

**H. B. 2110**

(By Delegates Howell, Moye, Storch, Moffatt, Hamrick,  
Householder, Statler, Walters, Arvon, Blair and Kessinger)

[Introduced January 20, 2015; referred to the

Committee on Small Business, Entrepreneurship and Economic Development then  
Finance]

**FISCAL  
NOTE**

A BILL to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13S-3 and §11-13S-4 of said code, all relating generally to the tax treatment of manufacturing entities generally; amending definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes; amending definition of manufacturing for purposes of manufacturing investment tax credit; and the amount of credit allowed for manufacturing investment, to include small arms manufacturing.

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

That §11-6F-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-13S-3 and §11-13S-4 of said code be amended and reenacted, all to read as follows:

**ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL  
ADDITIONS TO MANUFACTURING FACILITIES.**

**§11-6F-2. Definitions.**

1 As used in this article, the term:

2 (a) “Certified capital addition property” means all real property and personal property  
3 included within or to be included within a qualified capital addition to a manufacturing facility that  
4 has been certified by the State Tax Commissioner in accordance with section four of this article:  
5 *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles shall in no  
6 event constitute certified capital addition property.

7 (b) “Manufacturing” means any business activity classified as having a sector identifier,  
8 consisting of the first two digits of the six-digit North American Industry Classification System code  
9 number of thirty-one, thirty-two or thirty-three or the six digit code number 211112; or, the six-digit  
10 North American Industry Classification System code numbers 332992 and 332994.

11 (c) “Manufacturing facility” means any factory, mill, chemical plant, refinery, warehouse,  
12 building or complex of buildings, including land on which it is located, and all machinery,  
13 equipment, improvements and other real property and personal property located at or within the  
14 facility used in connection with the operation of the facility in a manufacturing business.

15 (d) “Personal property” means all property specified in subdivision (q), section ten, article  
16 two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and  
17 equipment, pollution control equipment, computers and related data processing equipment, spare  
18 parts and supplies.

19 (e) “Qualified capital addition to a manufacturing facility” means either:

20 (1) All real property and personal property, the combined original cost of which exceeds \$50  
21 million to be constructed, located or installed at or within two miles of a manufacturing facility  
22 owned or operated by the person making the capital addition that has a total original cost before the

1 capital addition of at least \$100 million. If the capital addition is made in a steel, chemical or  
2 polymer alliance zone as designated from time-to-time by executive order of the Governor, then the  
3 person making the capital addition may for purposes of satisfying the requirements of this subsection  
4 join in a multiparty project with a person owning or operating a manufacturing facility that has a total  
5 original cost before the capital addition of at least \$100 million if the capital addition creates  
6 additional production capacity of existing or related products or feedstock or derivative products  
7 respecting the manufacturing facility, consists of a facility used to store, handle, process or produce  
8 raw materials for the manufacturing facility, consists of a facility used to store, handle or process  
9 natural gas to produce fuel for the generation of steam or electricity for the manufacturing facility  
10 or consists of a facility that generates steam or electricity for the manufacturing facility, including  
11 but not limited to a facility that converts coal to a gas or liquid for the manufacturing facility's use  
12 in heating, manufacturing or generation of electricity. Beginning on and after July 1, 2011, when  
13 the new capital addition is a facility that is or will be classified under the North American Industry  
14 Classification System with a six digit code number 211112, or is a manufacturing facility that uses  
15 product produced at a facility with code number 211112, then wherever the term "100 million" is  
16 used in this subsection, the term "20 million" shall be substituted and where the term "50 million"  
17 is used, the term "10 million" shall be substituted; and that beginning on and after July 1, 2015, when  
18 the new capital addition is a facility that is or will be classified under the North American Industry  
19 Classification System with a six-digit North American Industry Classification System code a product  
20 produced at a facility with code numbers 332992 and 332994, then wherever the term "100 million"  
21 is used in this subsection, the term "2 million" shall be substituted and where the term "50 million"  
22 is used, the term "1 million" shall be substituted; or

