

**WEST VIRGINIA INNOVATIVE MINE SAFETY
TECHNOLOGY TAX CREDIT**

TAX CREDIT REVIEW AND ACCOUNTABILITY REPORT

August 1, 2013

Submitted by:
West Virginia State Tax Department
Mark W. Matkovich
Acting State Tax Commissioner

WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX CREDIT

As enacted in 2011, the West Virginia Innovative Mine Safety Technology Tax Credit Act requires an annual Tax Credit Review and Accountability Report. Specifically, West Virginia Code §11-13BB-11(a) states the following:

“Beginning on August 1, 2012, and August 1 of every year thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost of the credit allowed under this article during the most recent period for which information is available. The criteria to be evaluated include, but is not limited to, for each year:

- (1) The numbers of taxpayers claiming the credit; and
- (2) The cost of the credit.”

The following report is provided in conformity with the above requirement. This report provides information on the Innovative Mine Safety Technology Tax Credit allocated as of June 30, 2013 and the amount of such credit claimed on tax returns in State Tax Department databases as of July 12, 2013.

Introduction

The purpose of the West Virginia Innovative Mine Safety Technology Tax Credit Act as stated in West Virginia Code §11-13BB-2 is “The legislature finds that the encouragement of new investment in innovative coal mine safety technology in this state is in the public interest and promotes the general welfare of the people of the state.”

Pertinent definitions relative to the Innovative Mine Safety Technology Tax Credit included in the Statute are as follows:

"Eligible taxpayer" means a coal mining company which purchases eligible safety property.

“Eligible safety property” means safety technology equipment, that at the time of acquisition, is on the list of approved innovative mine safety technology¹.

“List of approved innovative mine safety technology” means the list required to be compiled and maintained by the Mine Safety Technology Task Force and approved and published by the director (Director of the Office of Miners’ Health, Safety and Training).

¹ HB3043 (passed April 13, 2013 and in effect 90 days from passage) specifies that eligible safety property includes machine mounted methane monitors required by section forty-three, article two, chapter twenty-two-a of this code (W. Va. Code §22a-2-43).

"Coal mining company" means:

(A) Any person subject to tax imposed on the severance of coal by section three, article thirteen-a of the West Virginia Code (W.Va. Code §11-13A-3); or

(B) Any person working as a contract miner of coal, which mines coal in this state, under contract with a person subject to tax imposed on the severance of coal by section three, article thirteen-a of the West Virginia Code (W.Va. Code §11-13A-3).

"Director" means the Director of the Office of Miners' Health, Safety and Training or West Virginia Office of Miners' Health, Safety and Training established under article one, chapter twenty two-a of the West Virginia Code (W.Va. Code §22-1 et seq.).

List of Approved Innovative Mine Safety Technology

As provided in West Virginia Code §11-13BB-4, the Mine Safety Technology Task Force is to annually compile a proposed list of approved innovative mine safety technologies. The list is to “describe and specifically identify safety equipment for use in West Virginia coal mines which, in the fiscal year when the equipment is added to the list, is not required by the Mine Safety and Health Administration of the United States Department of Labor or the West Virginia Office Of Miners' Health, Safety And Training or any other state or federal agency, to be used in a coal mine or on a mine site or on any other industrial site.” The West Virginia Innovative Mine Safety Technology Tax Credit Act also includes the following directive in regards to the list of approved innovative mine safety technologies:

“It is the intent of the Legislature that the list of approved innovative mine safety technologies include only safety equipment that is depreciable tangible personal property for federal income tax purposes, which is so new to the industry and so innovative in concept, design, operation or performance that, in the fiscal year when it is added to the list of approved innovative mine safety technologies, the equipment has not yet been adopted by the Federal Mine Safety and Health Administration or the West Virginia Office of Miners Health, Safety and Training or any other state or federal agency as required equipment to be used in a coal mine or on a mine site or on any other industrial site.”

The proposed list is then forwarded to the Director of the Office of Miners' Health, Safety and Training or West Virginia Office of Miners' Health, Safety and Training for approval or amendment within 30 days. At the expiration of the 30 day review period, the Director is to publish the list.

