

COMMITTEE SUBSTITUTE

FOR

**H. B. 4547**

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(Originating in the Committee on Finance)  
[February 24, 2012]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6L-1, §11-6L-2, §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and to amend said code by adding thereto a new article, designated §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-4, §11-13CC-5, §11-13CC-6, §11-13CC-7, §11-13CC-8, §11-13CC-9, §11-13CC-10, §11-13CC-11, §11-13CC-12, §11-13CC-13, §11-13CC-14, §11-13CC-15, §11-13CC-16, §11-13CC-17 and §11-13CC-18, all relating to creating the West Virginia Innovation Free-Trade Business Technology Property Valuation Act and the West Virginia

Innovation Free-Trade Tax Credit Act; defining terms; specifying method for valuation of certain property; providing for application to county assessors by specified date; providing procedure for protest and appeal of determination by county assessor; requiring the West Virginia Development Office to report to the Joint Committee on Government and Finance on the economic impact; specifying effective date; making legislative findings; allowing credits and exemptions from certain taxes; providing for computation of credit, application of credit and period for which credit is allowed; requiring application to claim credit; requiring that new jobs be good-paying jobs with health benefits; requiring identification of investment credit property and recomputation of credit in event of premature disposition of investment property; providing for forfeiture of unused tax credits and redetermination of credit allowed; imposing recapture tax under specified circumstances to recover state taxes and property taxes; allowing transfer of qualified investment to successors; providing for tax credit review and accountability; specifying

effective date and termination date; providing rule-making authority; and providing a severability clause.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-6L-1, §11-6L-2, §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and that said code be amended by adding thereto a new article, designated §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-4, §11-13CC-5, §11-13CC-6, §11-13CC-7, §11-13CC-8, §11-13CC-9, §11-13CC-10, §11-13CC-11, §11-13CC-12, §11-13CC-13, §11-13CC-14, §11-13CC-15, §11-13CC-16, §11-13CC-17 and §11-13CC-18, all to read as follows:

**ARTICLE 6L. SPECIAL METHOD FOR APPRAISING  
WEST VIRGINIA INNOVATION  
FREE-TRADE ACT BUSINESS  
TECHNOLOGY PROPERTY.**

**§11-6L-1. Short title.**

- 1 This article shall be known and cited as the “West
- 2 Virginia Innovation Free-Trade Business Technology
- 3 Property Valuation Act”.

**§11-6L-2. Definitions.**

1 For the purposes of this article:

2 (1) “Innovative business technologies” means “innovative  
3 business technologies” as defined in section three, article  
4 thirteen-cc of this chapter when the owner of the property  
5 qualifies or qualified for the tax credit allowed by that article.  
6 Qualifications for that tax credit and the special valuation  
7 methodology provided in this article include, but are not  
8 limited to, a minimum capital investment requirement, a  
9 minimum new jobs creation requirement and a requirement  
10 that the new jobs created be good paying jobs with health  
11 insurance benefits, all as defined in article thirteen-cc of this  
12 chapter; and

13 (2) “Salvage value” means five percent of original cost.

**§11-6L-3. Valuation of Innovation Free-Trade Act business technology property.**

1 Notwithstanding any other provision of this code to the  
2 contrary, the value of tangible personal property and  
3 improvements to real property placed in service or use on or

4 after July 1, 2012, and directly used in an innovative business  
5 technology as defined in section two of this article shall, for  
6 the purpose of ad valorem property taxation under this  
7 chapter and under Article X of the Constitution of this state,  
8 be its salvage value.

**§11-6L-4. Initial determination by county assessor.**

1 (a) On or before September 1 of the assessment year, the  
2 owner of tangible personal property and improvements to  
3 real property placed in service or use on or after July 1, 2012,  
4 directly used in a new business, or in a new segment of an  
5 existing business, that utilizes innovative business technology  
6 and qualifies for the tax credit allowed by article thirteen-cc  
7 of this chapter may file a report with the county assessor of  
8 the county in which the property was located on July 1 of that  
9 assessment year, listing the tangible personal property and  
10 improvements to real property placed in service or use on or  
11 after July 1, 2012, that is qualified investment for purposes  
12 of the credit allowed by article thirteen-cc of this chapter. A  
13 taxpayer that fails to timely file the report required by this

14 subsection shall be deemed to have waived valuation of the  
15 property as provided in this article for that assessment year.

16 (b) When the county assessor receives the report  
17 described in subsection (a) of this section, the assessor shall  
18 review the report and make such inquiries as he or she deems  
19 necessary to determine whether the tangible personal  
20 property and improvements to real property placed in service  
21 or use on or after July 1, 2012, listed in the report is eligible  
22 for valuation under this article. The county assessor shall  
23 notify the taxpayer in writing of his or her determination not  
24 later than January 15 of the assessment year.

25 (c) Upon making a determination that a taxpayer owns  
26 tangible personal property and improvements to real property  
27 placed in service or use on or after July 1, 2012, directly used  
28 in an innovative business technology that is eligible for  
29 valuation under this article, the county assessor shall notify  
30 the Tax Commissioner of that determination and shall  
31 provide information to the Tax Commissioner as he or she  
32 requires relating to that determination.

**§11-6L-5. Protest and appeal.**

- 1       (a) If the taxpayer disagrees with the county assessor's  
2       determination under section four of this article or if the  
3       assessor fails to notify the taxpayer of the assessor's  
4       determination on or before the day specified in that section  
5       the taxpayer may file objections in writing with the county  
6       assessor. The county assessor shall decide the matter by  
7       either sustaining the protest and making proper corrections,  
8       or by stating, in writing if requested, the reasons for the  
9       county assessor's refusal. The county assessor may, and if the  
10       taxpayer requests, the county assessor shall, before February  
11       1 of the assessment year, certify the question to the Tax  
12       Commissioner in a statement sworn to by both parties, or if  
13       the parties are unable to agree, in separate sworn statements.  
14       The sworn statement or statements shall contain a full  
15       description of the property and any other information which  
16       the Tax Commissioner may require.
- 17       (b) The Tax Commissioner shall, as soon as possible on  
18       receipt of the question, but in no case later than February 28

19 of the assessment year, instruct the county assessor as to how  
20 the property shall be treated. The instructions issued and  
21 forwarded by mail to the county assessor are binding upon  
22 the county assessor, but either the county assessor or the  
23 taxpayer may apply to the circuit court of the county for  
24 review of the question of the applicability of this article to the  
25 property in the same fashion as is provided for appeals from  
26 the county commission in section twenty-five, article three of  
27 this chapter. The Tax Commissioner shall prescribe forms on  
28 which the questions under this section shall be certified and  
29 the Tax Commissioner has the authority to pursue any  
30 inquiry and procure any information necessary for disposition  
31 of the matter.

**§11-6L-6. Report on economic benefit.**

1 The West Virginia Development Office shall provide to  
2 the Joint Committee on Government and Finance by March  
3 1, 2017, and again by March 1, 2020, a report detailing the  
4 economic benefit of the valuation method specified in this  
5 article. The report shall include the number of new jobs

6 created due to the provisions of this article and the ad  
7 valorem property tax impact.

**§11-6L-7. Effective date.**

1 This article shall be effective on and after July 1, 2012,  
2 for property placed in service or use on or after July 1, 2012,  
3 when the property and its use meet the requirements of this  
4 article.

**ARTICLE 13CC. WEST VIRGINIA INNOVATION**  
**FREE-TRADE TAX CREDIT ACT.**

**§11-13CC-1. Short title.**

1 This article may be cited as the “West Virginia  
2 Innovation Free-Trade Tax Credit Act”.

**§11-13CC-2. Purpose and legislative findings.**

1 (a) Purpose. -- The purpose of this article is to encourage  
2 economic opportunity, greater capital investment and  
3 development of the use in this state of new innovative  
4 technologies by enacting this innovation free-trade tax credit.

5 (b) Legislative findings. --

6 (1) Future expansion and development of the West  
7 Virginia economy, job creation potential and the physical

8 environment are driven by the flow of energy and the  
9 nonstop emergence of new technologies.

10 (2) State-of-the-art technologies are being developed,  
11 demonstrated and manufactured or used in manufacturing in  
12 other states in order to support economic development by  
13 responding to the emergence of new technologies and the  
14 rapidly expanding world-wide export market for such  
15 technologies.

16 (3) West Virginia has been slow to recognize the  
17 potential economic and technical benefits of these emerging  
18 technologies.

19 (4) The Legislature finds that it is in the public interest of  
20 the citizens of West Virginia to:

21 (A) Establish a foothold in the West Virginia economy  
22 for manufacturers of advanced products and the development  
23 of businesses employing other emerging technologies that are  
24 magnets for capital investment and produce new jobs that are  
25 characteristically knowledge-based;

26 (B) Encourage the application of nanotechnology and  
27 other supporting technology to:

- 28 (i) Aeronautics and space;  
29 (ii) Agriculture;  
30 (iii) Biotechnology;  
31 (iv) Environment;  
32 (v) Manufacturing and materials science;  
33 (vi) Medicine and health;  
34 (vii) Nanoelectronics and computer technology;  
35 (viii) National and homeland security; and  
36 (ix) Photonics; and  
37 (C) Encourage the manufacture, sale and use of  
38 alternative fuel vehicles fueled by natural gas, electricity,  
39 hydrogen or other alternative fuel and development of the  
40 infrastructure necessary to the convenient and efficient  
41 refueling of such vehicles.

