

KEYSTONE SPECIAL DEVELOPMENT ZONE

Program Guidelines | November 2018



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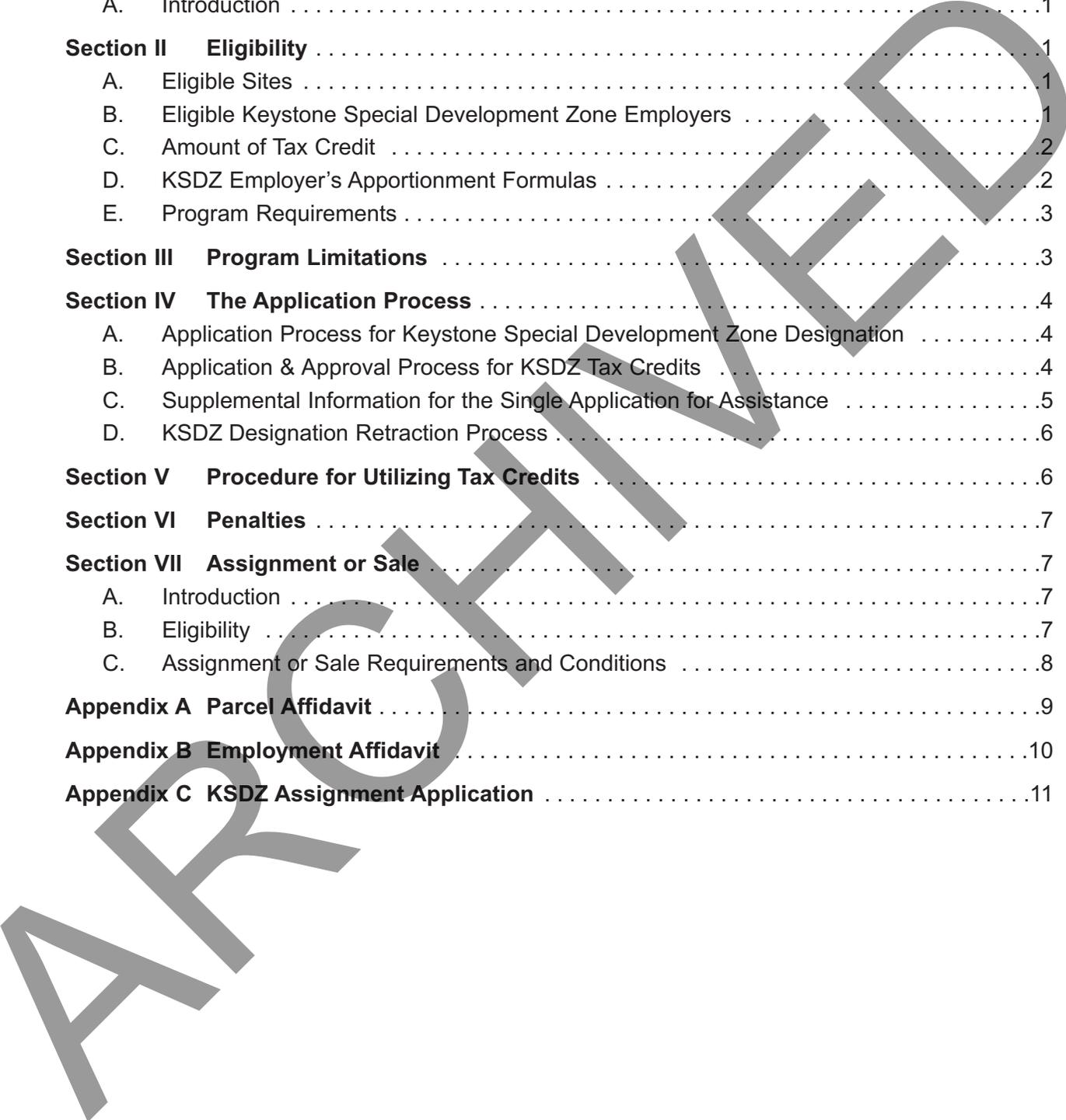
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Section I – General

A. Introduction

The Keystone Special Development Zone (KSDZ) program was established for the purpose of providing incentives to for-profit businesses that locate and operate in designated geographic zones. Pennsylvania continues to have a surplus of abandoned, deteriorated commercial and industrial sites in need of revitalization. The KSDZ program is an incentive-based tax credit program to foster redevelopment of these former industrial and commercial sites.