As of June 30, 2013, the approved innovative mine safety technologies are shown in the following table:

Table 1 – Approved Innovative Mine Safety Technologies

Item	Date Added	Reference
Proximity detectors that have been approved by MSHA ² .	April 19, 2012	Appendix A & Appendix B
TTE Mine Communication System. ³	April 19, 2012	Appendix A & Appendix B
PDM – Personal Dust Monitors	April 19, 2012	Appendix A & Appendix B
Coal Dust Monitors	April 3, 2013	Appendix B
Cameras on underground and surface mine mobile equipment for all mobile equipment that is not currently required to possess a camera under state law	April 3, 2013	Appendix B
Machine mounted methane monitors required by W. Va. Code §22A-2-43	July 12, 2013 ⁴	Appendix C

Innovative Mine Safety Technology Tax Credit Allowed

Effective for tax years beginning after December 31, 2011, the amount of Innovative Mine Safety Technology Tax Credit allowed to eligible taxpayers is equal to 50 percent of the qualified investment in items on the list of approved innovative mine safety technologies. The tax credit is to be applied over a five-year period, at the rate of one-fifth of the credit approved for each tax year, beginning with the tax year in which the eligible safety property is first placed in service or use in West Virginia. The tax credit may be used to reduce the eligible Taxpayer’s Business Franchise Tax and / or Corporation Net Income Tax, but the tax credit cannot reduce the Taxpayer’s liability for either of these two taxes below 50 percent of the tax that would be imposed in the absence of the tax credit. If the eligible Taxpayer is a limited liability company, small business corporation, or a partnership, then any unused tax credit after application against the Taxpayer’s own Business Franchise Tax and / or Corporation Net Income Tax may be allocated to the owners of the Taxpayer in the same manner as profits and losses are allocated for the tax year. The owners may only apply such credit against their Corporation Net Income Tax, but the tax credit cannot reduce the Owner-Taxpayer’s liability for this tax below 50 percent of the tax that would be imposed in the absence of the tax credit. Additionally, the Owner-Taxpayer may only apply the tax credit against Corporation Net Income Tax imposed on income directly derived by the Owner-Taxpayer from the original Taxpayer.

Other statutory provisions relating to the Innovative Mine Safety Technology Tax Credit include the following:

- No Innovative Mine Safety Technology Tax Credit is allowed against any tax imposed by W. Va. Code §11-21-1 et seq. (e.g., Personal Income Tax, Withholding Tax, etc.)

² MSHA refers to the Mine Safety and Health Administration of the United States Department of Labor.

³ TTE stands for “Through-the-Earth.”

⁴ Added by HB3043 as passed April 13, 2013 in effect 90 days from passage.

- No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for any unused portion of the Innovative Mine Safety Technology Tax Credit.
- No Innovative Mine Safety Technology Tax Credit is allowed until the Taxpayer seeking to claim the credit has:
 - Filed a written application for certification of the proposed Innovative Mine Safety Technology Tax Credit with the Office of Miners Health, Safety and Training; and
 - Received, from the Office of Miners Health, Safety and Training, certification of the amount of Innovative Mine Safety Technology Tax Credit to be allocated to the eligible Taxpayer.
- No more than \$2 million of Innovative Mine Safety Technology Tax Credit shall be allocated by the Office of Miners Health, Safety and Training during any fiscal year. The Office of Miners Health, Safety and Training shall allocate the available fiscal year amount of Innovative Mine Safety Technology Tax Credit in the order the applications for the credit are received.
- The total amount of Innovative Mine Safety Technology Tax Credit that may be used in any taxable year by any eligible Taxpayer may not exceed \$100,000.

Innovative Mine Safety Technology Tax Credit Allocated and Applied

The amount of Innovative Mine Safety Technology Tax Credit approved each fiscal year by the Office of Miners Health, Safety and Training and the amount of such tax credit claimed on Corporation Net Income Tax and / or Business Franchise Tax returns by ending tax year is shown in the table below.

