

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4547**

4 (By Delegates Skaiff, T. Campbell, Varner, D. Poling, Pasdon,
5 Andes, Caputo, Reynolds, Stowers, White and Morgan)

6 (Originating in the Committee on Finance)

7 [February 24, 2012]

8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §11-6L-1, §11-6L-2,
12 §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and to
13 amend said code by adding thereto a new article, designated
14 §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-4, §11-13CC-5,
15 §11-13CC-6, §11-13CC-7, §11-13CC-8, §11-13CC-9, §11-13CC-10,
16 §11-13CC-11, §11-13CC-12, §11-13CC-13, §11-13CC-14,
17 §11-13CC-15, §11-13CC-16, §11-13CC-17 and §11-13CC-18, all
18 relating to creating the West Virginia Innovation Free-Trade
19 Business Technology Property Valuation Act and the West
20 Virginia Innovation Free-Trade Tax Credit Act; defining terms;
21 specifying method for valuation of certain property; providing
22 for application to county assessors by specified date;
23 providing procedure for protest and appeal of determination by
24 county assessor; requiring the West Virginia Development
25 Office to report to the Joint Committee on Government and
26 Finance on the economic impact; specifying effective date;

1 making legislative findings; allowing credits and exemptions
2 from certain taxes; providing for computation of credit,
3 application of credit and period for which credit is allowed;
4 requiring application to claim credit; requiring that new jobs
5 be good-paying jobs with health benefits; requiring
6 identification of investment credit property and recomputation
7 of credit in event of premature disposition of investment
8 property; providing for forfeiture of unused tax credits and
9 redetermination of credit allowed; imposing recapture tax
10 under specified circumstances to recover state taxes and
11 property taxes; allowing transfer of qualified investment to
12 successors; providing for tax credit review and
13 accountability; specifying effective date and termination
14 date; providing rule-making authority; and providing a
15 severability clause.

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

17 That the Code of West Virginia, 1931, as amended, be amended
18 by adding thereto a new article, designated §11-6L-1, §11-6L-2,
19 §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and that said
20 code be amended by adding thereto a new article, designated
21 §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-4, §11-13CC-5,
22 §11-13CC-6, §11-13CC-7, §11-13CC-8, §11-13CC-9, §11-13CC-10,
23 §11-13CC-11, §11-13CC-12, §11-13CC-13, §11-13CC-14, §11-13CC-15,
24 §11-13CC-16, §11-13CC-17 and §11-13CC-18, all to read as follows:

25 **ARTICLE 6L. SPECIAL METHOD FOR APPRAISING WEST VIRGINIA INNOVATION**
26 **FREE-TRADE ACT BUSINESS TECHNOLOGY PROPERTY.**

1 **§11-6L-1. Short title.**

2 This article shall be known and cited as the "West Virginia
3 Innovation Free-Trade Business Technology Property Valuation Act".

4 **§11-6L-2. Definitions.**

5 For the purposes of this article:

6 (1) "Innovative business technologies" means "innovative
7 business technologies" as defined in section three, article
8 thirteen-cc of this chapter when the owner of the property
9 qualifies or qualified for the tax credit allowed by that article.

10 Qualifications for that tax credit and the special valuation
11 methodology provided in this article include, but are not limited
12 to, a minimum capital investment requirement, a minimum new jobs
13 creation requirement and a requirement that the new jobs created be
14 good paying jobs with health insurance benefits, all as defined in
15 article thirteen-cc of this chapter; and

16 (2) "Salvage value" means five percent of original cost.

17 **§11-6L-3. Valuation of Innovation Free-Trade Act business**
18 **technology property.**

19 Notwithstanding any other provision of this code to the
20 contrary, the value of tangible personal property and improvements
21 to real property placed in service or use on or after July 1, 2012,
22 and directly used in an innovative business technology as defined
23 in section two of this article shall, for the purpose of ad valorem
24 property taxation under this chapter and under Article X of the
25 Constitution of this state, be its salvage value.

1 **§11-6L-4. Initial determination by county assessor.**

2 (a) On or before September 1 of the assessment year, the owner
3 of tangible personal property and improvements to real property
4 placed in service or use on or after July 1, 2012, directly used in
5 a new business, or in a new segment of an existing business, that
6 utilizes innovative business technology and qualifies for the tax
7 credit allowed by article thirteen-cc of this chapter may file a
8 report with the county assessor of the county in which the property
9 was located on July 1 of that assessment year, listing the tangible
10 personal property and improvements to real property placed in
11 service or use on or after July 1, 2012, that is qualified
12 investment for purposes of the credit allowed by article
13 thirteen-cc of this chapter. A taxpayer that fails to timely file
14 the report required by this subsection shall be deemed to have
15 waived valuation of the property as provided in this article for
16 that assessment year.

17 (b) When the county assessor receives the report described in
18 subsection (a) of this section, the assessor shall review the
19 report and make such inquiries as he or she deems necessary to
20 determine whether the tangible personal property and improvements
21 to real property placed in service or use on or after July 1, 2012,
22 listed in the report is eligible for valuation under this article.
23 The county assessor shall notify the taxpayer in writing of his or
24 her determination not later than January 15 of the assessment year.

25 (c) Upon making a determination that a taxpayer owns tangible
26 personal property and improvements to real property placed in

1 service or use on or after July 1, 2012, directly used in an
2 innovative business technology that is eligible for valuation under
3 this article, the county assessor shall notify the Tax Commissioner
4 of that determination and shall provide information to the Tax
5 Commissioner as he or she requires relating to that determination.

6 **§11-6L-5. Protest and appeal.**

7 (a) If the taxpayer disagrees with the county assessor's
8 determination under section four of this article or if the assessor
9 fails to notify the taxpayer of the assessor's determination on or
10 before the day specified in that section the taxpayer may file
11 objections in writing with the county assessor. The county assessor
12 shall decide the matter by either sustaining the protest and making
13 proper corrections, or by stating, in writing if requested, the
14 reasons for the county assessor's refusal. The county assessor may,
15 and if the taxpayer requests, the county assessor shall, before
16 February 1 of the assessment year, certify the question to the Tax
17 Commissioner in a statement sworn to by both parties, or if the
18 parties are unable to agree, in separate sworn statements. The
19 sworn statement or statements shall contain a full description of
20 the property and any other information which the Tax Commissioner
21 may require.