Businesses that provide job-creating economic development opportunities through the expansion of existing operations or the relocation of operations to the Commonwealth of Pennsylvania may be eligible for tax credits under this program. These tax credits can be earned in any tax year for up to ten years during the period between July 1, 2012 and June 30, 2035 and may be used to offset the businesses' qualified tax liability, may be assigned, or may be sold.

Section II – Eligibility

A. Eligible Sites

Parcels of real estate must meet all of the following criteria to be designated a Keystone Special Development Zone:

1. Be located within a Special Industrial Area as of July 1, 2011, for which the Department of Environmental Protection (DEP) has executed a Special Industrial Area Consent Order and Agreement.
2. On July 1, 2011 had no permanent vertical structures affixed to it or had a permanent vertical structure affixed to it which has been deteriorated or abandoned for at least 20 years.
3. Has been certified by DEP as meeting the requirements of (1) and (2) above.

B. Eligible Keystone Special Development Zone Employers

In order to be eligible to receive KSDZ tax credits, a KSDZ employer, which includes pass-through entities such as Partnerships, LLCs and S Corporations, must meet the following requirements:

1. Be located within a Keystone Special Development Zone.
2. Employ one or more employees at a designated KSDZ site. To be eligible, the employee must:
 - a. Be employed by a KSDZ employer, or its predecessor, after June 30, 2011.
 - b. Be employed for at least 35 hours per week by a KSDZ employer.
 - c. Spend at least 90% of the time working at the KSDZ location.

A KSDZ employer who has caused or contributed to a level of regulated substance above the Act 2 cleanup standards or who has engaged in construction improvements on a Keystone Special Development Zone is not eligible to receive KSDZ tax credits.

C. Amount of Tax Credit

1. The amount of tax credits the KSDZ employer may earn in a single tax year is \$2,100 for each Full Time Equivalent Employee (FTE) in excess of the number of FTEs employed by the KSDZ employer in Pennsylvania prior to January 1, 2012.
2. A Full Time Equivalent Employee (FTE) is defined as the whole number of employees, rounded down, that equals the sum of the following:
 - a. The total paid hours, including paid time off and family leave under the Family and Medical Leave Act of 1993, of all of a KSDZ employer's employees classified as nonexempt during the KSDZ employer's tax year divided by 2000; and
 - b. The total number arrived at by adding, for each exempt employee scheduled to work at least 35 hours per week, the fraction equal to the portion of the year the exempt employee was paid by the KSDZ employer.
 - c. Employees are classified as exempt or non-exempt under the Fair Labor Standards Act of 1938.
3. This calculation excludes employees previously employed by an affiliate and employees previously employed by the KSDZ employer outside of a Keystone Special Development Zone.
4. An Affiliate is defined as follows:
 - a. An entity which is part of the same "Affiliated Group," as defined in Section 1504(A) of the Internal Revenue Code of 1986, as a KSDZ employer; or
 - b. An entity that would be part of the same "Affiliated Group" except that the entity or the KSDZ employer is not a corporation.
5. A KSDZ employer is entitled to claim this tax credit against its qualified tax liability. Qualified tax liability is defined as any tax owed by a KSDZ employer attributable to a business activity conducted within a Keystone Special Development Zone for a tax year under Articles III, IV, VI, VII, VIII or XV of the Tax Reform Code of 1971.

