SEMICONDUCTOR MANUFACTURING AND BIOMEDICAL MANUFACTURING AND RESEARCH TAX CREDIT PROGRAM

Act 108 of 2022 amended Article XVII-L of the Tax Reform Code of 1971 by adding the Pennsylvania Economic Development for a Growing Economy (PA Edge) Tax Credits to the Commonwealth's collection of tax credit programs. Included in this collection of tax credit programs is a tax credit for semiconductor manufacturing and biomedical manufacturing and research. A qualified taxpayer may apply for up to $10,000,000 in Semiconductor Manufacturing and Biomedical Manufacturing and Research ("SBMR") tax credits per year based upon capital investment and job creation criteria beginning after the initial project facility is first placed into service in the Commonwealth. The program is designed to complement the Federal CHIPS Act (Creating Helpful Incentives to Produce Semiconductors) to boost investments in the construction, expansion, and modernization of facilities that specialize in semiconductor manufacturing, biomedical manufacturing and research innovation in Pennsylvania.

A tax credit approved by the Pennsylvania Department of Revenue (the "Department"), will be a non-refundable credit that must first be applied against the Qualified Taxpayer's own tax liability. The annual tax credit amount may be based upon any one or more of the following: 2.5% of the initial capital investment and/or 100% of Personal Income Tax withholding (payroll) or $20,000 per job, whichever is less for each permanent job at the project facility.

Limitation: No qualified taxpayer may earn more than $10,000,000 in SBMR tax credits in a fiscal year.

The credit is limited to 20% of any of the qualified taxpayer's qualified tax liabilities incurred in the taxable year for which the credit was approved. A qualified tax liability includes corporate net income tax, bank and trust companies shares tax, title insurance companies shares tax, insurance premiums tax, gross receipts tax, mutual thrift institutions tax and personal income tax liabilities for owners of pass-through entities receiving the credit. A recipient of a credit "passed-through" from a pass-through entity cannot be passed-through again, i.e., there is no "double pass-through" of the credit.

If the qualified taxpayer receiving the SBMR Tax Credit holds the credit through the end of the calendar year in which the credit was granted, the taxpayer may apply for approval to sell or assign the credit to a buyer or assignee. A buyer or assignee may offset up to 50% of its own qualified tax liability with the purchased or assigned credit. The SBMR Tax Credits must be used by the buyer or assignee in the calendar year the purchase or assignment is made. Credits may only be purchased or assigned once.

The SBMR Tax Credit sale or assignment provision require that the qualified taxpayer exclusively offer the tax credit to downstream companies for a period of 30 days following approval of the credit, then exclusively to upstream companies for 30 days following the expiration of the downstream company offer period. This means that the qualified taxpayer cannot sell or assign the credit to a company that is neither a downstream nor upstream company within 60 days of the credit's approval.

In order to meet the definition of a "qualified taxpayer," an applicant must:

- Conduct semiconductor manufacturing, biomedical manufacturing or biomedical research in this Commonwealth at a project facility in this Commonwealth that has been placed in service on or after January 3, 2023.
- Make a capital investment of at least $200,000,000 in order to construct a facility within the commonwealth.
- Create at least 800 Permanent Jobs created to support the ongoing operation of the project facility.
- Pay the prevailing minimum wage and benefit rates for each craft or classification as determined by the Department of Labor and Industry under the Prevailing Wage Act for all New jobs created during the construction of the project facility.
- Make a good faith effort to recruit and employ workers from the local labor market for employment during the construction of the project facility.
- Abide by the Steel Products Procurement Act March 3, 1978 (P.L.6, No.3) for construction work to place a project facility into service

Implementing the SBMR Tax Credit program may result in economic growth and job creation for the Commonwealth.

Questions regarding the administration of the SBMR program should be directed to the Office of Economic Development within the Pennsylvania Department of Revenue. Please contact Matt Forti at 717-772-3896 or mforti@pa.gov.

