



1 §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12,  
2 §11-13BB-13, and §11-13BB-14, all to read as follows:

3 **ARTICLE 13BB. ENERGY EFFICIENT BUILDING PROPERTY TAX CREDIT.**

4 **§11-13BB-1. Short title.**

5 This article may be cited as the "Energy Efficient Building  
6 Act."

7 **§11-13BB-2. Legislative finding and purpose.**

8 The Legislature finds that encouraging the construction and  
9 rehabilitation of energy efficient buildings is in the public  
10 interest and promotes the general welfare of the people of this  
11 state. It contributes to economic growth and, in time, will  
12 improve environmental quality in the state by decreasing discharge  
13 of pollutants from buildings, improving energy efficiency and  
14 reducing greenhouse gas emissions. To accomplish these ends, there  
15 is hereby enacted the energy efficient building tax credit.

16 **§11-13BB-3. Definitions.**

17 (a) General. -- When used in this article, or in the  
18 administration of this article, terms defined in subsection (b)  
19 have the meanings ascribed to them by this section, unless a  
20 different meaning is clearly required by the context in which the  
21 term is used.

22 (b) Terms defined. --

23 (1) "EPA" means the United States Environmental Protection  
24 Agency.

1       (2) "Designed to Earn the Energy Star®" means a designation  
2 given by the EPA as part of the Energy Star® program to identify  
3 plans for the construction of residential or nonresidential  
4 buildings that incorporate energy-efficient details and  
5 specifications typically found in Energy Star® qualified buildings.

6       (3) "Eligible buildings" means energy efficient residential or  
7 nonresidential building property to which the EPA has awarded an  
8 Energy Star® label.

9       (4) "Eligible expenditures" means expenses incurred on or  
10 after July 1, 2011, for the planning, construction or  
11 rehabilitation of energy efficient residential or nonresidential  
12 building property. Eligible expenditures do not include:

13       (A) Legal fees related to construction or remodeling;

14       (B) Site purchase or preparation costs;

15       (C) Interest related to construction or remodeling;

16       (D) Architectural, engineering and other professional fees  
17 related to construction or remodeling; and

18       (E) Closing costs related to construction or remodeling

19       (F) Costs related to issuance, or procurement of loans, bond  
20 issuances or costs of capital or related administrative expenses.

21       (5) "Eligible building plans" means plans for the construction  
22 of residential or nonresidential buildings that incorporate  
23 energy-efficient details and specifications typically found in  
24 Energy Star® qualified buildings that have earned the Designed to  
25 Earn the Energy Star® label under the Energy Star® program.

1       (6) "Eligible taxpayer" means the owner of a residential or  
2 commercial building property to which the EPA has awarded an Energy  
3 Star® label, or the owner of building plans which have earned the  
4 Designed to Earn the Energy Star® label by the Energy Star®  
5 program.

6       (7) "Energy efficient residential or nonresidential building"  
7 means residential or nonresidential building property:

8       (A) Which is installed on or in any building which is:

9       (i) Located in West Virginia; and

10       (ii) Within the scope of the Energy Star® performance ratings  
11 system utilized in the Energy Star® program established by 42  
12 U.S.C. §6294a.

13       (B) Which is installed as part of:

14       (i) The interior lighting systems;

15       (ii) The heating, cooling, ventilation, and hot water systems;

16 or

17       (iii) The building envelope.

18       (C) To which the Administrator of the EPA has awarded an  
19 Energy Star® label for energy efficient buildings and manufacturing  
20 plants in accordance with the requirements and procedures  
21 established by the EPA under the Energy Star® program.

22       (8) "Energy Star® label" means, in the context of buildings,  
23 a designation given by the EPA as part of the Energy Star® program  
24 to identify residential and nonresidential buildings that meet EPA  
25 strict energy efficiency guidelines.

1       (9) "Energy Star® program" means a joint voluntary program  
2 established within the United States Department of Energy and the  
3 EPA to identify and promote energy-efficient products and buildings  
4 in order to reduce energy consumption, improve energy security, and  
5 reduce pollution through voluntary labeling of, or other forms of  
6 communication about, products and buildings that meet the highest  
7 energy conservation standards.

