

HB 2870

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



# ENROLLED

HOUSE BILL No. 2870

(By Delegate Beach, Kelley, Proudfoot, Boggs,  
Buchanan, Damron and Dempsey )



Passed April 12, 1997

In Effect Ninety Days From Passage



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OFFICE OF THE GOVERNOR  
STATE HOUSE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

# H. B. 2870

(BY DELEGATES BEACH, KELLEY, PROUDFOOT, BOGGS,  
BUCHANAN, DAMRON AND DEMPSEY)

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[Passed April 12, 1997; in effect ninety days from passage.]

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AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-m, all relating generally to allowing a tax credit to eligible taxpayers equal to two hundred fifty dollars for each new job filled by a full-time employee of the eligible taxpayer working in a new consumer-ready wood product manufacturing facility in this state, or at a new consumer-ready wood product line of an existing manufacturing facility, that begins manufacturing after the thirtieth day of June, one thousand nine hundred ninety-seven; stating legislative purpose; defining terms; allowing credit against business franchise tax and against income taxes; providing rules for determining amount of allowable credit and for application of amount of allowable credit against certain taxes; providing for proration of credit among partners, members of limited liability companies and shareholders in electing small business corporations; requiring annual computation of number of new jobs filled by full-time employees; making credit available to successors; providing for credit recapture upon certain events along with interest, additions to tax and a waivable money penalty; specifying time limitations for

certain actions; authorizing promulgation of administrative rules; providing rule of construction; specifying effective date; and providing for expiration of credit.

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

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article thirteen-m, to read as follows:

**ARTICLE 13M. TAX CREDIT FOR NEW VALUE-ADDED WOOD MANUFACTURING OPERATIONS.**

**§11-13M-1. Legislative purpose.**

1           The Legislature finds that production of consumer-  
2 ready wood products is very important to the economy of  
3 this state and that a sound economy is in the public  
4 interest and promotes the general welfare of the people of  
5 this state. In order to encourage capital investment in this  
6 state, through the manufacture of consumer-ready wood  
7 products after the thirtieth day of June, one thousand nine  
8 hundred ninety-seven, thereby increasing employment  
9 and economic development, there is hereby provided to  
10 eligible taxpayers a credit for each new job filled by a  
11 full-time hourly employee who works in a new consumer-  
12 ready wood product manufacturing facility, or in a new  
13 consumer-ready wood product line of an existing  
14 manufacturing facility, that begins operating in this state  
15 after the thirtieth day of June, one thousand nine hundred  
16 ninety-seven.

**§11-13M-2. Definitions.**

1           (a) *General.* — When used in this article, or in the  
2 administration of this article, terms defined in subsection  
3 (b) of this section have the meanings ascribed to them by  
4 this section, unless a different meaning is clearly required  
5 by the context in which the term is used.

6           (b) *Terms defined.*

7           (1) “*Affiliate*” means and includes all persons, as  
8 defined in this section, which are affiliates of each other  
9 when either directly or indirectly:

10 (A) One person controls or has the power to control  
11 the other, or

12 (B) A third party or third parties control or have the  
13 power to control two persons, the two thus being affiliates.  
14 In determining whether concerns are independently  
15 owned and operated and whether or not an affiliation  
16 exists, consideration shall be given to all appropriate  
17 factors, including common ownership, common  
18 management and contractual relationships.

19 (2) "*Commissioner*" or "*tax commissioner*" means  
20 the tax commissioner of the state of West Virginia, or the  
21 tax commissioner's delegate.

22 (3) "*Consumer-ready wood products*" means value-  
23 added wood products that are ready for sale to consumers  
24 at the end of the manufacturing process. Consumer-ready  
25 wood includes any value-added wood product that does  
26 not require further manufacturing before it may  
27 ordinarily be used or consumed by the purchaser of the  
28 product, except that consumer-ready wood product does  
29 not include any product that is not manufactured  
30 primarily from wood, any product that is not  
31 commercially marketed as a wood product for sale  
32 primarily to consumers of the product, or paper or paper  
33 products.

