

**Testimony Before the House Finance Committee
Department of Revenue
Wednesday, September 18, 2024**

Chairman Samuelson, Chairman Greiner, and members of the House Finance Committee, thank you for the opportunity to submit written testimony on behalf of the Department of Revenue (DOR) regarding tax incentives for semiconductor manufacturing in Pennsylvania.

Semiconductors, or “chips,” are tiny devices made of multiple critical minerals, critical metals, and rare earth elements that conduct electricity under certain specified conditions and can perform a variety of functions. Chips are essential components for all electronics as common as cell phones and as complex as military technology. Prior to 2022, the United States relied heavily on imports to supply chips. According to the Semiconductor Industry Association, domestic chip production fell from 37% in 1990 to 12% in recent years. The National Institute of Standards and Technology stated that despite being a global leader in design, research, and development, domestic commercial production of chips contributed only 10% of global commercial production. Supply chain disruptions during the COVID-19 pandemic halted chip production and exposed the United States’ overreliance on foreign chip production. The supply chain disruptions raised national security concerns, such as allegations of imported electronic devices being “bugged” and fears of foreign powers leveraging threats of further supply chain disruptions

In 2022, Congress passed the “Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act” to spur domestic chip production by providing \$52.7 billion in incentives. To complement the CHIPS and Science Act, the Pennsylvania General Assembly passed Act 108 of 2022, which expanded Article XVII-L of the Tax Reform Code of 1971 and created the Pennsylvania Economic Development for a Growing Economy (PA EDGE) program.

PA EDGE is a collection of four tax credit programs designed to attract new investment from companies across various industries. The Semiconductor Manufacturing and Biomedical Manufacturing and Research (SMBR) credit program allocates \$10 million for semiconductor manufacturing, and \$10 million for biomedical manufacturing or biomedical research per year based upon the capital investment and job creation criteria beginning after the initial project facility is first placed into service. The SMBR credit program is limited to \$20 million per year and \$100 million over the program's life beginning January 2, 2023.

Semiconductor manufacturing is defined as the manufacturing of components or the creation of advanced processes or technology within the semiconductor manufacturing and related equipment and material supplier sector.

To meet the definition of a “qualified taxpayer” under the SMBR credit program, an applicant must:

- Conduct semiconductor manufacturing, biomedical manufacturing or biomedical research in a project facility located in Pennsylvania and placed in service on or after January 2, 2023;
- Make a minimum capital expenditure of \$200 million to build the facility.
- Create a minimum of 800 permanent jobs to support the ongoing operation of the facility.
- Pay prevailing minimum wage and benefit rates for each craft or classification as determined by the Pennsylvania Department of Labor and Industry under the Prevailing Wage Act.
- Make a good-faith effort to recruit and employ workers from the local labor market for employment during the construction of the facility and
- Abide by the Steel Products Procurement Act of 1978 (P.L.6, No.3) for the construction work to place a project facility into service.

A qualified taxpayer who first meets the program qualifications may apply for up to \$10 million in credits per year for a total of five years. However, the total aggregate amount of tax credits awarded to a qualified taxpayer may not exceed 25% of the capital expenditure made to construct the facility. Any remaining unallocated SBMR credit may be awarded to the next qualified taxpayer that meets the program qualifications.

The SBMR credit is a non-refundable credit that is awarded based on one or more of the following:

- 1) No more than 2.5% of the initial capital expenditure
- 2) No more than 100% of personal income tax withheld from employees or \$20,000, whichever is less, for each permanent job at the facility.

The awarded credit must be first applied against the qualified taxpayer's liability, limited to 20% of the following tax-types:

- 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
- Personal Income Tax liabilities for partners, members, or shareholders for credits earned by pass-through entities (i.e. partnerships, LLCs and S-Corporations).
- Does not include employer tax withholding.

For further information on the program requirements and application, a copy of the Semiconductor Manufacturing and Biomedical Manufacturing and Research Tax Credit Program Guidance is included with this written testimony.