1 (2) (A) All real property and personal property, the combined original cost of which exceeds  
2 \$2 billion to be constructed, located or installed at a facility, or a combination of facilities by a single  
3 entity or combination of entities engaged in a unitary business, that:

4 (i) Is or will be classified under the North American Industry Classification System with a  
5 six digit code number 211112, or, the six-digit North American Industry Classification System code  
6 numbers 332992 and 332994; or

7 (ii) Is a manufacturing facility that uses one or more products produced at a facility with code  
8 number 211112; or, the six-digit North American Industry Classification System code numbers  
9 332992 and 332994; or

10 (iii) Is a manufacturing facility that uses one or more products produced at a facility described  
11 in subparagraph (ii) of this subdivision.

12 (B) No preexisting investment made, or in place before the capital addition shall be required  
13 for property specified in this subdivision (2). The requirements set forth in subdivision (1) of this  
14 subsection shall not apply to property specified in this subdivision (2) relating to:

15 (i) Location or installation of investment at or within two miles of a manufacturing facility  
16 owned or operated by the person making the capital addition;

17 (ii) Total original cost of preexisting investment before the capital addition of at least \$100  
18 million or \$20 million; or

19 (iii) Multiparty projects.

20 (f) “Real property” means all property specified in subdivision (p), section ten, article two,  
21 chapter two of this code and includes, but is not limited to, lands, buildings and improvements on  
22 the land such as sewers, fences, roads, paving and leasehold improvements: *Provided*, That for

1 capital additions certified on or after July 1, 2011, the value of the land before any improvements  
2 shall be subtracted from the value of the capital addition and the unimproved land value shall not  
3 be given salvage value treatment.

4 **ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.**

5 **§11-13S-3. Definitions.**

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

8 (b) For purpose of this article, the term:

9 (1) “Eligible taxpayer” means an industrial taxpayer who purchases new property for the  
10 purpose of industrial expansion or for the purpose of industrial revitalization of an existing industrial  
11 facility in this state.

12 (2) “Industrial expansion” means capital investment in a new or expanded industrial facility  
13 in this state.

14 (3) “Industrial facility” means any factory, mill, plant, refinery, warehouse, building or  
15 complex of buildings located within this state, including the land on which it is located, and all  
16 machinery, equipment and other real and tangible personal property located at or within the facility  
17 primarily used in connection with the operation of the manufacturing business.

18 (4) “Industrial revitalization” or “revitalization” means capital investment in an industrial  
19 facility located in this state to replace or modernize buildings, equipment, machinery and other  
20 tangible personal property used in connection with the operation of the facility in an industrial  
21 business of the taxpayer including the acquisition of any real property necessary to the industrial  
22 revitalization.

1 (5) “Industrial taxpayer” means any taxpayer who is primarily engaged in a manufacturing  
2 business.

3 (6) “Manufacturing” means any business activity classified as having a sector identifier,  
4 consisting of the first two digits of the six-digit North American Industry Classification System code  
5 number, of thirty-one, thirty-two or thirty-three or the six digit code number 211112 or the six digit  
6 code number 211112 or the six-digit North American Industry Classification System code numbers  
7 332992 and 332994.

8 (7) “Property purchased for manufacturing investment” means real property, and  
9 improvements thereto, and tangible personal property but only if the property was constructed or  
10 purchased on or after January 1, 2003, for use as a component part of a new, expanded or revitalized  
11 industrial facility. This term includes only that tangible personal property with respect to which  
12 depreciation, or amortization in lieu of depreciation, is allowable in determining the federal income  
13 tax liability of the industrial taxpayer, that has a useful life, at the time the property is placed in  
14 service or use in this state, of four years or more. Property acquired by written lease for a primary  
15 term of ten years or longer, if used as a component part of a new or expanded industrial facility, is  
16 included within this definition.

