

1 **H. B. 2817**

2
3 (By Delegates Reynolds, Skaff, Stowers, Sponaugle,
4 Moye, Ferns, P. Smith, McCuskey, L. Phillips,
5 Guthrie and Campbell)

6 [Introduced March 5, 2013; referred to the
7 Committee on Roads and Transportation then Finance.]

8 **FISCAL**
9 **NOTE**

10 A BILL to amend and reenact §11-6D-2, §11-6D-4 and §11-6D-6 of the
11 Code of West Virginia, 1931, as amended; and to amend said
12 code by adding thereto a new section, designated §11-6D-10,
13 all relating generally to use of alternative-fuel motor
14 vehicles; eliminating the availability of a tax credit for
15 vehicles that are capable of running on ethanol and certain
16 fuel mixtures containing ethanol, methanol or other alcohols;
17 removing the requirement that a converted vehicle must operate
18 exclusively on an alternative fuel in order to take the
19 credit; eliminating a rule requirement; allowing pass-through
20 entities to distribute credits to pass-through equity owners
21 in any manner those equity owners see fit; permitting the
22 transfer of tax credits for purchase of alternative-fuel
23 vehicles, conversion to an alternative-fuel vehicle or
24 construction of alternative-fuel vehicle infrastructure;

1 setting forth how those transfers of tax credits may be
2 accomplished; providing an exception; and permitting
3 government entities and nonprofit entities to utilize certain
4 tax credits.

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

6 That §11-6D-2, §11-6D-4 and §11-6D-6 of the Code of West
7 Virginia, 1931, as amended, be amended and reenacted; and that said
8 code be amended by adding thereto a new section, designated
9 §11-6D-10, all to read as follows:

10 **ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLES 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) Compressed natural gas;

16 (2) Liquified natural gas;

17 (3) Liquified petroleum gas;

18 ~~(4) Ethanol;~~

19 ~~(5) Fuel mixtures that contain eighty-five percent or more by~~

20 ~~volume, when combined with gasoline or other fuels, of the~~

21 ~~following:~~

22 ~~(A) Methanol;~~

23 ~~(B) Ethanol; or~~

- 1 ~~(C) Other alcohols;~~
- 2 ~~(6)~~ (4) Natural gas hydrocarbons and derivatives;
- 3 ~~(7)~~ (5) Hydrogen;
- 4 ~~(8)~~ (6) Coal-derived liquid fuels; and
- 5 ~~(9)~~ (7) Electricity, including electricity from solar energy.

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

8 (1) Operates solely on one alternative fuel;

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

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

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

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

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

21 (2) A plug-in hybrid electric vehicle conversion that provides
22 an increase in city fuel economy of seventy-five percent or more as
23 compared to a comparable nonhybrid version vehicle for a minimum of

1 twenty miles and that is capable of recharging its battery from an
2 on-board generation source and an off-board electricity source. A
3 vehicle is comparable if it is the same model year and the same
4 vehicle class as established by the United States Environmental
5 Protection Agency and is comparable in weight, size and use. Fuel
6 economy comparisons shall be made using city fuel economy standards
7 in a manner that is substantially similar to the manner in which
8 city fuel economy is measured in accordance with procedures set
9 forth in 40 C.F.R. 600 as in effect on January 1, 2011.

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

19 (f) "Qualified alternative fuel vehicle home refueling
20 infrastructure" means property owned by the applicant for the tax
21 credit located on a private residence or private home and used for
22 storing alternative fuels and for dispensing such alternative fuels
23 into fuel tanks of motor vehicles, including, but not limited to,

1 compression equipment, storage tanks and dispensing units for
2 alternative fuel at the point where the fuel is delivered or for
3 providing electricity to plug-in hybrid electric vehicles or
4 electric vehicles: *Provided*, That the property is installed and
5 located in this state.

6 (g) "Taxpayer" means any natural person, corporation, limited
7 liability company or partnership subject to the tax imposed under
8 article twenty-one, article twenty-three or article twenty-four of
9 this chapter or any combination thereof and, for the purposes of
10 transferability as allowed pursuant to section ten of this article,
11 state, county and municipal governmental entities and nonprofit
12 entities.

13 **§11-6D-4. Eligibility for credit.**

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

16 (a) Converts a motor vehicle that is presently registered in
17 West Virginia to operate ~~exclusively~~ on an alternative fuel as
18 defined in subdivision (a), section two of this article or any
19 combination of an alternative fuel and any other fuel; or

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

1 or

2 (c) Constructs or purchases and installs qualified alternative
3 fuel vehicle refueling infrastructure or qualified alternative fuel
4 vehicle home refueling infrastructure that is capable of dispensing
5 alternative fuel for alternative-fuel motor vehicles.

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

10 **§11-6D-6. Amount of credit for qualified alternative fuel vehicle**
11 **refueling infrastructure and qualified alternative**
12 **fuel vehicle home refueling infrastructure.**

13 (a) For taxable years beginning on and after January 1, 2011,
14 but prior to January 1, 2014, the amount of the credit allowed under
15 this article for qualified alternative fuel vehicle refueling
16 infrastructure is equal to an amount of fifty percent of the total
17 costs directly associated with the construction or purchase and
18 installation of the alternative fuel vehicle refueling
19 infrastructure up to a maximum of \$250,000: *Provided*, That if the
20 qualified alternative fuel vehicle refueling infrastructure is
21 generally accessible for public use, the amount of the credit
22 allowed will be multiplied by 1.25 and the maximum amount allowable
23 will be \$312,500. The amount of credit allowed may not exceed the

1 cost of construction of the alternative fuel vehicle refueling
2 infrastructure.