8       (10) "Energy Star® performance ratings system" means the  
9 ratings system used by the EPA in the Energy Star® program for  
10 buildings and manufacturing plants to award the Energy Star® label.

11       (11) "Placed in service" means the eligible building is placed  
12 in a condition or state of readiness and availability for use as a  
13 residential or nonresidential building.

14       (12) "Tax Commissioner" means the appointed official, or his  
15 or her designee, charged with administering the West Virginia State  
16 Tax Department.

17 **§11-13BB-4. Amount of credit allowed.**

18       (a) Credit allowed. --

19       (1) Eligible taxpayers are allowed a credit against the taxes  
20 imposed by articles twenty-three, twenty-four and twenty-one of  
21 this chapter, in that order, for owning a residential or commercial  
22 building to which the EPA has awarded an Energy Star® label, or  
23 owning building plans which have earned the Designed to Earn the  
24 Energy Star® label.

25       (2) Taxpayers who have taken the credit based on ownership of

1 eligible building plans must complete construction of the eligible  
2 building and obtain Energy Star® certification for the completed  
3 building within three years from the time the credit was initially  
4 taken.

5 (A) If the building fails to obtain Energy Star® certification  
6 by the end of year three, the credit allowed under this article  
7 shall be redetermined and amended returns filed for the first and  
8 second taxable years.

9 (B) In applying the amount of redetermined credit allowable  
10 for the two preceding taxable years, the redetermined credit shall  
11 first be applied to the extent it was originally applied in such  
12 prior two years to business franchise taxes, then to corporation  
13 net income taxes, then to personal income taxes. Any additional  
14 taxes due under this chapter shall be remitted with the amended  
15 returns filed with the Tax Commission, along with interest, as  
16 provided in section seventeen, article ten of this chapter, and a  
17 ten percent penalty.

18 (b) Application for credit required. --

19 (1) Application required. -- Notwithstanding any provision of  
20 this article to the contrary, no credit is allowed or may be  
21 applied under this article for any Energy Star® eligible building  
22 placed in service or use or for any Designed to Earn the Energy  
23 Star® building plans until the eligible taxpayer claiming the  
24 credit makes written application to the Tax Commissioner for  
25 allowance of credit as provided in this subsection. This

1 application shall be in the form prescribed by the Tax  
2 Commissioner, and shall be filed with the Tax Commissioner no later  
3 than the last day for filing the annual return, determined by  
4 including any authorized extension of time for filing the return,  
5 required under article twenty-one or twenty-four of this chapter  
6 for the taxable year in which the property to which the credit  
7 relates is placed in service or use.

8 (2) Failure to file. -- The failure to timely file the  
9 application for credit under this section results in forfeiture of  
10 fifty percent of the annual credit otherwise allowable under this  
11 article. This penalty applies annually until the application is  
12 filed.

13 (c) Amount of credit allowed.--

14 The amount of credit allowed by subsection (a) is the greater  
15 of:

16 (1) One and one-half percent of eligible expenditures; or

17 (2) One dollar per square foot of the eligible building as  
18 constructed or as designed and portrayed on the building plan.

19 **§11-13BB-5. Application of credit.**

20 (a) Application of credit over ten years. -- The amount of  
21 credit allowable must be taken over a ten-year period, at the rate  
22 of one tenth of the amount thereof per taxable year, beginning with  
23 the taxable year in which the taxpayer places the eligible building  
24 in service or use in this state: Provided, That the taxpayer may

1 elect to delay the beginning of the ten-year period until the next  
2 succeeding taxable year after the taxable year in which the  
3 taxpayer places the eligible building in service or use in this  
4 state or the building plan is approved to receive the Designed to  
5 Earn the Energy Star® label. This election shall be made in the  
6 annual income tax return filed under this chapter for the taxable  
7 year in which the eligible building is first placed into service or  
8 use by the taxpayer. Once made, the election cannot be revoked. In  
9 the event of a failure to make a timely election to delay the  
10 beginning of the credit application period, the credit shall be  
11 applied beginning in the taxable year in which the taxpayer places  
12 the eligible building in service or use in this state. No  
13 retroactive election to delay the beginning of the credit  
14 application period shall be allowed.