22 (b) The Tax Commissioner shall, as soon as possible on receipt
23 of the question, but in no case later than February 28 of the
24 assessment year, instruct the county assessor as to how the
25 property shall be treated. The instructions issued and forwarded by
26 mail to the county assessor are binding upon the county assessor,

1 but either the county assessor or the taxpayer may apply to the
2 circuit court of the county for review of the question of the
3 applicability of this article to the property in the same fashion
4 as is provided for appeals from the county commission in section
5 twenty-five, article three of this chapter. The Tax Commissioner
6 shall prescribe forms on which the questions under this section
7 shall be certified and the Tax Commissioner has the authority to
8 pursue any inquiry and procure any information necessary for
9 disposition of the matter.

10 **§11-6L-6. Report on economic benefit.**

11 The West Virginia Development Office shall provide to the
12 Joint Committee on Government and Finance by March 1, 2017, and
13 again by March 1, 2020, a report detailing the economic benefit of
14 the valuation method specified in this article. The report shall
15 include the number of new jobs created due to the provisions of
16 this article and the ad valorem property tax impact.

17 **§11-6L-7. Effective date.**

18 This article shall be effective on and after July 1, 2012, for
19 property placed in service or use on or after July 1, 2012, when
20 the property and its use meet the requirements of this article.

21 **ARTICLE 13CC. WEST VIRGINIA INNOVATION FREE-TRADE TAX CREDIT ACT.**

22 **§11-13CC-1. Short title.**

23 This article may be cited as the "West Virginia Innovation
24 Free-Trade Tax Credit Act".

25 **§11-13CC-2. Purpose and legislative findings.**

1 (a) Purpose. -- The purpose of this article is to encourage
2 economic opportunity, greater capital investment and development of
3 the use in this state of new innovative technologies by enacting
4 this innovation free-trade tax credit.

5 (b) Legislative findings. --

6 (1) Future expansion and development of the West Virginia
7 economy, job creation potential and the physical environment are
8 driven by the flow of energy and the nonstop emergence of new
9 technologies.

10 (2) State-of-the-art technologies are being developed,
11 demonstrated and manufactured or used in manufacturing in other
12 states in order to support economic development by responding to
13 the emergence of new technologies and the rapidly expanding
14 world-wide export market for such technologies.

15 (3) West Virginia has been slow to recognize the potential
16 economic and technical benefits of these emerging technologies.

17 (4) The Legislature finds that it is in the public interest of
18 the citizens of West Virginia to:

19 (A) Establish a foothold in the West Virginia economy for
20 manufacturers of advanced products and the development of
21 businesses employing other emerging technologies that are magnets
22 for capital investment and produce new jobs that are
23 characteristically knowledge-based;

24 (B) Encourage the application of nanotechnology and other
25 supporting technology to:

26 (i) Aeronautics and space;

1 (ii) Agriculture;

2 (iii) Biotechnology;

3 (iv) Environment;

4 (v) Manufacturing and materials science;

5 (vi) Medicine and health;

6 (vii) Nanoelectronics and computer technology;

7 (viii) National and homeland security; and

8 (ix) Photonics; and

9 (C) Encourage the manufacture, sale and use of alternative
10 fuel vehicles fueled by natural gas, electricity, hydrogen or other
11 alternative fuel and development of the infrastructure necessary to
12 the convenient and efficient refueling of such vehicles.

13 **§11-13CC-3. Definitions.**

14 (a) General. -- When used in this article, or in the
15 administration of this article, terms defined in subsection (b) of
16 this section have the meanings ascribed to them by this section,
17 unless a different meaning is clearly required by either the
18 context in which the term is used, or by specific definition, in
19 this article.

20 (b) Terms defined. --

21 (1) "Advanced coal technology" includes, but is not limited
22 to, a technology that is used in a new or existing energy
23 generating facility to reduce airborne carbon emissions associated
24 with the combustion or use of coal and includes, but is not limited
25 to, carbon dioxide capture and sequestration technology,
26 supercritical technology, advanced supercritical technology as that

1 technology is determined by the West Virginia Public Service
2 Commission, ultrasupercritical technology and pressurized fluidized
3 bed technology and any other resource, method, project or
4 technology certified by the Public Service Commission as advanced
5 coal technology: *Provided*, That the technology was not in
6 commercial use anywhere in the United States before July 1, 2012.

7 (2) "Advanced information technology" means the development,
8 installation and implementation of computer systems and
9 applications that utilize cloud computing, quantum computing or the
10 next evolution beyond cloud and quantum computing: *Provided*, That
11 the technology was not in commercial use anywhere in the United
12 States before July 1, 2012.

13 (3) "Advanced manufacturing" means the application of
14 state-of-the-art technologies, processes and methods to design and
15 manufacture tangible personal property for commercial or industrial
16 use or for use by consumers: *Provided*, That the technology was not
17 in commercial use anywhere in the United States before July 1,
18 2012.

19 (4) "Bioinformatics" means the application of statistics and
20 computer science to the field of molecular biology and entails the
21 creation and advancement of databases, algorithms, computational
22 and statistical techniques and theory to solve formal and practical
23 problems arising from the management and analysis of biological
24 data. The primary goal of bioinformatics is to increase the
25 understanding of biological processes. What sets bioinformatics
26 apart from other approaches is its focus on developing and applying

1 computationally intensive techniques (e.g., pattern recognition,
2 data mining, machine learning algorithms and visualization) to
3 achieve this goal: *Provided*, That the technology was not in
4 commercial use anywhere in the United States before July 1, 2012.

5 (5) "Bioscience" means the use of compositions, methods and
6 organisms in cellular and molecular research, development and
7 manufacturing processes for such diverse areas as pharmaceuticals,
8 medical therapeutics, medical diagnostics, medical devices, medical
9 instruments, biochemistry, microbiology, veterinary medicine, plant
10 biology, agriculture and industrial, environmental, and homeland
11 security applications of bioscience, and future developments in the
12 biosciences. Bioscience includes biotechnology and life sciences:
13 *Provided*, That the technology was not in commercial use anywhere in
14 the United States before July 1, 2012.

