed to make permanent the best elements of the Blue Collar Jobs Act Tax Credits, which have helped spur Delaware businesses' growth for more than twenty-five years. In addition, the New Job Creation Credit extends the scope of Delaware's job creation tax credits to include clean energy technologies that are essential to Delaware's economic and environmental future. The New Job Creation Credit is a critical policy element within the State's broader economic strategy that is designed to develop businesses with markets that extend beyond Delaware's borders, promote the development of local supplier networks, attract new resources and, consequently, produce the highest multiplier effects on the State's economy.

Section 2. Amend § 2010, Title 30 of the Delaware Code by inserting after the roman numeral III in the first sentence and before the second occurrence of the word "and" the roman numeral and punctuation ", V".

Section 3. Amend § 2010(4), Title 30 of the Delaware Code by deleting the words and punctuation ", and before June 30, 2011".

Section 4. Amend § 2010(5), Title 30 of the Delaware Code by deleting the words and punctuation "and before June 30, 2011,".

Section 5. Amend § 2010, Title 30 of the Delaware Code by adding a new subsection (23) as follows:

"(23) 'Clean energy technology device' shall mean:

a. solar power devices, which shall mean devices or systems that use photovoltaic solar cells to produce electricity or that use solar energy to heat water;

b. fuel cells, which shall mean devices or systems that use an electrochemical generator that converts the chemical energy of a fuel and an oxidant directly to electricity;

c. wind power devices, which shall mean devices or systems that convert the motion of wind into electric power; or,

d. geothermal power devices, which shall mean devices or systems that use the temperature differentials between the atmosphere and subterranean areas to heat or cool buildings or to heat water."

Section 6. Amend § 2010, Title 30 of the Delaware Code by adding a new subsection (24) as follows:

"(24) 'Clean energy technology device manufacturing' shall mean any activity constituting manufacturing within the meaning of § 2701(2) of this title (other than any repair, refurbishing, retooling, recycling or other similar process or procedure that merely preserves or restores the value of a product or that does not change the inherent nature of a product or material) of clean energy technology devices."

Section 7. Amend § 2011(a), Title 30 of the Delaware Code by:

(a) inserting after the word "that" and before the word "during" the phrase ": (1)",

(b) deleting the phrase ": (1)" after the first occurrence of the word "period",

(c) deleting the word "and" after the phrase "\$200,000";,

(d) inserting after the phrase "(2)" and before the word "Employs" the phrase "during the consecutive 12-month period referred to in paragraph (1)",

(e) deleting the words "during such" immediately after the word "employees" and before the word "period" and substituting therefor the words, roman numeral and punctuation "; and, (3) within thirty-six months after the date on which a qualified facility is placed in service (which thirty-six month", and

(f) inserting after the first occurrence of the word "shall" and before the parenthetical matter beginning with the punctuation and words "(except as otherwise" immediately following that word the phrase "include the month in which the qualified facility is placed in service) applies for written approval from the Secretary or the Secretary's designee confirming the taxpayer's qualification for the tax credits and license reductions set forth in this subchapter shall".

Section 8. Amend § 2011(b), Title 30 of the Delaware Code by replacing the word "Four" with "Five" where it appears at each location found therein.

Section 9. Amend § 2011, Title 30 of the Delaware Code, by deleting subsections (h), (i), and (j) in their entirety.

Section 10. Amend § 2011(l), Title 30 of the Delaware Code by replacing the phrase "\$400" with the phrase "\$500" and by redesignating subsection (l) as subsection (k).

Section 11. Amend Title 30 of the Delaware Code by deleting § 2014 in its entirety.

Section 12. Amend § 2021(a), Title 30 of the Delaware Code by replacing the punctuation and numerals "\$650" with the punctuation and numerals "\$750" and the punctuation and numerals "\$400" with the punctuation and numerals "\$500".

Section 13. Amend § 2021(d), Title 30 of the Delaware Code by replacing the punctuation and numerals "\$650" with the punctuation and numerals "\$750".