**§11-13CC-3. Definitions.**

- 1 (a) General. -- When used in this article, or in the  
2 administration of this article, terms defined in subsection (b)  
3 of this section have the meanings ascribed to them by this  
4 section, unless a different meaning is clearly required by

5 either the context in which the term is used, or by specific  
6 definition, in this article.

7 (b) Terms defined. --

8 (1) “Advanced coal technology” includes, but is not  
9 limited to, a technology that is used in a new or existing  
10 energy generating facility to reduce airborne carbon  
11 emissions associated with the combustion or use of coal and  
12 includes, but is not limited to, carbon dioxide capture and  
13 sequestration technology, supercritical technology, advanced  
14 supercritical technology as that technology is determined by  
15 the West Virginia Public Service Commission,  
16 ultrasupercritical technology and pressurized fluidized bed  
17 technology and any other resource, method, project or  
18 technology certified by the Public Service Commission as  
19 advanced coal technology: *Provided*, That the technology  
20 was not in commercial use anywhere in the United States  
21 before July 1, 2012.

22 (2) “Advanced information technology” means the  
23 development, installation and implementation of computer

24 systems and applications that utilize cloud computing,  
25 quantum computing or the next evolution beyond cloud and  
26 quantum computing: *Provided*, That the technology was not  
27 in commercial use anywhere in the United States before July  
28 1, 2012.

29 (3) “Advanced manufacturing” means the application of  
30 state-of-the-art technologies, processes and methods to  
31 design and manufacture tangible personal property for  
32 commercial or industrial use or for use by consumers:  
33 *Provided*, That the technology was not in commercial use  
34 anywhere in the United States before July 1, 2012.

35 (4) “Bioinformatics” means the application of statistics  
36 and computer science to the field of molecular biology and  
37 entails the creation and advancement of databases,  
38 algorithms, computational and statistical techniques and  
39 theory to solve formal and practical problems arising from  
40 the management and analysis of biological data. The primary  
41 goal of bioinformatics is to increase the understanding of  
42 biological processes. What sets bioinformatics apart from

43 other approaches is its focus on developing and applying  
44 computationally intensive techniques (e.g., pattern  
45 recognition, data mining, machine learning algorithms and  
46 visualization) to achieve this goal: *Provided, That the*  
47 technology was not in commercial use anywhere in the  
48 United States before July 1, 2012.

49 (5) "Bioscience" means the use of compositions, methods  
50 and organisms in cellular and molecular research,  
51 development and manufacturing processes for such diverse  
52 areas as pharmaceuticals, medical therapeutics, medical  
53 diagnostics, medical devices, medical instruments,  
54 biochemistry, microbiology, veterinary medicine, plant  
55 biology, agriculture and industrial, environmental, and  
56 homeland security applications of bioscience, and future  
57 developments in the biosciences. Bioscience includes  
58 biotechnology and life sciences: *Provided, That the*  
59 technology was not in commercial use anywhere in the  
60 United States before July 1, 2012.

61 (6) "Bioscience company" means a corporation, limited  
62 liability company, S corporation, partnership, registered  
63 limited liability partnership, foundation, association,  
64 nonprofit entity, business trust, group, or other entity that is  
65 engaged in the business of bioscience in this state and has  
66 business operations in this state, including, without  
67 limitation, research, development, or production directed  
68 towards developing or providing bioscience products or  
69 processes for specific commercial or public purposes and are  
70 identified by the following NAICS codes: 325411, 325412,  
71 325413, 325414, 325193, 325199, 325311, 32532, 334516,  
72 339111, 339112, 339113, 334510, 334517, 339115, 621511,  
73 621512, 541710, 541380, 541940, 622110. "Bioscience  
74 company" does not include a sole proprietorship.

75 (7) "Biotechnology" means those fields focusing on  
76 technological developments in areas such as biocomputing,  
77 biodefense, bioinformatics, genetic engineering, genomics,  
78 molecular biology, nanotechnology, proteomics and  
79 physiomics: *Provided*, That the technology was not in

80 commercial use anywhere in the United States before July 1,  
81 2012.

82 (8) "Business" means any activity engaged in by any  
83 person in this state that is taxable under article twenty-one,  
84 twenty-three or twenty-four of this chapter (or any  
85 combination of those articles of this chapter).

86 (9) "Business segment" means a component or subset of  
87 a business enterprise that: (A) Provides a single product or  
88 service or a group of related products and services; (B) is  
89 subject to risks and returns that are different from those of  
90 other business segments; and (C) earns revenue for the  
91 business enterprise.

92 (10) "Clean coal technology" means a technology first  
93 used commercially in the United States on or after July 1,  
94 2012, that significantly reduces the environmental impact of  
95 coal usage including, but not limited to, coal gasification and  
96 carbon capture and storage: *Provided*, That the technology  
97 was not in commercial use anywhere in the United States  
98 before July 1, 2012.

99 (11) "Clean natural gas technology" means a technology  
100 first used commercially in the United States on or after July  
101 1, 2012, that significantly reduces the environmental impact  
102 of natural gas: *Provided*, That the technology was not in  
103 commercial use anywhere in the United States before July 1,  
104 2012.

105 (12) "Commissioner" and "Tax Commissioner" are used  
106 interchangeably herein and mean the Tax Commissioner of  
107 the State of West Virginia, or his or her designee.

108 (13) "Compensation" means wages, salaries,  
109 commissions, the cost of health insurance benefits and any  
110 other form of remuneration paid to employees for personal  
111 services.

112 (14) "Controlled group" means one or more chains of  
113 corporations connected through stock ownership with a  
114 common parent corporation if stock possessing at least fifty  
115 percent of the voting power of all classes of stock of each of  
116 the corporations is owned directly or indirectly by one or  
117 more of the corporations; and the common parent owns

118 directly stock possessing at least fifty percent of the voting  
119 power of all classes of stock of at least one of the other  
120 corporations.

121 (15) "Corporation" means any corporation, joint-stock  
122 company or association, and any business conducted by a  
123 trustee or trustees wherein interest or ownership is evidenced  
124 by a certificate of interest or ownership or similar written  
125 instrument.

126 (16) "Designee" in the phrase "or his or her designee",  
127 when used in reference to the Tax Commissioner, means any  
128 officer or employee of the Tax Division of the Department of  
129 Revenue duly authorized by the commissioner directly, or  
130 indirectly by one or more redelegations of authority, to  
131 perform the functions mentioned or described in this article.

132 (17) "Eligible taxpayer" means a new business or a new  
133 segment of a business that is primarily engaged in an  
134 emerging technology industry or that is primarily utilizing  
135 new innovative business technologies, that makes at least the  
136 minimum required qualified investment in a new or expanded

137 business facility located in this state and creates the required  
138 number of new jobs that pay good salaries and provide health  
139 insurance benefits, and that is subject to any of the taxes  
140 imposed by articles twenty-one, twenty-three and twenty-four  
141 of this chapter (or any one or any combination of those  
142 articles).

143 (18) “Emerging technologies” are technologies that are  
144 currently being developed or will be developed over the next  
145 five to ten years, that are significant technological  
146 developments that broach new territory in some significant  
147 way in their field and which will substantially alter the  
148 business and social environment. Examples of currently  
149 emerging technologies include, but are not limited to,  
150 advanced coal technologies, alternative fuel vehicles,  
151 artificial intelligence, biotechnology, clean coal and clean  
152 natural gas technologies, cognitive science, cloud computing,  
153 quantum computing, man-machine communications,  
154 nanotechnology, photonics, photovoltaic devices and  
155 advanced robotics. Whether a technology is an emerging

156 technology is determined as of the date the new business or  
157 a new segment of an existing business is placed in service or  
158 use in this state. Emerging technologies do not include any  
159 technology that was in commercial use anywhere in the  
160 United States before July 1, 2012.

161 (19) "Expanded business facility" means any business  
162 facility (other than a new or replacement facility) resulting  
163 from the acquisition, construction, reconstruction, installation  
164 or erection of improvements or additions to existing property  
165 in this state when the improvements or additions are  
166 purchased on or after July 1, 2012, but only to the extent of  
167 the taxpayer's qualified investment in the improvements or  
168 additions and the extent to which the expansion of the  
169 business facility is directly used in a new segment of the  
170 taxpayer that primarily employs an emerging innovative  
171 business technology.

172 (20) "Health insurance benefits" means employer  
173 provided coverage for medical expenses of the employee or  
174 the employee and his or her family under a group accident or

175 health plan, or employer contributions to an Archer medical  
176 savings account, as defined in Section 220 of the Internal  
177 Revenue Code of 1986, as amended, or to a health savings  
178 account, as defined in Section 223 of the Internal Revenue  
179 Code, of the employee when the employer’s contribution to  
180 any such account is not less than fifty percent of the  
181 maximum amount permitted for the year as  
182 employer-provided coverage under Section 220 or 223 of the  
183 Internal Revenue Code, whichever section is applicable.

