

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2110**

(BY DELEGATES HOWELL, MOYE, STORCH, MOFFATT,  
HAMRICK, HOUSEHOLDER, STATLER, WALTERS, ARVON,  
BLAIR AND KESSINGER)

[Originated in the Committee on Finance  
on February 24, 2016.]



1 A BILL to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §11-13S-3 and §11-13S-4 of said code, all relating generally to the  
3 tax treatment of manufacturing entities generally; amending definition of manufacturing for  
4 purposes of special method for appraising qualified capital additions to manufacturing  
5 facilities for property tax purposes; amending definition of manufacturing for purposes of  
6 manufacturing investment tax credit; and amending the formula for calculating credit  
7 allowed for manufacturing investment, to include Small Arms Ammunition Manufacturing  
8 and Small Arms, Ordinance, and Ordinance Accessories Manufacturing.

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

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

10 (c) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse,  
11 building or complex of buildings, including land on which it is located, and all machinery,

12 equipment, improvements and other real property and personal property located at or within the  
13 facility used in connection with the operation of the facility in a manufacturing business.

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

18 (e) "Qualified capital addition to a manufacturing facility" means either:

19 (1) All real property and personal property, the combined original cost of which exceeds  
20 \$50 million to be constructed, located or installed at or within two miles of a manufacturing facility  
21 owned or operated by the person making the capital addition that has a total original cost before  
22 the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical or  
23 polymer alliance zone as designated from time-to-time by executive order of the Governor, then  
24 the person making the capital addition may for purposes of satisfying the requirements of this  
25 subsection join in a multiparty project with a person owning or operating a manufacturing facility  
26 that has a total original cost before the capital addition of at least \$100 million if the capital addition  
27 creates additional production capacity of existing or related products or feedstock or derivative  
28 products respecting the manufacturing facility, consists of a facility used to store, handle, process  
29 or produce raw materials for the manufacturing facility, consists of a facility used to store, handle  
30 or process natural gas to produce fuel for the generation of steam or electricity for the  
31 manufacturing facility or consists of a facility that generates steam or electricity for the  
32 manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for  
33 the manufacturing facility's use in heating, manufacturing or generation of electricity. Beginning  
34 on and after July 1, 2011, when the new capital addition is a facility that is or will be classified  
35 under the North American Industry Classification System with a six digit code number 211112, or  
36 is a manufacturing facility that uses product produced at a facility with code number 211112, then  
37 wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted

38 and where the term “50 million” is used, the term “10 million” shall be substituted; and that  
39 beginning on and after July 1, 2016, when the new capital addition is a facility that is or will be  
40 classified under the North American Industry Classification System with a six-digit North American  
41 Industry Classification System code a product produced at a facility with code numbers 332992  
42 and 332994, then wherever the term “100 million” is used in this subsection, the term “2 million”  
43 shall be substituted and where the term “50 million” is used, the term “1 million” shall be  
44 substituted; or

45 (2) (A) All real property and personal property, the combined original cost of which exceeds  
46 \$2 billion to be constructed, located or installed at a facility, or a combination of facilities by a  
47 single entity or combination of entities engaged in a unitary business, that:

48 (i) Is or will be classified under the North American Industry Classification System with a  
49 six digit code number 211112, 332992 or 332994; or

50 (ii) Is a manufacturing facility that uses one or more products produced at a facility with  
51 code number 211112; 332992 or 332994; or

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

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

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

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

61 (iii) Multiparty projects.

62 (f) “Real property” means all property specified in subdivision (p), section ten, article two,  
63 chapter two of this code and includes, but is not limited to, lands, buildings and improvements on

64 the land such as sewers, fences, roads, paving and leasehold improvements: *Provided*, That for  
65 capital additions certified on or after July 1, 2011, the value of the land before any improvements  
66 shall be subtracted from the value of the capital addition and the unimproved land value shall not  
67 be given salvage value treatment.

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

**§11-13S-3. Definitions.**

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

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

4 (1) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the  
5 purpose of industrial expansion or for the purpose of industrial revitalization of an existing  
6 industrial facility in this state.