SEMICONDUCTOR MANUFACTURING AND BIOMEDICAL MANUFACTURING AND RESEARCH TAX CREDIT PROGRAM

What is the Semiconductor Manufacturing and Biomedical Manufacturing and Research (“SBMR”) Tax Credit?
The SBMR Tax Credit will be limited to 20% of the taxpayer’s CNIT or pass-through tax liability. The SBMR Tax Credit issued and approved by the Pennsylvania Department of Revenue (DOR) will be a non-refundable credit against Pennsylvania corporate net income tax, bank and trust companies shares tax, title insurance companies shares tax, insurance premiums tax, gross receipts tax, mutual thrift institutions tax and personal income tax liabilities for partners, members, or shareholders for credits earned by pass-through entities such as partnerships, LLCs and S-Corporations.

Can the SBMR Tax Credit be assigned?
Yes. Businesses having approved SBMR Tax Credits may apply for approval to sell or assign their eligible SBMR Tax Credits to another taxpayer that can then use the purchased credits to offset up to 50% of its own Pennsylvania tax liability with the purchased credit.

SBMR Tax Credits must first be exclusively offered to upstream and downstream companies for a total of 60 days following the approval of the credits. Purchasers of SBMR Tax Credits, approved by DOR, would be a non-refundable credit. The SBMR Tax Credits must be used by the buyer within the tax year approval of the assignment. Credits may only be assigned once.

To which Pennsylvania taxes may purchased SBMR Tax Credits be applied, after an application is approved by DOR?
Purchasers of SBMR Tax Credits approved by DOR would be a non-refundable credit against Pennsylvania corporate net income tax, personal income tax, bank and trust companies shares tax, title insurance companies shares tax, insurance premiums tax, gross receipts tax, and mutual thrift institutions tax.

What is Pennsylvania’s current CNIT rate?
January 1, 2023 through December 31, 2023: 8.99 percent
January 1, 2024 through December 31, 2024: 8.49 percent
January 1, 2025 through December 31, 2025: 7.99 percent
January 1, 2026 through December 31, 2026: 7.49 percent
January 1, 2027 through December 31, 2027: 6.99 percent
January 1, 2028 through December 31, 2028: 6.49 percent
January 1, 2029 through December 31, 2029: 5.99 percent
January 1, 2030 through December 31, 2030: 5.49 percent
January 1, 2031 and each taxable year thereafter: 4.99 percent

What is Pennsylvania’s current PIT rate?
The PIT rate is currently at 3.07%.

What is the Bank and Trust Companies Shares Tax rate?
The rate is currently at 0.95% for all bank and trust companies doing business in Pennsylvania.

What is the Title Insurance Companies Shares Tax rate?
The rate is currently at 1.25% for Pennsylvania title insurance companies.

What is the Insurance Premiums Tax rate?
The insurance premiums tax on life insurance entered with unauthorized insurance companies is 2% of gross premiums.

What is the Mutual Thrift Institutions Tax rate?
The rate is currently at 11.5% for savings institutions, savings banks, savings and loan associations, and building and loan associations doing business in Pennsylvania.

Will a firm be able to carry over any unused SBMR Tax Credits?
No.

Can SBMR Tax Credits be passed through?
Yes. Credits earned by pass-through entities such as partnerships, limited liability companies and S-Corporations can be passed through one time to partners, members, or shareholders on a pro-rata basis pursuant to the equity ownership interest in the pass-through entity at the end of the tax year for which the credit application is submitted.

Is there any additional information on the use of the SBMR Tax Credits?
Yes, the credits:

- Must be applied in year passed through.
- No carry forward, carry back, or refund of unused credits by partners, members or shareholders.
- Utilized cannot exceed 20 percent of the total PIT liability by partners, members or shareholders.
- Must be "held" for one year before the assignment or sale.

Is there any additional information on the use of purchased or assigned SBMR Tax Credits?
Yes:

- Prior to sale or assignment, the credits must first be offered exclusively to downstream companies for a period of 30 days after approval.
- Prior to sale or assignment, the credits must be offered to an upstream or downstream companies for a period of 30 days after the initial downstream exclusive provision expires.
- The credits must be claimed by the recipient in calendar year the credits are purchased or assigned.
- The credits may not be carried forward, carried back, or refunded.
- The amount of the credit used cannot exceed 50 percent of the recipient's qualified tax liability.
- The seller must get a tax clearance before the sale is allowed.

What are the recapture provisions?
DOR has the authority to audit any person claiming this tax credit to ascertain the validity of the amount claimed. DOR has the authority to issue an assessment for any improperly issued tax credit.

