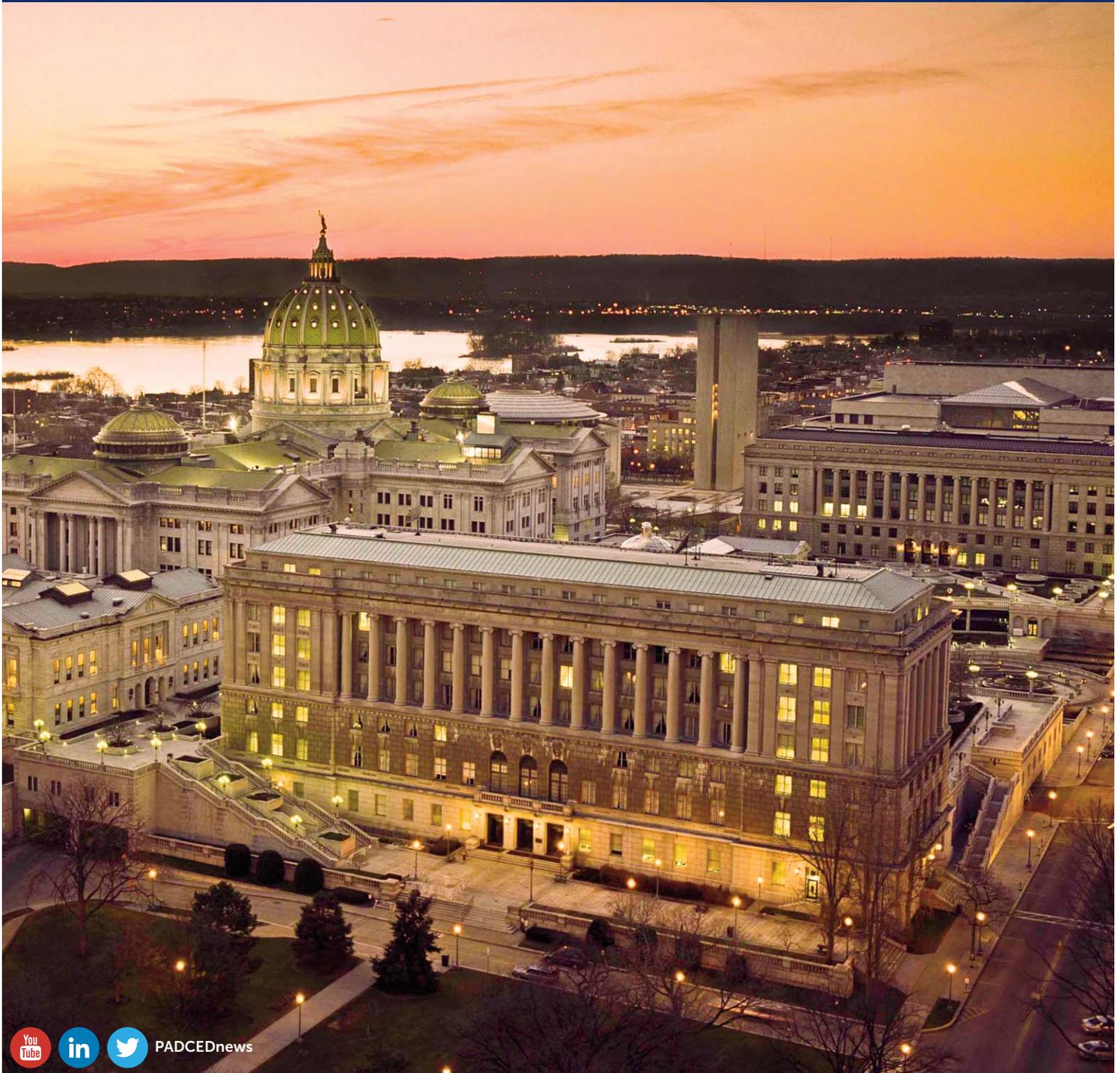


# COAL REFUSE ENERGY AND RECLAMATION TAX CREDIT

Program Guidelines | February 2017



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## Section I – General

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### A. Introduction and Purpose

The Coal Refuse Energy and Reclamation Tax Credit (“Coal Refuse Tax Credit”) Program was established by Act 84 of July 13, 2016 (the “Act”) in recognition of the significant and tangible benefits to the environment and savings in commonwealth funds provided by Eligible Facilities (as defined below) reclaiming coal refuse piles and previously mined lands. These Eligible Facilities generate electricity in the commonwealth by using coal refuse for power generation, control acid gasses for emission control, and use ash produced by the facilities to reclaim mining-affected sites. The Program is administered by the Department of Community and Economic Development (the “Department”) in consultation with the Department of Environmental Protection.

