

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2844**

BY DELEGATES KEATON, WAMSLEY, AND HAYNES

[Introduced March 02, 2021; Referred to the  
Committee on Finance]

1 A BILL to amend and reenact §11-13S-4 of the Code of West Virginia, 1931, as amended, relating  
 2 to the amount of tax credit allowed for manufacturing investment; and reducing the 40  
 3 percent limitation to 25 percent.

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

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

**§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 §11-24-13A-  
 3 1 *et seq.*, §11-23-1 *et seq.*, and §11-24-1 *et seq.* of this code: *Provided*, That a tax credit for any  
 4 eligible taxpayer operating a business activity classified as having a sector identifier, consisting  
 5 of the six digit code number 211112 such eligible taxpayer ~~must~~ shall comply with the provisions  
 6 of subsection (e) of this section for all construction related thereto in order to be eligible for any  
 7 credit under this article. The amount of credit shall be determined as hereinafter provided in this  
 8 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) and shall reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, the  
 12 business franchise tax imposed under §11-23-1 *et seq.* of this code and the corporation net  
 13 income tax imposed under §11-24-1 *et seq.* of this code, in that order, subject to the following  
 14 conditions and limitations:

15 (1) The amount of credit allowable is applied over a 10-year period, at the rate of one-  
 16 tenth thereof per taxable year, beginning with the taxable year in which the property purchased  
 17 for manufacturing investment is first placed in service or use in this state;

18 (2) *Severance tax.* -- The credit is applied to reduce the severance tax imposed under  
 19 §11-13A-1 *et seq.* of this code (determined before application of the credit allowed by §11-12B-3  
 20 of this code and before any other allowable credits against tax and before application of the annual

21 exemption allowed by §11-13A-10 of this code). The amount of annual credit allowed may not  
22 reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 50 percent of the  
23 amount which would be imposed for such taxable year in the absence of this credit against tax:  
24 *Provided*, That for tax years beginning on and after January 1, 2009 2021, the amount of annual  
25 credit allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code,  
26 below ~~forty~~ 25 percent of the amount which would be imposed for such taxable year in the  
27 absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit  
28 under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for  
29 the taxable year may not reduce the amount of the severance tax, imposed under §11-13A-1 *et*  
30 *seq.* of this code, below 50 percent of the amount which would be imposed for such taxable year  
31 (determined before application of the credit allowed by §11-12B-3 of this code and before any  
32 other allowable credits against tax and before application of the annual exemption allowed by  
33 §11-13A-10 of this code): *Provided, however*, That when in any taxable year beginning on and  
34 after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et*  
35 *seq.* of this code of this chapter, the total amount of all credits allowable for the taxable year may  
36 not reduce the amount of the severance tax imposed under §11-13A-1 *et seq.* of this code, below  
37 ~~forty~~ 25 percent of the amount which would be imposed for such taxable year as determined  
38 before application of the credit allowed by §11-12B-3 of this code and before any other allowable  
39 credits against tax and before application of the annual exemption allowed by §11-13A-10 of this  
40 code;

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

42 After application of subdivision (2) of this subsection, any unused credit is next applied to  
43 reduce the business franchise tax imposed under §11-23-1 *et seq.* of this code (determined after  
44 application of the credits against tax provided in §11-23-17 of this code, but before application of  
45 any other allowable credits against tax). The amount of annual credit allowed will not reduce the  
46 business franchise tax, imposed under §11-23-1 *et seq.* of this code, below 50 percent of the

47 amount which would be imposed for such taxable year in the absence of this credit against tax:  
48 *Provided*, That for tax years beginning on and after January 1, ~~2009~~ 2021, the amount of annual  
49 credit allowed will not reduce the business franchise tax, imposed under §11-23-1 *et seq.* of this  
50 code, below ~~forty~~ 25 percent of the amount which would be imposed for such taxable year in the  
51 absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit  
52 under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for  
53 the taxable year will not reduce the amount of the business franchise tax, imposed under article  
54 twenty-three of this chapter, below 50 percent of the amount which would be imposed for the  
55 taxable year (determined after application of the credits against tax provided in §11-23-17 of this  
56 code, but before application of any other allowable credits against tax): *Provided, however*, That  
57 when in any taxable year beginning on and after January 1, ~~2009~~ 2021, the taxpayer is entitled to  
58 claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits  
59 allowable for the taxable year will not reduce the amount of the business franchise tax, imposed  
60 under §11-23-1 *et seq.* of this code, below ~~forty~~ 25 percent of the amount which would be imposed  
61 for the taxable year as determined after application of the credits against tax provided in §11-23-  
62 17 of this code, but before application of any other allowable credits against tax;

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

64 After application of subdivision (3) of this subsection, any unused credit is next applied to  
65 reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code (determined  
66 before application of any other allowable credits against tax). The amount of annual credit allowed  
67 will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below  
68 50 percent of the amount which would be imposed for such taxable year in the absence of this  
69 credit against tax: *Provided*, That for tax years beginning on and after January 1, ~~2009~~ 2021, the  
70 amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-  
71 24-1 *et seq.* of this code, below ~~forty~~ 25 percent of the amount which would be imposed for such  
72 taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is