15 (6) "Bioscience company" means a corporation, limited
16 liability company, S corporation, partnership, registered limited
17 liability partnership, foundation, association, nonprofit entity,
18 business trust, group, or other entity that is engaged in the
19 business of bioscience in this state and has business operations in
20 this state, including, without limitation, research, development,
21 or production directed towards developing or providing bioscience
22 products or processes for specific commercial or public purposes
23 and are identified by the following NAICS codes: 325411, 325412,
24 325413, 325414, 325193, 325199, 325311, 32532, 334516, 339111,
25 339112, 339113, 334510, 334517, 339115, 621511, 621512, 541710,
26 541380, 541940, 622110. "Bioscience company" does not include a

1 sole proprietorship.

2 (7) "Biotechnology" means those fields focusing on
3 technological developments in areas such as biocomputing,
4 biodefense, bioinformatics, genetic engineering, genomics,
5 molecular biology, nanotechnology, proteomics and physiomics:
6 Provided, That the technology was not in commercial use anywhere in
7 the United States before July 1, 2012.

8 (8) "Business" means any activity engaged in by any person in
9 this state that is taxable under article twenty-one, twenty-three
10 or twenty-four of this chapter (or any combination of those
11 articles of this chapter).

12 (9) "Business segment" means a component or subset of a
13 business enterprise that: (A) Provides a single product or service
14 or a group of related products and services; (B) is subject to
15 risks and returns that are different from those of other business
16 segments; and (C) earns revenue for the business enterprise.

17 (10) "Clean coal technology" means a technology first used
18 commercially in the United States on or after July 1, 2012, that
19 significantly reduces the environmental impact of coal usage
20 including, but not limited to, coal gasification and carbon capture
21 and storage: Provided, That the technology was not in commercial
22 use anywhere in the United States before July 1, 2012.

23 (11) "Clean natural gas technology" means a technology first
24 used commercially in the United States on or after July 1, 2012,
25 that significantly reduces the environmental impact of natural gas:
26 Provided, That the technology was not in commercial use anywhere in

1 the United States before July 1, 2012.

2 (12) "Commissioner" and "Tax Commissioner" are used
3 interchangeably herein and mean the Tax Commissioner of the State
4 of West Virginia, or his or her designee.

5 (13) "Compensation" means wages, salaries, commissions, the
6 cost of health insurance benefits and any other form of
7 remuneration paid to employees for personal services.

8 (14) "Controlled group" means one or more chains of
9 corporations connected through stock ownership with a common parent
10 corporation if stock possessing at least fifty percent of the
11 voting power of all classes of stock of each of the corporations is
12 owned directly or indirectly by one or more of the corporations;
13 and the common parent owns directly stock possessing at least fifty
14 percent of the voting power of all classes of stock of at least one
15 of the other corporations.

16 (15) "Corporation" means any corporation, joint-stock company
17 or association, and any business conducted by a trustee or trustees
18 wherein interest or ownership is evidenced by a certificate of
19 interest or ownership or similar written instrument.

20 (16) "Designee" in the phrase "or his or her designee", when
21 used in reference to the Tax Commissioner, means any officer or
22 employee of the Tax Division of the Department of Revenue duly
23 authorized by the commissioner directly, or indirectly by one or
24 more redelegations of authority, to perform the functions mentioned
25 or described in this article.

26 (17) "Eligible taxpayer" means a new business or a new segment

1 of a business that is primarily engaged in an emerging technology
2 industry or that is primarily utilizing new innovative business
3 technologies, that makes at least the minimum required qualified
4 investment in a new or expanded business facility located in this
5 state and creates the required number of new jobs that pay good
6 salaries and provide health insurance benefits, and that is subject
7 to any of the taxes imposed by articles twenty-one, twenty-three
8 and twenty-four of this chapter (or any one or any combination of
9 those articles).

10 (18) "Emerging technologies" are technologies that are
11 currently being developed or will be developed over the next five
12 to ten years, that are significant technological developments that
13 broach new territory in some significant way in their field and
14 which will substantially alter the business and social environment.
15 Examples of currently emerging technologies include, but are not
16 limited to, advanced coal technologies, alternative fuel vehicles,
17 artificial intelligence, biotechnology, clean coal and clean
18 natural gas technologies, cognitive science, cloud computing,
19 quantum computing, man-machine communications, nanotechnology,
20 photonics, photovoltaic devices and advanced robotics. Whether a
21 technology is an emerging technology is determined as of the date
22 the new business or a new segment of an existing business is placed
23 in service or use in this state. Emerging technologies do not
24 include any technology that was in commercial use anywhere in the
25 United States before July 1, 2012.

26 (19) "Expanded business facility" means any business facility

1 (other than a new or replacement facility) resulting from the
2 acquisition, construction, reconstruction, installation or erection
3 of improvements or additions to existing property in this state
4 when the improvements or additions are purchased on or after July
5 1, 2012, but only to the extent of the taxpayer's qualified
6 investment in the improvements or additions and the extent to which
7 the expansion of the business facility is directly used in a new
8 segment of the taxpayer that primarily employs an emerging
9 innovative business technology.

10 (20) "Health insurance benefits" means employer provided
11 coverage for medical expenses of the employee or the employee and
12 his or her family under a group accident or health plan, or
13 employer contributions to an Archer medical savings account, as
14 defined in Section 220 of the Internal Revenue Code of 1986, as
15 amended, or to a health savings account, as defined in Section 223
16 of the Internal Revenue Code, of the employee when the employer's
17 contribution to any such account is not less than fifty percent of
18 the maximum amount permitted for the year as employer-provided
19 coverage under Section 220 or 223 of the Internal Revenue Code,
20 whichever section is applicable.

21 (21) "Includes" and "including", when used in a definition or
22 sentence contained in this article, shall not be considered to
23 exclude other things otherwise within the meaning of the term being
24 defined or the sentence in which the word is used.

25 (22) "Innovative business technologies" means and includes,
26 but is not limited to, emerging technologies and other business

1 technologies that primarily use state-of-the-art methodologies,
2 practices or techniques to manufacture, produce or provide its
3 primary goods or services. Innovative business technologies do not
4 include any technology that was in commercial use anywhere in the
5 United States prior to July 1, 2012.

6 (23) "Internal Revenue Code of 1986, as amended", or "Internal
7 Revenue Code", means the United States Internal Revenue Code of
8 1986 as codified in Title 26 of the United States Code, as amended,
9 and as defined in section three, article twenty-four of this
10 chapter as last updated by the Legislature.