Innovative Mine Safety Technology Tax Credit Utilization

Fiscal Year	Credit Approved	Tax Year	Number of Taxpayers Claiming the Credit	Cost of the Credit (Claimed on Tax Returns)
2012	\$470,981.79	2012	*	*
2013	\$0.00	2013	*	*

Most new programs go through a start-up period, with participation in the program increasing over time. Some other recent tax credit programs have required three or more years to ramp up. While the above table shows that Innovative Mine Safety Technology Tax Credit has been approved, no such credit has been claimed on tax returns. Since the majority of Taxpayers use a tax year that coincides with the calendar year, claims of the Innovative Mine Safety Technology Tax Credit for tax year 2012 would be most likely to be reported on the annual returns due March 15, 2013 for regular corporations or April 15, 2013 for pass-through entities (e.g., Sub-Chapter S Corporations, Partnerships, Limited Liability Companies, etc.). Additionally, since many Taxpayers apply for an automatic 6-month extension for filing their annual return, the first Innovative Mine Safety Technology Tax Credit claims may not be known until late 2013 (for returns extended to September 2013 or October 2013).

Other factors, besides the normal slow start-up of a new program, which may have resulted in the amount of Innovative Mine Safety Technology Tax Credit approved in FY2012 at less than 25 percent of the \$2 million limit, include a reduced window for applications in FY2012 and economic conditions. As shown in Appendix A, the first list of approved innovative mine safety technology items was dated April 19, 2012. Thus, less than two and one-half months were left in FY2012 for potential Taxpayers to apply for the tax credit and for the Office of Miners' Health, Safety and Training to review the applications. Also some potential applicants for the Innovative Mine Safety Technology Tax Credit may have been deterred by economic conditions. The demand for coal to generate electricity has softened due in part to a warmer than normal winter and in part to lower natural gas prices that have led to shift in the fuel used at electric power plants. Additionally, exports of West Virginia's high quality metallurgical coal have slowed as world economies have slowed. As a result of the drop in demand, some West Virginia mines have closed or reduced operations since the beginning of 2012 and some major companies have filed for bankruptcy.

Appendix A

List of Innovative Mine Safety Technology Items for Purposes of the Innovative Mine Safety Technology – Dated April 19, 2012



State of West Virginia
Earl Ray Tomblin, Governor

WV Office of Miners' Health, Safety & Training
C. A. Phillips, Director
1615 Washington Street East • Charleston, West Virginia • 25311-2126
Telephone 304-558-1425 • Fax 304-558-1282
www.wvminesafety.org

FILED
2012 APR 19 PM 3:17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

April 19, 2012

The Honorable Natalie E. Tennant
Secretary of State
State Capitol Complex
Bld. 1, Suite 157-K
Charleston, WV 25305

RE: Publication in the State Register

Dear Secretary Tennant:

Please publish the accompanying two letters and Memorandum in the next edition of the State Register.

Thank you for your attention to this matter.

Very truly yours,

C. A. Phillips

C. A. Phillips
Director



State of West Virginia
Earl Ray Tomblin, Governor

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2012 APR 19 PM 3:17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WV Office of Miners' Health, Safety & Training
C. A. Phillips, Director
1615 Washington Street East • Charleston, West Virginia • 25311-2126
Telephone 304-558-1425 • Fax 304-558-1282
www.wvminesafety.org

MEMORANDUM

TO: West Virginia Coal Industry and other interested parties
FROM: C. A. Phillips, Director *C.A. Phillips*
RE: List of Innovative Mine Safety Technology Approved for Purposes of
The West Virginia Innovative Mine Safety Technology Tax Credit Act
DATE: April 19, 2012

As the Director of the West Virginia Office of Miners' Health, Safety and Training, I have received a letter, dated March 20, 2012, from the West Virginia Mine Safety Technology Task Force (Task Force) stating that "no innovative mine safety technology items are available for listing at this time." Pursuant to the requirements of W. Va. Code § 11-13BB-4, I have reviewed that letter and the list of innovative mine safety technologies and amend that list to include the following three (3) innovative mine safety technology safety items:

1. Proximity detectors that have been approved by MSHA.
2. TTE Mine Communication System.
3. PDM – Personal Dust Monitors.

A copy of the two (2) Task Force letters together with this Memorandum shall be filed with the Secretary of State for publication in the State Register.