73 entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of  
74 all credits allowable for the taxable year may not reduce the amount of the corporation net income  
75 tax, imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would  
76 be imposed for the taxable year (determined before application of any other allowable credits  
77 against tax): *Provided, however,* That when in any taxable year beginning on and after January  
78 1, ~~2009~~ 2021, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of  
79 this code, the total amount of all credits allowable for the taxable year may not reduce the amount  
80 of the corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below ~~forty~~ 25  
81 percent of the amount which would be imposed for the taxable year as determined before  
82 application of any other allowable credits against tax;

83 (5) *Pass-through entities.* —

84 (A) If the eligible taxpayer is a limited liability company, small business corporation or a  
85 partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this  
86 subsection) is allowed as a credit against the taxes imposed by §11-24-1 *et seq.* of this code on  
87 owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer  
88 by its owners. Only those portions of the tax imposed by §11-24-1 *et seq.* of this code that are  
89 imposed on income directly derived by the owner from the eligible taxpayer are subject to offset  
90 by this credit.

91 (B) The amount of annual credit allowed will not reduce corporation net income tax,  
92 imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be  
93 imposed on the conduit income directly derived from the eligible taxpayer by each owner for such  
94 taxable year in the absence of this credit against the taxes (determined before application of any  
95 other allowable credits against tax): *Provided,* That for tax years beginning on and after January  
96 1, ~~2009~~ 2021, the amount of annual credit allowed will not reduce corporation net income tax,  
97 imposed under §11-24-1 *et seq.* of this code, below ~~forty~~ 25 percent of the amount which would  
98 be imposed on the conduit income directly derived from the eligible taxpayer by each owner for

99 such taxable year in the absence of this credit against the taxes as determined before application  
100 of any other allowable credits against tax.

101 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and  
102 §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will  
103 not reduce the corporation net income tax imposed on the conduit income directly derived from  
104 the eligible taxpayer by each owner below 50 percent of the amount that would be imposed for  
105 such taxable year on the conduit income (determined before application of any other allowable  
106 credits against tax): *Provided*, That when in any taxable year beginning on and after January 1,  
107 ~~2009~~ 2021, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this  
108 code, the total amount of all credits allowable for the taxable year will not reduce the corporation  
109 net income tax imposed on the conduit income directly derived from the eligible taxpayer by each  
110 owner below ~~forty~~ 25 percent of the amount that would be imposed for such taxable year on the  
111 conduit income as determined before application of any other allowable credits against tax;

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

116 (7) No credit is allowed under this article against any tax imposed by §11-21-1 *et seq.* of  
117 this code.

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

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

122 (1) *Application required.* -- Notwithstanding any provision of this article to the contrary, no  
123 credit is allowed or may be applied under this article for any qualified investment property placed  
124 in service or use until the person claiming the credit makes written application to the Tax

125 Commissioner for allowance of credit as provided in this section. This application shall be in the  
126 form prescribed by the Tax Commissioner and shall provide the number and type of jobs created,  
127 if any, by the manufacturing investment, the average wage rates and benefits paid to employees  
128 filling the new jobs and any other information the Tax Commissioner may require. This application  
129 shall be filed with the Tax Commissioner no later than the last day for filing the annual return,  
130 determined by including any authorized extension of time for filing the return, required under §11-  
131 21-1 *et seq.* or §11-24-1 *et seq.* of this code for the taxable year in which the property to which  
132 the credit relates is placed in service or use.

133 (2) *Failure to file.* -- The failure to timely apply the application for credit under this section  
134 results in forfeiture of 50 percent of the annual credit allowance otherwise allowable under this  
135 article. This penalty applies annually until the application is filed.

136 (e)(1) Any person or entity undertaking any construction related to any business activity  
137 included within North American Industrial Code six-digit code number 211112, the value of which  
138 is an amount equal to or greater than \$500,000, shall hire at least 75 percent of employees for  
139 ~~said~~ construction from the local labor market, to be rounded off, with at least two employees from  
140 outside the local labor market permissible for each employer per project, "the local labor market"  
141 being defined as every county in West Virginia and any county outside of West Virginia if any  
142 portion of that county is within 50 miles of the border of West Virginia.

143 (2) Any person or entity unable to employ the minimum number of employees from the  
144 local labor market shall inform the nearest office of the bureau of employment programs' division  
145 of employment services of the number of qualified employees needed and provide a job  
146 description of the positions to be filled.

147 (3) If, within three business days following the placing of a job order, the division is unable  
148 to refer any qualified job applicants to the person or entity engaged in said construction or refers  
149 less qualified job applicants than the number requested, then the division shall issue a waiver to  
150 the person or entity engaged in said construction stating the unavailability of applicants and shall

151 permit the person or entity engaged in said construction to fill any positions covered by the waiver  
152 from outside the local labor market. The waiver shall be either oral or in writing and shall be issued  
153 within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged  
154 in said construction for its permanent project records.

NOTE: The purpose of this bill is to reduce the 40 percent limitation of tax credit allowed for manufacturing investment to 25 percent.

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