11 (24) "Leased property" does not include property which the
12 taxpayer is required to show on its books and records as an asset
13 under generally accepted principles of financial accounting. If the
14 taxpayer is prohibited from expensing the lease payments for
15 federal income tax purposes, the property shall be treated as
16 purchased property under this section.

17 (25) "Life science" means any of several branches of science,
18 such as biology, medicine, anthropology or ecology, that deal with
19 living organisms and their organization, life processes and
20 relationships to each other and their environment: *Provided*, That
21 the technology was not in commercial use anywhere in the United
22 States before July 1, 2012.

23 (26) "Nanotechnology" means the branch of engineering that
24 deals with things smaller than one hundred nanometers.
25 Nanotechnology includes the materials and systems whose structures
26 and components exhibit novel and significantly improved physical,

1 chemical, and biological properties, phenomena, and processes due
2 to their nanoscale size: Provided, That the technology was not in
3 commercial use anywhere in the United States before July 1, 2012.

4 (27) "New business" means any business primarily employing
5 emerging technology or a twenty-first century business technology
6 whose ownership and activities are not closely related to a
7 preexisting business. A mere change in the stock ownership of a
8 corporation, or the equity ownership of a partnership or other
9 entity treated as a partnership for federal income tax purposes,
10 shall not affect its status as an existing business. Additionally,
11 a new business that acquires substantially all of the assets of a
12 corporation or other business entity or of a sole proprietorship
13 shall not be treated as a new business for purposes of this
14 article. In determining whether or not a new business is closely
15 related to a preexisting business, all facts and circumstances
16 shall be considered by the Tax Commissioner. The existence of a
17 majority of the following factors establish that a new business is
18 closely related to an existing business:

19 (A) The new business's products or services are very similar
20 to the products or services provided by the preexisting business;

21 (B) The new business markets products and services to the same
22 class of customers as that of the preexisting business;

23 (C) The new business is conducted in the same general location
24 as the preexisting business;

25 (D) The new business requires the use of the same or similar
26 operating assets as those used in the preexisting business;

1 (E) The new business's economic success builds on, or depends
2 on, the success of the preexisting business;

3 (F) The activity of the new business is of a type that would
4 normally be treated as a unit with the preexisting business in the
5 accounting records of the preexisting business;

6 (G) If the new business and the preexisting business are
7 regulated or licensed, they are regulated or licensed by the same
8 or similar governmental authority; and

9 (H) Twenty percent or more of the equity of the new business
10 is collectively owned by individuals and/or businesses that
11 collectively owned more than fifty percent of the equity of the
12 preexisting business.

13 These eight listed factors are not the only ones that may be
14 considered by the Tax Commissioner. Others may also be taken into
15 account, in the discretion of the Tax Commissioner. However, this
16 definition shall not exclude the categorization of a business as a
17 new business for the sole reason that the entity engaging in the
18 new business already does business in the State of West Virginia.

19 (28) "New business facility" means a business facility located
20 in this state which satisfies all the requirements of paragraphs
21 (A), (B), (C) and (D) of this subdivision.

22 (A) The facility is employed by the taxpayer in a new business
23 or in a new segment of an existing business the conduct of a
24 business the net income of which is or will be taxable under
25 article twenty-one or twenty-four of this chapter. The facility is
26 not considered a new business facility in the hands of the taxpayer

1 if the taxpayer's only activity with respect to the facility is to
2 lease it to another person or persons;

3 (B) The facility is purchased by, or leased to, the taxpayer
4 on or after July 1, 2012;

5 (C) The facility was not purchased or leased by the taxpayer
6 from a related person: *Provided*, That the Tax Commissioner may
7 wave this requirement if the facility was acquired from a related
8 person for its fair market value and the acquisition was not tax
9 motivated; and

10 (D) The facility was not in service or use during the ninety
11 days immediately prior to transfer of the title to the facility, or
12 prior to the commencement of the term of the lease of the facility:
13 *Provided*, That this ninety-day period may be waived by the Tax
14 Commissioner if the commissioner determines that persons employed
15 at the facility may be treated as "new employees" as that term is
16 defined in this subsection.

17 (29) "New employee" means:

18 (A) A person residing and domiciled in this state, hired by
19 the taxpayer to fill a position or a job in this state which
20 previously did not exist in the taxpayer's business enterprise in
21 this state prior to the date on which the taxpayer's qualified
22 investment is placed in service or use in this state. The term "new
23 employee" also includes a person employed by the taxpayer who works
24 outside this state who relocates in this state, becomes domiciled
25 in this state and is employed full-time at the new business
26 facility in this state. In no case may the number of new employees

1 directly attributable to the investment for purposes of this credit
2 exceed the total net increase in the taxpayer's employment in this
3 state: *Provided*, That the Tax Commissioner may require that the net
4 increase in the taxpayer's employment in this state be determined
5 and certified for the taxpayer's controlled group.

6 (B) A person is considered to be a "new employee" only if the
7 person's duties in connection with the operation of the business
8 facility are on:

9 (i) A regular, full-time and permanent basis:

10 (I) "Full-time" means employment for at least one hundred
11 forty hours per month at a wage not less than the prevailing state
12 or federal minimum wage, depending on which minimum wage provision
13 is applicable to the business;

14 (II) "Permanent" does not include employment that is temporary
15 or seasonal and therefore the wages, salaries and other
16 compensation paid to the temporary or seasonal employees may not be
17 considered for purposes of sections five and seven of this article;
18 or

19 (III) A regular, part-time and permanent basis: *Provided*, That
20 the person is customarily performing the duties at least twenty
21 hours per week for at least six months during the taxable year.

22 (30) "New job" means a job which did not exist in the business
23 of the taxpayer in this state prior to the taxpayer's qualified
24 investment being made, and which is filled by a new employee.

25 (31) "New property" means:

26 (A) Property, the construction, reconstruction or erection of

1 which is completed on or after July 1, 2012, and placed in service
2 or use after that date; and

3 (B) Property leased or acquired by the taxpayer that is placed
4 in service or use in this state on or after July 1, 2012, if the
5 original use of the property commences with the taxpayer and
6 commences after that date.

7 (32) "NAICS" means the North American Industry Classification
8 System.

9 (33) "Original use" means the first use to which the property
10 is put, whether or not the use corresponds to the use of the
11 property by the taxpayer.