WEST VIRGINIA MINE SAFETY TECHNOLOGY TASK FORCE

1615 Washington Street, E. • Charleston, West Virginia 25311 • Telephone 304-957-2306 • Fax 304-558-0062

20 March 2012

Mr. C. A. Phillips, Director
Office of Miners Health, Safety and Training
1615 Washington Street East
Charleston, West Virginia 25311

Re: Technology Tax Credit List

Director Phillips,

At the request of the Task Force, I am sending you this letter and the attached technology list. The list was authorized at the 19 March 2012 meeting of the Task Force and is the same list submitted in December 2011 and January 2012.

The Task Force has decided that due to the legislative session in which you played a key role in the Governor's legislative agenda for miner health and safety, that they needed to reissue the letter.

Please feel free to contact me with any concerns or issues which you may have.


Joel L. Watts
Health and Safety Administrator
Board of Coal Mine Health and Safety
Mine Safety Technology Task Force





WEST VIRGINIA MINE SAFETY TECHNOLOGY TASK FORCE

1615 Washington Street, E. • Charleston, West Virginia 25311 • Telephone 304-957-2306 • Fax 304-558-0062

20 March 2012

Mr. C. A. Phillips, Director
Office of Miners Health, Safety and Training
1615 Washington Street East
Charleston, West Virginia 25311

Re: Technology Tax Credit List

Dear Mr. Phillips:

This letter is being submitted by the West Virginia Safety Technology Task Force in order to comply with the requirements of House Bill 2955 § 11-13BB-4, "List of Approved Innovative Mine Safety Technology", specifically, item A of the aforementioned section of House Bill 2955.

Qualifications for putting items on the list were not met.

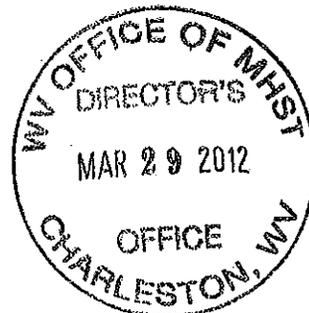
Therefore, no innovative mine safety technology items are available for listing at this time.

Sincerely,

Joel L. Watts, Administrator
WV Board of Coal Mine Health & Safety
On behalf of:

WEST VIRGINIA MINE SAFETY TECHNOLOGY TASK FORCE

cc: Dale Birchfield
Jim Dean
Ted Hapney
Terry Hudson
Todd Moore
Gary Trout
Steve Webber



Appendix B

List of Innovative Mine Safety Technology Items for Purposes of the Innovative Mine Safety Technology – Dated April 3, 2013



FILED

2013 APR -3 PM 2:59

State of West Virginia
Earl Ray Tomblin, Governor

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WV Office of Miners' Health, Safety & Training
Eugene White, Director
#7 Player Club Drive, Suite 2, Charleston, WV 25311-1626
Telephone 304-558-1425 • Fax 304-558-1282
www.wvminesafety.org

April 3, 2013

The Honorable Natalie E. Tennant
Secretary of State
State Capitol Complex
Bld. 1, Suite 157-K
Charleston, WV 25305

RE: Publication in the State Register

Dear Secretary Tennant:

Please publish the accompanying letter and Memorandum in the next edition of the State Register.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Eugene White".

Eugene White
Director



State of West Virginia
Earl Ray Tomblin, Governor

WV Office of Miners' Health, Safety & Training
Eugene White, Director
#7 Player Club Drive, Suite 2, Charleston, WV 25311-1626
Telephone 304-558-1425 • Fax 304-558-1282
www.wvminesafety.org

FILED
2013 APR -3 PM 3:00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TO: West Virginia Coal Industry and other interested parties
FROM: Eugene White, Director
RE: List of Innovative Mine Safety Technology Approved for Purposes of
The West Virginia Innovative Mine Safety Technology Tax Credit Act
DATE: April 3, 2013

As the Director of the West Virginia Office of Miners' Health, Safety and Training, I have received a letter, dated March 18, 2013, from the West Virginia Mine Safety Technology Task Force (Task Force) recommending eight (8) items for listing as innovative mine safety technology safety items for tax credit purposes. Pursuant to the requirements of W. Va. Code § 11-13BB-4, I have reviewed that letter and the recommended list of innovative mine safety technologies and amend that list to the following five (5) innovative mine safety technology safety items:

1. Proximity detectors that have been approved by MSHA,
2. Though the Earth Mine Communication Systems,
3. Personal Dust Monitors,
4. Coal Dust Meters,
5. Cameras on underground and surface mine mobile equipment for all mobile equipment that is not currently required to possess a camera under state law.

