

1 COMMITTEE SUBSTITUTE

2 FOR

3 COMMITTEE SUBSTITUTE

4 FOR

5 **Senate Bill No. 185**

6 (By Senators Kessler (Mr. President) and M. Hall,

7 By Request of the Executive)

8 _____
9 [Originating in the Committee on Finance;

10 reported March 27, 2013.]

11 _____
12
13
14 A BILL to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4,
15 §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West
16 Virginia, 1931, as amended, all relating to the tax credit for
17 alternative-fuel motor vehicles and qualified alternative-fuel
18 vehicle refueling infrastructure and qualified alternative-
19 fuel vehicle home refueling infrastructure; setting forth
20 legislative findings; defining terms; restricting credit to
21 purchases of and conversions to natural gas-fueled motor
22 vehicles and liquefied petroleum gas-fueled motor vehicles;
23 narrowing allowance of credit for alternative-fuel motor
24 vehicle purchases, alternative-fuel motor vehicle conversions

1 and alternative-fuel motor vehicle refueling infrastructure;
2 outlining eligibility for credit and cessation of eligibility
3 for credit for specified construction, purchases,
4 expenditures, investments, installations or conversions made
5 on or after cessation dates or tax years as specified;
6 requiring that not more than one tax credit be granted under
7 said article six-d, or any combination of articles set forth
8 in said chapter eleven for purchase of an alternative-fuel
9 motor vehicle or for costs relating to conversion of a motor
10 vehicle to an alternative-fuel motor vehicle, or for costs
11 associated with alternative-fuel vehicle refueling
12 infrastructure or for costs associated with alternative-fuel
13 home refueling infrastructure; providing amount of credit for
14 qualified alternative-fuel vehicle refueling infrastructure;
15 providing limitations on credit; allowing pass-through
16 entities to distribute credits to pass-through equity owners
17 in any manner such equity owners see fit; providing for the
18 termination of tax credit for alternative-fuel motor vehicles
19 purchased after December 31, 2017; providing for the
20 termination of tax credit for motor vehicles converted to
21 operate on alternative fuel after December 31, 2017; providing
22 for the termination of tax credit for construction or purchase
23 and installation of alternative-fuel vehicle refueling
24 infrastructure occurring after December 31, 2017; providing

1 for the termination of tax credit for construction or purchase
2 and installation of qualified alternative-fuel vehicle home
3 refueling infrastructure occurring on or after April 15, 2013;
4 providing for the termination of tax credit for purchases of
5 motor vehicles that operate on fuels other than compressed
6 natural gas or liquefied natural gas, or liquefied petroleum
7 gas, occurring on or after April 15, 2013; providing for the
8 termination of tax credit for conversions of motor vehicles to
9 operate on fuels other than compressed natural gas or
10 liquefied natural gas or liquefied petroleum gas occurring on
11 or after April 15, 2013; providing limitations and
12 restrictions of credit carryover; and providing that credit is
13 nontransferable.

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

15 That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5,
16 §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931,
17 as amended, be amended and reenacted, all to read as follows:

18 **ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT.**

19 **§11-6D-1. Legislative findings and purpose.**

20 Consistent with the public policy as stated in section one,
21 article two-d, chapter twenty-four of this code, the Legislature
22 hereby finds that the use of natural gas-based alternative fuels is
23 in the public interest and promotes the general welfare of the
24 people of this state insofar as it addresses serious concerns for

1 our environment and our state's and nation's dependence on foreign
2 oil as a source of energy. The Legislature further finds that ~~this~~
3 ~~state has an abundant supply of alternative fuels and an extensive~~
4 ~~supply network and that,~~ by encouraging the use of
5 ~~alternatively-fueled~~ natural gas-fueled and liquefied petroleum
6 gas-fueled motor vehicles, the state will be reducing its
7 dependence on foreign oil and attempting to improve its air
8 quality. The Legislature further finds that the wholesale cost of
9 fuel for certain ~~alternatively-fueled~~ natural gas-fueled and
10 liquefied petroleum gas-fueled motor vehicles is significantly
11 lower than the cost of ~~fueling~~ fuel for traditional motor vehicles.
12 ~~with oil based fuels~~

13 However, because the cost of motor vehicles which utilize
14 ~~alternative-fuel~~ natural gas-fueled or liquefied petroleum gas-
15 fueled technologies remains high in relation to motor vehicles that
16 employ more traditional technologies, citizens of this state who
17 might otherwise choose ~~an alternatively-fueled~~ a natural gas-
18 fueled or liquefied petroleum gas-fueled motor vehicle are forced
19 by economic necessity to continue using motor vehicles that are
20 fueled by more conventional means. Additionally, the availability
21 of commercial ~~and residential~~ infrastructure to support
22 ~~alternatively-fueled~~ natural gas-fueled and liquefied petroleum
23 gas-fueled vehicles available to the public is inadequate to
24 encourage the use of ~~alternatively-fueled~~ natural gas-fueled and