34 (4) "*Corporation*" includes any corporation, a joint-  
35 stock company and any association or other organization  
36 which is classified as a corporation under federal income  
37 tax law.

38 (5) "*Delegate*", when used in reference to the tax  
39 commissioner, means any officer or employee of the tax  
40 division of the department of tax and revenue duly  
41 authorized by the tax commissioner directly, or indirectly  
42 by one or more redelegations of authority, to perform the  
43 functions mentioned or described in this article.

44 (6) "*Eligible taxpayer*" means a person who after  
45 the thirtieth day of June, one thousand nine hundred  
46 ninety-seven, begins manufacturing a consumer-ready  
47 wood product at a new manufacturing facility located in

48 this state, or begins manufacturing a new consumer-ready  
49 wood product line at an existing manufacturing facility  
50 located in this state, which results in the creation of new  
51 jobs filled by full-time employees.

52 (7) "*Employer*" means the person for whom an  
53 individual preforms or preformed any service, of whatever  
54 nature, as the employee of such person, except that if the  
55 person for whom the individual performs or performed  
56 the service does not have control of the payment of wages  
57 for such services, the term "employer" means the person  
58 having control of the payment of such wages.

59 (8) "*Existing manufacturing facility*" means a  
60 building which at anytime during the twelve months  
61 preceding the month in which manufacturer of a  
62 consumer-ready-wood product begins was used by the  
63 taxpayer, or by a related person, to manufacture tangible  
64 personal property.

65 (9) "*Full-time employee*" means a permanent hourly  
66 employee of an eligible taxpayer, who is a West Virginia  
67 domiciled resident, and works in a new consumer-ready  
68 wood product manufacturing facility in this state, or in a  
69 new consumer-ready wood product line of an existing  
70 manufacturing facility in this state, more than eighteen  
71 hundred hours during the entire twelve-month period  
72 ending on the last day of the taxable year of the eligible  
73 employer, whether these hours are hours worked at the  
74 manufacturing facility, or include hours of employer paid  
75 vacation leave or other employer paid leave. Full-time  
76 employee does not include an employee who is a part-  
77 time, seasonal or temporary employee.

78 (10) "*Internal Revenue Code*" means the Internal  
79 Revenue Code of 1986, as amended, of the United States.

80 (11) "*Manufacturing facility*" means any facility  
81 which is used in the manufacturing of tangible personal  
82 property (including processing resulting in a change in  
83 the condition of such property).

84 (12) "*New consumer-ready wood product line*"  
85 means the manufacture of a consumer-ready wood

86 product in an existing manufacturing facility in this state  
87 that first begins manufacturing the new consumer-ready  
88 wood product line after the thirtieth day of June, one  
89 thousand nine hundred ninety-seven.

90 (13) "*New consumer-ready wood product*  
91 *manufacturing facility*" means a building that is primarily  
92 used by the eligible taxpayer to manufacture a consumer-  
93 ready wood product that is first placed in service and used  
94 for that purpose by the eligible taxpayer after the thirtieth  
95 day of June, one thousand nine hundred ninety seven. If  
96 the facility was used by the taxpayer, or by a related  
97 person, to manufacture tangible personal property at any  
98 time during the twelve months preceding the month in  
99 which the facility is first used by the taxpayer to  
100 manufacture a consumer-ready wood product, the  
101 building is not a new consumer-ready wood product  
102 manufacturing facility.

103 (14) "*New job*" means a job at a new consumer-  
104 ready wood product manufacturing facility located in this  
105 state, or at a new consumer-ready wood product line at an  
106 existing manufacturing facility located in this state, which  
107 did not exist in this state with any employer as of the first  
108 day of the second calendar month preceding the calendar  
109 month in which the new consumer-ready wood product  
110 manufacturing facility begins to manufacture consumer-  
111 ready wood products, or in which the new consumer-ready  
112 wood product line begins to manufacture consumer-ready  
113 wood products in an existing manufacturing facility  
114 located in this state, that is filled by a full-time employee  
115 of the eligible taxpayer.