15 The eligible taxpayer may take the tax credit.

16 (b) Business franchise tax. -- The credit is first applied to  
17 reduce the taxes imposed by article twenty-three of this chapter  
18 for the taxable year, determined after application of the credits  
19 against tax provided in section seventeen of said article, but  
20 before application of any other allowable credits against tax.

21 (c) Corporation net income taxes. -- After application of  
22 subsection (b) of this section, any unused credit is next applied  
23 to reduce the taxes imposed by article twenty-four of this chapter  
24 for the taxable year, determined before application of allowable  
25 credits against tax.

1 (d) Personal income tax. --

2 (1) If the eligible taxpayer is an electing small business  
3 corporation (as defined in section 1361 of the United States  
4 Internal Revenue Code of 1986, as amended), a partnership, a  
5 limited liability company that is treated as a partnership for  
6 federal income tax purposes or a sole proprietorship, then any  
7 unused credit, after application of subsections (b) and (c) of this  
8 section, as applicable, is allowed as a credit against the taxes  
9 imposed by article twenty-one of this chapter.

10 (2) Electing small business corporations, limited liability  
11 companies, partnerships and other unincorporated organizations  
12 shall allocate the credit allowed by this article among its members  
13 in the same manner as profits and losses are allocated for the  
14 taxable year.

15 **§11-13BB-6. Limitation on use of credit.**

16 (a) Withholding. -- No credit is allowed under this section  
17 against any employer withholding taxes imposed by article  
18 twenty-one of this chapter.

19 (b) No other tax credit authorized. -- The credit allowed or  
20 authorized under the provisions of this article shall not be  
21 allowed, authorized or applied against tax if any tax credit is  
22 authorized, applied for or used or applied against tax by the  
23 taxpayer, or by any other person, under article thirteen-d, article  
24 thirteen-e, article thirteen-q, article thirteen-r, or article  
25 thirteen-s of this chapter, or any combination thereof, for, or

1 with relation to, investment in any building, or facility for which  
2 credit is, or may be allowed, authorized or applied against tax  
3 under this article.

4 **§11-13BB-7. Excess credit; carryforward; carryback prohibited.**

5 (a) If the tax credit allowed under this article in any  
6 taxable year exceeds the sum of the taxes enumerated in section  
7 four of this article for that taxable year, the excess may be  
8 applied against those taxes, in the order and manner stated in  
9 section four of this article, for succeeding taxable years until  
10 the earlier of the following:

11 (1) Five taxable years have elapsed; or

12 (2) The full amount of the excess tax credit is used.

13 (b) No carryback to a prior taxable year is allowed for the  
14 amount of any unused portion of any annual credit allowance.

15 (c) The transfer or sale of this credit does not extend the  
16 time in which the credit can be used. The carry forward period for  
17 the credit that is transferred or sold begins on the date on which  
18 the credit was originally allowed to be used by the original  
19 taxpayer for which credit entitlement was initially authorized.

20 **§11-13BB-8. Transfer or sale of credit.**

21 (a) Any tax credit issued in accordance with this article,  
22 which has been issued to an eligible taxpayer, and to the extent  
23 not previously claimed against the tax of the eligible taxpayer or  
24 the owner of the credit, may be transferred or sold by such  
25 eligible taxpayer to another West Virginia taxpayer, subject to the

1 following conditions:

2 (1) A single transfer or sale may involve one or more  
3 transferees, assignees or purchasers. A transfer of sale of the  
4 credits may involve multiple transfers to one or more transferees,  
5 assignees or purchasers.

6 (2) Transferors and sellers shall apply to the tax department  
7 for approval of any transfer, sale or assignment of the tax credit.  
8 Any amount of the tax credit that has been transferred or assigned  
9 shall be subject to the same limitations and conditions that apply  
10 to the eligible transferor taxpayer's or seller's entitlement, use  
11 and application of the credit. The application for sale, transfer  
12 or assignment of the credit shall include the transferor's tax  
13 credit balance prior to transfer, the credit certificate number,  
14 the name of the seller, the transferor's remaining tax credit  
15 balance after transfer, if any, all tax identification numbers for  
16 both transferor and transferee, the date of transfer, the amount  
17 transferred, a copy of the credit certificate and any other  
18 information required by the Tax Commissioner.