7 (2) "Industrial expansion" means capital investment in a new or expanded industrial facility  
8 in this state.

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

13 (4) "Industrial revitalization" or "revitalization" means capital investment in an industrial  
14 facility located in this state to replace or modernize buildings, equipment, machinery and other  
15 tangible personal property used in connection with the operation of the facility in an industrial  
16 business of the taxpayer including the acquisition of any real property necessary to the industrial  
17 revitalization.

18 (5) "Industrial taxpayer" means any taxpayer who is primarily engaged in a manufacturing  
19 business.

20 (6) "Manufacturing" means any business activity classified as having a sector identifier,  
21 consisting of the first two digits of the six-digit North American Industry Classification System code  
22 number, of thirty-one, thirty-two or thirty-three or the six digit code number 211112, 332992 or  
23 332994.

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

33 (A) "Property purchased for manufacturing investment" does not include:

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

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

37 (iii) Airplanes;

38 (iv) Off-premises transportation equipment;

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

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

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

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

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

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

57 (8) "Qualified manufacturing investment" means that amount determined under section  
58 five of this article as qualified manufacturing investment.

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

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

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

9 (b) *Amount of credit allowable.* — The amount of allowable credit under this article is equal  
10 to five percent of the qualified manufacturing investment (as determined in section five of this

11 article) for any eligible taxpayer operating a business activity classified as having a sector  
12 identifier, consisting of the six digit code number 211112; and (2) the amount of allowable credit  
13 under this article is equal to fifty percent of the qualified manufacturing investment (as determined  
14 in section five of this article) for any eligible taxpayer operating a business activity classified as  
15 having a sector identifier, consisting of the six digit code number 332992 or 332994. This credit  
16 ~~and~~ shall reduce the severance tax, imposed under article thirteen-a of this chapter, the business  
17 franchise tax imposed under article twenty-three of this chapter and the corporation net income  
18 tax imposed under article twenty-four of this chapter, in that order, subject to the following  
19 conditions and limitations:

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

23 (2) *Severance tax.* — The credit is applied to reduce the severance tax imposed under  
24 article thirteen-a of this chapter (determined before application of the credit allowed by section  
25 three, article twelve-b of this chapter and before any other allowable credits against tax and before  
26 application of the annual exemption allowed by section ten, article thirteen-a of this chapter). The  
27 amount of annual credit allowed may not reduce the severance tax, imposed under article  
28 thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such  
29 taxable year in the absence of this credit against tax: *Provided*, That for tax years beginning on  
30 and after January 1, 2009, the amount of annual credit allowed may not reduce the severance  
31 tax, imposed under article thirteen-a of this chapter, below forty percent of the amount which  
32 would be imposed for such taxable year in the absence of this credit against tax. When in any  
33 taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this  
34 chapter, the total amount of all credits allowable for the taxable year may not reduce the amount  
35 of the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the  
36 amount which would be imposed for such taxable year (determined before application of the credit

37 allowed by section three, article twelve-b of this chapter and before any other allowable credits  
38 against tax and before application of the annual exemption allowed by section ten, article  
39 thirteen-a of this chapter): *Provided, however,* That when in any taxable year beginning on and  
40 after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d  
41 of this chapter, the total amount of all credits allowable for the taxable year may not reduce the  
42 amount of the severance tax imposed under article thirteen-a of this chapter, below forty percent  
43 of the amount which would be imposed for such taxable year as determined before application of  
44 the credit allowed by section three, article twelve-b of this chapter and before any other allowable  
45 credits against tax and before application of the annual exemption allowed by section ten, article  
46 thirteen-a of this chapter;