### B. Definitions

The following terms shall have the following meanings:

**“Affiliate.”** A person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a Qualified Taxpayer. For purposes of this definition, the terms “control,” “controlling,” “controlled by” and “under common control with” means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of 20% or more of the voting securities, capital interests, profit interests or any similar equity interests in a business association of a person by contract or otherwise.

**“Application.”** Application form attached hereto as Exhibit A.

**“Coal Refuse Tax Credit Certificate.”** The certificate issued by the Department upon approval of an Application.

**“Eligible Facility.”** An electric generating facility placed in service prior to July 1, 2016 consisting of one or more units placed in service before July 1, 2016 that generates electricity located on the same property and that:

1. Combusts Qualified Coal Refuse or fuel composed of at least 75% Qualified Coal Refuse by BTU energy value in the prior calendar year;
2. Utilizes at a minimum a circulating fluidized bed combustion unit or pressurized fluidized bed combustion unit equipped with a limestone injection system for control of acid gases and a fabric filter particulate emission control system; and
3. Beneficially uses ash produced by the facility in the prior calendar year to reclaim mining-affected sites in accordance with 25 Pa. Code Ch. 209 (relating to beneficial use of coal ash) in amounts equal to at least 50% of the ash produced by the facility in the prior calendar year.

**“Qualified Coal Refuse.”** Any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay and related materials associated with or near a coal seam that are either brought above ground or otherwise removed from a coal mine in the process of mining coal or that are separated from coal during the cleaning or preparation operations. The term includes underground development wastes, coal processing wastes and excess spoil, but does not include overburden from surface mining activities.

**“Qualified Tax Liability.”** The liability imposed on a Qualified Taxpayer for the following taxes: Personal Income Tax (excluding employer withholding), Corporate Net Income Tax, Capital Stock/Foreign Franchise Tax, Bank Shares Tax, Title Insurance Companies Shares Tax, Insurance Premiums Tax, Gross Receipts Tax, and Mutual Thrift Institutions Tax.

**“Qualified Taxpayer.”** A person that owns an Eligible Facility in this commonwealth or is a transferor, purchaser, affiliate or assignee of a person to which a Coal Refuse Tax Credit Certificate is issued.

**“Ton.”** Two thousand pounds of qualified coal refuse, including inherent moisture, ash, sulphur, and other non-calorific substances, but excluding excess moisture.

### C. Eligibility

A Qualified Taxpayer is eligible to apply to the Department for a Coal Refuse Tax Credit.

## II. Application and Approval

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A Qualified Taxpayer shall submit the Application to the Department by February 1 of each year for the Coal Refuse Tax Credit claimed for Qualified Coal Refuse used at an Eligible Facility during the prior calendar year. The Application must be submitted by accessing [www.esa.dced.state.pa.us](http://www.esa.dced.state.pa.us). The Department may require additional information to document that a facility qualifies as an Eligible Facility and to document the amount of Qualified Coal Refuse used to generate electricity at the Eligible Facility.

The Department shall review and approve an Application meeting the requirements of the Act by March 20 of each year. During the review of the Applications, the Department shall consult with the Department of Environmental Protection to determine whether a facility qualifies as an Eligible Facility and to review the calculation of the amount of Qualified Coal Refuse used by the facility to generate electricity.

For an Application to be approved, the Qualified Taxpayer must have (i) filed all required state tax reports and returns for all applicable tax years and (ii) paid any balance of state tax due as determined by assessment or by determination of the Department or Revenue and not under timely appeal.

Upon approval, the Department shall issue a Coal Refuse Tax Credit Certificate stating the amount of tax credit granted for Qualified Coal Refuse used at the Eligible Facility in the prior calendar year.

### **III. Coal Refuse Tax Credit Amounts and Limitations**

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- A. The total amount of Coal Refuse Tax Credits issued by the Department may not exceed \$7,500,000 in the fiscal year 2016-2017 and \$10,000,000 in each fiscal year thereafter until expiration of the program on December 31, 2026.
- B. A Qualified Taxpayer shall receive a credit equal to \$4 multiplied by the tons of Qualified Coal Refuse used to generate electricity at an Eligible Facility in the commonwealth by a Qualified Taxpayer in the previous calendar year. However, if the total amount of otherwise approvable Coal Refuse Tax Credits applied for by all Qualified Taxpayers exceeds the amount under subsection (a) above, the Coal Refuse Tax Credit to be received by each Qualified Taxpayer shall be the product of the amount under subsection (a) multiplied by the quotient of the Coal Refuse Tax Credits otherwise approvable for the Qualified Taxpayer divided by the total of all Coal Refuse Tax Credits otherwise approvable for all Qualified Taxpayers.
- C. Notwithstanding the above, the Department may not grant more than 22.2% of the amount under subsection (a) in Coal Refuse Tax Credits to a single Eligible Facility in any fiscal year.