19 (3) The Tax Commissioner shall not approve the transfer or  
20 assignment of a tax credit to a taxpayer if the seller or  
21 transferor has an outstanding tax obligation with the State of West  
22 Virginia.

23 (b) The transferee, assignee or purchaser shall apply such  
24 credits as required by this article, and subject to all conditions  
25 and limitations of this article.

1       (c) For purposes of this chapter, any proceeds received by the  
2 eligible company or transferor for its assignment or sale of the  
3 tax credits allowed pursuant to this section are exempt from the  
4 West Virginia consumers sales and service tax and use tax and from  
5 the corporate net income tax and personal income tax.

6 **§11-13BB-9. Credit recapture.**

7       (a) If it appears upon audit or otherwise that any taxpayer  
8 has taken the credit against tax allowed under this article and was  
9 not entitled to take the credit, then the credit improperly taken  
10 under this article shall be recaptured.

11       (b) Amended returns shall be filed for any tax year for which  
12 the credit was improperly taken. Any additional taxes due under  
13 this chapter shall be remitted with the amended return or returns  
14 filed with the Tax Commissioner, along with interest, as provided  
15 in section seventeen, article ten of this chapter and such other  
16 penalties and additions to tax as may be applicable pursuant to the  
17 provisions of article ten of this chapter.

18 **§11-13BB-10. Interest; penalties; additions to tax.**

19       Notwithstanding the provisions of article ten of this chapter,  
20 penalties and additions to tax imposed under article ten of this  
21 chapter may be waived at the discretion of the Tax Commissioner:  
22 Provided, That interest is not subject to waiver, except in  
23 accordance with the provisions of article ten of this chapter.

24 **§11-13BB-11. Statute of limitations.**

1 Notwithstanding the provisions of article ten of this chapter,  
2 the statute of limitations for the issuance of an assessment of tax  
3 by the Tax Commissioner shall be five years from the date of filing  
4 of any tax return on which this credit was taken or five years from  
5 the date of payment of any tax liability, calculated pursuant to  
6 the assertion of the credit allowed under this article, whichever  
7 is later.

8 **§11-13BB-12. Report on credit.**

9 (a) The Tax Commissioner shall provide to the Joint Committee  
10 on Government and Finance by July 1, 2013, and on July 1 of each  
11 year thereafter, a report detailing the amount of credit claimed  
12 pursuant to this article. The report is to include the amount of  
13 credit claimed against the business franchise tax, the amount of  
14 credit claimed against the corporate net income tax and the amount  
15 of credit claimed against the personal income tax.

16 (b) Taxpayers claiming the credit shall provide the  
17 information as the Tax Commissioner may require to prepare the  
18 report: *Provided,* That the information is subject to the  
19 confidentiality and disclosure provisions of sections five-d and  
20 five-s, article ten of this chapter.

21 **§11-13BB-13. Legislative rules.**

22 The Tax Commissioner shall propose for legislative approval  
23 rules pursuant to the provisions of article three, chapter  
24 twenty-nine-a of this code, as may be necessary to carry out the  
25 purposes of this article.

1 **§11-13BB-14. Effective date.**

2 This article shall be effective for business franchise tax  
3 years, corporate net income tax years and personal income tax years  
4 beginning on or after January 1, 2011.

NOTE: The purpose of this bill is to authorize the creation of a new tax credit for eligible expenditures incurred in placing in service residential or nonresidential energy efficient building property. The bill's incentive will encourage the construction of energy efficient buildings, thereby reducing the total amount of energy consumed in the state. The bill defines terms. The bill establishes the amount of tax credit permitted and provides the tax credit to be transferrable. The bill also authorizes rulemaking. The bill further requires the Tax Commissioner to provide to the Joint Committee on Government and Finance annual reports beginning in 2013.

This article is new; therefore, it has been completely underscored.