Section 14. Amend § 2024, Title 30 of the Delaware Code by striking the number "2041" and replacing it with the number "2040" and by deleting the phrase "(including adjustments thereto under §§ 2042, 2043, and 2044 of this title)".

Section 15. Repeal Subchapter V, Chapter 20, Title 30 of the Delaware Code in its entirety and replace that subchapter with a new subchapter to read as follows:

"Subchapter V. Clean Energy Technology Device Manufacturers' Credits

§ 2040. Credit against corporation income tax for Clean Energy Technology Device Manufacturers.

(a) In the case of any taxpayer that (i) places in service a qualified facility in which the taxpayer is engaged in clean energy technology device manufacturing, as defined in § 2010(24) of this title, and (ii) otherwise satisfies the requirements contained in § 2011(a) of this title for the allowance of a credit against the tax imposed by Chapter 19 of this title (relating to corporation income tax) for the taxable year of the taxpayer in which such qualified facility is placed in service by the taxpayer, § 2011 of this title shall be applied with respect to such qualified facility by substituting "\$750" for "\$500" in § 2011(b)(1) and (2) of this title.

(b) In the case of any taxpayer that (i) places in service a qualified facility in which the taxpayer is engaged in clean energy technology device manufacturing, as defined in § 2010(24) of this title, and (ii) otherwise satisfies the requirements contained in § 2011(k) of this title, such taxpayer shall be allowed a credit equal to 75% of the credit allowable under subsection (a) of this section, subject, however, to limitation and carryover provisions under § 2011(d) and (f) of this title. The credit claimed in any tax year (including amounts carried over from previous tax years) shall not exceed the difference between \$500,000 and the amount of credits claimed under § 2012 of this title for the 12 months comprising said tax year. Amounts of credit not used by virtue of the preceding sentence may be carried forward as if such unused credits arose by virtue of § 2011(f) of this title. No taxpayer may be eligible for credit under both this subsection and subsection (a) of this section for the same facility." Section 16. Amend § 2701(2), Title 30 of the Delaware Code by inserting after the word "including" and before the word "automobile", the phrase "clean energy technology device manufacturing (as defined in § 2010(24) of this title) and".

Section 17. Amend § 2702(b)(1), Title 30 of the Delaware Code as effective both until and on and after January 1, 2014 by inserting after "manufacturer" and before the words "shall pay" the phrase ", except those subject to paragraph (b)(2) of this section,".

Section 18. Amend § 2702(b)(2), Title 30 of the Delaware Code as effective both until and on and after January 1, 2014 by striking the first occurrence of the word "paragraph" and substituting in lieu thereof the word "paragraphs" and by inserting immediately after the phrase "(b)(1)" and before the word "of" immediately following, the phrase "or (2)".

Section 19. Redesignate § 2702(b)(2), as amended by Section 18 and as effective both until and on and after January 1, 2014, as § 2702(b)(3) and insert a new § 2702(b)(2) as follows:

"(2) For taxable periods beginning after June 30, 2011 and ending on or before December 31, 2013, in addition to the license fee required by subsection (a) of this section, every clean energy technology device manufacturer shall pay, a license fee of 0.1458% of the aggregate gross receipts of such clean energy technology device manufacturer, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. For taxable periods beginning on or after January 1, 2014, in addition to the license fee required by subsection (a) of this section, every clean energy technology device manufacturer shall pay a license fee of 0.135% of the aggregate gross receipts of such clean energy technology device manufacturer, which fee shall be payable monthly on or before the twentieth day of each month with respect to the aggregate gross receipts for the immediately preceding month. In computing the fee due on such aggregate gross receipts for each month, there shall be allowed a deduction of \$1,000,000. For purposes of this subsection, all branches or entities comprising an enterprise with common ownership or common direction and control shall be allowed only 1 monthly deduction from the aggregate gross receipts of the entire enterprise. The monthly returns shall be accompanied by a certified statement on such forms as the Department of Finance shall require in computing the fee due."

Section 20. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 21. This Act shall become effective for taxable periods beginning after June 30, 2011.

Approved June 22, 2011