184 (21) “Includes” and “including”, when used in a  
185 definition or sentence contained in this article, shall not be  
186 considered to exclude other things otherwise within the  
187 meaning of the term being defined or the sentence in which  
188 the word is used.

189 (22) “Innovative business technologies” means and  
190 includes, but is not limited to, emerging technologies and  
191 other business technologies that primarily use state-of-the-art  
192 methodologies, practices or techniques to manufacture,  
193 produce or provide its primary goods or services. Innovative

194 business technologies do not include any technology that was  
195 in commercial use anywhere in the United States prior to July  
196 1, 2012.

197 (23) “Internal Revenue Code of 1986, as amended”, or  
198 “Internal Revenue Code”, means the United States Internal  
199 Revenue Code of 1986 as codified in Title 26 of the United  
200 States Code, as amended, and as defined in section three,  
201 article twenty-four of this chapter as last updated by the  
202 Legislature.

203 (24) “Leased property” does not include property which  
204 the taxpayer is required to show on its books and records as  
205 an asset under generally accepted principles of financial  
206 accounting. If the taxpayer is prohibited from expensing the  
207 lease payments for federal income tax purposes, the property  
208 shall be treated as purchased property under this section.

209 (25) “Life science” means any of several branches of  
210 science, such as biology, medicine, anthropology or ecology,  
211 that deal with living organisms and their organization, life  
212 processes and relationships to each other and their

213 environment: *Provided*, That the technology was not in  
214 commercial use anywhere in the United States before July 1,  
215 2012.

216 (26) “Nanotechnology” means the branch of engineering  
217 that deals with things smaller than one hundred nanometers.  
218 Nanotechnology includes the materials and systems whose  
219 structures and components exhibit novel and significantly  
220 improved physical, chemical, and biological properties,  
221 phenomena, and processes due to their nanoscale size:  
222 *Provided*, That the technology was not in commercial use  
223 anywhere in the United States before July 1, 2012.

224 (27) “New business” means any business primarily  
225 employing emerging technology or a twenty-first century  
226 business technology whose ownership and activities are not  
227 closely related to a preexisting business. A mere change in  
228 the stock ownership of a corporation, or the equity ownership  
229 of a partnership or other entity treated as a partnership for  
230 federal income tax purposes, shall not affect its status as an  
231 existing business. Additionally, a new business that acquires

232 substantially all of the assets of a corporation or other  
233 business entity or of a sole proprietorship shall not be treated  
234 as a new business for purposes of this article. In determining  
235 whether or not a new business is closely related to a  
236 preexisting business, all facts and circumstances shall be  
237 considered by the Tax Commissioner. The existence of a  
238 majority of the following factors establish that a new  
239 business is closely related to an existing business:

240 (A) The new business's products or services are very  
241 similar to the products or services provided by the preexisting  
242 business;

243 (B) The new business markets products and services to  
244 the same class of customers as that of the preexisting  
245 business;

246 (C) The new business is conducted in the same general  
247 location as the preexisting business;

248 (D) The new business requires the use of the same or  
249 similar operating assets as those used in the preexisting  
250 business;

251 (E) The new business's economic success builds on, or  
252 depends on, the success of the preexisting business;

253 (F) The activity of the new business is of a type that would  
254 normally be treated as a unit with the preexisting business in the  
255 accounting records of the preexisting business;

256 (G) If the new business and the preexisting business are  
257 regulated or licensed, they are regulated or licensed by the  
258 same or similar governmental authority; and

259 (H) Twenty percent or more of the equity of the new  
260 business is collectively owned by individuals and/or  
261 businesses that collectively owned more than fifty percent of  
262 the equity of the preexisting business.

263 These eight listed factors are not the only ones that may  
264 be considered by the Tax Commissioner. Others may also be  
265 taken into account, in the discretion of the Tax  
266 Commissioner. However, this definition shall not exclude the  
267 categorization of a business as a new business for the sole  
268 reason that the entity engaging in the new business already  
269 does business in the State of West Virginia.

270 (28) “New business facility” means a business facility  
271 located in this state which satisfies all the requirements of  
272 paragraphs (A), (B), (C) and (D) of this subdivision.

273 (A) The facility is employed by the taxpayer in a new  
274 business or in a new segment of an existing business the  
275 conduct of a business the net income of which is or will be  
276 taxable under article twenty-one or twenty-four of this chapter.  
277 The facility is not considered a new business facility in the hands  
278 of the taxpayer if the taxpayer's only activity with respect to the  
279 facility is to lease it to another person or persons;

280 (B) The facility is purchased by, or leased to, the  
281 taxpayer on or after July 1, 2012;

282 (C) The facility was not purchased or leased by the  
283 taxpayer from a related person: *Provided*, That the Tax  
284 Commissioner may waive this requirement if the facility was  
285 acquired from a related person for its fair market value and  
286 the acquisition was not tax motivated; and

287 (D) The facility was not in service or use during the  
288 ninety days immediately prior to transfer of the title to the

289 facility, or prior to the commencement of the term of the  
290 lease of the facility: *Provided*, That this ninety-day period  
291 may be waived by the Tax Commissioner if the  
292 commissioner determines that persons employed at the  
293 facility may be treated as "new employees" as that term is  
294 defined in this subsection.

295 (29) "New employee" means:

296 (A) A person residing and domiciled in this state, hired  
297 by the taxpayer to fill a position or a job in this state which  
298 previously did not exist in the taxpayer's business enterprise  
299 in this state prior to the date on which the taxpayer's qualified  
300 investment is placed in service or use in this state. The term  
301 "new employee" also includes a person employed by the  
302 taxpayer who works outside this state who relocates in this  
303 state, becomes domiciled in this state and is employed  
304 full-time at the new business facility in this state. In no case  
305 may the number of new employees directly attributable to the  
306 investment for purposes of this credit exceed the total net  
307 increase in the taxpayer's employment in this state: *Provided*,

308 That the Tax Commissioner may require that the net increase  
309 in the taxpayer's employment in this state be determined and  
310 certified for the taxpayer's controlled group.

311 (B) A person is considered to be a "new employee" only  
312 if the person's duties in connection with the operation of the  
313 business facility are on:

314 (i) A regular, full-time and permanent basis:

315 (I) "Full-time" means employment for at least one  
316 hundred forty hours per month at a wage not less than the  
317 prevailing state or federal minimum wage, depending on  
318 which minimum wage provision is applicable to the business;

319 (II) "Permanent" does not include employment that is  
320 temporary or seasonal and therefore the wages, salaries and  
321 other compensation paid to the temporary or seasonal  
322 employees may not be considered for purposes of sections  
323 five and seven of this article; or

324 (III) A regular, part-time and permanent basis: *Provided,*  
325 That the person is customarily performing the duties at least  
326 twenty hours per week for at least six months during the  
327 taxable year.

328 (30) "New job" means a job which did not exist in the  
329 business of the taxpayer in this state prior to the taxpayer's  
330 qualified investment being made, and which is filled by a  
331 new employee.

332 (31) "New property" means:

333 (A) Property, the construction, reconstruction or erection  
334 of which is completed on or after July 1, 2012, and placed in  
335 service or use after that date; and

336 (B) Property leased or acquired by the taxpayer that is  
337 placed in service or use in this state on or after July 1, 2012,  
338 if the original use of the property commences with the  
339 taxpayer and commences after that date.

340 (32) "NAICS" means the North American Industry  
341 Classification System.

342 (33) "Original use" means the first use to which the  
343 property is put, whether or not the use corresponds to the use  
344 of the property by the taxpayer.

345 (34) "Partnership" includes a syndicate, group, pool, joint  
346 venture or other unincorporated organization through or by

347 means of which any business or venture is carried on, and  
348 which is not a trust or estate, a corporation or a sole  
349 proprietorship and which is treated as a partnership for tax  
350 purposes under the laws of this state. The term "partner"  
351 includes a member in such a syndicate, group, pool, joint  
352 venture or other organization.

353 (35) "Person" includes any natural person, corporation or  
354 partnership, and includes any entity that is treated like a  
355 corporation or partnership for federal income tax purposes.

356 (36) "Photonics" includes the generation, emission,  
357 transmission, modulation, signal processing, switching,  
358 amplification, detection and sensing of light: *Provided, That*  
359 the technology was not in commercial use anywhere in the  
360 United States before July 1, 2012.

361 (37) "Photovoltaic devices" means those products  
362 designed, manufactured and produced to convert sunlight  
363 directly into electricity: *Provided, That* the technology was  
364 not in commercial use anywhere in the United States before  
365 July 1, 2012.

366 (38) "Property purchased or leased for business  
367 expansion" means:

368 (A) *Included property.* -- Except as provided in paragraph

369 (B) of this subdivision, the term "property purchased or

370 leased for business expansion" means real property and

371 improvements thereto, and tangible personal property, but

372 only if the real or personal property was constructed,

373 purchased, or leased and placed in service or use by the

374 taxpayer, for use as a component part of a new business

375 facility or expanded business facility as defined in this

376 section, which is located within the State of West Virginia.