1 liquefied petroleum gas-fueled motor vehicles. It is the intent of
2 the Legislature that the alternative fuel motor vehicle tax credit
3 previously expired in 2006 be hereby reinstated with changes and
4 amendments as set forth herein. Therefore, in order to encourage
5 the use of ~~alternatively-fueled~~ natural gas-fueled and liquefied
6 petroleum gas-fueled motor vehicles and possibly reduce unnecessary
7 pollution of our environment and reduce our dependence on foreign
8 sources of energy, there is hereby created an alternative-fuel
9 motor vehicles tax credit and an alternative-fuel vehicle refueling
10 infrastructure tax credit.

11 **§11-6D-2. Definitions.**

12 As used in this article, the following terms have the meanings
13 ascribed to them in this section.

14 (a) "Alternative fuel". - ~~includes~~

15 (1) For purchase or installations occurring on and after
16 January 1, 2011, but prior to April 15, 2013, the term "alternative
17 fuel" means and includes:

- 18 ~~(1)~~ (A) Compressed natural gas;
- 19 ~~(2)~~ (B) ~~Liquified~~ Liquefied natural gas;
- 20 ~~(3)~~ (C) ~~Liquified~~ Liquefied petroleum gas;
- 21 ~~(4)~~ (D) Ethanol;
- 22 ~~(5)~~ (E) Fuel mixtures that contain eighty-five percent or more
23 by volume, when combined with gasoline or other fuels, of the
24 following:

- 1 ~~(A)~~ (i) Methanol;
- 2 ~~(B)~~ (ii) Ethanol; or
- 3 ~~(C)~~ (iii) Other alcohols;
- 4 ~~(6)~~ (F) Natural gas hydrocarbons and derivatives;
- 5 ~~(7)~~ (G) Hydrogen;
- 6 ~~(8)~~ (H) Coal-derived liquid fuels; and
- 7 ~~(9)~~ (I) Electricity, including electricity from solar energy.

8 (2) For purchases or installations occurring on or after April
9 15, 2013, the term "alternative fuel" means and is limited to:

- 10 (A) Compressed natural gas;
- 11 (B) Liquefied natural gas; or
- 12 (C) Liquefied petroleum gas.

13 (b) "Alternative-fuel motor vehicle" or "qualified motor
14 vehicle" means a motor vehicle that as a new or retrofitted or
15 converted fuel vehicle:

- 16 (1) Operates solely on one alternative fuel;
- 17 (2) Is capable of operating on one or more alternative fuels,
18 singly or in combination; or
- 19 (3) Is capable of operating on an alternative fuel and is also
20 capable of operating on gasoline or diesel fuel.

21 (c) "Bi-fueled motor vehicle" means a motor vehicle fueled
22 from two or more tanks, each of which stores a separate type of
23 fuel, which has the ability of an alternative-fuel motor vehicle to
24 operate on an alternative fuel and another form of fuel.

1 "Bi-fueled motor vehicles" as here defined are alternative-fuel
2 motor vehicles.

3 (d) "Liquefied petroleum gas" means fuel commonly known and
4 designated as "liquefied petroleum gas" or "LP gas." The term
5 "liquefied petroleum gas" also means and includes:

6 (1) Propane;

7 (2) Butane; or

8 (3) A mix of gasses used as motor fuel which is predominantly
9 propane or butane, or predominantly a mixture of propane and
10 butane.

11 ~~(d)~~ (e) "Plug-in hybrid electric vehicle" means:

12 (1) A plug-in hybrid electric vehicle manufactured by an
13 established motor vehicle manufacturer of plug-in hybrid electric
14 vehicles that can operate solely on electric power and that is
15 capable of recharging its battery from an on-board generation
16 source and an off-board electricity source; and

17 (2) A plug-in hybrid electric vehicle conversion that provides
18 an increase in city fuel economy of seventy-five percent or more as
19 compared to a comparable nonhybrid version vehicle for a minimum of
20 twenty miles and that is capable of recharging its battery from an
21 on-board generation source and an off-board electricity source. A
22 vehicle is comparable if it is the same model year and the same
23 vehicle class as established by the United States Environmental
24 Protection Agency and is comparable in weight, size and use. Fuel

1 economy comparisons shall be made using city fuel economy standards
2 in a manner that is substantially similar to the manner in which
3 city fuel economy is measured in accordance with procedures set
4 forth in 40 C. F. R. 600 as in effect on January 1, 2011.