What is the effective date for SBMR Tax Credit Program?
January 3, 2023.

Is the SBMR Tax Credit capped?
Yes, no more than $20,000,000,000 in tax credits may be awarded annually and no more than $100,000,000 may be awarded over the life of the Program.

Are there any Limitations under the Cap?
Yes, a qualified taxpayer may apply for up to $10,000,000 in tax credits per year under the program for a total of five years. The total aggregate amount of tax credits awarded to a qualified taxpayer may not exceed 25% of the capital investment made to construct a project facility.

a) A qualified taxpayer engaged in semiconductor manufacturing which first meets the qualifications to receive a tax credit may apply for up to $10,000,000 in tax credits in a fiscal year.
b) A qualified taxpayer engaged in biomedical manufacturing or biomedical research which first meets the qualifications to receive a tax credit may apply for up to $10,000,000 in tax credits in a fiscal year.

Unallocated tax credits may be awarded to the qualified taxpayer which next meets the qualifications to receive a tax credit under the program.

Who will administer the SBMR Tax Credits?
The DOR will administer the SBMR Tax Credit Program. The SBMR Tax Credits are issued and approved by DOR. DOR shall designate forms or schedules and promulgate regulations necessary for the implementation and administration of the SBMR Tax Credit program.

What are the dates for application and approval of SBMR Tax Credits by DOR?
A qualified taxpayer may apply for a SBMR Tax Credit by submitting an application by March 1st to DOR. DOR shall notify the taxpayer the amount of the approved taxpayer's SBMR Tax Credit by May 1st of the calendar year. The taxpayer or principals may immediately utilize the credit upon approval.

Does the legislation have a sunset date?
No. However, no more than $100,000,000 in tax credits may be awarded under this program.

What are the dates and the process for application and approval of the sale of SBMR Tax Credits?

The seller business must hold SBMR Tax Credits issued by DOR through the calendar year in which the credits were granted. Applications for the transfer of all or a portion of the Tax Credit will be reviewed by DOR. DOR may take up to 60 days to review the application and confirm compliance with all conditions before posting the transfer and transferee's respective accounts.

Is there any additional information for the transfer process for SBMR Tax Credits?

Yes, the seller/assignor must be in tax compliance in order to transfer the credit.

Does the legislation have an annual reporting requirement for SBMR Tax Credit effectiveness?

Yes. The report shall include the names of all qualified taxpayers utilizing the tax credit and the amount of tax credit approved, utilized, sold or assigned by qualified taxpayers. DOR shall issue a report to the General Assembly no later than the year after which tax credits are first awarded and each October 1 thereafter.

Does the legislation have a final reporting requirement?

Yes. After the year in which tax credits are first awarded, DOR shall produce a ten year reconciliation report to the Governor and General Assembly concerning a program evaluation on the effectiveness of SBMR Tax Credit program and any recommended changes or continuation of the credit.

What are the desired effects of the SBMR Tax Credit program?

1. The SBMR Tax Credit is an incentive to boost investments in the construction, expansion, and modernization of facilities that specialize in semiconductor manufacturing, biomedical manufacturing and research innovation in Pennsylvania.
2. Firms can purchase SBMR Tax Credits from qualified taxpayers, due to the assignment provisions, so as to reduce their Pennsylvania tax liability.
3. Qualified Taxpayers in Pennsylvania will be able to reduce Pennsylvania Corporate Net Income Tax, and Personal Income Tax (for pass-through entities) liability for greater after-tax profitability.
4. Because of the assignment provisions, purchasers of SBMR Tax Credits will be able to reduce Pennsylvania corporate net income tax, personal income tax, bank and trust companies shares tax, title insurance companies shares tax, gross premiums tax, gross receipts tax, and mutual thrift institutions tax.
5. SBMR Tax Credits will be a relocation incentive tool, where Pennsylvania will become a more attractive place relative to other states for semiconductor manufacturing, biomedical manufacturing and biomedical research businesses.
6. Greater economic energy activity is expected, which will generate higher economic growth for the Commonwealth. Enhanced job growth is expected.
7. The SBMR Tax Credit program through enhanced investment and job growth will result in indirect additional state revenues.