377 This term includes only:

378 (i) Real property and improvements thereto having a

379 useful life of four or more years, placed in service or use on

380 or after July 1, 2012, by the taxpayer;

381 (ii) Real property and improvements thereto, acquired by

382 written lease having a primary term of ten or more years and

383 placed in service or use by the taxpayer on or after July 1,

384 2012;

385 (iii) Tangible personal property placed in service or use  
386 by the taxpayer on or after July 1, 2012, with respect to  
387 which depreciation, or amortization in lieu of depreciation,  
388 is allowable in determining the personal or corporation net  
389 income tax liability of the business taxpayer under article  
390 twenty-one or twenty-four of this chapter, and which has a  
391 useful life, at the time the property is placed in service or use  
392 in the state, of four or more years;

393 (iv) Tangible personal property acquired by written lease  
394 having a primary term of four years or longer, that  
395 commenced and was executed by the parties thereto on or  
396 after July 1, 2012, if used as a component part of a new or  
397 expanded business facility, shall be included within this  
398 definition; and

399 (v) Tangible personal property owned or leased, and used  
400 by the taxpayer at a business location outside the state which  
401 is moved into the State of West Virginia on or after July 1,  
402 2012, for use as a component part of a new or expanded  
403 business facility located in the state: *Provided*, That if the

404 property is owned, it must be depreciable or amortizable  
405 personal property for income tax purposes, and have a useful  
406 life of four or more years remaining at the time it is placed in  
407 service or use in the state, and if the property is leased, the  
408 primary term of the lease remaining at the time the leased  
409 property is placed in service or use in the state, must be four  
410 or more years;

411 (B) Excluded property. -- The term "property purchased  
412 or leased for business expansion" does not include:

413 (i) Property owned or leased by the taxpayer and for  
414 which the taxpayer was previously allowed tax credit under  
415 article thirteen-c, thirteen-d, thirteen-e, thirteen-h, thirteen-q,  
416 thirteen-r, thirteen-s, thirteen-t, thirteen-u, thirteen-aa or  
417 thirteen-bb of this chapter, or the tax credits allowed by this  
418 article;

419 (ii) Property owned or leased by the taxpayer and for  
420 which the seller, lessor, or other transferor, was previously  
421 allowed tax credit under article thirteen-c, thirteen-d,  
422 thirteen-e, thirteen-h, thirteen-q, thirteen-r, thirteen-s,

423 thirteen-t, thirteen-u, thirteen-aa or thirteen-bb of this  
424 chapter, or the tax credits allowed by this article;

425 (iii) Property owned or leased by the taxpayer that is used  
426 to qualify for any other credit against state taxes allowed by  
427 this code;

428 (iv) Repair costs, including materials used in the repair,  
429 unless for federal income tax purposes the cost of the repair  
430 must be capitalized and not expensed;

431 (v) Airplanes;

432 (vi) Property which is primarily used outside the state,  
433 with use being determined based upon the amount of time the  
434 property is actually used both within and outside the state;

435 (vii) Property which is acquired incident to the purchase  
436 of the stock or assets of the seller, unless for good cause  
437 shown, the commissioner consents to waiving this  
438 requirement;

439 (viii) Natural resources in place; or

440 (ix) Purchased or leased property the cost or  
441 consideration for which cannot be quantified with any

442 reasonable degree of accuracy at the time the property is  
443 placed in service or use: *Provided*, That when the contract of  
444 purchase or lease specifies a minimum purchase price or  
445 minimum annual rent the amount thereof shall be used to  
446 determine the qualified investment in the property under  
447 section eight of this article if the property otherwise qualifies  
448 as property purchased or leased for business expansion.

449 (39) "Purchase" means any acquisition of property, but  
450 only if:

451 (A) The property is not acquired from a person whose  
452 relationship to the person acquiring it would result in the  
453 disallowance of deductions under Section 267 or 707(b) of  
454 the United States Internal Revenue Code of 1986, as  
455 amended;

456 (B) The property is not acquired by one component  
457 member of a controlled group from another component  
458 member of the same controlled group. The commissioner  
459 may waive this requirement if the property was acquired  
460 from a related party for its then fair market value; and

461 (C) The basis of the property for federal income tax  
462 purposes, in the hands of the person acquiring it, is not  
463 determined:

464 (i) In whole or in part, by reference to the federal  
465 adjusted basis of the property in the hands of the person from  
466 whom it was acquired; or

467 (ii) Under Section 1014(e) of the United States Internal  
468 Revenue Code of 1986, as amended.

469 (40) “Qualified activity” means any business or other  
470 activity subject to any of the taxes imposed by article  
471 thirteen, twenty-one, twenty-three or twenty-four of this  
472 chapter (or any combination of those articles of this chapter),  
473 but does not include the activity of severance or production  
474 of natural resources.

475 (41) “Related person” means:

476 (A) A corporation, partnership, association or trust  
477 controlled by the taxpayer;

478 (B) An individual, corporation, partnership, association  
479 or trust that is in control of the taxpayer;

480 (C) A corporation, partnership, association or trust  
481 controlled by an individual, corporation, partnership,  
482 association or trust that is in control of the taxpayer; or

483 (D) A member of the same controlled group as the  
484 taxpayer.

485 For purposes of this definition, "control", with respect to  
486 a corporation, means ownership, directly or indirectly, of  
487 stock possessing fifty percent or more of the total combined  
488 voting power of all classes of the stock of the corporation  
489 entitled to vote. "Control", with respect to a trust, means  
490 ownership, directly or indirectly, of fifty percent or more of  
491 the beneficial interest in the principal or income of the trust.  
492 The ownership of stock in a corporation, of a capital or  
493 profits interest in a partnership or association or of a  
494 beneficial interest in a trust is determined in accordance with  
495 the rules for constructive ownership of stock provided in  
496 Section 267(c) of the United States Internal Revenue Code of  
497 1986, as amended, other than paragraph (3) of that section.

498 (42) “Replacement facility” means any property (other  
499 than an expanded facility) that replaces or supersedes any  
500 other property located within this state that:

501 (A) The taxpayer or a related person used in or in  
502 connection with any activity for more than two years during  
503 the period of five consecutive years ending on the date the  
504 replacement or superseding property is placed in service by  
505 the taxpayer; or

506 (B) Is not used by the taxpayer or a related person in or  
507 in connection with any qualified activity for a continuous  
508 period of one year or more commencing with the date the  
509 replacement or superseding property is placed in service by  
510 the taxpayer.

511 (43) “State-of-the-art technology” or “leading edge  
512 technology” means the highest level of development, as of a  
513 device, technique, or scientific field achieved at a particular  
514 time: *Provided*, That the technology was not in commercial  
515 use anywhere in the United States before July 1, 2012.

516 (44) “Taxpayer” means any person subject to any of the  
517 taxes imposed by article twenty-one, twenty-three or  
518 twenty-four of this chapter (or any combination of those  
519 articles of this chapter).

520 (45) “This code” means the Code of West Virginia, 1931,  
521 as amended.

522 (46) “This state” means the State of West Virginia.

523 (47) “Used property” means property acquired after June  
524 30, 2012, that is not "new property".

**§11-13CC-4. Amount of credit allowed.**

1 (a) *Credit allowed.* — Eligible taxpayers are allowed a  
2 credit against the portion of taxes imposed by this state that  
3 are attributable to and the consequence of the taxpayer's  
4 qualified investment, as described in section six of this  
5 article, in a new business, or in a new segment of an existing  
6 business, in this state that utilizes innovative business  
7 technology, which results in the creation of new jobs. The  
8 amount of this credit is determined and applied as provided  
9 in this article.

10       (b) Amount of credit. -- When the eligible taxpayer  
11       creates at least ten new jobs but less than fifteen new jobs in  
12       a new business in this state that utilizes innovative business  
13       technology and whose qualified investment in this state is at  
14       least \$5 million but is less than \$10 million, the eligible  
15       taxpayer shall for the tax year in which the ten employees are  
16       first employed by the eligible taxpayer and for the next four  
17       tax years thereafter be exempt from payment of the taxes  
18       imposed by articles twenty-three and twenty-four of this  
19       chapter on the taxable capital attributable to the emerging  
20       technology business activity in this state and West Virginia  
21       taxable income attributable to the emerging technology  
22       business activity in this state: *Provided*, That the eligible  
23       taxpayer may elect to defer for one tax year the start of this  
24       five-year period. When the eligible business is a partnership  
25       or other entity treated as a partnership for federal income tax  
26       purposes, the partners, S corporation shareholders or  
27       members of the limited liability company shall be exempt  
28       from paying the tax imposed by article twenty-one of this  
29       chapter on his or her distributive share attributable to the

30 emerging technology business activity in this state. The  
31 eligible business shall also be exempt from paying the taxes  
32 imposed by articles fifteen and fifteen-a of this chapter on  
33 tangible personal property and services purchased for use or  
34 consumption by the eligible taxpayer in the emerging  
35 technology business activity during the same five-year  
36 period, except that this exemption shall not apply to the  
37 purchase of motor fuel or alternative fuels to power a vehicle  
38 or to the purchase or lease of motor vehicles, unless the  
39 vehicle is an alternative fuel vehicle. The exemption from  
40 paying the taxes imposed by articles fifteen and fifteen-a of  
41 this chapter on purchases for use in business allowed by this  
42 subsection is in addition to any exemption that might  
43 otherwise be available to the taxpayer under articles fifteen  
44 and fifteen-a of this chapter. When the taxpayer qualifies for  
45 tax benefits under this subsection, these benefits are not  
46 forfeited if during the applicable five-year period, the new  
47 business creates additional new jobs or makes additional  
48 capital investment at the new business facility or does both.