12 (34) "Partnership" includes a syndicate, group, pool, joint
13 venture or other unincorporated organization through or by means of
14 which any business or venture is carried on, and which is not a
15 trust or estate, a corporation or a sole proprietorship and which
16 is treated as a partnership for tax purposes under the laws of this
17 state. The term "partner" includes a member in such a syndicate,
18 group, pool, joint venture or other organization.

19 (35) "Person" includes any natural person, corporation or
20 partnership, and includes any entity that is treated like a
21 corporation or partnership for federal income tax purposes.

22 (36) "Photonics" includes the generation, emission,
23 transmission, modulation, signal processing, switching,
24 amplification, detection and sensing of light: *Provided*, That the
25 technology was not in commercial use anywhere in the United States
26 before July 1, 2012.

1 (37) "Photovoltaic devices" means those products designed,
2 manufactured and produced to convert sunlight directly into
3 electricity: Provided, That the technology was not in commercial
4 use anywhere in the United States before July 1, 2012.

5 (38) "Property purchased or leased for business expansion"
6 means:

7 (A) Included property. -- Except as provided in paragraph (B)
8 of this subdivision, the term "property purchased or leased for
9 business expansion" means real property and improvements thereto,
10 and tangible personal property, but only if the real or personal
11 property was constructed, purchased, or leased and placed in
12 service or use by the taxpayer, for use as a component part of a
13 new business facility or expanded business facility as defined in
14 this section, which is located within the State of West Virginia.
15 This term includes only:

16 (i) Real property and improvements thereto having a useful
17 life of four or more years, placed in service or use on or after
18 July 1, 2012, by the taxpayer;

19 (ii) Real property and improvements thereto, acquired by
20 written lease having a primary term of ten or more years and placed
21 in service or use by the taxpayer on or after July 1, 2012;

22 (iii) Tangible personal property placed in service or use by
23 the taxpayer on or after July 1, 2012, with respect to which
24 depreciation, or amortization in lieu of depreciation, is allowable
25 in determining the personal or corporation net income tax liability
26 of the business taxpayer under article twenty-one or twenty-four of

1 this chapter, and which has a useful life, at the time the property
2 is placed in service or use in the state, of four or more years;

3 (iv) Tangible personal property acquired by written lease
4 having a primary term of four years or longer, that commenced and
5 was executed by the parties thereto on or after July 1, 2012, if
6 used as a component part of a new or expanded business facility,
7 shall be included within this definition; and

8 (v) Tangible personal property owned or leased, and used by
9 the taxpayer at a business location outside the state which is
10 moved into the State of West Virginia on or after July 1, 2012, for
11 use as a component part of a new or expanded business facility
12 located in the state: Provided, That if the property is owned, it
13 must be depreciable or amortizable personal property for income tax
14 purposes, and have a useful life of four or more years remaining at
15 the time it is placed in service or use in the state, and if the
16 property is leased, the primary term of the lease remaining at the
17 time the leased property is placed in service or use in the state,
18 must be four or more years;

19 (B) Excluded property. -- The term "property purchased or
20 leased for business expansion" does not include:

21 (i) Property owned or leased by the taxpayer and for which the
22 taxpayer was previously allowed tax credit under article
23 thirteen-c, thirteen-d, thirteen-e, thirteen-h, thirteen-q,
24 thirteen-r, thirteen-s, thirteen-t, thirteen-u, thirteen-aa or
25 thirteen-bb of this chapter, or the tax credits allowed by this
26 article;

1 (ii) Property owned or leased by the taxpayer and for which
2 the seller, lessor, or other transferor, was previously allowed tax
3 credit under article thirteen-c, thirteen-d, thirteen-e,
4 thirteen-h, thirteen-g, thirteen-r, thirteen-s, thirteen-t,
5 thirteen-u, thirteen-aa or thirteen-bb of this chapter, or the tax
6 credits allowed by this article;

7 (iii) Property owned or leased by the taxpayer that is used to
8 qualify for any other credit against state taxes allowed by this
9 code;

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

13 (v) Airplanes;

14 (vi) Property which is primarily used outside the state, with
15 use being determined based upon the amount of time the property is
16 actually used both within and outside the state;

17 (vii) Property which is acquired incident to the purchase of
18 the stock or assets of the seller, unless for good cause shown, the
19 commissioner consents to waiving this requirement;

20 (viii) Natural resources in place; or

21 (ix) Purchased or leased property the cost or consideration
22 for which cannot be quantified with any reasonable degree of
23 accuracy at the time the property is placed in service or use:

24 Provided, That when the contract of purchase or lease specifies a
25 minimum purchase price or minimum annual rent the amount thereof
26 shall be used to determine the qualified investment in the property

1 under section eight of this article if the property otherwise
2 qualifies as property purchased or leased for business expansion.

3 (39) "Purchase" means any acquisition of property, but only
4 if:

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

9 (B) The property is not acquired by one component member of a
10 controlled group from another component member of the same
11 controlled group. The commissioner may waive this requirement if
12 the property was acquired from a related party for its then fair
13 market value; and

14 (C) The basis of the property for federal income tax purposes,
15 in the hands of the person acquiring it, is not determined:

16 (i) In whole or in part, by reference to the federal adjusted
17 basis of the property in the hands of the person from whom it was
18 acquired; or

19 (ii) Under Section 1014(e) of the United States Internal
20 Revenue Code of 1986, as amended.

21 (40) "Qualified activity" means any business or other activity
22 subject to any of the taxes imposed by article thirteen,
23 twenty-one, twenty-three or twenty-four of this chapter (or any
24 combination of those articles of this chapter), but does not
25 include the activity of severance or production of natural
26 resources.

1 (41) "Related person" means:

2 (A) A corporation, partnership, association or trust
3 controlled by the taxpayer;

4 (B) An individual, corporation, partnership, association or
5 trust that is in control of the taxpayer;

6 (C) A corporation, partnership, association or trust
7 controlled by an individual, corporation, partnership, association
8 or trust that is in control of the taxpayer; or

9 (D) A member of the same controlled group as the taxpayer.