D. KSDZ Employer's Apportionment Formulas

The KSDZ employer's tax liability attributable to business activities within the Keystone Special Development Zone shall be calculated in conformity with Articles III, IV, VI, VII, VIII or XV of the Tax Reform Code of 1971 and by using the following apportionment formulas:

1. If the entire business of the employer in this commonwealth is transacted wholly within the Keystone Special Development Zone, the tax liability attributable to business activity within a Keystone Special Development Zone shall consist of the Pennsylvania income as determined under Articles III, IV, VI, VII, VIII or XV, whichever is applicable, of the Tax Reform Code.
2. If the entire business of the employer in this commonwealth is not transacted wholly within the Keystone Special Development Zone, the qualified tax liability of an employer in a Keystone Special Development Zone shall be determined upon such portion of the PA tax liability of the employer attributable to business activity conducted with the Keystone Special Development Zone apportioned to the Keystone Special Development Zone by multiplying Pennsylvania tax liability by a fraction, the numerator of which is the property factor plus the payroll factor and the denominator of which is two, in accordance with the following:

- a. The property factor is a fraction, the numerator of which is the average value of the employer's real and tangible personal property owned or rented and used in the Keystone Special Development Zone during the tax period and the denominator of which is the average value of all of the employer's real and tangible personal property owned or rented and used in this Commonwealth during the tax period but shall not include the security interest of any employer as seller or lessor in personal property sold or leased under a conditional sale, bailment lease, chattel mortgage or other contract providing for the retention of a lien or title as security for the sales price of the property.
- b. The payroll factor is a fraction, the numerator of which is the total amount paid in the Keystone Special Development Zone during the tax period by the employer to an employee as compensation and the denominator of which is the total compensation paid by the employer in this commonwealth during the tax period.
- c. Compensation does not include any individual not employed directly by the KSDZ employer including but not limited to: contracted employees (i.e., employees of a third party entity contracted to perform work at the KSDZ company), consultants, independent sales people, etc., who are not eligible to be included as part of the payroll.

E. Program Requirements

1. The KSDZ employer must be current with all state tax liabilities as certified by the Department of Revenue.
2. Tax credits must be first applied against the KSDZ employer's qualified tax liability prior to transfer, assignment, or sale.
3. The KSDZ employer must agree to maintain operations related to the KSDZ tax credits in this commonwealth for a period of 5 years from the date the company first submits a KSDZ tax credit certificate to the Department of Revenue.
4. **Monitoring and Reporting**
When applying for KSDZ benefits, an applicant is authorizing the Department of Community and Economic Development (DCED) to request access to, and review of, the applicant's and it's affiliates' state tax returns. Authorized representatives of the applicant with full authority to waive confidentiality under Pennsylvania law will sign off on the release of tax information by the Department of Revenue.

Section III – Program Limitations

The following limitations apply:

1. Eligible employers may earn the KSDZ tax credit in any tax year for up to 10 years during the period beginning July 1, 2012 and ending June 30, 2035.
2. The KSDZ employer may not claim this credit along with benefits under the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone or Keystone Opportunity Improvement Zone Act.

Section IV – The Application Process

A. Application Process for Keystone Special Development Zone Designation

1. To obtain this certification, applicants must submit a letter requesting KSDZ designation that includes the following information:
 - a. Legal name and taxpayer identification number of property owner(s).
 - b. Property location (include street address, municipality, and zip code). Include information on the size of the property. Approximate acreage is acceptable.
 - c. Copy of the executed Special Industrial Area Consent Order and Agreement with the Department of Environmental Protection.
 - d. List of all tax parcel(s) identification number(s) located within the Special Industrial Area.
 - e. Narrative description outlining the historical use and ownership of the site.
 - f. Map of the site.
 - g. Photographs of the parcel(s) within the Special Industrial Areas.
 - h. Fully executed Parcel Affidavit See Appendix A, certifying that the site had no permanent vertical structures affixed to it as of July 1, 2011.
2. DCED will review the information with the Department of Environmental Protection and the Department of Revenue.
3. Upon approval of a successful application, DCED will issue the owner a letter designating the parcel(s) within the Keystone Special Development Zone.
4. Requests for Keystone Special Development Zone designation should be submitted to:

PA Department of Community & Economic Development
Site Development Division
ATTN: Brian Eckert
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

For specific questions on this program contact the Site Development Division in DCED at (717) 787-7120.

B. Application & Approval Process for KSDZ Tax Credits

KSDZ employers looking to apply for the KSDZ tax credits must submit the following information:

1. The Single Application must be submitted on-line by accessing www.esa.dced.state.pa.us
2. KSDZ employers must provide all applicable business tax IDs; FEIN; Employer Account Revenue ID, Sales ID, and UCN.
3. In addition to the electronic Single Application, KSDZ employers must submit the Supplemental Information outlined in Section C with the signed electronic signature page.