49 (c) Amount of credit. -- When the eligible taxpayer does  
50 not qualify for credit under subsection (b) of this section,  
51 either because the qualified investment exceeds \$10 million  
52 or the number of new jobs created is fifteen or more, or for  
53 both reasons, the amount of credit allowable is determined by  
54 multiplying the amount of the taxpayer's "qualified  
55 investment" (determined under section six of this article) in  
56 "property purchased or leased for business expansion" (as  
57 defined in section three of this article) using innovative  
58 business technologies (as defined in section three of this  
59 article) by the taxpayer's new jobs percentage (determined  
60 under section seven of this article). The product of this  
61 calculation establishes the maximum amount of credit  
62 allowable under this article due to the qualified investment.

**§11-13CC-5. Application of annual credit allowance.**

1 (a) In general. -- When the credit is determined pursuant  
2 to the provisions of subsection (c), section four of this  
3 section, the aggregate annual credit allowance for the current  
4 taxable year is an amount equal to the sum of the following:

5 (1) The one-tenth part allowed under subsection (c),  
6 section four of this article for qualified investment placed  
7 into service or use during a prior taxable year; plus

8 (2) The one-tenth part allowed under subsection (c),  
9 section four of this article for qualified investment placed  
10 into service or use during the current taxable year.

11 (b) *Application of current year annual credit allowance.*  
12 -- The amount determined under subsection (a) of this section  
13 is allowed as a credit against one hundred percent of that  
14 portion of the taxpayer's state tax liability which is  
15 attributable to and the direct result of the taxpayer's qualified  
16 investment, and applied as provided in subsections (c)  
17 through (f), both inclusive, of this section, and in that order.

18 (c) *Business and occupation taxes.* -- That portion of the  
19 allowable credit attributable to qualified investment in a  
20 business or other activity subject to the taxes imposed by  
21 article thirteen of this chapter under section two-o of that  
22 article must first be applied to reduce the taxes imposed or  
23 payable under section two-o, article thirteen of this chapter,

24 for the taxable year (determined before application of  
25 allowable credits against tax and the annual exemption). In  
26 no case may the credit allowed under this article be applied  
27 to reduce any tax imposed under any other section of article  
28 thirteen of this chapter except section two-o.

29 (1) If the taxes due under section two-o, article thirteen  
30 of this chapter are not solely attributable to and the direct  
31 result of the taxpayer's qualified investment in a business or  
32 other activity taxable under section two-o, article thirteen of  
33 this chapter, the amount of those taxes that are attributable is  
34 determined by multiplying the amount of taxes due under  
35 section two-o, article thirteen of this chapter, for the taxable  
36 year (determined before application of any allowable credits  
37 against tax and the annual exemption), by a fraction, the  
38 numerator of which is all wages, salaries and other  
39 compensation paid during the taxable year to all employees  
40 of the taxpayer employed in this state, whose positions are  
41 directly attributable to the qualified investment in a business  
42 or other activity taxable under section two-o, article thirteen

43 of this chapter. The denominator of the fraction shall be the  
44 wages, salaries and other compensation paid during the  
45 taxable year to all employees of the taxpayer employed in  
46 this state, whose positions are directly attributable to the  
47 business or other activity of the taxpayer that is taxable under  
48 article thirteen of this chapter.

49 (2) The annual exemption allowed by section three,  
50 article thirteen of this chapter, plus any credits allowable  
51 under articles thirteen-d, thirteen-e, thirteen-q, thirteen-r and  
52 thirteen-s of this chapter, shall be applied against and reduce  
53 only the portion of article thirteen taxes not apportioned to  
54 the qualified investment under this article: *Provided, That*  
55 any excess exemption or credits may be applied against the  
56 amount of article thirteen taxes apportioned to the qualified  
57 investment under this article, that is not offset by the amount  
58 of annual credit against the taxes allowed under this article  
59 for the taxable year, unless their application is otherwise  
60 prohibited by this chapter.

61 (d) *Business franchise tax. --*

62       (1) After application of subsection (c) of this section, any  
63       unused allowable credit is next applied to reduce the taxes  
64       imposed by article twenty-three of this chapter for the taxable  
65       year (determined after application of the credits against tax  
66       provided in section seventeen of article twenty-three of this  
67       chapter, but before application of any other allowable credits  
68       against tax).

69       (2) If the taxes due under article twenty-three of this  
70       chapter are not solely attributable to and the direct result of  
71       the taxpayer's qualified investment in a business or other  
72       activity taxable under article twenty-three of this chapter for  
73       the taxable year, the amount of the taxes which are so  
74       attributable are determined by multiplying the amount of  
75       taxes due (determined after application of the credits against  
76       tax as provided in section seventeen of article twenty-three of  
77       this chapter, but before application of any other allowable  
78       credits), by a fraction, the numerator of which is all wages,  
79       salaries and other compensation paid during the taxable year  
80       to all employees of the taxpayer employed in this state,

81 whose positions are directly attributable to the qualified  
82 investment in a business or other activity taxable under  
83 article twenty-three of this chapter. The denominator of the  
84 fraction is wages, salaries and other compensation paid  
85 during the taxable year to all employees of the taxpayer  
86 employed in this state, whose positions are directly  
87 attributable to the business or other activity of the taxpayer  
88 that is taxable under article twenty-three of this chapter.

89 (3) Any credits allowable under articles thirteen-d,  
90 thirteen-e, thirteen-q, thirteen-r and thirteen-s of this chapter  
91 are applied against and reduce only the portion of article  
92 twenty-three taxes not apportioned to the qualified  
93 investment under this article: *Provided*, That any excess  
94 exemption or credits may be applied against the amount of  
95 article twenty-three taxes apportioned to the qualified  
96 investment under this article that is not offset by the amount  
97 of annual credit against those taxes allowed under this article  
98 for the taxable year, unless their application is otherwise  
99 prohibited by this chapter.

100 (e) Corporation net income taxes. --

101 (1) After application of subsections (c) and (d) of this  
102 section, any unused credit is next applied to reduce the taxes  
103 imposed by article twenty-four of this chapter for the taxable  
104 year (determined before application of allowable credits  
105 against tax).

106 (2) If the taxes due under article twenty-four of this  
107 chapter (determined before application of allowable credits  
108 against tax) are not solely attributable to and the direct result  
109 of the taxpayer's qualified investment, the amount of the  
110 taxes that is attributable are determined by multiplying the  
111 amount of taxes due under article twenty-four of this chapter  
112 for the taxable year (determined before application of  
113 allowable credits against tax), by a fraction, the numerator of  
114 which is all wages, salaries and other compensation paid  
115 during the taxable year to all employees of the taxpayer  
116 employed in this state whose positions are directly  
117 attributable to the qualified investment. The denominator of  
118 the fraction is the wages, salaries and other compensation

119 paid during the taxable year to all employees of the taxpayer  
120 employed in this state.

121 (3) Any credits allowable under article twenty-four of this  
122 chapter are applied against and reduce only the amount of  
123 article twenty-four of this chapter taxes not apportioned to  
124 the qualified investment under this article: *Provided, That*  
125 any excess credits may be applied against the amount of  
126 article twenty-four of this chapter taxes apportioned to the  
127 qualified investment under this article that is not offset by the  
128 amount of annual credit against such taxes allowed under this  
129 article for the taxable year, unless their application is  
130 otherwise prohibited by this chapter.

131 (f) *Personal income taxes.* --

132 (1) If the person making the qualified investment is an  
133 electing small business corporation (as defined in Section  
134 1361 of the United States Internal Revenue Code of 1986 as  
135 amended), a partnership, or a limited liability company that  
136 is treated as a partnership for federal income tax purposes,  
137 then any unused credit (after application of subsections (c),

138 (d) and (e) of this section) is allowed as a credit against the  
139 taxes imposed by article twenty-one of this chapter on the  
140 income from business or other activity subject to tax under  
141 article thirteen or twenty-three of this chapter that is  
142 attributable to the business activity for credit is allowed under  
143 this article.

144 (2) Electing small business corporations, limited liability  
145 companies, partnerships and other unincorporated  
146 organizations shall allocate the credit allowed by this article  
147 among its members in the same manner as profits and losses  
148 are allocated for the taxable year.