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

15 ~~(f)~~ (g) "Qualified alternative-fuel vehicle home refueling
16 infrastructure" means property owned by the applicant for the tax
17 credit located on a private residence or private home and used for
18 storing alternative fuels and for dispensing such alternative fuels
19 into fuel tanks of motor vehicles, including, but not limited to,
20 compression equipment, storage tanks and dispensing units for
21 alternative fuel at the point where the fuel is delivered or for
22 providing electricity to plug-in hybrid electric vehicles or
23 electric vehicles: *Provided*, That the property is installed and
24 located in this state.

1 ~~(g)~~ (h) "Taxpayer" means any natural person, corporation,
2 limited liability company or partnership subject to the tax imposed
3 under article twenty-one, article twenty-three or article
4 twenty-four of this chapter or any combination thereof.

5 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles and**
6 **qualified alternative-fuel vehicle refueling**
7 **infrastructure; application against personal income**
8 **tax, business franchise tax or corporate net income**
9 **tax; effective date.**

10 The tax credits for the purchase of alternative-fuel motor
11 vehicles or conversion to alternative-fuel motor vehicles,
12 qualified alternative-fuel vehicle refueling infrastructure and
13 qualified alternative-fuel vehicle home refueling infrastructure
14 provided in this article may be applied against the tax liability
15 of a taxpayer imposed by the provisions of either article
16 twenty-one, article twenty-three or article twenty-four of this
17 chapter, but in no case may more than one tax credit be granted
18 under this article or any combination of articles set forth in this
19 chapter for the same purchase of an alternative-fuel motor vehicle
20 or for costs relating to conversion to an alternative-fuel motor
21 vehicle, or for costs associated with alternative-fuel vehicle
22 refueling infrastructure or for costs associated with alternative-
23 fuel home refueling infrastructure as defined in ~~subdivision (b),~~
24 ~~section two~~ of this article. This credit shall be available for

1 those tax years beginning on or after January 1, 2011, but shall
2 not be available for, or with relation to, any purchase,
3 expenditure, investment, installation, construction or conversion
4 made in any tax year beginning after the termination dates
5 specified in this article, as applicable to specified purchases,
6 expenditures, investments, installations, construction or
7 conversions.

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

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

11 (a) Converts a motor vehicle that is presently registered in
12 West Virginia to operate exclusively on an alternative fuel as
13 defined in ~~subdivision (a), section two of this article~~ or to
14 operate as a bi-fueled alternative-fuel motor vehicle; or

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

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

1 (d) (1) The credit provided in this article is not available
2 to and may not be claimed by any taxpayer under any obligation
3 pursuant to any federal or state law, policy or regulation to
4 convert to the use of alternative fuels for any motor vehicle.

5 (2) The credit provided in this article is not available to
6 and may not be claimed by any taxpayer for construction or purchase
7 or installation of alternative-fuel vehicle home refueling
8 infrastructure on or after April 15, 2013.

9 (e) The credit provided in this article for purchase of an
10 alternative-fuel motor vehicle or conversion of a motor vehicle to
11 an alternative-fuel motor vehicle, is not available to and may not
12 be claimed by any taxpayer in, or for, any tax year in which the
13 taxpayer did not own the alternative-fuel motor vehicle for which
14 the claim is filed on the last day of the taxpayer's tax year for
15 which the credit is claimed.

16 (f) Effective date. -

17 The amendments to this article enacted in the 2013 Regular
18 Legislative Session shall be effective upon passage.

19 **§11-6D-5. Amount of credit for alternative fuel motor**
20 **vehicles.**

21 (a) For taxable years beginning on and after January 1, 2011,
22 but prior to termination or cessation of this credit as specified
23 in this article, the amount of the credit allowed under this
24 article for an alternative-fuel motor vehicle that weighs less than

1 twenty-six thousand pounds is thirty-five percent of the purchase
2 price of the alternative-fuel motor vehicle up to a maximum amount
3 of \$7,500 or fifty percent of the actual cost of converting from a
4 traditionally fueled motor vehicle to an alternative-fuel motor
5 vehicle up to a maximum amount of \$7,500.

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

15 **§11-6D-6. Amount of credit for qualified alternative-fuel vehicle**
16 **refueling infrastructure.**

17 (a) For taxable years beginning on and after January 1, 2011,
18 but prior to January 1, 2014, the amount of the credit allowed
19 under this article for qualified alternative-fuel vehicle refueling
20 infrastructure is equal to ~~an amount of~~ fifty percent of the total
21 costs directly associated with the construction or purchase and
22 installation of the alternative-fuel vehicle refueling
23 infrastructure up to a maximum of \$250,000: *Provided,* That if the
24 qualified alternative-fuel vehicle refueling infrastructure is

1 generally accessible for public use, the amount of the credit
2 allowed will be multiplied by 1.25 and the maximum amount allowable
3 will be \$312,500. The amount of credit allowed may not exceed the
4 cost of construction of the alternative-fuel vehicle refueling
5 infrastructure.