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

16 (c) For taxable years beginning on and after January 1, 2016,
17 but prior to January 1, 2022, the amount of the credit allowed under
18 this article for qualified alternative fuel vehicle refueling
19 infrastructure is equal to an amount of fifty percent of the total
20 costs directly associated with the construction or purchase and
21 installation of the alternative fuel vehicle refueling
22 infrastructure up to a maximum of \$150,000: *Provided*, That if the
23 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 \$187,500. The amount of credit allowed may not exceed the
4 cost of construction of the alternative fuel vehicle refueling
5 infrastructure.

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

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

19 (f) When the taxpayer is a pass-through entity treated like a
20 partnership for federal and state income tax purposes, the credit
21 allowed under this article for the year shall flow through to the
22 equity owners of the pass-through entity in ~~the same~~ any manner that
23 such equity owners see fit and is not required to flow through to

1 those equity owners in the same manner as distributive share flows
2 through to the equity owners. and in accordance with any legislative
3 rule the Tax Commissioner may propose for legislative approval in
4 accordance with article three, chapter twenty-nine-a of this code
5 to administer this section.

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

9 **§11-6D-10. Transfer or sale of credit.**

10 (a) For purposes of this article and notwithstanding any
11 provision in the code to the contrary, a state, county or municipal
12 governmental entity and a nonprofit entity constitute a "taxpayer"
13 as that term is defined in section two of this article and are
14 entitled to take and transfer tax credits which are provided in this
15 article. Any entity may transfer and sell the right to a tax credit
16 issued pursuant to this article for liquefied natural gas vehicles,
17 compressed natural gas vehicles, natural gas hydrocarbon and
18 derivative vehicles and qualified alternative-fuel vehicle refueling
19 infrastructure to any taxpayer, subject to the following conditions:

20 (1) A single transfer or sale may involve one or more
21 transferees, assignees or purchasers. A transfer or sale of the
22 credits may involve multiple transfers to one or more transferees,
23 assignees or purchasers.

1 (2) Transferors and sellers shall apply to the tax department
2 for approval of any transfer, sale or assignment of the tax credit.
3 Any amount of the tax credit that has been transferred or assigned
4 is subject to the same limitations and conditions that apply to
5 transferor's or seller's entitlement, use and application of the
6 credit. The application for sale, transfer or assignment of the
7 credit shall include the transferor's tax credit balance prior to
8 transfer, if any, the name of the seller, the transferor's remaining
9 tax credit balance after transfer, if any, all tax identification
10 numbers for both transferor, if any, and transferee, the date of
11 transfer, the amount transferred and any other information required
12 by the Tax Commissioner. The Tax Commissioner shall either approve
13 or disapprove the application for sale, transfer or assignment of
14 the tax credit within thirty days of receipt of the application.
15 In the event the Tax Commissioner denies the application for sale,
16 transfer or assignment of the tax credit, the Tax Commissioner shall
17 provide the reason for such denial: *Provided*, That the total amount
18 of tax credits authorized to be transferred by state, county and
19 municipal governmental entities and nonprofit entities in any one
20 calendar year in the aggregate shall not exceed \$2 million for
21 qualified alternative-fuel motor vehicle tax credits and \$2 million
22 for qualified alternative-fuel vehicle refueling infrastructure tax
23 credits.

1 (3) The Tax Commissioner may not approve the transfer or
2 assignment of a tax credit to a taxpayer if the seller or transferor
3 has an outstanding tax obligation with the State of West Virginia.

4 (b) The transferee, assignee or purchaser shall apply the tax
5 credits as required by this article and is subject to all conditions
6 and limitations of this article.

7 (c) For purposes of this section, any proceeds received by the
8 transferor for its assignment or sale of the tax credits allowed
9 pursuant to this section are exempt from the West Virginia consumers
10 sales and service tax and use tax and from the corporation net
11 income tax and personal income tax.

12 (d) The purpose of this section is to authorize any entity to
13 take and transfer tax credits provided in this article, and
14 specifically allow government entities and nonprofit entities to
15 utilize certain tax credits issued pursuant to this article.

NOTE: The purpose of this bill is to eliminate the availability of a tax credit for vehicles that are capable of running on ethanol and certain fuel mixtures containing ethanol, methanol or other alcohols. The bill removes the requirement that a converted vehicle must operate exclusively on an alternative fuel in order to take the credit. The bill eliminates a rule requirement. The bill allows pass-through entities to distribute credits to pass-through equity owners in any manner the equity owners see fit. The bill permits the transfer of tax credits for purchase of alternative-fuel vehicles, conversion to an alternative-fuel vehicle or construction of alternative-fuel vehicle infrastructure. The bill sets forth how those transfer of tax credits may be accomplished. The bill allows government entities and nonprofit entities to utilize certain tax credits.

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

§11-6D-10 is new; therefore, it has been completely underscored.