Currently, over half of the \$52.7 billion from the CHIPS and Science Act has funded at least 26 projects and created more than 36,000 jobs with companies like Intel, Micron and IBM, who are building facilities in Arizona, New York and Oregon. The Governor's Action Team (GAT), acting on behalf of DOR, has been actively working to promote and attract participation in the SMBR program. Through strategic marketing and targeted outreach, GAT aims to position the state as an attractive destination for semiconductor and biomedical firms looking to expand their footprint. However, despite these concerted efforts, DOR has yet to receive any applications for the SMBR tax credit since the creation of the program. Accordingly, the Administration would support the consideration of changes to the program that are reflective of industry feedback and designed to attract additional qualifying enterprises, which may include:

- Adjusting the overall investment amount.
- Modifying the expected number of permanent jobs, and/or
- Broadening the definition of manufacturing activities within the semiconductor production

In closing, the Department looks forward to working with the members on the committee and answering any questions they may have. Thank you for the opportunity to provide testimony on behalf of the Department of Revenue.

Semiconductor Manufacturing and Biomedical Manufacturing and Research Tax Credit Program

Program Guidelines

June 2023

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Section I - Introduction

The Commonwealth of Pennsylvania, through the Pennsylvania Department of Revenue (the “Department”), administers the Semiconductor Manufacturing and Biomedical Manufacturing and Research (“SBMR”) Tax Credit Program. The SBMR Tax Credit Program was authorized under Act 108 of 2022, which 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.

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.

Section II - Program Eligibility

SBMR tax credits are available to companies that can meet the eligibility requirements as a Qualified Taxpayer, as determined by the Department.

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 November 3, 2022.
- 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 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 each New Job.
- 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

Applicants must submit a complete application to the Department, documenting the eligibility requirements, at least 180 days prior to the submission of the first application for tax credits. The Department has the authority to audit a Qualified Taxpayer to demonstrate it meets the requirements for eligibility. The Department will work with applicants to ensure that they meet the qualifications.

Pursuant to Article XVII-A.1 of the Tax Reform Code, Qualified Taxpayers must remain tax compliant to obtain tax credits.

Section III – Credit Determination and Limitation

SBMR Tax Credits may be earned annually by qualified taxpayers, as determined by the Department. The annual tax credit amount may be based upon any one or more of the following:

- 1) 2.5% of the initial capital investment
- 2) 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.

Section IV – Application Criteria for SBMR Credits

Applicants for SBMR tax credits must provide to the Department a complete application package consisting of the following:

1. Completed SBMR Tax Credit Program Application.
2. Capital Investment Electronic file containing:
 - Listing of all expenditures and evidence incurred at the project facility to document the capital investment criteria.
3. Prevailing Wage Electronic Contractor file containing:
 - Copies of Construction Contracts for all construction activity at the project facility.
 - The names, addresses and Social Security numbers of each construction employee for which prevailing wage was paid during construction of the project facility.

A copy of the Audit Report, as conducted by the Department may be substituted for the electronic Capital Investment File and Prevailing Wage Contractor File.

4. Personal Income Tax Electronic Withholding file containing:
 - The names, addresses and Social Security numbers of each employee for which the credit is claimed.
 - Verification that each employee identified for the tax credit, spent at least 90% of the employee's working time for the qualified taxpayer at the SBMR facility.

Documentation Submission

The completed application and electronic files must be mailed to the Department on a secure portable data storage device (compact disc or flash drive).

- Do NOT email downloadable .zip files or provide links to stored files.
- Do NOT compress files or password protect individual documents submitted via portable or electronic media. A one-time password protection may be added to a device, however other security features or requirements to download may cause the device to be unreadable by the Department.
- Please be advised that all evidence submitted in conjunction with any application is the property of the Commonwealth of Pennsylvania and **will not be returned.**

Section V – Application Deadline, Credit Approval and Credit Limitation

A. Application Deadline

A Qualified Taxpayer may apply for a SBMR tax credit by submitting an SBMR credit application to the Department by March 1, for the tax credit claimed for semiconductor manufacturing, biomedical manufacturing or biomedical research conducted by the qualified taxpayer at the project facility during the prior calendar year.

B. Credit Approval

Upon approval of the application and by May 1, the Department will issue a SBMR tax credit certificate to the Qualified Taxpayer.

