

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 410

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

[Originating in the Committee on Finance;
reported February 28, 2011.]

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

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

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

1 Consistent with the public policy as stated in section one,
2 article two-d, chapter twenty-four of this code, the Legisla-
3 ture hereby finds that the use of alternative fuels is in the
4 public interest and promotes the general welfare of the
5 people of this state insofar as it addresses serious concerns
6 for our environment and our state's and nation's dependence
7 on foreign oil as a source of energy. The Legislature further
8 finds that this state has an abundant supply of alternative
9 fuels and an extensive supply network and that, by encour-
10 aging the use of alternatively-fueled motor vehicles, the state
11 will be reducing its dependence on foreign oil and attempt-
12 ing to improve its air quality. The Legislature further finds

13 that the wholesale cost of fuel for certain alternatively-
14 fueled motor vehicles is significantly lower than the cost of
15 fueling traditional motor vehicles with oil-based fuels.

16 However, because the cost of motor vehicles which utilize
17 alternative-fuel technologies remains high in relation to
18 motor vehicles that employ more traditional technologies,
19 citizens of this state who might otherwise choose an
20 alternatively-fueled motor vehicle are forced by economic
21 necessity to continue using motor vehicles that are fueled by
22 more conventional means. Additionally, the availability of
23 commercial and residential infrastructure to support
24 alternatively-fueled vehicles available to the public is
25 inadequate to encourage the use of alternatively fueled motor
26 vehicles. Therefore, in order to encourage the use of
27 alternatively-fueled motor vehicles and possibly reduce
28 unnecessary pollution of our environment and reduce our
29 dependence on foreign sources of energy, there is hereby
30 created an alternative-fuel motor vehicles tax credit and an
31 alternative-fuel infrastructure tax credit.

§11-6D-2. Definitions.

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

3 (a) "Alternative fuel" includes:

4 (1) Compressed natural gas;

5 (2) Liquified natural gas;

6 (3) Liquified petroleum gas;

7 ~~(4) Methanol;~~

8 ~~(5) Ethanol;~~

9 ~~(6) Fuel mixtures that contain eighty-five percent or more~~

10 ~~by volume, when combined with gasoline or other fuels, of~~

11 ~~the following:~~

12 ~~(A) Methanol;~~

13 ~~(B) Ethanol; or~~

14 ~~(C) Other alcohols;~~

15 (4) Natural gas hydrocarbons and derivatives;

16 (5) Hydrogen;

17 ~~(7) (6) Coal-derived liquid fuels; and~~

18 ~~(8) (7) Electricity, including electricity from solar energy.~~

19 (b) "Alternative-fuel motor vehicle" means a motor vehicle

20 that as a new or retrofitted or converted fuel vehicle:

21 (1) Operates solely on one alternative fuel;

22 (2) Is capable of operating on one or more alternative fuels,

23 singly or in combination; or

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

26 (c) “Bi-fueled” means the ability of an alternative-fuel
27 motor vehicle to operate on an alternative fuel and another
28 form of fuel.

29 (d) “Plug-in hybrid electric vehicle” means:

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

34 (2) A plug-in hybrid electric vehicle conversion that
35 provides an increase in city fuel economy of seventy-five
36 percent or more as compared to a comparable nonhybrid
37 version vehicle for a minimum of twenty miles and that is
38 capable of recharging its battery from an on-board genera-
39 tion source and an off-board electricity source. A vehicle is
40 comparable if it is the same model year and the same vehicle
41 class as established by the United States Environmental
42 Protection Agency and is comparable in weight, size, and
43 use. Fuel economy comparisons shall be made using city fuel
44 economy standards in a manner that is substantially similar
45 to the manner in which city fuel economy is measured in

46 accordance with procedures set forth in 40 C.F.R. 600 as in
47 effect on January 1, 2011.

48 (e) “Qualified alternative fuel vehicle refueling infrastruc-
49 ture” means property owned by the applicant for the tax
50 credit and used for storing alternative fuels and for dispens-
51 ing such alternative fuels into fuel tanks of motor vehicles,
52 including but not limited to, compression equipment, storage
53 tanks and dispensing units for alternative fuel at the point
54 where the fuel is delivered: *Provided*, That the property is
55 installed and located in this state and is not located on a
56 private residence or private home.