17 (A) “Property purchased for manufacturing investment” does not include:

18 (i) Repair costs, including materials used in the repair, unless for federal income tax  
19 purposes, the cost of the repair must be capitalized and not expensed;

20 (ii) Motor vehicles licensed by the Department of Motor Vehicles;

21 (iii) Airplanes;

22 (iv) Off-premises transportation equipment;

1 (v) Property which is primarily used outside this state; and

2 (vi) Property which is acquired incident to the purchase of the stock or assets of an industrial  
3 taxpayer which property was or had been used by the seller in his or her industrial business in this  
4 state or in which investment was previously the basis of a credit against tax taken under any other  
5 article of this chapter.

6 (B) Purchases or acquisitions of land or depreciable property qualify as purchases of property  
7 purchased for manufacturing investment for purposes of this article only if:

8 (i) The property is not acquired from a person whose relationship to the person acquiring it  
9 would result in the disallowance of deductions under section 267 or 707(b) of the United States  
10 Internal Revenue Code of 1986, as amended;

11 (ii) The property is not acquired from a related person or by one component member of a  
12 controlled group from another component member of the same controlled group. The Tax  
13 Commissioner may waive this requirement if the property was acquired from a related party for its  
14 then fair market value; and

15 (iii) The basis of the property for federal income tax purposes, in the hands of the person  
16 acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the  
17 property in the hands of the person from whom it was acquired or under Section 1014(e) of the  
18 United States Internal Revenue Code of 1986, as amended.

19 (8) “Qualified manufacturing investment” means that amount determined under section five  
20 of this article as qualified manufacturing investment.

21 (9) “Taxpayer” means any person subject to any of the taxes imposed by article thirteen-a,  
22 twenty-three or twenty-four of this chapter or any combination of those articles of this chapter.

1 **§11-13S-4. Amount of credit allowed for manufacturing investment.**

2 (a) *Credit allowed.* -- There is allowed to eligible taxpayers and to persons described in  
3 subdivision (5), subsection (b) of this section a credit against the taxes imposed by articles thirteen-a,  
4 twenty-three and twenty-four of this chapter: *Provided,* That a tax credit for any eligible taxpayer  
5 operating a business activity classified as having a sector identifier, consisting of the six digit code  
6 number 211112 or, the six-digit North American Industry Classification System code numbers  
7 332992 and 332994 such eligible taxpayer must comply with the provisions of subsection (e) of this  
8 section for all construction related thereto in order to be eligible for any credit under this article. The  
9 amount of credit shall be determined as hereinafter provided in this section.

10 (b) *Amount of credit allowable.* -- The amount of allowable credit under this article is equal  
11 to five percent of the qualified manufacturing investment (as determined in section five of this  
12 article) and shall reduce the severance tax, imposed under article thirteen-a of this chapter, the  
13 business franchise tax imposed under article twenty-three of this chapter and the corporation net  
14 income tax imposed under article twenty-four of this chapter, in that order, subject to the following  
15 conditions and limitations:

16 (1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth  
17 thereof per taxable year, beginning with the taxable year in which the property purchased for  
18 manufacturing investment is first placed in service or use in this state;

19 (2) *Severance tax.* -- The credit is applied to reduce the severance tax imposed under article  
20 thirteen-a of this chapter (determined before application of the credit allowed by section three, article  
21 twelve-b of this chapter and before any other allowable credits against tax and before application of  
22 the annual exemption allowed by section ten, article thirteen-a of this chapter). The amount of



1 annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this  
2 chapter, below fifty percent of the amount which would be imposed for such taxable year in the  
3 absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1,  
4 2009, the amount of annual credit allowed may not reduce the severance tax, imposed under article  
5 thirteen-a of this chapter, below forty percent of the amount which would be imposed for such  
6 taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is  
7 entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all  
8 credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under  
9 article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such  
10 taxable year (determined before application of the credit allowed by section three, article twelve-b  
11 of this chapter and before any other allowable credits against tax and before application of the annual  
12 exemption allowed by section ten, article thirteen-a of this chapter): *Provided, however*, That when  
13 in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit  
14 under this article and article thirteen-d of this chapter, the total amount of all credits allowable for  
15 the taxable year may not reduce the amount of the severance tax imposed under article thirteen-a of  
16 this chapter, below forty percent of the amount which would be imposed for such taxable year as  
17 determined before application of the credit allowed by section three, article twelve-b of this chapter  
18 and before any other allowable credits against tax and before application of the annual exemption  
19 allowed by section ten, article thirteen-a of this chapter;