116 (15) "*Partnership*" means and includes a syndicate,  
117 group, pool, joint venture or other unincorporated  
118 organization through or by means of which any business,  
119 financial operation, or venture is carried on, which is  
120 classified as a partnership for federal income tax purposes  
121 for the taxable year.

122 (16) "*Partner*" includes a member in a syndicate,  
123 group, pool, joint venture or organization classified as a  
124 partnership for federal income tax purposes for the  
125 taxable year.

126 (17) "*Part-time employee*" means any employee  
127 who normally works twenty-hours or less per week.

128 (18) "*Seasonal employee*" means an employee who  
129 normally works on a full-time basis less than five months  
130 in a year.

131 (19) "*Temporary employee*" means an employee  
132 performing services under a contractual arrangement with  
133 the employer of two years or less duration.

134 (20) "*Person*" means and includes an individual, a  
135 trust, estate, partnership, association, company or  
136 corporation.

137 (21) "*Related entity*" , "*related person*", "*entity*  
138 *related to*" or "*person related to*" means:

139 (A) An individual, corporation, partnership, affiliate,  
140 association or trust or any combination or group thereof  
141 controlled by the taxpayer;

142 (B) An individual, corporation, partnership, affiliate,  
143 association or trust or any combination or group thereof  
144 that is in control of the taxpayer;

145 (C) An individual, corporation, partnership, affiliate,  
146 association or trust or any combination or group thereof  
147 controlled by an individual, corporation, partnership,  
148 affiliate, association or trust or any combination or group  
149 thereof that is in control of the taxpayer; or

150 (D) A member of the same controlled group as the  
151 taxpayer. For purposes of this subdivision (21),  
152 "control," with respect to a corporation, means  
153 ownership, directly or indirectly, of stock possessing fifty  
154 percent or more of the total combined voting power of all  
155 classes of the stock of the corporation which entitles its  
156 owner to vote. "Control," with respect to a trust, means  
157 ownership, directly or indirectly, of fifty percent or more  
158 of the beneficial interest in the principal or income of the  
159 trust. The ownership of stock in a corporation, of a capital  
160 or profits interest in a partnership or association or of a  
161 beneficial interest in a trust shall be determined in

162 accordance with the rules for constructive ownership of  
163 stock provided in section 267(c) of the Internal Revenue  
164 Code: *Provided*, That paragraph (3) of section 267(c) of  
165 the Internal Revenue Code shall not apply.

166 (22) “*Tax year*” or “*taxable year*,” means the tax  
167 year of the taxpayer for federal income tax purposes.

168 (23) “*Taxpayer*” means any person subject to the  
169 tax imposed by articles twenty-one, twenty-three or  
170 twenty-four of this chapter.

**§11-13M-3. Eligibility for tax credits; creation of the credit.**

1 There shall be allowed to every eligible taxpayer a  
2 credit against the taxes imposed in articles twenty-one,  
3 twenty-three and twenty-four of this chapter. The amount  
4 of this credit shall be determined and applied as provided  
5 in this article.

**§11-13M-4. Amount of credit allowed; expiration of the credit.**

1 (a) *Credit allowable.* — The amount of annual credit  
2 allowable under this article to an eligible taxpayer shall be  
3 two hundred fifty dollars for each new job at a new  
4 consumer-ready wood product manufacturing facility  
5 located in this state, or at a new consumer-ready product  
6 line of an existing manufacturing facility located in this  
7 state, that is filled by a full-time employee of the eligible  
8 taxpayer during the taxable year, subject to the following:

9 (1) When the new consumer-ready wood product  
10 manufacturing facility, or the new wood product line of an  
11 existing consumer-ready wood product manufacturing  
12 facility, is in operation for less than twelve months of the  
13 taxable year in which it is placed in service, the credit  
14 allowed by subsection (a) of this section shall be prorated  
15 by the ratio that the number of months in the taxpayer’s  
16 taxable year during which the new consumer-ready wood  
17 products facility, or the new products line of an existing  
18 consumer-ready wood product manufacturing facility, was  
19 in service bears to twelve.