57 (f) “Qualified alternative fuel vehicle home refueling
58 infrastructure” means property owned by the applicant for
59 the tax credit located on a private residence or private home
60 and used for storing alternative fuels and for dispensing such
61 alternative fuels into fuel tanks of motor vehicles, including
62 but not limited to, compression equipment, storage tanks and
63 dispensing units for alternative fuel at the point where the
64 fuel is delivered or for providing electricity to plug-in hybrid
65 electric vehicles or electric vehicles: *Provided*, That the
66 property is installed and located in this state.

67 (g) “Taxpayer” means any natural person, corporation,
68 limited liability company or partnership subject to the tax
69 imposed under article twenty-one, article twenty-three or
70 article twenty-four of this chapter or any combination
71 thereof.

**§11-6D-3. Credit allowed for alternative-fuel motor vehicles and
qualified alternative-fuel vehicle refueling infra-
structure; application against personal income tax,
business franchise tax or corporate net income tax;
effective date.**

1 The tax ~~credit~~ credits for the purchase of alternative-fuel
2 motor vehicles or conversion to alternative-fuel motor
3 vehicles, qualified alternative fuel vehicle refueling infra-
4 structure and qualified alternative fuel vehicle home refuel-
5 ing infrastructure provided in this article may be applied
6 against the tax liability of a taxpayer imposed by the
7 provisions of either article twenty-one, article twenty-three
8 or article twenty-four of this chapter but in no case may
9 more than one credit be granted for the same alternative-fuel
10 motor vehicle as defined in subdivision (b), section two of
11 this article. This credit shall be available for those tax years
12 beginning after ~~June 30, 1997~~ January 1, 2011.

§11-6D-4. Eligibility for credit.

1 A taxpayer is eligible to claim the credit against tax
2 provided in this article if he or she:

3 (a) Converts a motor vehicle that is presently registered in
4 West Virginia to operate exclusively on an alternative fuel as
5 defined in subdivision (a), section two of this article; or

6 ~~(1) Exclusively on an alternative fuel as defined in subdivi-~~
7 ~~sion (a), section two of this article; or~~

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

11 (b) Purchases from an original equipment manufacturer or
12 an after-market conversion facility or any other automobile
13 retailer, a new dedicated or ~~dually fueled~~ bi-fueled
14 alternative-fuel motor vehicle for which the taxpayer then
15 obtains a valid West Virginia registration; or

16 (c) Constructs or purchases and installs qualified alterna-
17 tive fuel vehicle refueling infrastructure or qualified alterna-
18 tive fuel vehicle home refueling infrastructure that is capable
19 of dispensing alternative fuel for alternative-fuel motor
20 vehicles.

21 ~~(e)~~ (d) The credit provided in this article is not available to
22 and may not be claimed by any taxpayer under any obliga-
23 tion pursuant to any federal or state law, policy or regulation
24 to convert to the use of alternative fuels for any motor
25 vehicle.

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

1 (a) For taxable years beginning on and after January 1,
2 2011, the amount of the credit allowed under this article for
3 an alternative-fuel motor vehicle that weighs less than
4 twenty-six thousand pounds is thirty-five percent of the
5 purchase price of the alternative-fuel motor vehicle up to a
6 maximum amount of \$7,500 or fifty percent of the actual cost
7 of converting from a traditionally fueled motor vehicle to an
8 alternative fuel motor vehicle up to a maximum amount of
9 \$7,500.

10 (b) For taxable years beginning on and after January 1,
11 2011, the amount of the credit allowed under this article for
12 an alternative-fuel motor vehicle that weighs more than
13 twenty-six thousand pounds is thirty-five percent of the
14 purchase price of the alternative-fuel motor vehicle up to a
15 maximum amount of \$25,000 or fifty percent of the actual
16 cost of converting from a traditionally fueled motor vehicle

17 to an alternative fuel motor vehicle up to a maximum amount
18 of \$25,000.

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

1 (a) For taxable years beginning on and after January 1,
2 2011, but prior to January 1, 2014, the amount of the credit
3 allowed under this article for qualified alternative fuel
4 vehicle refueling infrastructure is equal to an amount of fifty
5 percent of the total costs directly associated with the
6 construction or purchase and installation of the alternative
7 fuel vehicle refueling infrastructure up to a maximum of
8 \$250,000: *Provided*, That if the qualified alternative fuel
9 vehicle refueling infrastructure is generally accessible for
10 public use, the amount of the credit allowed will be multi-
11 plied by 1.25 and the maximum amount allowable will be
12 \$312,500. The amount of credit allowed may not exceed the
13 cost of construction of the alternative fuel vehicle refueling
14 infrastructure.