4. Applications for KSDZ tax credits must be received by February 1st to be eligible for tax credits earned in the previous year.
5. Upon approval of a successful application, DCED will send an award letter to the applicant for the KSDZ tax credit by March 1st containing the following information:
 - a. The amount of the KSDZ tax credit and the period of time over which it may be claimed.
 - b. A statement that the applicant intends to maintain its operation in the commonwealth for five years from the date the applicant first claimed the KSDZ tax credit.
6. Applicant shall present award letter to the Department of Revenue when filing its taxes.
7. Completed applications, including all required signatures, should be submitted to:

PA Department of Community & Economic Development
Site Development Division
ATTN: Brian Eckert
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

For specific questions on this program contact the Site Development Division in DCED at (717) 787-7120.

C. Supplemental Information for the Single Application for Assistance

In addition to completing the DCED Electronic Single Application for Assistance, the following supplemental information must be submitted by February 1st of the year in which the tax credit application is being made:

1. A description of the business activity being conducted in the KSDZ.
2. Verification that the employer is located in a KSDZ.
3. Verification that each employee for which the credit is being claimed is employed for at least 35 hours per week by a KSDZ employer and has spent at least 90% of the employee's working time within the KSDZ.
4. Employment Affidavit (Appendix B), completed, signed, and notarized attesting to the employment numbers.
5. Spreadsheet showing the names, addresses, social security numbers and hours worked for all exempt and non-exempt employees for which the credit is claimed.
6. A copy of the W-2 Transmittal REV-1667 Form (submitted annually to the Department of Revenue).
7. A description of the investment (including amount) that the business has undertaken in the year for which the tax credit is being requested.

D. KSDZ Designation Retraction Process

1. After an applicant has obtained certification as outlined in Subsection A, an applicant may subsequently withdraw its application for certification of parcels in a KSDZ, thereby nullifying the KSDZ designation for the parcels. In order to do so, an applicant must submit a Petition for Application Withdrawal containing the following:
 - a. Legal name and taxpayer identification number of property owner(s).
 - b. Property location (include street address, municipality, and zip code).
 - c. List of all tax parcel(s) identification number(s) located within the Keystone Special Development Zone subject to the application for withdrawal.
 - d. List of each entity which operates within the property to be removed from the zone or possesses an interest in such property, including any holder of an option either to purchase or lease any property located within the Keystone Special Development Zone.
 - e. A signed written statement from each entity on the list produced by subsection (d) that manifests its intent to withdraw from and revoke Keystone Special Development Zone designation.
2. The DCED will review the information with the Department of Environmental Protection (DEP) and the Department of Revenue (DOR).
3. Upon its determination that the Petition for Withdrawal is complete, the DCED will issue the owner a letter which indicates that the parcels in question have been removed from KSDZ designation.
4. Petitions for Application Withdrawal should be submitted to:

PA Department of Community & Economic Development
Site Development Division
ATTN: Brian Eckert
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Section V – Procedure for Utilizing Tax Credits

- A. After jobs have been deemed created, DCED will issue a tax credit award letter to the KSDZ employer. In order to claim the tax credit, the KSDZ employer must submit the tax credit award letter received from DCED to the Department of Revenue.
- B. A KSDZ employer may claim a KSDZ tax credit of \$2,100 for each new FTE job created as approved by DCED. The KSDZ tax credit must first be applied to the KSDZ employer's qualified tax liability for the period in which the credit is approved before the KSDZ employer may sell or assign the excess KSDZ tax credits. Remaining credit can be carried forward for up to ten years.
- C. A KSDZ employer may apply the tax credit to 100% of the business's state Corporate Net Income tax, Capital Stock/Foreign Franchise tax, Personal Income tax, Tile Insurance tax, Bank Shares tax, and Mutual Thrift tax. Credits may be awarded to sole proprietorships, pass-through entities, and corporations only. Cash refunds will not be issued for unused credits.
- D. KSDZ tax credits may be sold or assigned only as approved by DCED. See Section VII for further details.