20 (2) When the eligible taxpayer stops manufacturing

21 consumer-ready wood products at the new consumer-  
22 ready wood product manufacturing facility, or at the new  
23 wood product line of an existing consumer-ready wood  
24 product manufacturing facility, during the taxable year,  
25 the credit allowed by subsection (a) of this section shall be  
26 prorated by the ratio that the number of months in the  
27 taxpayer's taxable year during which the new consumer-  
28 ready wood products facility, or the new products line of  
29 an existing consumer-ready wood product manufacturing  
30 facility, was in operation manufacturing consumer-ready  
31 wood product bears to twelve.

32 (3) When determining the number of full-time  
33 employees who fill new jobs at the new consumer-ready  
34 wood product manufacturing facility located in this state,  
35 or who fill new jobs at a new consumer-ready wood  
36 product line of an existing manufacturing facility located  
37 in this state, the eligible taxpayer shall not include any  
38 position occupied by any employee of the eligible  
39 taxpayer, or of a related person, which existed in this state  
40 as of the first day of the second calendar month preceding  
41 the calendar month in which the new consumer-ready  
42 wood product manufacturing facility, or a new consumer-  
43 ready wood product line at an existing consumer-ready  
44 wood products manufacturing facility first becomes  
45 operational, whether such positions are filled permanent,  
46 seasonal, temporary or part-time employees.

47 (4) The amount of credit allowable each taxable year  
48 shall be calculated annually based upon the number of  
49 new jobs filled by full-time employees during the taxable  
50 year.

51 (b) *Expiration of credit.* — This credit shall expire  
52 on the first day of July, two thousand and two. When the  
53 first day of July in the year two thousand and two falls  
54 during the taxable year of the eligible taxpayer, the  
55 amount of credit allowable for that taxable year shall be  
56 limited to that portion of the amount of credit that would  
57 have been allowable had the credit not expired multiplied  
58 by the ratio the number of months during taxpayers  
59 taxable year ending before the first day of July, two  
60 thousand and two, bears to twelve.

**§11-13M-5. Application of annual credit allowance.**

1           (a) *Application of credit against business franchise*  
2 *tax.* — The amount of credit allowed under section four  
3 of this article shall first be applied against the eligible  
4 taxpayer's liability for the tax imposed by article twenty-  
5 three of this chapter that is attributable to a new consumer-  
6 ready wood product manufacturing facility located in this  
7 state and to a new consumer-ready wood product  
8 production line at an existing manufacturing facility  
9 located in this state.

10           (b) *Application of remaining credit against income*  
11 *tax.* — After application of the allowable credit against the  
12 tax imposed by article twenty-three of this chapter, as  
13 provided in subsection (a) of this section, any remaining  
14 credit may be applied against the taxes imposed by article  
15 twenty-one or twenty-four of this chapter to the extent  
16 those taxes are attributable to a new consumer-ready wood  
17 product manufacturing facility located in this state and to  
18 a new consumer-ready wood product production line at an  
19 existing manufacturing facility located in this state:  
20 *Provided,* That no credit shall be allowed against employer  
21 withholding taxes due under article twenty-one of this  
22 chapter.

23           (c) *Excess credit forfeited.* — If after application of  
24 subsections (a) and (b) of this section, any credit remains  
25 for the taxable year, the amount remaining and not used is  
26 forfeited. Unused credit may not be carried back to any  
27 prior taxable year and shall not carry forward to any  
28 subsequent taxable year.

29           (d) *Application of this credit when other credits*  
30 *apply.* — The credit allowed under this article shall be  
31 applied after application of all other applicable tax credits  
32 allowed for the taxable year against the taxes imposed by  
33 articles twenty-one, twenty-three or twenty-four of this  
34 chapter.