### **IV. Use of Tax Credits *(As Administered by the PA Department of Revenue)***

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Upon issuance of the Coal Refuse Tax Credit Certificate, the Department will notify the Department of Revenue that the entity has been awarded a credit within the program.

#### **A. Terms of Use**

Tax credits claimed will be first applied against the unpaid tax liability for the period in which the credit is approved. The unpaid tax liability must be satisfied before any portion of the credit can be carried forward to satisfy the tax liabilities for future years or be sold or passed through. Prior year credits will be applied on a “first in first out” basis until all tax liabilities are satisfied. Restricted credits will be applied before any cash payments.

#### **B. Credit Utilization**

To utilize this credit, please return the Coal Refuse Tax Credit Certificate and claim form to the Department of Revenue. Do not include the claim form with any tax report. For use of the credit by shareholders, members, or partners and affiliates, please provide the amount of credit to be passed through to each on the Qualified Taxpayer’s letterhead, signed by an authorized representative.

The claim form and Coal Refuse Tax Credit Certificate must be mailed to:

Commonwealth of Pennsylvania  
Department of Revenue  
Bureau of Corporation Taxes  
Dept. 280701  
Harrisburg, PA 17128-0701

The liability offset limit for tax credits utilized by the Qualified Taxpayer, as well as credits passed through to shareholders, members, partners and affiliates is 100%.

### C. Carry Forward Provision

The tax credit may be carried over and applied to succeeding taxable years for not more than fifteen taxable years following the first taxable year for which the Qualified Taxpayer was entitled to claim the credit.

Please note, any credit not utilized by affiliated entities after the credit has been assigned to the affiliated entity, may be carried-forward for the remainder of the carry-forward period.

### D. Tax Credit Sales

A completed tax report **must be filed** for the period in which the credit was approved before the credit may be passed through, carried forward, sold or assigned. In addition, the sale or assignment of the credit will not be approved if the seller has any unpaid state taxes. Therefore, a seller must have filed **all** state tax reports and returns and paid all state tax liabilities as of the date the Department of Revenue is asked to review the seller's records as part of the process to approve the sale of a credit.

Entities that are no longer subject to filing the RCT-101 Corporate Tax Report as per the phase out of the Capital Stock & Foreign Franchise Tax are required to file the PA- 20S/PA-65, S Corporation/Partnership Information return prior to selling a credit. Every domestic or foreign PA S corporation (72 P.S. § 7330.1), partnership (72 P.S § 7335(c)), or entity formed as a limited liability company that is classified as a partnership or S corporation for federal income tax purposes, must file the PA- 20S/PA-65 Information Return.

### E. Purchased or Assigned Credits

Buyers or assignees of the credit must use the credit in the year in which the purchase or assignment is made. They may not carry over, carry back, obtain a refund of or sell or assign the credit.

Tax credits are applied to the buyer's or assignee's account for the tax period open as of the date the seller files the seller's report for either the period in which the credit is approved, or the period as of the date the seller becomes compliant.

**"Tax period open"** refers to the current tax year open, regardless of when the taxpayer files a tax return for the tax period. The purchaser's or assignee's liability offset limit is 75% of the purchaser's or assignee's tax liability for the period open.

### F. Resources

For additional guidance, please refer to an informational notice on the Department of Revenue's website at: [www.revenue.state.pa.us](http://www.revenue.state.pa.us), under the general tax information link to incentives credits and programs; tax credits page.

Department of Revenue inquiries should be directed to:

PA Department of Revenue  
Office of Economic Development  
11th Floor Strawberry Square  
Harrisburg, PA 17128

Telephone: (717) 772-3896

## V. Program Requirements

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### A. Non-Discrimination

No assistance shall be awarded to a Qualified Taxpayer under this program unless the Qualified Taxpayer on behalf of itself and the Eligible Facility certifies to the Department that the Qualified Taxpayer and Eligible Facility shall not discriminate against any employee or against any person seeking employment by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act, which prohibits discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, or in violation of any applicable federal laws.

## VI. Contacts

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A. Program inquiries should be directed to:

Department of Community & Economic Development  
Center for Business Financing / Tax Credit Division  
Coal Refuse Energy and Reclamation Tax Credit Program  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, Pennsylvania 17120-0225

Phone: (717) 787-7120  
Fax: (717) 772-3581  
E-mail: [ra-eitc@pa.gov](mailto:ra-eitc@pa.gov)

B. These guidelines can be accessed on-line at [dced.pa.gov](http://dced.pa.gov).

C. The Single Application for Assistance can be accessed on-line at [www.esa.dced.state.pa.us](http://www.esa.dced.state.pa.us).