C. Credit Limitations and Allocation

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.

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 beginning January 1, 2024 and ending December 31, 2043.

D. Other Limitations

A qualified taxpayer that has been granted a tax credit under this program shall be ineligible for any other tax credit or a tax benefit program offered by the Commonwealth, as defined in section 1701-A.1 of the Tax Reform Code.

Section VI – Credit Utilization, Pass-Through and Sale

A. Credit Utilization and Pass-Through

A tax credit approved in accordance with these guidelines will be a non-refundable credit that must first be applied against the Qualified Taxpayer's own tax liability. It will be limited to 20% of 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.

B. Credit Sales

The Qualified Taxpayer must hold SBMR tax credits 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 the Department of Revenue ("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.

- 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 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.

Purchasers of SBMR Tax Credits approved by DOR are permitted to use the 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.

Section VII - Contact Information

Please mail all correspondence to:

Pennsylvania Department of Revenue
Office of Economic Development
1133 Strawberry Square
Harrisburg PA 17128

For additional information on the Semiconductor Manufacturing and Biomedical Manufacturing and Research Tax Credit Program, contact the Office of Economic Development at 717-772-3896 or ra-rveconomic-dev@pa.gov.

Section VIII - Application for Eligibility Determination

<u>Semiconductor Manufacturing and Biomedical Manufacturing and Research Tax Credit Program</u>		
PRIMARY BUSINESS REPRESENTATIVE		
Please provide an attachment to this page if the business has a secondary representative or additional representatives that may answer questions and discuss confidential tax matters in relation to the application.		
Name:		
Title:		
Company Name:		
Phone:		
E-mail:		
Mailing Address:		
City:	State:	ZIP Code:
BUSINESS INFORMATION		
Entity Name:		
Facility Name:		
Facility Address:		
City:	State:	ZIP Code:

TAX INFORMATION

Entity Type:

Indicate how the entity reports to the Internal Revenue Service

- C Corporation
- S Corporation
- Partnership
- Limited Liability Company (LLC)
- Limited Partnership (LP)

If LLC is selected, is the LLC a:

- Partnership
- C Corporation
- S Corporation
- Disregarded Entity (Corporate) LLC
- Disregarded Entity (Sole Proprietorship)
- Single-Owner LLC

Federal Employer Identification Number:

PA Revenue ID:

PURTA Number:

Unemployment Compensation Number:

NAICS Code:

CLEARANCE REQUIREMENT

Attest that a State Tax Clearance Form was filed with the Department of Revenue. Instructions and a link to the clearance form can be accessed here: www.revenue.pa.gov/taxcredits

ELIGIBILITY REQUIREMENTS

SBMR tax credits are available to companies that can meet the eligibility requirements as a Qualified Taxpayer, as determined by the Department of Revenue.

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 November 3, 2022.
- 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 during the construction of the facility and ongoing operation of the project facility. All jobs must 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.
- 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

SUPPORTING DOCUMENTATION

Applicant must provide a notarized affidavit with documentation that the entity has satisfied the eligibility requirements and is requesting review by the Department of Revenue. The affidavit must be signed by the Corporate Officer or equivalent representative.

STATEMENT OF AUTHENTICITY

Please provide the name of person completing the application.

Name:

Signature:

Date of Submission:

Section IX - Application for Tax Credits

<u>Semiconductor Manufacturing and Biomedical Manufacturing and Research Tax Credit Program</u>		
PRIMARY BUSINESS REPRESENTATIVE		
Please provide an attachment to this page if the business has a secondary representative or additional representatives that may answer questions and discuss confidential tax matters in relation to the application.		
Name:		
Title:		
Company Name:		
Phone:		
E-mail:		
Mailing Address:		
City:	State:	ZIP Code:
FACILITY INFORMATION		
Facility Name:		
Facility Address:		
City:	State:	ZIP Code:

APPLICANT IDENTIFICATION

Applicant Name:

Phone:

E-mail:

Corporate Mailing Address:

City:	State:	ZIP Code:
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TAX INFORMATION

Entity Type:

