

Senate Bill No. 410

(By Senators McCabe, Browning, Unger, Foster, Kessler (Acting President), Klempa and Miller)

[Introduced February 3, 2011; referred to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-6D-9, all relating to extending the alternative-fuel motor vehicles tax credit; making additional legislative findings; providing for tax credits for qualified alternative-fuel vehicles and refueling infrastructure; establishing the amount of credit available; establishing the period of time the credit is available; eliminating the requirement for the credit to be taken over a three-year period; eliminating some definitions and defining other terms; requiring the Tax Commissioner to promulgate new rules; and allowing for the carryover and recapture of the tax credit.

Be it enacted by the Legislature of West Virginia:

That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of the Code of West Virginia, 1931,

1 as amended, be amended and reenacted; and that said code be amended
2 by adding thereto a new section, designated §11-6D-9, all to read
3 as follows:

4 **ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLES TAX CREDIT.**

5 **§11-6D-1. Legislative findings and purpose.**

6 Consistent with the public policy as stated in section one,
7 article two-d, chapter twenty-four of this code, the Legislature
8 hereby finds that the use of alternative fuels is in the public
9 interest and promotes the general welfare of the people of this
10 state insofar as it addresses serious concerns for our environment
11 and our state's and nation's dependence on foreign oil as a source
12 of energy. The Legislature further finds that this state has an
13 abundant supply of alternative fuels and an extensive supply
14 network and that, by encouraging the use of alternatively-fueled
15 motor vehicles, the state will be reducing its dependence on
16 foreign oil and attempting to improve its air quality. The
17 Legislature further finds that the wholesale cost of fuel for
18 certain alternatively-fueled motor vehicles is significantly lower
19 than the cost of fueling traditional motor vehicles with oil based
20 fuels.

21 However, because the cost of motor vehicles which utilize
22 alternative-fuel technologies remains high in relation to motor
23 vehicles that employ more traditional technologies, citizens of
24 this state who might otherwise choose an alternatively-fueled motor
25 vehicle are forced by economic necessity to continue using motor
26 vehicles that are fueled by more conventional means. Additionally,
27 the availability of commercial and residential infrastructure to

1 support alternatively-fueled vehicles available to the public is
 2 inadequate to encourage the use of alternatively-fueled motor
 3 vehicles. Therefore, in order to encourage the use of
 4 alternatively-fueled motor vehicles and possibly reduce unnecessary
 5 pollution of our environment and reduce our dependence on foreign
 6 sources of energy, there is hereby created an alternative-fuel
 7 motor vehicles tax credit.

8 **§11-6D-2. Definitions.**

9 As used in this article, the following terms have the meanings
 10 ascribed to them in this section:

11 (a) "Alternative fuel" includes:

12 (1) Compressed natural gas;

13 (2) Liquefied natural gas;

14 (3) Liquefied petroleum gas;

15 (4) ~~Methanol~~ Hydrogen;

16 ~~(5) Ethanol;~~

17 ~~(6) Fuel mixtures that contain eighty five percent or more by~~
 18 ~~volume, when combined with gasoline or other fuels, of the~~
 19 ~~following:~~

20 ~~(A) Methanol;~~

21 ~~(B) Ethanol; or~~

22 ~~(C) Other alcohols;~~

23 ~~(7)~~ (5) Coal-derived liquid fuels; and

24 ~~(8)~~ (6) Electricity, including electricity from solar energy.

25 (b) "Alternative-fuel motor vehicle" means a motor vehicle
 26 that as a new or retrofitted or converted fuel vehicle:

27 (1) Operates solely on one alternative fuel;

1 (2) Is capable of operating on one or more alternative fuels,
2 singly or in combination; or

3 (3) Is capable of operating on an alternative fuel and is also
4 capable of operating on gasoline or diesel fuel.

5 (c) "Bi-fueled" means the ability of an alternative-fuel motor
6 vehicle to operate on an alternative fuel and another form of fuel.