35           (e) *Completion of annual schedule to assert credit.*  
36 To assert this credit against tax, the eligible taxpayer shall  
37 prepare and file with the annual tax return filed under

38 articles twenty-one, twenty-three or twenty-four of this  
39 chapter, an annual schedule showing the amount of tax  
40 paid for the taxable year, and the amount of credit allowed  
41 under this article. This annual schedule shall set forth the  
42 information and be in the form prescribed by the tax  
43 commissioner.

44 (f) *Payments of estimated tax.* — A taxpayer may  
45 consider the amount of credit allowed under this article  
46 when determining the taxpayer's liability under articles  
47 twenty-one, twenty-three and twenty-four of this chapter  
48 for periodic payments of estimated tax for the taxable  
49 year, in accordance with the procedures and requirements  
50 prescribed by the tax commissioner. The annual total tax  
51 liability and total tax credit allowed under this article are  
52 subject to adjustment and reconciliation pursuant to the  
53 filing of the annual schedule required by subsection (e) of  
54 this section.

**§11-13M-6. Proration of credit among partners, members of  
limited liability companies, or shareholders in  
small business corporations.**

1 The amount of credit allowed under this article for  
2 the taxable year to a partnership or limited liability  
3 company classified as a partnership for the taxable year,  
4 or to an electing small business corporation, that remains  
5 after application the credit against the tax imposed by  
6 article twenty-three of this chapter as provided in  
7 subsection (a), section five of this article shall be allocated  
8 to the individual partners, members or shareholders, as the  
9 case may be, in proportion to their ownership interest in  
10 the partnership, limited liability company or electing small  
11 business corporation. The amount of credit allocated to  
12 the individual partners, members or shareholders, as the  
13 case may be, may be applied against the taxes imposed by  
14 articles twenty-one and twenty-four of this chapter in  
15 accordance with the rule set forth in subsection (b), section  
16 five of this article.

**§11-13M-7. Annual computation of the number of new jobs  
held by full-time employees.**

1 (a) The eligible taxpayer shall annually determine

2 the number of new jobs held by full-time permanent  
3 employees of the eligible taxpayer in the taxable year by  
4 calculating the average number of full-time employees  
5 holding jobs for each month of the taxable year by  
6 averaging the beginning and ending monthly employment  
7 of full-time employees, then totaling the monthly  
8 averages and dividing that total by twelve.

9 (b) The eligible taxpayer shall also annually  
10 determine the number of new jobs filled during the  
11 taxable year by full-time employees of the eligible  
12 taxpayer employed at a new consumer-ready wood  
13 product manufacturing facility, or at a new consumer-  
14 ready wood product line at an existing manufacturing  
15 facility, located in this state that is owned or operated by  
16 the eligible taxpayer, by calculating the average number  
17 of new jobs held by full-time employees for each month  
18 of the taxable year by averaging the beginning and  
19 ending monthly employment of full-time employees  
20 holding new jobs, then totaling the monthly averages and  
21 dividing that total by twelve.

22 (c) Preexisting jobs carried over from a corporation  
23 or other entity merged with the taxpayer, and not  
24 reflective of a true increase in the number of new jobs in  
25 West Virginia, or preexisting jobs formerly in place with a  
26 contract service provider which are taken over or  
27 supplanted by the internal operations of the taxpayer, or  
28 any other increase in the count of jobs in place with a  
29 taxpayer which is not reflective of new jobs, as defined in  
30 section two of this article, shall not count as new jobs for  
31 purposes of the credit allowed under this article.

32 (d) The tax commissioner may prescribe by rule  
33 alternative methods for determining the number of jobs  
34 held by full-time permanent employees in the taxable year  
35 upon a finding by the tax commissioner that an alternative  
36 method is appropriate for ascertaining an accurate and  
37 realistic determination of new jobs held by full-time  
38 employees in the taxable year. For purposes of  
39 prescribing alternative methods, the tax commissioner may  
40 require the deduction or inclusion of jobs in place with  
41 contract service providers that provide or at any time