10 For purposes of this definition, "control", with respect to a
11 corporation, means ownership, directly or indirectly, of stock
12 possessing fifty percent or more of the total combined voting power
13 of all classes of the stock of the corporation entitled to vote.
14 "Control", with respect to a trust, means ownership, directly or
15 indirectly, of fifty percent or more of the beneficial interest in
16 the principal or income of the trust. The ownership of stock in a
17 corporation, of a capital or profits interest in a partnership or
18 association or of a beneficial interest in a trust is determined in
19 accordance with the rules for constructive ownership of stock
20 provided in Section 267(c) of the United States Internal Revenue
21 Code of 1986, as amended, other than paragraph (3) of that section.

22 (42) "Replacement facility" means any property (other than an
23 expanded facility) that replaces or supersedes any other property
24 located within this state that:

25 (A) The taxpayer or a related person used in or in connection
26 with any activity for more than two years during the period of five

1 consecutive years ending on the date the replacement or superseding
2 property is placed in service by the taxpayer; or

3 (B) Is not used by the taxpayer or a related person in or in
4 connection with any qualified activity for a continuous period of
5 one year or more commencing with the date the replacement or
6 superseding property is placed in service by the taxpayer.

7 (43) "State-of-the-art technology" or "leading edge
8 technology" means the highest level of development, as of a device,
9 technique, or scientific field achieved at a particular time:
10 Provided, That the technology was not in commercial use anywhere in
11 the United States before July 1, 2012.

12 (44) "Taxpayer" means any person subject to any of the taxes
13 imposed by article twenty-one, twenty-three or twenty-four of this
14 chapter (or any combination of those articles of this chapter).

15 (45) "This code" means the Code of West Virginia, 1931, as
16 amended.

17 (46) "This state" means the State of West Virginia.

18 (47) "Used property" means property acquired after June 30,
19 2012, that is not "new property".

20 **§11-13CC-4. Amount of credit allowed.**

21 (a) Credit allowed. -- Eligible taxpayers are allowed a credit
22 against the portion of taxes imposed by this state that are
23 attributable to and the consequence of the taxpayer's qualified
24 investment, as described in section six of this article, in a new
25 business, or in a new segment of an existing business, in this
26 state that utilizes innovative business technology, which results

1 in the creation of new jobs. The amount of this credit is
2 determined and applied as provided in this article.

3 (b) Amount of credit. -- When the eligible taxpayer creates
4 at least ten new jobs but less than fifteen new jobs in a new
5 business in this state that utilizes innovative business technology
6 and whose qualified investment in this state is at least \$5 million
7 but is less than \$10 million, the eligible taxpayer shall for the
8 tax year in which the ten employees are first employed by the
9 eligible taxpayer and for the next four tax years thereafter be
10 exempt from payment of the taxes imposed by articles twenty-three
11 and twenty-four of this chapter on the taxable capital attributable
12 to the emerging technology business activity in this state and West
13 Virginia taxable income attributable to the emerging technology
14 business activity in this state: Provided, That the eligible
15 taxpayer may elect to defer for one tax year the start of this
16 five-year period. When the eligible business is a partnership or
17 other entity treated as a partnership for federal income tax
18 purposes, the partners, S corporation shareholders or members of
19 the limited liability company shall be exempt from paying the tax
20 imposed by article twenty-one of this chapter on his or her
21 distributive share attributable to the emerging technology business
22 activity in this state. The eligible business shall also be exempt
23 from paying the taxes imposed by articles fifteen and fifteen-a of
24 this chapter on tangible personal property and services purchased
25 for use or consumption by the eligible taxpayer in the emerging
26 technology business activity during the same five-year period,

1 except that this exemption shall not apply to the purchase of motor
2 fuel or alternative fuels to power a vehicle or to the purchase or
3 lease of motor vehicles, unless the vehicle is an alternative fuel
4 vehicle. The exemption from paying the taxes imposed by articles
5 fifteen and fifteen-a of this chapter on purchases for use in
6 business allowed by this subsection is in addition to any exemption
7 that might otherwise be available to the taxpayer under
8 articles fifteen and fifteen-a of this chapter. When the taxpayer
9 qualifies for tax benefits under this subsection, these benefits
10 are not forfeited if during the applicable five-year period, the
11 new business creates additional new jobs or makes additional
12 capital investment at the new business facility or does both.

13 (c) Amount of credit. -- When the eligible taxpayer does not
14 qualify for credit under subsection (b) of this section, either
15 because the qualified investment exceeds \$10 million or the number
16 of new jobs created is fifteen or more, or for both reasons, the
17 amount of credit allowable is determined by multiplying the amount
18 of the taxpayer's "qualified investment" (determined under section
19 six of this article) in "property purchased or leased for business
20 expansion" (as defined in section three of this article) using
21 innovative business technologies (as defined in section three of
22 this article) by the taxpayer's new jobs percentage (determined
23 under section seven of this article). The product of this
24 calculation establishes the maximum amount of credit allowable
25 under this article due to the qualified investment.

26 **§11-13CC-5. Application of annual credit allowance.**

1 (a) In general. - When the credit is determined pursuant to
2 the provisions of subsection (c), section four of this section, the
3 aggregate annual credit allowance for the current taxable year is
4 an amount equal to the sum of the following:

5 (1) The one-tenth part allowed under subsection (c), section
6 four of this article for qualified investment placed into service
7 or use during a prior taxable year; plus

8 (2) The one-tenth part allowed under subsection (c), section
9 four of this article for qualified investment placed into service
10 or use during the current taxable year.

11 (b) Application of current year annual credit allowance. --
12 The amount determined under subsection (a) of this section is
13 allowed as a credit against one hundred percent of that portion of
14 the taxpayer's state tax liability which is attributable to and the
15 direct result of the taxpayer's qualified investment, and applied
16 as provided in subsections (c) through (f), both inclusive, of this
17 section, and in that order.

18 (c) Business and occupation taxes. -- That portion of the
19 allowable credit attributable to qualified investment in a business
20 or other activity subject to the taxes imposed by article thirteen
21 of this chapter under section two-o of that article must first be
22 applied to reduce the taxes imposed or payable under section two-o,
23 article thirteen of this chapter, for the taxable year (determined
24 before application of allowable credits against tax and the annual
25 exemption). In no case may the credit allowed under this article be
26 applied to reduce any tax imposed by under any other section of

1 article thirteen of this chapter except section two-o.