Section VI – Penalties

- A. KSDZ employers who receive KSDZ tax credits and who fail to substantially maintain the operations related to the KSDZ tax credits in this commonwealth for a period of five years from the date the KSDZ employer first submits the KSDZ tax credit certificate to the Department of Revenue shall be required to refund to the commonwealth the total amount of the KSDZ tax credits granted with interest and a penalty of 20% of the amount of credits granted.

Section VII – Assignment or Sale

A. Introduction

KSDZ employers who have not used all or a portion of their KSDZ tax credits issued between July 1, 2012 and June 30, 2035 may apply to DCED for approval to assign their eligible KSDZ tax credits to a “buyer” that can use them to offset up to 75% of its own tax liability.

B. Eligibility

1. Seller or Assignor

In order to be eligible to sell or assign KSDZ tax credits, a KSDZ employer must demonstrate the following:

- a. It had insufficient qualified tax liabilities against which to apply the KSDZ tax credits granted to it.
- b. It has possessed the KSDZ tax credits granted by DCED for at least one year prior to the date of the proposed assignment.
- c. It is seeking to assign or sell in whole or in part only those KSDZ tax credits that have not already been utilized, and are still within their ten (10) year maximum lifetime.

2. Pass-through Entities

- a. If the KSDZ employer holding the KSDZ tax credits is a pass-through entity and does not have sufficient tax liability to use the KSDZ tax credits, it may elect to transfer all or a portion of the credits to shareholders, members or partners of the pass-through entity. A shareholder, member or partner is entitled to KSDZ tax credits equal to the product of:
 - i. The unused amount of the KSDZ credit, and
 - ii. The percentage of the pass-through entity distributive income to which the shareholder is entitled.
- b. The pass-through entity and the shareholder, member or partner of that entity may not claim a KSDZ credit for the same portion of the approved KSDZ tax credit. The pass-through entity may not apply to assign any KSDZ tax credit that has been passed through to a shareholder, member or partner. The credit must be applied in the year the transfer is made. Partners, members or shareholders may not carry forward, carry back, sell, assign or obtain a refund for unused credits.

3. Buyers

- a. A buyer may use a KSDZ tax credit to offset any qualified tax liability up to a maximum of 75% of its qualified tax liability for the taxable year in which the approval is received and the purchase is made. Qualified tax liabilities are those covered in Articles III, IV, VI, VII, VIII or XV of the Tax Reform Code including:
 - i. Personal Income Tax.
 - ii. Corporate Net Income Tax
 - iii. Capital Stock/Foreign Franchise Tax
- b. A buyer may not carry over, carry back, obtain a refund of, sell or assign the KSDZ tax credit. The buyer must claim the credit in the taxable year in which the approval is received and purchase of the KSDZ tax credit is made.
- c. The buyer is required to notify the Department of Revenue of the seller of the KSDZ tax credit in accordance with procedures specified by DCED.

C. Assignment or Sale Requirements and Conditions

The following program conditions apply to prospective KSDZ tax credit assignors, buyers or facilitators:

1. At the time of the application for approval to sell or assign KSDZ tax credits, the seller or assignor business should be prepared to: identify the specific KSDZ tax credits to be sold or assigned (issue date, amounts, etc.); provide information identifying the buyer to the satisfaction of DCED and the Department of Revenue; and disclose the selling price of the KSDZ tax credits being sold or assigned.
2. If the seller is selling credits to more than one buyer or credits from more than one issue date or “class or vintage”, a separate application should be submitted to DCED for approval to assign credits for each separate buyer or separate “class or vintage” of KSDZ tax credits.
3. KSDZ tax credits may only be sold or assigned once. Once a sale or assignment is approved, it is final, and the seller’s or assignor’s right to claim the credit is terminated. Buyers may not resell or reassign the KSDZ tax credits.
4. The date of receipt of the application form (see Appendix C) by DCED will be used to determine the official date of approval for the sale or assignment of the KSDZ tax credits. If the assignor and buyer agree that the tax credits being assigned are to be used for a specific taxable calendar or fiscal year, the submission of the application should be timed so that DCED receives it on or before the last business day of the taxable calendar or fiscal year for which the tax credit will be used. Faxed or emailed applications will be considered received on the date of the fax receipt or the date the email is sent.