7 (d) "Plug-in hybrid electric vehicle" means:

8 (1) An original equipment manufacturer plug-in hybrid electric
9 vehicle that can operate solely on electric power and that is
10 capable of recharging its battery from an on-board generation
11 source and an off-board electricity source; and

12 (2) A plug-in hybrid electric vehicle conversion that provides
13 an increase in city fuel economy of seventy-five percent or more as
14 compared to a comparable nonhybrid version vehicle for a minimum of
15 twenty miles and that is capable of recharging its battery from an
16 on-board generation source and an off-board electricity source. A
17 vehicle shall be comparable if it is the same model year and the
18 same vehicle class as established by the United States
19 Environmental Protection Agency and is comparable in weight, size,
20 and use. Fuel economy comparisons shall be made using city fuel
21 economy standards in a manner that is substantially similar to the
22 manner in which city fuel economy is measured in accordance with
23 procedures set forth in 40 C.F.R. Part 600, as in effect on January
24 1, 2011.

25 (e) "Qualified alternative fuel vehicle refueling
26 infrastructure" means property owned by the applicant for the tax
27 credit and used for storing alternative fuels and for dispensing

1 such alternative fuels into fuel tanks of motor vehicles, including
2 but not limited to, compression equipment, storage tanks, and
3 dispensing units for alternative fuel at the point where the fuel
4 is delivered: *Provided*, That the property is installed and located
5 in this state and is not located on a private residence or private
6 home.

7 (f) "Qualified alternative fuel vehicle home refueling
8 infrastructure" means property owned by the applicant for the tax
9 credit located on a private residence or private home and used for
10 storing alternative fuels and for dispensing such alternative fuels
11 into fuel tanks of motor vehicles, including, but not limited to,
12 compression equipment, storage tanks, and dispensing units for
13 alternative fuel at the point where the fuel is delivered or for
14 providing electricity to plug-in hybrid electric vehicles or
15 electric vehicles: *Provided*, That the property is installed and
16 located in this state.

17 (g) "Taxpayer" means any natural person, corporation, limited
18 liability company or partnership subject to the tax imposed under
19 article twenty-one, twenty-three or twenty-four of this chapter, or
20 any combination.

21 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles;**
22 **qualified alternative fuel vehicle refueling**
23 **infrastructure application against personal income**
24 **tax or corporate net income tax; effective date.**

25 The tax credit provided for the purchase of alternative-fuel
26 motor vehicles or conversion to alternative-fuel motor vehicles and
27 qualified alternative fuel vehicle refueling infrastructure in this

1 article may be applied against the tax liability of a taxpayer
 2 imposed by the provisions of ~~either~~ article twenty-one,
 3 twenty-three or article twenty-four of this chapter, but in no case
 4 may more than one credit be granted for the same alternative-fuel
 5 motor vehicle as defined in subdivision (b), section two of this
 6 article. This credit shall be available for those tax years
 7 beginning on or after June 30, 1997 January 1, 2011.

8 **§11-6D-4. Eligibility for credit.**

9 A taxpayer is eligible to claim the credit against tax
 10 provided in this article if he, ~~or~~ she or it:

11 (a) Converts a motor vehicle that is presently registered in
 12 West Virginia to operate:

13 (1) Exclusively on an alternative fuel as defined in
 14 subdivision (a), section two of this article; or

15 (2) ~~In a dual fuel mode, as defined in paragraph (6),~~
 16 ~~subdivision (a), section two of this article~~ As a bi-fueled
 17 alternative-fuel motor vehicle; or

18 (b) Purchases from an original equipment manufacturer or an
 19 after-market conversion facility or any other automobile retailer
 20 a new dedicated or ~~dually fueled~~ bi-fueled alternative-fuel motor
 21 vehicle for which the taxpayer then obtains a valid West Virginia
 22 registration; or

23 (c) Constructs or purchases and installs qualified alternative
 24 fuel vehicle refueling infrastructure or qualified alternative fuel
 25 vehicle home infrastructure that is capable of dispensing
 26 alternative fuel for alternative-fuel motor vehicles.