47 (3) *Business franchise tax.* —

48 After application of subdivision (2) of this subsection, any unused credit is next applied to  
49 reduce the business franchise tax imposed under article twenty-three of this chapter (determined  
50 after application of the credits against tax provided in section seventeen, article twenty-three of  
51 this chapter, but before application of any other allowable credits against tax). The amount of  
52 annual credit allowed will not reduce the business franchise tax, imposed under article  
53 twenty-three of this chapter, below fifty percent of the amount which would be imposed for such  
54 taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on  
55 and after January 1, 2009, the amount of annual credit allowed will not reduce the business  
56 franchise tax, imposed under article twenty-three of this chapter, below forty percent of the  
57 amount which would be imposed for such taxable year in the absence of this credit against tax.  
58 When in any taxable year the taxpayer is entitled to claim credit under this article and article  
59 thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not  
60 reduce the amount of the business franchise tax, imposed under article twenty-three of this  
61 chapter, below fifty percent of the amount which would be imposed for the taxable year  
62 (determined after application of the credits against tax provided in section seventeen, article

63 twenty-three of this chapter, but before application of any other allowable credits against tax):  
64 *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the  
65 taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total  
66 amount of all credits allowable for the taxable year will not reduce the amount of the business  
67 franchise tax, imposed under article twenty-three of this chapter, below forty percent of the  
68 amount which would be imposed for the taxable year as determined after application of the credits  
69 against tax provided in section seventeen, article twenty-three of this chapter, but before  
70 application of any other allowable credits against tax;

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

72 After application of subdivision (3) of this subsection, any unused credit is next applied to  
73 reduce the corporation net income tax imposed under article twenty-four of this chapter  
74 (determined before application of any other allowable credits against tax). The amount of annual  
75 credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this  
76 chapter, below fifty percent of the amount which would be imposed for such taxable year in the  
77 absence of this credit against tax: *Provided,* That for tax years beginning on and after January 1,  
78 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed  
79 under article twenty-four of this chapter, below forty percent of the amount which would be  
80 imposed for such taxable year in the absence of this credit against tax. When in any taxable year  
81 the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the  
82 total amount of all credits allowable for the taxable year may not reduce the amount of the  
83 corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent  
84 of the amount which would be imposed for the taxable year (determined before application of any  
85 other allowable credits against tax): *Provided, however,* That when in any taxable year beginning  
86 on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article  
87 thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not  
88 reduce the amount of the corporation net income tax, imposed under article twenty-four of this

89 chapter, below forty percent of the amount which would be imposed for the taxable year as  
90 determined before application of any other allowable credits against tax;

91 (5) *Pass-through entities.* —

92 (A) If the eligible taxpayer is a limited liability company, small business corporation or a  
93 partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this  
94 subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter  
95 on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer  
96 by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that  
97 are imposed on income directly derived by the owner from the eligible taxpayer are subject to  
98 offset by this credit.

99 (B) The amount of annual credit allowed will not reduce corporation net income tax,  
100 imposed under article twenty-four of this chapter, below fifty percent of the amount which would  
101 be imposed on the conduit income directly derived from the eligible taxpayer by each owner for  
102 such taxable year in the absence of this credit against the taxes (determined before application  
103 of any other allowable credits against tax): *Provided*, That for tax years beginning on and after  
104 January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax,  
105 imposed under article twenty-four of this chapter, below forty percent of the amount which would  
106 be imposed on the conduit income directly derived from the eligible taxpayer by each owner for  
107 such taxable year in the absence of this credit against the taxes as determined before application  
108 of any other allowable credits against tax.

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

115 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter,  
116 the total amount of all credits allowable for the taxable year will not reduce the corporation net  
117 income tax imposed on the conduit income directly derived from the eligible taxpayer by each  
118 owner below forty percent of the amount that would be imposed for such taxable year on the  
119 conduit income as determined before application of any other allowable credits against tax;

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

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

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

129 (d) *Application for credit required.* —

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

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

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

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

155           (3) If, within three business days following the placing of a job order, the division is unable  
156 to refer any qualified job applicants to the person or entity engaged in said construction or refers  
157 less qualified job applicants than the number requested, then the division shall issue a waiver to  
158 the person or entity engaged in said construction stating the unavailability of applicants and shall  
159 permit the person or entity engaged in said construction to fill any positions covered by the waiver  
160 from outside the local labor market. The waiver shall be either oral or in writing and shall be  
161 issued within the prescribed three days. A waiver certificate shall be sent to the person or entity  
162 engaged in said construction for its permanent project records.