42 provided any service to any eligible taxpayer or to any  
43 member of the affiliated group related to any eligible  
44 taxpayer or to any one or more entities related to the  
45 eligible taxpayer: *Provided*, That deduction, or inclusion  
46 of those jobs shall only pertain to jobs held by employees  
47 of the contract service provider that are attributable or that  
48 were formerly attributable to the service provided by the  
49 contract service provider to the taxpayer. The tax  
50 commissioner may require any deconsolidation of any  
51 filing entity, or may require an alternative method based  
52 on separate accounting, unitary combination, combination  
53 of the affiliated group or combination of the taxpayer and  
54 one or more entities related to the taxpayer, or any other  
55 method determined by the tax commissioner to be  
56 appropriate for ascertaining an accurate and realistic  
57 determination of new jobs held by full-time employees in  
58 the taxable year.

**§11-13M-8. Availability of credit to successors.**

1 (a) *Transfer or sale.* — When there is a transfer or  
2 sale of the business assets of an eligible taxpayer to a  
3 successor taxpayer which continues to operate the new  
4 consumer-ready wood product manufacturing facility  
5 located in this state, or the new consumer-ready wood  
6 product line of an existing manufacturing facility located  
7 in this state, the successor taxpayer is entitled to the credit  
8 allowed under this article: *Provided*, That the successor  
9 taxpayer otherwise remains in compliance with the  
10 requirements of this article for entitlement to the credit.

11 (b) *Allocation of credit between eligible taxpayer*  
12 *and successor eligible taxpayer.* — For any taxable year  
13 during which a transfer, or sale of the business assets of an  
14 eligible taxpayer to a successor taxpayer under this section  
15 occurs, or a merger allowed under this section occurs, the  
16 credit allowed under this article shall be apportioned  
17 between the predecessor eligible taxpayer and the  
18 successor taxpayer based on the number of days during  
19 the taxable year that each taxpayer acted as the legal  
20 employer of individuals filling new jobs for which the  
21 credit allowed under this article is based and the number  
22 of days during the taxable year that each taxpayer owned

23 the new consumer-ready wood product manufacturing  
24 facility located in this state, or the new consumer-ready  
25 wood product line of an existing manufacturing facility  
26 located in this state.

27 (c) *Stock purchases.* — When a corporation which is  
28 an eligible taxpayer entitled to the credit allowed under  
29 this article is purchased through a stock purchase by a new  
30 owner, and the corporation remains a legal entity so as to  
31 retain its corporate identity, the entitlement of that  
32 corporation to the credit allowed under this article will not  
33 be affected by the ownership change.

34 (d) *Mergers.*

35 (1) When a corporation or other entity which is an  
36 eligible taxpayer entitled to the credit allowed under this  
37 article is merged with another corporation, or entity, the  
38 surviving corporation, or entity, shall be entitled to the  
39 credit to which the predecessor eligible taxpayer was  
40 originally entitled only if the surviving corporation, or  
41 entity, otherwise complies with the provisions of this  
42 article.

43 (2) The amount of credit available in any taxable  
44 year during which a merger occurs shall be apportioned  
45 between the predecessor eligible taxpayer and the  
46 successor eligible taxpayer based on the number of days  
47 during the taxable year that each taxpayer acted as the  
48 legal employer of employees holding the new jobs upon  
49 which the credit allowed under this article is based and the  
50 number of days during the taxable year that each owned  
51 the transferred business assets: *Provided*, That when the  
52 taxable year of the predecessor eligible taxpayer and the  
53 taxable year of the successor eligible taxpayer are  
54 different, the apportionment shall be made in accordance  
55 with legislative rules prescribed by the tax commissioner.

56 (e) No provision of this section or of this article shall  
57 be construed to allow sales or other transfers of the tax  
58 credit allowed under this article. The credit allowed under  
59 this article may be transferred only in circumstances where  
60 there is a valid successorship as described under this  
61 section.