20 (3) *Business franchise tax.* --

21 After application of subdivision (2) of this subsection, any unused credit is next applied to  
22 reduce the business franchise tax imposed under article twenty-three of this chapter (determined after

1 application of the credits against tax provided in section seventeen, article twenty-three of this  
2 chapter, but before application of any other allowable credits against tax). The amount of annual  
3 credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this  
4 chapter, below fifty percent of the amount which would be imposed for such taxable year in the  
5 absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1,  
6 2009, the amount of annual credit allowed will not reduce the business franchise tax, imposed under  
7 article twenty-three of this chapter, below forty percent of the amount which would be imposed for  
8 such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is  
9 entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all  
10 credits allowable for the taxable year will not reduce the amount of the business franchise tax,  
11 imposed under article twenty-three of this chapter, below fifty percent of the amount which would  
12 be imposed for the taxable year (determined after application of the credits against tax provided in  
13 section seventeen, article twenty-three of this chapter, but before application of any other allowable  
14 credits against tax): *Provided, however*, That when in any taxable year beginning on and after  
15 January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this  
16 chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of  
17 the business franchise tax, imposed under article twenty-three of this chapter, below forty percent  
18 of the amount which would be imposed for the taxable year as determined after application of the  
19 credits against tax provided in section seventeen, article twenty-three of this chapter, but before  
20 application of any other allowable credits against tax;

21 (4) *Corporation net income tax.* —

22 After application of subdivision (3) of this subsection, any unused credit is next applied to

1 reduce the corporation net income tax imposed under article twenty-four of this chapter (determined  
2 before application of any other allowable credits against tax). The amount of annual credit allowed  
3 will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below  
4 fifty percent of the amount which would be imposed for such taxable year in the absence of this  
5 credit against tax: *Provided*, That for tax years beginning on and after January 1, 2009, the amount  
6 of annual credit allowed will not reduce corporation net income tax, imposed under article  
7 twenty-four of this chapter, below forty percent of the amount which would be imposed for such  
8 taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is  
9 entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all  
10 credits allowable for the taxable year may not reduce the amount of the corporation net income tax,  
11 imposed under article twenty-four of this chapter, below fifty percent of the amount which would  
12 be imposed for the taxable year (determined before application of any other allowable credits against  
13 tax): *Provided, however*, That when in any taxable year beginning on and after January 1, 2009, the  
14 taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total  
15 amount of all credits allowable for the taxable year may not reduce the amount of the corporation  
16 net income tax, imposed under article twenty-four of this chapter, below forty percent of the amount  
17 which would be imposed for the taxable year as determined before application of any other allowable  
18 credits against tax;

19 (5) *Pass-through entities.* —

20 (A) If the eligible taxpayer is a limited liability company, small business corporation or a  
21 partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this  
22 subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on

1 owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by  
2 its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are  
3 imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by  
4 this credit.

5 (B) The amount of annual credit allowed will not reduce corporation net income tax, imposed  
6 under article twenty-four of this chapter, below fifty percent of the amount which would be imposed  
7 on the conduit income directly derived from the eligible taxpayer by each owner for such taxable  
8 year in the absence of this credit against the taxes (determined before application of any other  
9 allowable credits against tax): *Provided*, That for tax years beginning on and after January 1, 2009,  
10 the amount of annual credit allowed will not reduce corporation net income tax, imposed under  
11 article twenty-four of this chapter, below forty percent of the amount which would be imposed on  
12 the conduit income directly derived from the eligible taxpayer by each owner for such taxable year  
13 in the absence of this credit against the taxes as determined before application of any other allowable  
14 credits against tax.