A copy of the Task Force letter together with this Memorandum shall be filed with the West Virginia Secretary of State for publication in the State Register.

Appendix C

HB3043 – Enrolled Version

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ENROLLED

H. B. 3043

(By Mr. Speaker (Mr. Thompson) and Delegates
Craig, Hunt, Marcum, Caputo, Ferro,
R. Phillips, Williams and Boggs)

[Passed April 13, 2013; in effect ninety days from passage.]

**FISCAL
NOTE**

AN ACT 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.

§11-13BB-3. Definitions.

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

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

1 (1) "Certified eligible safety property" means eligible
2 safety property in which an eligible taxpayer has made qualified
3 investment for which credit has been certified under this
4 article.

5 (2) "Coal mining company" means:

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

8 (B) A person working as a contract miner of coal, mining
9 coal in this state, under contract with a person subject to tax
10 imposed on the severance of coal by section three, article
11 thirteen-a of this chapter.

12 (3) "Director" means the Director of the Office of Miners'
13 Health, Safety and Training or West Virginia Office of Miners'
14 Health, Safety and Training established under article one,
15 chapter twenty two-a of this code.

16 (4) "Eligible safety property" means safety technology
17 equipment that, at the time of acquisition, is on the list of
18 approved innovative mine safety technology: *Provided*, That
19 eligible safety property includes machine mounted methane
20 monitors required by section forty-three, article two, chapter
21 twenty-two-a of this code.

22 (5) "Eligible taxpayer" means a coal mining company that

1 purchases eligible safety property.

2 (6) "List of approved innovative mine safety technology"
3 means the list required to be compiled and maintained by the
4 Mine Safety Technology Task Force and approved and published by
5 the director under this article.

6 (7) "Office of Miners' Health, Safety and Training" or "West
7 Virginia Office of Miners' Health, Safety and Training" means
8 the Office of Miners' Health, Safety and Training established
9 under article one, chapter twenty two-a of this code.

10 (8) "Person" includes any corporation, limited liability
11 company or partnership.

12 (9) "Qualified investment" means the eligible taxpayer's
13 investment in eligible safety property pursuant to a qualified
14 purchase as qualified and limited by section six of this
15 article.

16 (10) "Qualified purchase" means and includes only
17 acquisitions of eligible safety property for use in this state.

18 (A) A lease of eligible safety property may constitute a
19 qualified purchase if the lease was entered into and became
20 effective at a time when the equipment is on the list of
21 approved innovative mine safety technology and if the primary
22 term of the lease for the eligible safety property is five years

1 or more. Leases having a primary term of less than five years
2 do not qualify.

3 (B) "Qualified purchase" does not include:

4 (i) Purchases or leases of realty or any cost for, or
5 related to, the construction of a building, facility or
6 structure attached to realty;

7 (ii) Purchases or leases of property not exclusively used
8 in West Virginia;

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

12 (iv) Motor vehicles licensed by the Division of Motor
13 Vehicles;

14 (v) Clothing;

15 (vi) Airplanes;

16 (vii) Off-premises transportation equipment;

17 (viii) Leases of tangible personal property having a primary
18 term of less than five years;

19 (ix) Property that is used outside this state; and

20 (x) Property that is acquired incident to the purchase of
21 the stock or assets of an industrial taxpayer that was or had
22 been used by the seller in his or her industrial business in

1 this state or in which investment was previously the basis of a
2 credit against tax taken under any other article of this
3 chapter.

4 (C) Acquisitions, including leases, of eligible safety
5 property may constitute qualified purchases for purposes of this
6 article only if:

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

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

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

1 (11) "Safety technology" means depreciable tangible personal
2 property and equipment, other than clothing, principally
3 designed to directly minimize workplace injuries and fatalities
4 in coal mines.

5 (12) "Taxpayer" means a person subject to any of the taxes
6 imposed by article thirteen-a, twenty-three or twenty-four of
7 this chapter.