15 (b) For taxable years beginning on and after January 1,
16 2014, but prior to January 1, 2016, the amount of the credit
17 allowed under this article for qualified alternative fuel

18 vehicle refueling infrastructure is equal to an amount of fifty
19 percent of the total costs directly associated with the
20 construction or purchase and installation of the alternative
21 fuel vehicle refueling infrastructure up to a maximum of
22 \$200,000: *Provided*, That if the qualified alternative fuel
23 vehicle refueling infrastructure is generally accessible for
24 public use, the amount of the credit allowed will be multi-
25 plied by 1.25 and the maximum amount allowable will be
26 \$250,000. The amount of credit allowed may not exceed the
27 cost of construction of the alternative fuel vehicle refueling
28 infrastructure.

29 (c) For taxable years beginning on and after January 1,
30 2016, but prior to January 1, 2022, the amount of the credit
31 allowed under this article for qualified alternative fuel
32 vehicle refueling infrastructure is equal to an amount of fifty
33 percent of the total costs directly associated with the
34 construction or purchase and installation of the alternative
35 fuel vehicle refueling infrastructure up to a maximum of
36 \$150,000: *Provided*, That if the qualified alternative fuel
37 vehicle refueling infrastructure is generally accessible for
38 public use, the amount of the credit allowed will be multi-
39 plied by 1.25 and the maximum amount allowable will be

40 \$187,500. The amount of credit allowed may not exceed the
41 cost of construction of the alternative fuel vehicle refueling
42 infrastructure.

43 (d) For taxable years beginning on and after January 1,
44 2011, the amount of the credit allowed under this article for
45 qualified alternative fuel vehicle home refueling infrastruc-
46 ture is equal to an amount of fifty percent of the total costs
47 directly associated with the construction or purchase and
48 installation of the alternative fuel vehicle home refueling
49 infrastructure up to a maximum of \$10,000.

50 (e) The cost of construction of the alternative fuel vehicle
51 refueling infrastructure or alternative fuel vehicle home
52 refueling infrastructure eligible for a tax credit under this
53 section does not include costs associated with exploration,
54 development or production activities necessary for severing
55 natural resources from the soil or ground.

56 (f) When the taxpayer is a pass-through entity treated like
57 a partnership for federal and state income tax purposes, the
58 credit allowed under this article for the year shall flow
59 through to the equity owners of the pass-through entity in
60 the same manner that distributive share flows through to the
61 equity owners and in accordance with any legislative rule

62 the Tax Commissioner may propose for legislative approval
63 in accordance with article three, chapter twenty-nine-a of
64 this code to administer this section.

65 (g) No credit allowed by this article may be applied against
66 employer withholding taxes imposed by article twenty-one
67 of this chapter.

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

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

**§11-6D-8. Commissioner to design forms and schedules; promul-
gation of rules.**

1 (a) The Tax Commissioner shall design and provide to the
2 public simplified forms and schedules to implement and
3 effectuate the provisions of this article.

4 (b) The Tax Commissioner ~~is authorized to promulgate~~
5 shall promulgate new rules for the administration of this

6 article consistent with its provisions and in accordance with
7 article three, chapter twenty-nine-a of this code after the
8 effective date of the amendments to this article. Such rules
9 shall include rules relating to the necessary documentation
10 required to be filed in order to take the tax credits allowed
11 in this article.

12 (c) Within one year ~~following~~ prior to the expiration of the
13 credit established in this article, the State Tax Commissioner
14 shall provide a written report to the Legislature setting forth
15 the utilization of the credit, the benefit of the credit and the
16 overall cost of the credit.

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

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

7 (b) No carry back to a prior taxable year is allowed for the
8 amount of any unused credit in any taxable year.

9 (c) A tax credit is subject to recapture, elimination or
10 reduction if it is determined by the State Tax Commissioner

11 that a taxpayer was not entitled to the credit, in whole or in
12 part, in the tax year in which it was claimed by the taxpayer.
13 The amount of credit that flows through to equity owners of
14 a passthrough entity may be recaptured or recovered from
15 either the taxpayer or the equity owners in the discretion of
16 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.)