Appendix A – Parcel Affidavit

COMMONWEALTH OF PENNSYLVANIA :
 : §
COUNTY OF _____ :

The undersigned, being duly sworn, deposes and says:

1. I am the _____ of _____, a _____ (the "Company");
2. The Company is requesting Keystone Special Development Zone (KSDZ) designation for the site located at _____ County, Pennsylvania being further described as Parcel number(s) _____ (the "Site");
3. On July 1, 2011 the Site was within a Special Industrial Area, as described in Section 305(A) of the Act of May 19, 1995 (P.L.4, No. 2), known as the Land Recycling and Environmental Remediation Standards Act, for which the Department of Environmental Protection has executed a Special Industrial Area Consent Order and Agreement, as provided under Section 502(A) or the Land Recycling and Environmental Remediation Standards Act;
4. On July 1, 2011 the Site had no permanent vertical structures affixed to it; or had a permanent vertical structure affixed to it which had been deteriorated or abandoned for at least 20 years;
5. This Affidavit has been given by the undersigned, individually and on behalf of the Company, to the Department of Community and Economic Development for the purpose of inducing the Department to designate the Site as a Keystone Special Development Zone in order for the Company to be eligible to apply for Keystone Special Development Zone Tax Credits, and the undersigned expressly recognizes and acknowledges that this Affidavit is being relied on by the commonwealth in connection with such;
6. Under penalties of perjury, I declare that the information contained in this Affidavit and any accompanying documentation is, to the best of my knowledge, true, correct and complete as of the date hereof.

Signature

SWORN TO AND SUBSCRIBED
BEFORE ME THIS _____ DAY
OF _____

Notary Public

MY COMMISSION EXPIRES:

Insert Appendix B Here

(Amy- reformat this to fit portrait style)

Reformat next form to look like KIZ form next time????

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Appendix C – KSDZ Assignment Application

Application to Assign or Sell Keystone Special Development Zone Tax Credits

Application Number: _____

Date Received: _____

(To be filled in by DCED)

Note: This date may be used to determine in which taxable year the assigned tax credit may be claimed by the buyer.

1. Prospective Assignor Identification:

Name: _____

Address: _____

Other Contact Information:

Telephone: _____ (____) _____

FAX: _____ (____) _____

E-mail Address: _____

Please use the same name and address as is on record with the PA Department of Revenue unless that on-file information has been changed and is no longer valid.

Taxpayer Identification (SSN or Box Number): _____

Date of Issue or Approval of Tax Credits to be transferred or assigned: _____

Amount of approved KSDZ Tax Credits to be transferred or assigned from the listed issue or approval date: _____

Signature and Business Title of Prospective Assignor:

Signature: _____

Printed Name: _____

Printed Title or Affiliation to the Business: _____

2. Prospective KSDZ Tax Credit Buyer or Assignee:

Name: _____

Address: _____

Other Contact Information:

Telephone: _____

FAX: _____

E-mail Address: _____

Please use the same name and address as is on record with the PA Department of Revenue unless that on-file information has been changed and is no longer valid.

Taxpayer Identification (SSN or Box Number): _____

3. Information on the KSDZ Tax Credit Assignment:

Dollar amount agreed upon to complete the transfer or assignment: \$ _____

Were the services of any agent(s) or facilitator(s) used to arrange this prospective KSDZ Tax Credit transfer? _____

If the services of any agent(s) or facilitator(s) were used, please identify the agent(s) or facilitator(s):

What, if any, fee or commission was, or is being paid to each agent(s) or facilitator(s) listed above?

4. Definitions

Assignor – Business to which the KSDZ tax credits were originally issued or approved, and which is applying to assign those credits.

Assignee/Buyer – Entity that is purchasing the KSDZ tax credit from the assignor and to which the KSDZ tax credit is to be assigned.

DCED – The Pennsylvania Department of Community & Economic Development.

Facilitator – Person, business, or organization acting to facilitate the arrangements between assignor(s) and buyer(s) to complete the sale of KSDZ tax credits.