149 (3) If the amount of taxes due under article twenty-one of  
150 this chapter (determined before application of allowable  
151 credits against tax) that is attributable to business, is not  
152 solely attributable to and the direct result of the qualified  
153 investment of the electing small business corporation, limited  
154 liability company, partnership, other unincorporated  
155 organization or sole proprietorship, the amount of the taxes  
156 that are so attributable are determined by multiplying the

157 amount of taxes due under article twenty-one of this chapter  
158 (determined before application of allowable credits against  
159 tax), that is attributable to business by a fraction, the  
160 numerator of which is all wages, salaries and other  
161 compensation paid during the taxable year to all employees  
162 of the electing small business corporation, limited liability  
163 company, partnership, other unincorporated organization or  
164 sole proprietorship employed in this state, whose positions  
165 are directly attributable to the qualified investment. The  
166 denominator of the fraction is the wages, salaries and other  
167 compensation paid during the taxable year to all employees  
168 of the taxpayer.

169 (g) No credit is allowed under this section against any  
170 employer withholding taxes imposed by article twenty-one of  
171 this chapter.

172 (h) If the wages, salaries and other compensation fraction  
173 formula provisions of subsections (c) through (f) of this  
174 section, inclusive, do not fairly represent the taxes solely  
175 attributable to and the direct result of qualified investment of

176 the taxpayer the commissioner may require, in respect to all  
177 or any part of the taxpayer's businesses or activities, if  
178 reasonable:

179 (1) Separate accounting or identification;

180 (2) Adjustment to the wages, salaries and other  
181 compensation fraction formula to reflect all components of  
182 the tax liability;

183 (3) The employment of any other method to effectuate an  
184 equitable attribution of the taxes. In order to effectuate the  
185 purposes of this subsection, the commissioner may propose  
186 for promulgation rules, including emergency rules, in  
187 accordance with article three, chapter twenty-nine-a of this  
188 code.

189 (j) *Unused credit.* -- If any credit remains after  
190 application of subsection (b) of this section, the amount  
191 thereof is carried forward to each ensuing tax year until used  
192 or until the expiration of the third taxable year subsequent to  
193 the end of the initial ten year credit application period. If any  
194 unused credit remains after the thirteenth year, the amount

195 thereof is forfeited. No carryback to a prior taxable year is  
 196 allowed for the amount of any unused portion of any annual  
 197 credit allowance.

**§11-13CC-6. Qualified investment.**

1 (a) General. -- The qualified investment in property  
 2 purchased or leased for business expansion is the applicable  
 3 percentage of the cost of each property purchased or leased for  
 4 the purpose of business expansion which is placed in service or  
 5 use in this state by the taxpayer during the taxable year.

6 (b) Applicable percentage. -- For the purpose of  
 7 subsection (a), the applicable percentage of any property is  
 8 determined under the following table:

<u>If useful life is:</u>	<u>The applicable percentage is:</u>
9 <u>Less than 4 years . . . . .</u>	<u>0%</u>
10 <u>4 years or more but less than 6 years . . . . .</u>	<u>33 1/3%</u>
11 <u>6 years or more but less than 8 years . . . . .</u>	<u>66 2/3%</u>
12 <u>8 years or more . . . . .</u>	<u>100%</u>

13  
 14 The useful life of any property, for purposes of this section,  
 15 is determined as of the date the property is first placed in

16 service or use in this state by the taxpayer, determined in  
17 accordance with rules and requirements the Tax  
18 Commissioner may proscribe.

19 (c) Cost. -- For purposes of subsection (a), the cost of  
20 each property purchased for business expansion is  
21 determined under the following rules:

22 (1) Trade-ins. -- Cost does not include the value of  
23 property given in trade or exchange for the property  
24 purchased for business expansion.

25 (2) Damaged, destroyed or stolen property. -- If property  
26 is damaged or destroyed by fire, flood, storm or other  
27 casualty, or is stolen, then the cost of replacement property  
28 does not include any insurance proceeds received in  
29 compensation for the loss.

30 (3) Rental property. --

31 (A) The cost of real property acquired by written lease  
32 for a primary term of ten years or longer is one hundred  
33 percent of the rent reserved for the primary term of the lease,  
34 not to exceed twenty years.

35 (B) The cost of tangible personal property acquired by  
36 written lease for a primary term of:

37 (i) Four years, or longer, is one third of the rent reserved  
38 for the primary term of the lease;

39 (ii) Six years, or longer, is two-thirds of the rent reserved  
40 for the primary term of the lease; or

41 (iii) Eight years, or longer, is one hundred percent of the  
42 rent reserved for the primary term of the lease, not to exceed  
43 twenty years: *Provided*, That in no event may rent reserved  
44 include rent for any year subsequent to expiration of the book  
45 life of the equipment, determined using the straight-line  
46 method of depreciation.

47 (4) *Self-constructed property*. -- In the case of  
48 self-constructed property, the cost thereof is the amount  
49 properly charged to the capital account for depreciation in  
50 accordance with federal income tax law.

51 (5) *Transferred property*. -- The cost of property used by  
52 the taxpayer out-of-state and then brought into this state, is  
53 determined based on the remaining useful life of the property

54 at the time it is placed in service or use in this state, and the  
55 cost is the original cost of the property to the taxpayer less  
56 straight line depreciation allowable for the tax years or  
57 portions thereof the taxpayer used the property outside this  
58 state. In the case of leased tangible personal property, cost is  
59 based on the period remaining in the primary term of the  
60 lease after the property is brought into this state for use in a  
61 new or expanded business facility of the taxpayer, and is the  
62 rent reserved for the remaining period of the primary term of  
63 the lease, not to exceed twenty years, or the remaining useful  
64 life of the property (determined as above), whichever is less.

**§11-13CC-7. New jobs; new jobs percentage.**

1 (a) In general. -- For purposes of this article, the new jobs  
2 created by the taxpayer must be directly attributable to  
3 taxpayer's qualified investment in this state, must be filled by  
4 new employees as defined in section three of this article and  
5 the compensation of new employees filling the new jobs must  
6 be equal to or exceed the compensation and health insurance  
7 benefits set forth in section eight of this article during the



27       (d) Certification of new jobs. -- With the annual return for  
28       the applicable taxes filed for the taxable year in which the  
29       qualified investment is first placed in service or use in this  
30       state, the taxpayer shall estimate and certify the number of  
31       new jobs reasonably projected to be created by it in this state  
32       within the period prescribed in subsection (f) of this section  
33       that are, or will be, directly attributable to the qualified  
34       investment of the taxpayer. For purposes of this section,  
35       "applicable taxes" means the taxes imposed by articles  
36       thirteen, twenty-one, twenty-three and twenty-four of this  
37       chapter against which this credit is applied.

38       (e) Equivalency of permanent employees. -- The hours of  
39       part-time employees shall be aggregated to determine the  
40       number of equivalent full-time employees for the purpose of  
41       this section.

42       (f) Redetermination of new jobs percentage. -- With the  
43       annual return for the applicable taxes imposed, filed for the  
44       third taxable year in which the qualified investment is in  
45       service or use, the taxpayer shall certify the actual number of

46 new jobs created by it in this state that are directly  
47 attributable to the qualified investment of the taxpayer.

48 (1) If the actual number of jobs created would result in a  
49 higher new jobs percentage, the credit allowed under this  
50 article shall be redetermined and amended returns filed for  
51 the first and second taxable years that the qualified  
52 investment was in service or use in this state.

53 (2) If the actual number of jobs created would result in a  
54 lower new jobs percentage, the credit previously allowed  
55 under this article shall be redetermined and amended returns  
56 filed for the first and second taxable years. In applying the  
57 amount of redetermined credit allowable for the two  
58 preceding taxable years, the redetermined credit shall first be  
59 applied to the extent it was originally applied in the prior two  
60 years to personal income taxes, then to corporation net  
61 income taxes, then to business franchise taxes and, lastly, to  
62 business and occupation taxes. Any additional taxes due  
63 under this chapter shall be remitted with the amended returns  
64 filed with the commissioner, along with interest, as provided

65 in section seventeen, article ten of this chapter, and a  
66 ten-percent penalty determined on the amount of taxes due  
67 with the amended return, which may be waived by the  
68 commissioner if the taxpayer shows that the over-claimed  
69 amount of the new jobs percentage was due to reasonable  
70 cause and not due to willful neglect.

**§11-13CC-8. New jobs compensation and benefits requirement.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, no credit shall be allowed under this article unless  
3 the following compensation requirements are met beginning  
4 with the tax year when the new employee first begins  
5 working at the new or expanded business facility and  
6 continuing through the period for which credit is allowed  
7 under this article:

8 (1) The median compensation paid to the employees  
9 filling the new jobs must be at least \$50,000 annually:  
10 *Provided*, That beginning November 1, 2013, and on or  
11 before every November 1 thereafter, the Tax Commissioner  
12 shall adjust this minimum annual compensation requirement

13 in the manner provided in subsection (b) of this section,  
14 which adjustment shall apply to compensation paid for  
15 employee services during the next calendar year;

16 (2) Health insurance benefits are provided to all full-time  
17 permanent employees working at the new or expanded  
18 business facility in this state; and

19 (3) Each new job is a full-time, permanent position, as  
20 those terms are defined in section three, of this article.

