

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Senate Bill 816

BY SENATOR BLAIR

[Passed February 29, 2020; to take effect July 1, 2020]

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2020 MAR 25 PM 4:10

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SB816

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OFFICE OF THE CLERK
WEST VIRGINIA LEGISLATURE
CHARLESTON, WEST VIRGINIA

2020 MAR 25 PM 3:10

FILED

1 AN ACT 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 of said code, all relating generally to updating the North
3 American Industry Classification System code references; and making other technical
4 changes to conform to new bill-drafting requirements.

Be it enacted by the Legislature of West Virginia:

**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 §11-6F-4 of this code:
5 *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles are not
6 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 31, 32, or 33. For purposes of this article, manufacturing also includes the processing
10 of raw natural gas or oil to recover or extract liquid hydrocarbons, which activity is classified under
11 North American Industry Classification System code number 211130. This definition does not
12 mean or include any other processes or activities classified, categorized, grouped, or identified
13 under North American Industry Classification System code number 211130.

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

18 (d) "Personal property" means all property specified in §2-2-10(q) of this code and
19 includes, but is not limited to, furniture, fixtures, machinery, and equipment, pollution control
20 equipment, computers, and related data processing equipment, spare parts, and supplies.

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

22 (1) All real property and personal property, the combined original cost of which exceeds
23 \$50 million to be constructed, located, or installed at or within two miles of a manufacturing facility
24 owned or operated by the person making the capital addition that has a total original cost before
25 the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical, or
26 polymer alliance zone as designated from time-to-time by executive order of the Governor, then
27 the person making the capital addition may, for purposes of satisfying the requirements of this
28 subsection, join in a multiparty project with a person owning or operating a manufacturing facility
29 that has a total original cost before the capital addition of at least \$100 million if the capital addition
30 creates additional production capacity of existing or related products or feedstock or derivative
31 products respecting the manufacturing facility, consists of a facility used to store, handle, process,
32 or produce raw materials for the manufacturing facility, consists of a facility used to store, handle,
33 or process natural gas to produce fuel for the generation of steam or electricity for the
34 manufacturing facility or consists of a facility that generates steam or electricity for the
35 manufacturing facility, including, but not limited to, a facility that converts coal to a gas or liquid
36 for the manufacturing facility's use in heating, manufacturing or generation of electricity. When
37 the new capital addition is a facility that is or will be processing raw natural gas or oil to recover
38 or extract liquid hydrocarbons, or is a manufacturing facility that uses product produced at a facility
39 engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons, then
40 wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted
41 and where the term "50 million" is used, the term "10 million" shall be substituted; or

42 (2) (A) All real property and personal property, the combined original cost of which exceeds
43 \$2 billion to be constructed, located or installed at a facility, or a combination of facilities by a
44 single entity or combination of entities engaged in a unitary business, that:

45 (i) Is or will be engaged in processing of raw natural gas or oil to recover or extract liquid
46 hydrocarbons; or

47 (ii) Is a manufacturing facility that uses one or more products produced at a facility
48 described in subparagraph (i) above; or

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

51 (B) No preexisting investment made, or in place before the capital addition is required for
52 property specified in this subdivision. The requirements set forth in subdivision (1) of this
53 subsection do not apply to property specified in this subdivision relating to:

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

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

58 (iii) Multiparty projects.

59 (f) "Real property" means all property specified in §2-2-10(p) of this code and includes, but
60 is not limited to, lands, buildings, and improvements on the land such as sewers, fences, roads,
61 paving, and leasehold improvements: *Provided*, That for capital additions certified on or after July
62 1, 2011, the value of the land before any improvements shall be subtracted from the value of the
63 capital addition and the unimproved land value shall not 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
12 facility 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 31, 32, or 33. For purposes of this article, manufacturing also includes the processing
23 of raw natural gas or oil to recover or extract liquid hydrocarbons, which is classified under North
24 American Industry Classification System code number 211130. This definition does not mean or
25 include any other processes or activities classified, categorized, grouped, or identified under North
26 American Industry Classification System code number 211130.

27 (7) "Property purchased for manufacturing investment" means real property, and
28 improvements thereto, and tangible personal property but only if the property was constructed or
29 purchased on or after January 1, 2003, for use as a component part of a new, expanded, or

30 revitalized industrial facility. This term includes only that tangible personal property with respect
31 to which depreciation, or amortization in lieu of depreciation, is allowable in determining the
32 federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property
33 is placed in service or use in this state, of four years or more. Property acquired by written lease
34 for a primary term of 10 years or longer, if used as a component part of a new or expanded
35 industrial facility, is included within this definition.

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

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

39 (ii) Motor vehicles licensed by the Division of Motor Vehicles;

40 (iii) Airplanes;

41 (iv) Off-premises transportation equipment;

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

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

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

49 (i) The property is not acquired from a person whose relationship to the person acquiring
50 it would result in the disallowance of deductions under section 267 or 707(b) of the United States
51 Internal Revenue Code of 1986, as defined in §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code;

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

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

60 (8) "Qualified manufacturing investment" means that amount determined under §11-13S-
61 5 of this code as qualified manufacturing investment.

62 (9) "Taxpayer" means any person subject to any of the taxes imposed by §11-13A-1 *et*
63 *seq.*, §11-21-1 *et seq.*, or §11-24-1 *et seq.* of this code, or any combination of those articles of
64 this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Marty Mumpford
.....
Chairman, Senate Committee

Steve Caputo
.....
Chairman, House Committee

Originated in the Senate.

To take effect July 1, 2020.

Joe Linn
.....
Clerk of the Senate

Steve Harris
.....
Clerk of the House of Delegates

Walter B. Lammiman
.....
President of the Senate

Leon Hancock
.....
Speaker of the House of Delegates

FILED
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CLERK OF THE SENATE

The within is approved this the 25th
Day of March, 2020.

James R. Hunt
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 13 2020

Time 3:16pm