Indicate how the entity reports to the Internal Revenue Service

C Corporation S Corporation

Partnership Limited Liability Company (LLC)

Limited Partnership (LP)

If LLC is selected, is the LLC a:

Partnership C Corporation S Corporation

Disregarded Entity (Corporate) LLC Disregarded Entity (Sole Proprietorship)

Single-Owner LLC

Federal Employer Identification Number:

PA Revenue ID:

NAICS Code:

CLEARANCE REQUIREMENT

Attest that a State Tax Clearance Form was filed with the Department of Revenue. Instructions and a link to the clearance form can be accessed here: www.revenue.pa.gov/taxcredits

CREDIT DOCUMENTATION

Applicants for SBMR tax credits must provide to the Department a complete application package consisting of the following:

1. Completed SBMR Tax Credit Program Application.
2. Capital Investment Electronic file containing:
 - Listing of all expenditures and evidence incurred at the project facility to document the capital investment criteria.
3. Prevailing Wage Electronic Contractor file containing:
 - Copies of Construction Contracts for all construction activity at the project facility.
 - The names, addresses and Social Security numbers of each construction employee for which prevailing wage was paid during construction of the project facility.

A copy of the Audit Report, as conducted by the Department may be substituted for the electronic Capital Investment File and Prevailing Wage Contractor File.

4. Personal Income Tax Electronic Withholding file containing:
 - The names, addresses and Social Security numbers of each employee for which the credit is claimed.
 - Verification that each employee identified for tax credit, spent at least 90% of the employee's working time for the qualified taxpayer at the SBMR facility.

TAX CREDIT DETERMINATION

Please provide the total amount of credit requested for this application.

Total Credit Requested

\$ _____

STATEMENT OF AUTHENTICITY

Please provide the name of person completing the application.

Name:

Signature:

Date of Submission:

DEPARTMENT USE ONLY POST MARK DATE:

Section X – Definitions

"Biomedical manufacturing." The manufacture of products or the creation of processes that advance the understanding, treatment and prevention of disease.

"Biomedical research." Scientific research encompassing the application of the biological sciences, especially biochemistry, molecular biology and genetics, for the understanding, treatment and prevention of disease.

"Capital investment." The amount of money or assets invested by a qualified taxpayer in constructing and placing into service a project facility in the commonwealth.

"Company." A corporation, partnership, limited liability company, limited liability partnership, business trust, affiliate, unincorporated joint venture or other business entity doing business in this Commonwealth.

"Department." The Department of Revenue of the Commonwealth.

"Downstream company." A company that purchases products or chemical compounds manufactured or processed by a qualified taxpayer.

"Full-time-equivalent job." The quotient obtained by dividing the total number of hours for which employees were compensated for employment over the preceding 12-month period by 2,080.

"New job." A full-time-equivalent job created during the construction of the project facility and paying 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.

"Pass-through entity." Any of the following:

- (1) A partnership as defined in section 301(n.0).
- (2) A Pennsylvania S corporation as defined in section 301(n.1).
- (3) An unincorporated entity subject to section 307.21.

"Permanent job." A full-time-equivalent job created to support the ongoing operation of the project facility.

"Prevailing Wage Act." The act of August 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing Wage Act.

"Project facility." A facility located in this Commonwealth which is owned and operated by the qualified taxpayer and where semiconductor manufacturing, biomedical manufacturing or biomedical research is conducted by the qualified taxpayer at the project facility.

"Qualified tax liability." The liability for taxes imposed under Articles III, IV, VII, VIII, IX, XI and XV. The term does not include tax withheld under section 316.1.

"Semiconductor manufacturing." The manufacture of components or the creation of advanced processes or technology within the semiconductor manufacturing and related equipment and material supplier sector

Tax credit. "The Semiconductor Manufacturing and Biomedical Manufacturing and Research ("SBMR") Tax Credit authorized under Article XVII-L of the Tax Code Reform Code of 1971."

"Upstream company." The term includes a company that is engaged in the exploration, development, production, processing, refining or transportation of natural gas, clean hydrogen milk or products used in semiconductor manufacturing, biomedical manufacturing or biomedical research in this Commonwealth.