**§11-13M-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.**

1 (a) If it appears upon audit or otherwise that any  
2 person has improperly claimed the credit allowed by this  
3 article, the amount improperly claimed and which the  
4 person was not entitled to take shall be recaptured.  
5 Amended returns shall be filed for any taxable year for  
6 which the credit was improperly taken. Any additional  
7 taxes due under this chapter shall be remitted with the  
8 amended return or returns filed with the tax commissioner,  
9 along with interest, as provided in section seventeen, article  
10 ten of this chapter, and a ten percent penalty plus such  
11 other penalties and additions to tax as may be applicable  
12 under the provisions of article ten of this chapter.

13 (b) *Recapture for jobs loss.* —

14 (1) In any tax year the number of individuals  
15 employed in full-time positions by the eligible taxpayer  
16 decrease by more than ten percent, credit recapture shall  
17 apply, and the taxpayer shall return to the state an amount  
18 of tax determined by multiplying five hundred dollars by  
19 the number of full-time jobs lost which exceed ten  
20 percent. An amended return shall be filed for the tax year  
21 for which credit recapture is required. Any additional  
22 taxes due under this chapter shall be remitted with the  
23 amended return filed with the tax commissioner, along  
24 with interest, as provided in section seventeen, article ten of  
25 this chapter, and a ten percent penalty plus such other  
26 penalties and additions to tax as may be applicable under  
27 the provisions of article ten of this chapter.

28 (2) Notwithstanding the provisions of article ten of  
29 this chapter, penalties and additions to tax imposed under  
30 article ten of this chapter and the ten percent penalty  
31 imposed under this section may be waived, in whole or in  
32 part, at the discretion of the tax commissioner. However,  
33 interest may not be waived.

34 (c) Notwithstanding the provisions of article ten of  
35 this chapter, the time within which a notice of assessment  
36 may be issued by the tax commissioner to recover  
37 recapture tax shall be five years from the date of filing of

38 any tax return on which this credit was taken or five years  
39 from the date of payment of any tax liability calculated  
40 pursuant to the assertion of the credit allowed under this  
41 article, whichever is later:

**§11-13M-10. Administrative rules.**

1 The tax commission may prescribe such rules as may  
2 be necessary to carry out the purposes of this article,  
3 including, but not limited to, rules relating to applicability  
4 of credit, method of claiming of credit, credit recapture,  
5 documentation necessary to claim credit and rules  
6 preventing abuse of this article by related persons or by  
7 change in the form of doing business. All rules  
8 promulgated under this article shall be promulgated in  
9 accordance with article three, chapter twenty-nine-a of this  
10 code.

**§11-13M-11. Construction of article.**

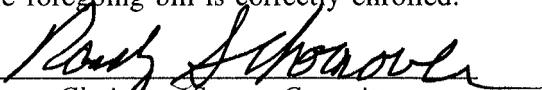
1 The provisions of this article shall be reasonably  
2 construed. The burden of proof is on the person claiming  
3 the credit allowed by this article to establish by clear and  
4 convincing evidence that the person is entitled to the  
5 amount of credit asserted for the taxable year.

**§11-13M-12. Effective date.**

1 This article shall be effective for taxable years  
2 beginning on or after the first day of July, one thousand  
3 nine hundred ninety-seven.

Enr. Com. Sub. for H. B. 2870] 16

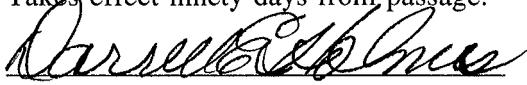
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

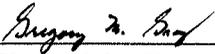
  
Chairman Senate Committee

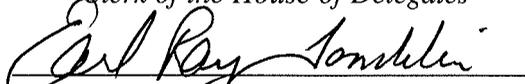
  
Chairman House Committee

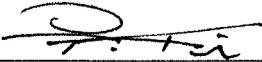
Originating in the House.

Takes effect ninety days from passage.

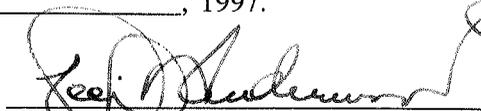
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is appended this the 5th  
day of May, 1997.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/29/07

Time 3:01pm