6 (b) For taxable years beginning on and after January 1, 2014,
7 but prior to ~~January 1, 2016~~ termination or cessation of this
8 credit as specified in this article, the amount of the credit
9 allowed under this article for qualified alternative-fuel vehicle
10 refueling infrastructure is equal to ~~an amount of fifty~~ twenty
11 percent per facility of the total costs directly associated with
12 the construction or purchase and installation of the alternative
13 fuel vehicle refueling infrastructure up to a maximum of ~~\$200,000~~
14 ~~Provided, That if the qualified alternative fuel vehicle refueling~~
15 ~~infrastructure is generally accessible for public use, the amount~~
16 ~~of the credit allowed will be multiplied by 1.25 and the maximum~~
17 ~~amount allowable will be \$250,000. The amount of credit allowed may~~
18 ~~not exceed the cost of construction of the alternative fuel vehicle~~
19 ~~refueling infrastructure~~ \$400,000 per facility.

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

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

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

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

22 ~~(f) (d)~~ When the taxpayer is a pass-through entity treated
23 like a partnership for federal and state income tax purposes, the
24 credit allowed under this article for the year shall flow through

1 to the equity owners of the pass-through entity in ~~the same~~ any
2 manner that such equity owners see fit and is not required to flow
3 through such equity owners in the same manner as distributive share
4 flows through to the equity owners and in accordance with any
5 legislative rule the Tax Commissioner may propose for legislative
6 approval in accordance with article three, chapter twenty-nine-a of
7 this code to administer this section.

8 ~~(g)~~ (e) No credit allowed by this article may be applied
9 against employer withholding taxes imposed by article twenty-one of
10 this chapter.

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

12 No person is eligible to receive a tax credit under this
13 article for:

14 (1) An alternative-fuel motor vehicle purchased after December
15 31, ~~2021~~ 2017;

16 (2) A vehicle converted to an alternative-fuel motor vehicle
17 after December 31, ~~2021~~ 2017; ~~or~~

18 (3) The construction or purchase and installation of qualified
19 alternative-fuel vehicle refueling infrastructure ~~or qualified~~
20 ~~alternative fuel vehicle home refueling infrastructure~~ occurring
21 after December 31, ~~2021~~ 2017;

22 (4) The construction or purchase and installation of qualified
23 alternative-fuel vehicle home refueling infrastructure occurring on
24 or after April 15, 2013;

1 (5) Purchases of motor vehicles that operate on fuels other
2 than compressed natural gas, liquefied natural gas or liquefied
3 petroleum gas, occurring on or after April 15, 2013; or

4 (6) Conversions of motor vehicles to operate on fuels other
5 than compressed natural gas, liquefied natural gas or liquefied
6 petroleum gas, occurring on or after April 15, 2013.

7 **§11-6D-9. Carryover credit allowed; recapture of credit.**

8 (a) If the alternative-fuel motor vehicle tax credit allowed
9 under this article in ~~any~~ the first taxable year in which the tax
10 credit is allowable to offset tax exceeds the taxpayer's tax
11 liability as determined in accordance with article twenty-one,
12 article twenty-three ~~or~~ and article twenty-four of this chapter for
13 that taxable year, the excess may be applied for not more than the
14 four next succeeding taxable years until the ~~full amount of the~~
15 excess tax credit is used or the end of the fourth next succeeding
16 taxable year, whichever occurs first. Any excess credit remaining
17 at the end of the fourth next succeeding taxable year shall be
18 forfeited.

19 (b) If the qualified alternative-fuel vehicle refueling
20 infrastructure tax credit allowed under this article in any taxable
21 year exceeds the taxpayer's tax liability as determined in
22 accordance with article twenty-one, article twenty-three or article
23 twenty-four of this chapter for that taxable year, the excess may
24 be applied for succeeding taxable years until the full amount of

1 the excess tax credit is used.

2 (c) No carry back to a prior taxable year is allowed for the
3 amount of any unused credit in any taxable year.

4 ~~(c)~~ (d) A tax credit is subject to recapture, elimination or
5 reduction if it is determined by the State Tax Commissioner that a
6 taxpayer was not entitled to the credit, in whole or in part, in
7 the tax year in which it was claimed by the taxpayer. The amount
8 of credit that flows through to equity owners of a ~~passthrough~~
9 pass-through entity may be recaptured or recovered from either the
10 taxpayer or the equity owners in the discretion of the Tax
11 Commissioner.

12 (e) The tax credit allowed under this article may not be sold,
13 transferred or assigned to any person or entity. The tax credit
14 allowed under this article does not attach to or follow the
15 qualified motor vehicle or qualified infrastructure upon sale,
16 resale, transfer, assignment or any other change of ownership of
17 such vehicle or infrastructure. Credit shall not be available to
18 any successor owner of any qualified motor vehicle or any qualified
19 infrastructure property for which the credit was available to the
20 original owner or predecessor owner.