15 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and  
16 article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not  
17 reduce the corporation net income tax imposed on the conduit income directly derived from the  
18 eligible taxpayer by each owner below fifty percent of the amount that would be imposed for such  
19 taxable year on the conduit income (determined before application of any other allowable credits  
20 against tax): *Provided*, That when in any taxable year beginning on and after January 1, 2009, the  
21 taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total  
22 amount of all credits allowable for the taxable year will not reduce the corporation net income tax

1 imposed on the conduit income directly derived from the eligible taxpayer by each owner below forty  
2 percent of the amount that would be imposed for such taxable year on the conduit income as  
3 determined before application of any other allowable credits against tax;

4 (6) Small business corporations, limited liability companies, partnerships and other  
5 unincorporated organizations shall allocate any unused credit after application of subdivisions (2),  
6 (3) and (4) of this subsection among their members in the same manner as profits and losses are  
7 allocated for the taxable year; and

8 (7) No credit is allowed under this article against any tax imposed by article twenty-one of  
9 this chapter.

10 (c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed  
11 for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

12 (d) *Application for credit required.* --

13 (1) *Application required.* -- Notwithstanding any provision of this article to the contrary, no  
14 credit is allowed or may be applied under this article for any qualified investment property placed  
15 in service or use until the person claiming the credit makes written application to the Tax  
16 Commissioner for allowance of credit as provided in this section. This application shall be in the  
17 form prescribed by the Tax Commissioner and shall provide the number and type of jobs created,  
18 if any, by the manufacturing investment, the average wage rates and benefits paid to employees  
19 filling the new jobs and any other information the Tax Commissioner may require. This application  
20 shall be filed with the Tax Commissioner no later than the last day for filing the annual return,  
21 determined by including any authorized extension of time for filing the return, required under article  
22 twenty-one or twenty-four of this chapter for the taxable year in which the property to which the

1 credit relates is placed in service or use.

2           (2) *Failure to file.* -- The failure to timely apply the application for credit under this section  
3 results in forfeiture of fifty percent of the annual credit allowance otherwise allowable under this  
4 article. This penalty applies annually until the application is filed.

5           (e) (1) Any person or entity undertaking any construction related to any business activity  
6 included within North American Industrial Code six-digit code number 211112, the value of which  
7 is an amount equal to or greater than \$500,000, shall hire at least seventy-five percent of employees  
8 for said construction from the local labor market, to be rounded off, with at least two employees  
9 from outside the local labor market permissible for each employer per project, “the local labor  
10 market” being defined as every county in West Virginia and any county outside of West Virginia if  
11 any portion of that county is within fifty miles of the border of West Virginia.

12           (2) Any person or entity unable to employ the minimum number of employees from the local  
13 labor market shall inform the nearest office of the bureau of employment programs’ division of  
14 employment services of the number of qualified employees needed and provide a job description of  
15 the positions to be filled.

16           (3) If, within three business days following the placing of a job order, the division is unable  
17 to refer any qualified job applicants to the person or entity engaged in said construction or refers less  
18 qualified job applicants than the number requested, then the division shall issue a waiver to the  
19 person or entity engaged in said construction stating the unavailability of applicants and shall permit  
20 the person or entity engaged in said construction to fill any positions covered by the waiver from  
21 outside the local labor market. The waiver shall be either oral or in writing and shall be issued  
22 within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged

1 in said construction for its permanent project records.

2 (f) The amendments made to section three of this article, this section and to section two,  
3 article six-f of this chapter are enacted to provide manufacturing investment tax credit to small arms  
manufacturers and may be cited as the “West Virginia Small Arms Investment Act”.

NOTE: The purpose of this bill is to provide manufacturing investment tax credit generally for small arms manufacturing. It amends the definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes and the definition of manufacturing for purposes of manufacturing investment tax credit.

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