21 Jobs that do not provide health insurance benefits do not  
22 qualify as new jobs for purposes of the credit authorized by  
23 this article. Additionally, jobs that are less than full-time,  
24 permanent positions do not qualify as new jobs under this  
25 article.

26 (b) Adjustment of annual compensation for inflation. --  
27 The compensation requirements for credit under this article  
28 shall be adjusted for inflation by application of a  
29 cost-of-living adjustment. The annual compensation amount  
30 shall be applicable, as adjusted, each year throughout the  
31 ten-year credit period. Failure of a taxpayer entitled to credit

32 under this article to meet the annual compensation  
33 requirement for any year shall result in forfeiture of the credit  
34 for that year. However, if in any succeeding year within the  
35 original ten-year credit period, the taxpayer pays annual  
36 compensation to its employees which exceeds the inflation  
37 adjusted annual compensation amount for that year, the  
38 taxpayer shall regain entitlement to take the credit for that  
39 year only. No credit forfeited in a prior year may be taken,  
40 and the tax year or years to which the forfeited credit would  
41 have been applied shall be forfeited and deducted from the  
42 remainder of the years over which the credit can be taken.

43 (1) *Cost-of-living adjustment.* -- For purposes of this  
44 section, the cost-of-living adjustment for any calendar year  
45 is the percentage, if any, by which the consumer price index  
46 for the preceding calendar year exceeds the consumer price  
47 index for calendar year 2012.

48 (2) *Consumer price index for any calendar year.* -- For  
49 purposes of this section, the consumer price index for any  
50 calendar year is the average of the federal consumer price

51 index as of the close of the twelve-month period ending on  
52 August 31 of such calendar year.

53 (3) Consumer price index. -- For purposes of this section,  
54 the term "Federal Consumer Price Index" means the last  
55 consumer price index for all urban consumers published by  
56 the United States Department of Labor.

57 (4) Rounding. -- If any increase in the annual  
58 compensation amount under this section is not a multiple of  
59 \$50, such increase shall be rounded to the next lowest  
60 multiple of \$50.

61 (c) Unused credit remaining in any tax year after  
62 application against the taxes specified in section five of this  
63 article is forfeited and does not carry forward to any  
64 succeeding tax year and does not carry back to a prior tax  
65 year.

66 (d) Reduction in number of employees credit forfeiture.  
67 -- If during the year when a new job was created for which  
68 credit was granted under this section or during the remainder  
69 of the credit period allowed by either subsection (b) or (c),

70 section four of this article, net jobs that are attributable to and  
71 the consequence of the taxpayer's business operations in this  
72 state, decrease, counting both new jobs for which credit was  
73 granted under this article and preexisting jobs, then the total  
74 amount of credit to which the taxpayer is entitled under this  
75 section shall be decreased and forfeited in the amount of  
76 \$3,000 for each net job lost.

**§11-13CC-9. Application for credit required; failure to make  
timely application; burden of proof.**

1 (a) Application for credit required. -- Notwithstanding  
2 any provision of this article to the contrary, no credit is  
3 allowed or may be applied under this article for any qualified  
4 investment property placed in service or use until the person  
5 asserting a claim for the allowance of credit under this article  
6 makes written application to the Tax Commissioner for  
7 allowance of credit as provided in this subsection. An  
8 application for credit shall be filed, in the form prescribed by  
9 the Tax Commissioner, no later than the last day for filing the  
10 tax returns, determined by including any authorized

11 extension of time for filing the return, required under article  
12 twenty-one or twenty-four of this chapter for the taxable year  
13 in which the property to which the credit relates is placed in  
14 service or use and all information required by the form shall  
15 be provided.

16 (b) Failure to make timely application. -- The failure to  
17 timely apply for the credit results in the forfeiture of fifty  
18 percent of the annual credit allowance otherwise allowable  
19 under this article. This penalty applies annually until the  
20 application is filed.

21 (c) The burden of proof is on the taxpayer to establish by  
22 clear and convincing evidence that the taxpayer is entitled to  
23 the benefits allowed by this article.

**§11-13CC-10. Identification of investment credit property.**

1 Every taxpayer who claims credit under this article shall  
2 maintain sufficient records to establish the following facts for  
3 each item of qualified property:

4 (1) Its identity;

5 (2) Its actual or reasonably determined cost;

6 (3) Its straight-line depreciation life;

7 (4) The month and taxable year in which it was placed in  
8 service;

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be  
11 qualified property.

**§11-13CC-11. Forfeiture of unused tax credits; redetermination  
of credit allowed.**

1 (a) *Disposition of property or cessation of use.* -- If  
2 during any taxable year, property with respect to which a tax  
3 credit has been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as  
5 determined under section eight of this article; or

6 (2) Ceases to be used in an eligible business of the  
7 taxpayer in this state prior to the end of its useful life, as  
8 determined under section eight of this article, then the unused  
9 portion of the credit allowed for the property is forfeited for  
10 the taxable year and all ensuing years. Additionally, except  
11 when the property is damaged or destroyed by fire, flood,  
12 storm or other casualty, or is stolen, the taxpayer shall

13 redetermine the amount of credit allowed in all earlier years  
14 by reducing the applicable percentage of cost of the property  
15 allowed under section eight of this article, to correspond with  
16 the percentage of cost allowable for the period of time that  
17 the property was actually used in this state in the new or  
18 expanded business of the taxpayer. The taxpayer shall then  
19 file a reconciliation statement for the year in which the  
20 forfeiture occurs and pay any additional taxes owed due to  
21 reduction of the amount of credit allowable for the earlier  
22 years, plus interest and any applicable penalties. The  
23 reconciliation statement shall be filed with the annual return  
24 for the primary tax for which the taxpayer is liable under  
25 article twenty-three of this chapter, or under article  
26 twenty-one or twenty-four of this chapter.

27 (b) *Cessation of operation of business facility.* -- If during  
28 any taxable year the taxpayer ceases operation of a business  
29 facility in this state for which credit was allowed under this  
30 article, before expiration of the useful life of property with  
31 respect to which tax credit has been allowed under this  
32 article, then the unused portion of the allowed credit is

33 forfeited for the taxable year and for all ensuing years.  
34 Additionally, except when the cessation is due to fire, flood,  
35 storm or other casualty, the taxpayer shall redetermine the  
36 amount of credit allowed in earlier years by reducing the  
37 applicable percentage of cost of the property allowed under  
38 section eight of this article, to correspond with the percentage  
39 of cost allowable for the period of time that the property was  
40 actually used in this state in a business of the taxpayer that is  
41 taxable under article twenty-three or twenty-four of this  
42 chapter, or in the case of a partnership, the distributive share  
43 of partnership items is taxable under article twenty-one of  
44 this chapter. The taxpayer shall then file a reconciliation  
45 statement with the annual return for the primary tax for which  
46 the taxpayer is liable under article twenty-one, twenty-three  
47 or twenty-four of this chapter, for the year in which the  
48 forfeiture occurs, and pay any additional taxes owed due to  
49 the reduction of the amount of credit allowable for the earlier  
50 years, plus interest and any applicable penalties.

51 (c) Reduction in number of employees. -- If during any  
52 taxable year subsequent to the taxable year in which the new

53 jobs percentage is redetermined as provided in section seven  
54 of this article, the average number of employees of the  
55 taxpayer, for the then current taxable year, employed in  
56 positions created because of and directly attributable to the  
57 qualified investment falls below the minimum number of new  
58 jobs created upon which the taxpayer's annual credit  
59 allowance is based, the taxpayer shall calculate what his or  
60 her annual credit allowance would have been had his or her  
61 new jobs percentage been determined based upon the average  
62 number of employees, for the then current taxable year,  
63 employed in positions created because of and directly  
64 attributable to the qualified investment. The difference  
65 between the result of this calculation and the taxpayer's  
66 annual credit allowance for the qualified investment as  
67 determined under section four of this article, is forfeited for  
68 the then current taxable year, and for each succeeding taxable  
69 year unless for a succeeding taxable year the taxpayer's  
70 average employment in positions directly attributable to the  
71 qualified investment once again meets the level required to

72 enable the taxpayer to utilize its full annual credit allowance  
73 for that taxable year.

**§11-13CC-12. Recapture of credit; recapture tax imposed.**

1 (a) When recapture tax applies. --  
2 (1) Any person who places qualified investment property  
3 in service or use and who fails to use the qualified investment  
4 property for at least the period of its useful life (determined  
5 as of the time the property was placed in service or use), or  
6 the period of time over which tax credits allowed under this  
7 article with respect to the property are applied under this  
8 article, whichever period is less, and who reduces the number  
9 of its employees filling new jobs in its business in this state,  
10 which were created and are directly attributable to the  
11 qualified investment property, after the third taxable year in  
12 which the qualified investment property was placed in  
13 service or use, or fails to continue to employ individuals in  
14 all the new jobs created as a direct result of the qualified  
15 investment property and used to qualify for the credit allowed  
16 by this article, prior to the end of the tenth taxable year after

17 the qualified investment property was placed in service or  
18 use, the person shall pay the recapture tax imposed by  
19 subsection (b) of this section.