2 (1) If the taxes due under section two-o, article thirteen of
3 this chapter are not solely attributable to and the direct result
4 of the taxpayer's qualified investment in a business or other
5 activity taxable under section two-o, article thirteen of this
6 chapter, the amount of those taxes that are attributable is
7 determined by multiplying the amount of taxes due under section
8 two-o, article thirteen of this chapter, for the taxable year
9 (determined before application of any allowable credits against tax
10 and the annual exemption), by a fraction, the numerator of which is
11 all wages, salaries and other compensation paid during the taxable
12 year to all employees of the taxpayer employed in this state, whose
13 positions are directly attributable to the qualified investment in
14 a business or other activity taxable under section two-o, article
15 thirteen of this chapter. The denominator of the fraction shall be
16 the wages, salaries and other compensation paid during the taxable
17 year to all employees of the taxpayer employed in this state, whose
18 positions are directly attributable to the business or other
19 activity of the taxpayer that is taxable under article thirteen of
20 this chapter.

21 (2) The annual exemption allowed by section three, article
22 thirteen of this chapter, plus any credits allowable under articles
23 thirteen-d, thirteen-e, thirteen-q, thirteen-r and thirteen-s of
24 this chapter, shall be applied against and reduce only the portion
25 of article thirteen taxes not apportioned to the qualified
26 investment under this article: *Provided*, That any excess exemption

1 or credits may be applied against the amount of article thirteen
2 taxes apportioned to the qualified investment under this article,
3 that is not offset by the amount of annual credit against the taxes
4 allowed under this article for the taxable year, unless their
5 application is otherwise prohibited by this chapter.

6 (d) Business franchise tax. --

7 (1) After application of subsection (c) of this section, any
8 unused allowable credit is next applied to reduce the taxes imposed
9 by article twenty-three of this chapter for the taxable year
10 (determined after application of the credits against tax provided
11 in section seventeen of article twenty-three of this chapter, but
12 before application of any other allowable credits against tax).

13 (2) If the taxes due under article twenty-three of this
14 chapter are not solely attributable to and the direct result of the
15 taxpayer's qualified investment in a business or other activity
16 taxable under article twenty-three of this chapter for the taxable
17 year, the amount of the taxes which are so attributable are
18 determined by multiplying the amount of taxes due (determined after
19 application of the credits against tax as provided in section
20 seventeen of article twenty-three of this chapter, but before
21 application of any other allowable credits), by a fraction, the
22 numerator of which is all wages, salaries and other compensation
23 paid during the taxable year to all employees of the taxpayer
24 employed in this state, whose positions are directly attributable
25 to the qualified investment in a business or other activity taxable
26 under article twenty-three of this chapter. The denominator of the

1 fraction is wages, salaries and other compensation paid during the
2 taxable year to all employees of the taxpayer employed in this
3 state, whose positions are directly attributable to the business or
4 other activity of the taxpayer that is taxable under article
5 twenty-three of this chapter.

6 (3) Any credits allowable under articles thirteen-d,
7 thirteen-e, thirteen-q, thirteen-r and thirteen-s of this chapter
8 are applied against and reduce only the portion of article
9 twenty-three taxes not apportioned to the qualified investment
10 under this article: *Provided*, That any excess exemption or credits
11 may be applied against the amount of article twenty-three taxes
12 apportioned to the qualified investment under this article that is
13 not offset by the amount of annual credit against those taxes
14 allowed under this article for the taxable year, unless their
15 application is otherwise prohibited by this chapter.

16 (e) Corporation net income taxes. --

17 (1) After application of subsections (c) and (d) of this
18 section, any unused credit is next applied to reduce the taxes
19 imposed by article twenty-four of this chapter for the taxable year
20 (determined before application of allowable credits against tax).

21 (2) If the taxes due under article twenty-four of this chapter
22 (determined before application of allowable credits against tax)
23 are not solely attributable to and the direct result of the
24 taxpayer's qualified investment, the amount of the taxes that is
25 attributable are determined by multiplying the amount of taxes due
26 under article twenty-four of this chapter for the taxable year

1 (determined before application of allowable credits against tax),
2 by a fraction, the numerator of which is all wages, salaries and
3 other compensation paid during the taxable year to all employees of
4 the taxpayer employed in this state whose positions are directly
5 attributable to the qualified investment. The denominator of the
6 fraction is the wages, salaries and other compensation paid during
7 the taxable year to all employees of the taxpayer employed in this
8 state.

9 (3) Any credits allowable under article twenty-four of this
10 chapter are applied against and reduce only the amount of article
11 twenty-four of this chapter taxes not apportioned to the qualified
12 investment under this article: *Provided*, That any excess credits
13 may be applied against the amount of article twenty-four of this
14 chapter taxes apportioned to the qualified investment under this
15 article that is not offset by the amount of annual credit against
16 such taxes allowed under this article for the taxable year, unless
17 their application is otherwise prohibited by this chapter.

18 (f) *Personal income taxes.* --

19 (1) If the person making the qualified investment is an
20 electing small business corporation (as defined in Section 1361 of
21 the United States Internal Revenue Code of 1986 as amended), a
22 partnership, or a limited liability company that is treated as a
23 partnership for federal income tax purposes, then any unused credit
24 (after application of subsections (c), (d) and (e) of this section)
25 is allowed as a credit against the taxes imposed by article
26 twenty-one of this chapter on the income from business or other

1 activity subject to tax under article thirteen or twenty-three of
2 this chapter that is attributable to the business activity for
3 credit is allowed under this article.

4 (2) Electing small business corporations, limited liability
5 companies, partnerships and other unincorporated organizations
6 shall allocate the credit allowed by this article among its members
7 in the same manner as profits and losses are allocated for the
8 taxable year.

9 (3) If the amount of taxes due under article twenty-one of
10 this chapter (determined before application of allowable credits
11 against tax) that is attributable to business, is not solely
12 attributable to and the direct result of the qualified investment
13 of the electing small business corporation, limited liability
14 company, partnership, other unincorporated organization or sole
15 proprietorship, the amount of the taxes that are so attributable
16 are determined by multiplying the amount of taxes due under article
17 twenty-one of this chapter (determined before application of
18 allowable credits against tax), that is attributable to business by
19 a fraction, the numerator of which is all wages, salaries and other
20 compensation paid during the taxable year to all employees of the
21 electing small business corporation, limited liability company,
22 partnership, other unincorporated organization or sole
23 proprietorship employed in this state, whose positions are directly
24 attributable to the qualified investment. The denominator of the
25 fraction is the wages, salaries and other compensation paid during
26 the taxable year to all employees of the taxpayer.

