

H. B. 3043

(BY MR. SPEAKER (MR. THOMPSON)
AND DELEGATE(S) CRAIG, HUNT, MARCUM, CAPUTO, FERRO,
R. PHILLIPS, WILLIAMS AND BOGGS)

[Introduced March 22, 2013; referred to the
Committee on Finance.]

A BILL to amend and reenact §11-13BB-3 of the Code of West Virginia, 1931, as amended, relating to including methane monitoring equipment as eligible safety equipment for tax credit purposes.

Be it enacted by the Legislature of West Virginia:

That §11-13BB-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX CREDIT ACT.

1 **§11-13BB-3. Definitions.**

2 (a) Any term used in this article has the meaning ascribed by
3 this section unless a different meaning is clearly required by the
4 context of its use or by definition in this article.

5 (b) For purposes of this article, the term:

6 (1) “Certified eligible safety property” means eligible safety
7 property in which an eligible taxpayer has made qualified
8 investment for which credit has been certified under this article.

9 (2) “Coal mining company” means:

10 (A) ~~Any~~ A person subject to tax imposed on the severance
11 of coal by section three, article thirteen-a of this chapter; or

12 (B) ~~Any~~ A person working as a contract miner of coal, ~~which~~
13 ~~mines~~ mining coal in this state, under contract with a person
14 subject to tax imposed on the severance of coal by section three,
15 article thirteen-a of this chapter.

16 (3) “Director” means the Director of the Office of Miners’
17 Health, Safety and Training or West Virginia Office of Miners’
18 Health, Safety and Training established under article one,
19 chapter twenty two-a of this code.

20 (4) “Eligible safety property” means safety technology
21 equipment that, at the time of acquisition, is on the list of
22 approved innovative mine safety technology: Provided, That
23 eligible safety property includes portable and machine mounted
24 methane monitors required by section forty-three, article two,
25 chapter twenty-two-a of this code.

26 (5) “Eligible taxpayer” means a coal mining company ~~which~~
27 that purchases eligible safety property.

28 (6) “List of approved innovative mine safety technology”
29 means the list required to be compiled and maintained by the
30 Mine Safety Technology Task Force and approved and published
31 by the director under this article.

32 (7) “Office of Miners’ Health, Safety and Training” or
33 “West Virginia Office of Miners’ Health, Safety and Training”
34 means the Office of Miners’ Health, Safety and Training
35 established under article one, chapter twenty two-a of this code.

36 (8) “Person” includes any corporation, limited liability
37 company or partnership.

38 (9) “Qualified investment” means the eligible taxpayer’s
39 investment in eligible safety property pursuant to a qualified
40 purchase as qualified and limited by section six of this article.

41 (10) “Qualified purchase” means and includes only acqui-
42 sitions of eligible safety property for use in this state.

43 (A) A lease of eligible safety property may constitute a
44 qualified purchase if the lease was entered into and became
45 effective at a time when the equipment is on the list of approved
46 innovative mine safety technology and if the primary term of the
47 lease for the eligible safety property is five years or more. Leases
48 having a primary term of less than five years do not qualify.

49 (B) “Qualified purchase” does not include:

50 (i) Purchases or leases of realty or any cost for, or related to,
51 the construction of ~~any~~ a building, facility or structure attached
52 to realty;

53 (ii) Purchases or leases of ~~any~~ property not exclusively used
54 in West Virginia;

55 (iii) Repair costs including materials used in the repair
56 unless, for federal income tax purposes, the cost of the repair
57 must be capitalized and not expensed;

58 (iv) Motor vehicles licensed by the ~~Department~~ Division of
59 Motor Vehicles;

60 (v) Clothing;

- 61 (vi) Airplanes;
- 62 (vii) Off-premises transportation equipment;
- 63 (viii) Leases of tangible personal property having a primary
64 term of less than five years; ~~shall not qualify;~~
- 65 (ix) Property that is used outside this state; and
- 66 (x) Property that is acquired incident to the purchase of the
67 stock or assets of an industrial taxpayer ~~which property that~~ that
68 or had been used by the seller in his or her industrial business in
69 this state or in which investment was previously the basis of a
70 credit against tax taken under any other article of this chapter.
- 71 (C) Acquisitions, including leases, of eligible safety property
72 may constitute qualified purchases for purposes of this article
73 only if:
- 74 (i) The property is not acquired from a person whose
75 relationship to the person acquiring it would result in the
76 disallowance of deductions under Section 267 or 707(b) of the
77 United States Internal Revenue Code of 1986, as amended;
- 78 (ii) The property is not acquired from a related person or by
79 one component member of a controlled group from another
80 component member of the same controlled group but the Tax

81 Commissioner may waive this requirement if the property was
82 acquired from a related party for its then fair market value; and

83 (iii) The basis of the property for federal income tax
84 purposes, in the hands of the person acquiring it, is not deter-
85 mined, in whole or in part, by reference to the federal adjusted
86 basis of the property in the hands of the person from whom it
87 was acquired or under Section 1014(e) of the United States
88 Internal Revenue Code of 1986, as amended.

89 (11) “Safety technology” means depreciable tangible
90 personal property and equipment, other than clothing, principally
91 designed to directly minimize workplace injuries and fatalities
92 in coal mines.

93 (12) “Taxpayer” means ~~any~~ a person subject to any of the
94 taxes imposed by article thirteen-a, twenty-three or twenty-four
95 of this chapter.

NOTE: The purpose of this bill is to define eligible safety property as including methane monitoring equipment.

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