27 ~~(e)~~ (d) The credit provided in this article is not available

1 to and may not be claimed by any taxpayer under any obligation
2 pursuant to any federal or state law, policy or regulation to
3 convert to the use of alternative fuels for any motor vehicle.

4 **§11-6D-5. Amount of credit for alternative fuel motor vehicles.**

5 (a) For taxable years beginning on January 1, 2011, the amount
6 of the credit allowed under this article for an alternative-fuel
7 motor vehicle that weighs less than twenty six thousand pounds
8 shall be thirty-five percent of the purchase price of the
9 alternative-fuel motor vehicle up to a maximum amount of \$7,500 or
10 fifty percent of the actual cost of converting from a traditionally
11 fueled motor vehicle to an alternative fuel motor vehicle up to a
12 maximum amount of \$7,500.

13 (b) For taxable years beginning on and after January 1, 2011,
14 the amount of the credit allowed under this article for an
15 alternative-fuel motor vehicle that weighs more than twenty six
16 thousand pounds shall be thirty-five percent of the purchase price
17 of the alternative-fuel motor vehicle up to a maximum amount of
18 \$25,000 or fifty percent of the actual cost of converting from a
19 traditionally fueled motor vehicle to an alternative fuel motor
20 vehicle up to a maximum amount of \$25,000.

21 **§11-6D-6. Amount of credit for qualified alternative fuel vehicle**
22 **refueling infrastructure.**

23 (a) For taxable years beginning on and after January 1, 2011
24 but prior to January 1, 2014, the amount of the credit allowed
25 under this article for qualified alternative fuel vehicle refueling
26 infrastructure shall be equal to an amount of fifty percent of the
27 total costs directly associated with the construction or purchase

1 and installation of the alternative fuel vehicle refueling
2 infrastructure up to a maximum of \$250,000: *Provided*, That if the
3 refueling facility is generally accessible for public use, the
4 amount of the credit allowed will be multiplied by one hundred
5 twenty-five percent and the maximum amount allowable will be
6 \$312,500: *Provided, however*, That the amount of credit allowed may
7 not exceed the cost of construction of the alternative fuel vehicle
8 refueling infrastructure.

9 (b) For taxable years beginning on and after January 1, 2014
10 but prior to January 1, 2016, the amount of the credit allowed
11 under this article for qualified alternative fuel vehicle refueling
12 infrastructure shall be equal to an amount of fifty percent of the
13 total costs directly associated with the construction or purchase
14 and installation of the alternative fuel vehicle refueling
15 infrastructure up to a maximum of \$200,000: *Provided*, That if the
16 refueling facility is generally accessible for public use, the
17 amount of the credit allowed will be multiplied by \$1.25 and the
18 maximum amount allowable will be \$250,000: *Provided, however*, That
19 the amount of credit allowed may not exceed the cost of
20 construction of the alternative fuel vehicle refueling
21 infrastructure.

22 (c) For taxable years beginning on and after January 1, 2016
23 but prior to January 1, 2022, the amount of the credit allowed
24 under this article for qualified alternative fuel vehicle refueling
25 infrastructure shall be equal to an amount of fifty percent of the
26 total costs directly associated with the construction or purchase
27 and installation of the alternative fuel vehicle refueling

1 infrastructure up to a maximum of \$150,000: *Provided*, That if the
2 refueling facility is generally accessible for public use, the
3 amount of the credit allowed will be multiplied by 1.25 and the
4 maximum amount allowable will be \$187,500: *Provided, however*, That
5 the amount of credit allowed may not exceed the cost of
6 construction of the alternative fuel vehicle refueling
7 infrastructure.

8 (d) For taxable years beginning on and after January 1, 2011,
9 the amount of the credit allowed under this article for qualified
10 alternative fuel vehicle home refueling infrastructure shall be
11 equal to an amount of fifty percent of the total costs directly
12 associated with the construction or purchase and installation of
13 the alternative fuel vehicle home refueling infrastructure up to a
14 maximum of \$10,000.