20 (2) This section does not apply when section thirteen of  
21 this article applies. However, the successor, or the  
22 successors, and the person, or persons, who previously  
23 claimed credit under this article with respect to the qualified  
24 investment property and the new jobs attributable thereto, are  
25 jointly and severally liable for payment of any recapture tax  
26 subsequently imposed under this section with respect to the  
27 qualified investment property and new jobs.

28 (b) Recapture tax imposed. -- The recapture tax imposed  
29 by this subsection is the amount determined as follows:

30 (1) Full recapture. -- If the taxpayer prematurely removes  
31 qualified investment property placed in service (when  
32 considered as a class) from economic service in the  
33 taxpayer's qualified investment business activity in this state,  
34 and the number of employees filling the new jobs created by  
35 the person falls below the number of new jobs required to be

36 created in order to qualify for the amount of credit being  
37 claimed or the requirements of section eight of this article are  
38 not satisfied, the taxpayer shall recapture the amount of credit  
39 claimed under section four of this article for the taxable year,  
40 and all preceding taxable years, on qualified investment  
41 property which has been prematurely removed from service.  
42 Additionally, the property tax benefit allowed under article  
43 six-L of this chapter shall be recaptured for a like period. The  
44 amount of tax due under this subdivision is an amount equal  
45 to the amount of credit that is recaptured under this  
46 subdivision plus the amount of the property tax benefit  
47 recaptured under this section.

48 (2) *Partial recapture.* -- If the taxpayer prematurely  
49 removes qualified investment property from economic  
50 service in the taxpayer's qualified investment business  
51 activity in this state, and the number of employees filling the  
52 new jobs created by the person remains ten or more, but falls  
53 below the number necessary to sustain continued application  
54 of credit determined by use of the new job percentage upon

55 which the taxpayer's one-tenth annual credit allowance was  
56 determined under section four or section ten of this article,  
57 taxpayer shall recapture an amount of credit equal to the  
58 difference between: (A) The amount of credit claimed under  
59 section four of this article for the taxable year, and all  
60 preceding taxable years; and (B) the amount of credit that  
61 would have been claimed in those years if the amount of  
62 credit allowable under section four of this article had been  
63 determined based on the qualified investment property which  
64 remains in service using the average number of new jobs  
65 filled by employees in the taxable year for which recapture  
66 occurs. The amount of tax due under this subdivision is an  
67 amount equal to the amount of credit that is recaptured under  
68 this subdivision.

69 (3) *Additional recapture.* -- If after a partial recapture  
70 under subdivision (2) of this subsection, the taxpayer further  
71 reduces the number of employees filling new jobs, the  
72 taxpayer shall recapture an additional amount determined as  
73 provided under subdivision (1) of this subsection. The

74 amount of tax due under this subdivision is an amount equal  
75 to the amount of credit that is recaptured under this  
76 subdivision.

77 (c) *Payment of recapture tax.* -- The amount of tax  
78 recaptured under this section is due and payable on the day  
79 the person's annual return is due for the taxable year in which  
80 this section applies, under article twenty-one or twenty-four  
81 of this chapter. When the employer is a partnership, limited  
82 liability company or Subchapter S corporation for federal  
83 income tax purposes, the recapture tax shall be paid by those  
84 persons who are partners in the partnership, members in the  
85 company, or shareholders in the Subchapter S corporation, in  
86 the taxable year in which recapture occurs under this section.  
87 The Tax Commissioner shall cause the property tax benefit  
88 recaptured to be paid over to the sheriff of the county in  
89 which the property is or was located within sixty days after  
90 the recapture tax is paid to the Tax Commissioner.

91 (d) *Rules.* -- The Tax Commissioner may promulgate  
92 such rules as may be useful or necessary to carry out the

93 purpose of this section and to implement the intent of the  
94 Legislature. Rules shall be promulgated in accordance with  
95 the provisions of article three, chapter twenty-nine-a of this  
96 code.

**§11-13CC-13. Transfer of qualified investment to successors.**

1       (a) Mere change in form of business. -- Property may not  
2 be treated as disposed of under section eleven of this article,  
3 by reason of a mere change in the form of conducting the  
4 business as long as the property is retained in the successor  
5 business in this state, and the transferor business retains a  
6 controlling interest in the successor business. In this event,  
7 the successor business is allowed to claim the amount of  
8 credit still available with respect to the business facility or  
9 facilities transferred, and the transferor business may not be  
10 required to redetermine the amount of credit allowed in  
11 earlier years.

12       (b) Transfer or sale to successor. -- Property is not  
13 treated as disposed of under section eleven of this article by  
14 reason of any transfer or sale to a successor business which

15 continues to operate the business facility in this state. Upon  
16 transfer or sale, the successor shall acquire the amount of  
17 credit that remains available under this article for each  
18 subsequent taxable year and the transferor business is not  
19 required to redetermine the amount of credit allowed in  
20 earlier years.

**§11-13CC-14. Failure to keep records of investment credit property.**

1 A taxpayer who does not keep the records required for  
2 identification of investment credit property is subject to the  
3 following rules:

4 (1) A taxpayer is treated as having disposed of, during the  
5 taxable year, any investment credit property which the  
6 taxpayer cannot establish was still on hand, in this state, at  
7 the end of that year.

8 (2) If a taxpayer cannot establish when investment credit  
9 property reported for purposes of claiming this credit  
10 returned during the taxable year was placed in service, the  
11 taxpayer is treated as having placed it in service in the most

12 recent prior year in which similar property was placed in  
13 service, unless the taxpayer can establish that the property  
14 placed in service in the most recent year is still on hand. In  
15 that event, the taxpayer will be treated as having placed the  
16 returned property in service in the next most recent year.

**§11-13CC-15. Interpretation and construction.**

1 (a) No inference, implication or presumption of  
2 legislative construction or intent may be drawn or made by  
3 reason of the location or grouping of any particular section,  
4 provision or portion of this article; and no legal effect may be  
5 given to any descriptive matter or heading relating to any  
6 section, subsection or paragraph of this article.

7 (b) The provisions of this article shall be reasonably  
8 construed in order to effectuate the legislative intent recited  
9 in section two of this article.

10 (c) In no event may any property that is treated as  
11 qualified investment property for purposes of this article be  
12 used to qualify for credit under any other article of this  
13 chapter.

**§11-13CC-16. Tax credit review and accountability.**

1       (a) On or before February 1, 2017, and on or before  
2       February 1 of every third year thereafter, the Tax  
3       Commissioner shall submit to the Governor, the President of  
4       the Senate and the Speaker of the House of Delegates, a tax  
5       credit review and accountability report evaluating the cost  
6       effectiveness of the credit allowed by this article during the  
7       most recent three-year period for which information is  
8       available. The criteria to be evaluated shall include, but not  
9       be limited to, for each year of the three-year period:

10       (1) The numbers of taxpayers claiming the credit;

11       (2) The net number of new jobs created by all taxpayers  
12       claiming the credit;

13       (3) The cost of the credit;

14       (4) The cost of the credit per new job created; and

15       (5) Comparison of employment trends for an industry and  
16       for taxpayers within the industry that claim the credit.

17       (b) Taxpayers claiming the credit shall provide any  
18       information the Tax Commissioner may require to prepare

19 the report: *Provided*, That the information provided is  
20 subject to the confidentiality and disclosure provisions of  
21 sections five-d and five-s, article ten of this chapter.

**§11-13CC-17. Effective date; termination date.**

1 (a) *Effective date*. -- The credit allowed by this article is  
2 allowed for qualified investment placed in service or use on  
3 or after July 1, 2012, subject to the rules contained in this  
4 section.

5 (b) *Termination date*. -- Unless extended by the  
6 Legislature, this credit shall not be allowed for any qualified  
7 investment property placed in service or use after December  
8 31, 2020: *Provided*, That when the qualified investment  
9 property was placed in service or use prior to January 1,  
10 2020, taxpayers shall be allowed the tax benefits allowed by  
11 section four of this article for the remainder of the credit  
12 period allowed by subsection (b) of that section, or the  
13 remainder of the credit period allowed under subsection (c)  
14 of that section, depending upon which is applicable to the  
15 taxpayer.

**§11-13CC-18. Severability.**

1       (a) If any provision of this article or the application thereof  
2 is for any reason adjudged by any court of competent  
3 jurisdiction to be invalid, the judgment may not affect, impair or  
4 invalidate the remainder of the article, but shall be confined in  
5 its operation to the provision thereof directly involved in the  
6 controversy in which the judgment shall have been rendered,  
7 and the applicability of the provision to other persons or  
8 circumstances may not be affected thereby.

9       (b) If any provision of this article or the application thereof  
10 is made invalid or inapplicable by reason of the repeal or any  
11 other invalidation of any statute therein addressed or referred to,  
12 such invalidation or inapplicability may not affect, impair or  
13 invalidate the remainder of the article, but shall be confined in  
14 its operation to the provision thereof directly involved with,  
15 pertaining to, addressing or referring to the statute, and the  
16 application of the provision with regard to other statutes or in  
17 other instances not affected by any such repealed or invalid  
18 statute may not be abrogated or diminished in any way.