15 (e) The cost of construction, purchase or installation of the
16 alternative fuel vehicle refueling infrastructure or alternative
17 fuel vehicle home refueling infrastructure eligible for a tax
18 credit under this section shall not include costs associated with
19 exploration, development or production activities necessary for
20 severing natural resources from the soil or ground.

21 (f) When the taxpayer is a pass-through entity treated like a
22 partnership for federal and state income tax purposes, the credit
23 allowed under this article for the year shall flow through to the
24 equity owners of the pass-through entity in the same manner that
25 distributive share flows through to the equity owners and in
26 accordance with any legislative rule the tax commissioner may
27 promulgate pursuant to article three, chapter twenty-nine-a of this

1 code, to effectuate this section.

2 (g) No credit allowed by this article may be applied against
3 employer withholding taxes imposed by article twenty-one of this
4 chapter.

5 **§11-6D-7. Duration of availability of credit.**

6 No person is eligible to receive a tax credit under this
7 article for: (i) An alternative-fuel motor vehicle purchased after
8 December 31, 2021; (ii) a vehicle converted to an alternative-fuel
9 motor vehicle after December 31, 2021; or (iii) the construction or
10 purchase and installation of qualified alternative fuel vehicle
11 refueling infrastructure occurring after December 31, 2021.

12 **§11-6D-8. Commissioner to design forms and schedules; promulgation**
13 **of rules.**

14 (a) The Tax Commissioner shall design and provide to the
15 public simplified forms and schedules to implement and effectuate
16 the provisions of this article.

17 (b) The Tax Commissioner ~~is authorized to~~ shall promulgate
18 rules for the administration of this article consistent with its
19 provisions and in accordance with article three, chapter
20 twenty-nine-a of this code after the effective date of the
21 amendments made during the 2011 Legislative session to this
22 article. These rules shall include rules relating to the necessary
23 documentation required to be filed in order to take the tax credits
24 allowed in this article.

25 (c) Within one year ~~following~~ prior to the expiration of the
26 credit established in this article the State Tax Commissioner shall
27 provide a written report to the Legislature setting forth the

1 utilization of the credit, the benefit of the credit and the
2 overall cost of the credit.

3 **§11-6D-9. Carryover credit allowed; recapture of credit.**

4 (a) If the tax credit allowed under this article in any
5 taxable year exceeds the taxpayer's tax liability as determined in
6 accordance with article twenty-one, twenty-three or twenty-four of
7 this chapter for that taxable year, the excess may be applied for
8 succeeding taxable years until the full amount of the excess tax
9 credit is used.

10 (b) No carryback to a prior taxable year is allowed for the
11 amount of any unused credit in any taxable year.

12 (c) A tax credit is subject to recapture, elimination or
13 reduction if it is determined by the Tax Commissioner that a
14 taxpayer was not entitled to the credit, in whole or in part, in
15 the tax year in which it was claimed by the taxpayer. The amount
16 of credit that flows through to equity owners of a pass-through
17 entity may be recaptured or recovered from either the taxpayer or
18 the equity owners, in the discretion of the Tax Commissioner.

NOTE: The purpose of this bill is to extend the alternative-fuel motor vehicle tax credits. The bill makes additional legislative findings. The bill provides for new tax credits for qualified alternative fuel vehicles and refueling infrastructure. The bill establishes the amount of credit and the period of time the credit is available. The bill also eliminates the requirement the credit to be taken over a three year period;. The bill further eliminates some definitions of terms and defines other terms. The bill requires the Tax Commissioner to promulgate new rules. Additionally, the bill allows for the carryover and recapture of the tax credit.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§11-6D-5, §11-6D-6 and §11-6D-7 have been completely rewritten; therefore, strike-throughs and underscoring have been omitted.

§11-6D-9 is new; therefore, strike-throughs and underscoring have been omitted.