1 (g) No credit is allowed under this section against any
2 employer withholding taxes imposed by article twenty-one of this
3 chapter.

4 (h) If the wages, salaries and other compensation fraction
5 formula provisions of subsections (c) through (f) of this section,
6 inclusive, do not fairly represent the taxes solely attributable to
7 and the direct result of qualified investment of the taxpayer the
8 commissioner may require, in respect to all or any part of the
9 taxpayer's businesses or activities, if reasonable:

10 (1) Separate accounting or identification;

11 (2) Adjustment to the wages, salaries and other compensation
12 fraction formula to reflect all components of the tax liability;

13 (3) The employment of any other method to effectuate an
14 equitable attribution of the taxes. In order to effectuate the
15 purposes of this subsection, the commissioner may propose for
16 promulgation rules, including emergency rules, in accordance with
17 article three, chapter twenty-nine-a of this code.

18 (j) Unused credit. -- If any credit remains after application
19 of subsection (b) of this section, the amount thereof is carried
20 forward to each ensuing tax year until used or until the expiration
21 of the third taxable year subsequent to the end of the initial ten
22 year credit application period. If any unused credit remains after
23 the thirteenth year, the amount thereof is forfeited. No carryback
24 to a prior taxable year is allowed for the amount of any unused
25 portion of any annual credit allowance.

26 **§11-13CC-6. Qualified investment.**

1 (a) General. -- The qualified investment in property purchased
2 or leased for business expansion is the applicable percentage of
3 the cost of each property purchased or leased for the purpose of
4 business expansion which is placed in service or use in this state
5 by the taxpayer during the taxable year.

6 (b) Applicable percentage. -- For the purpose of subsection
7 (a), the applicable percentage of any property is determined under
8 the following table:

<u>If useful life is:</u>	<u>The applicable percentage is:</u>
<u>Less than 4 years.....</u>	<u>0%</u>
<u>4 years or more but less than 6 years</u>	<u>33 1/3%</u>
<u>6 years or more but less than 8 years</u>	<u>66 2/3%</u>
<u>8 years or more</u>	<u>100%</u>

14 The useful life of any property, for purposes of this section, is
15 determined as of the date the property is first placed in service
16 or use in this state by the taxpayer, determined in accordance with
17 rules and requirements the Tax Commissioner may proscribe.

18 (c) Cost. -- For purposes of subsection (a), the cost of each
19 property purchased for business expansion is determined under the
20 following rules:

21 (1) Trade-ins. - Cost does not include the value of property
22 given in trade or exchange for the property purchased for business
23 expansion.

24 (2) Damaged, destroyed or stolen property. -- If property is
25 damaged or destroyed by fire, flood, storm or other casualty, or is
26 stolen, then the cost of replacement property does not include any

1 insurance proceeds received in compensation for the loss.

2 (3) Rental property. --

3 (A) The cost of real property acquired by written lease for a
4 primary term of ten years or longer is one hundred percent of the
5 rent reserved for the primary term of the lease, not to exceed
6 twenty years.

7 (B) The cost of tangible personal property acquired by written
8 lease for a primary term of:

9 (i) Four years, or longer, is one third of the rent reserved
10 for the primary term of the lease;

11 (ii) Six years, or longer, is two-thirds of the rent reserved
12 for the primary term of the lease; or

13 (iii) Eight years, or longer, is one hundred percent of the
14 rent reserved for the primary term of the lease, not to exceed
15 twenty years: Provided, That in no event may rent reserved include
16 rent for any year subsequent to expiration of the book life of the
17 equipment, determined using the straight-line method of
18 depreciation.

19 (4) Self-constructed property. -- In the case of
20 self-constructed property, the cost thereof is the amount properly
21 charged to the capital account for depreciation in accordance with
22 federal income tax law.

23 (5) Transferred property. -- The cost of property used by the
24 taxpayer out-of-state and then brought into this state, is
25 determined based on the remaining useful life of the property at
26 the time it is placed in service or use in this state, and the cost

1 is the original cost of the property to the taxpayer less straight
2 line depreciation allowable for the tax years or portions thereof
3 the taxpayer used the property outside this state. In the case of
4 leased tangible personal property, cost is based on the period
5 remaining in the primary term of the lease after the property is
6 brought into this state for use in a new or expanded business
7 facility of the taxpayer, and is the rent reserved for the
8 remaining period of the primary term of the lease, not to exceed
9 twenty years, or the remaining useful life of the property
10 (determined as above), whichever is less.

11 **§11-13CC-7. New jobs; new jobs percentage.**

12 (a) In general. -- For purposes of this article, the new jobs
13 created by the taxpayer must be directly attributable to taxpayer's
14 qualified investment in this state, must be filled by new employees
15 as defined in section three of this article and the compensation of
16 new employees filling the new jobs must be equal to or exceed the
17 compensation and health insurance benefits set forth in section
18 eight of this article during the period for which the credit
19 allowed by this article may be taken.

20 (b) When a job is attributable. -- An employee's position is
21 directly attributable to the qualified investment if:

22 (1) The employee's service is performed or his or her base of
23 operations is at the new or expanded business facility;

24 (2) The position did not exist prior to the construction,
25 renovation, expansion or acquisition of the business facility and
26 the making of the qualified investment; and

1 (3) But for the qualified investment, the position would not
2 have existed.

3 (c) Applicable percentage. -- The taxpayer's new jobs
4 percentage is determined under the following table:

5 If number of new jobs The applicable percentage is:
6 is at least:

7 15 15%

8 20 20%

9 280 30%

10 520 40%

11 (d) Certification of new jobs. -- With the annual return for
12 the applicable taxes filed for the taxable year in which the
13 qualified investment is first placed in service or use in this
14 state, the taxpayer shall estimate and certify the number of new
15 jobs reasonably projected to be created by it in this state within
16 the period prescribed in subsection (f) of this section that are,
17 or will be, directly attributable to the qualified investment of
18 the taxpayer. For purposes of this section, "applicable taxes"
19 means the taxes imposed by articles thirteen, twenty-one,
20 twenty-three and twenty-four of this chapter against which this
21 credit is applied.

22 (e) Equivalency of permanent employees. -- The hours of
23 part-time employees shall be aggregated to determine the number of
24 equivalent full-time employees for the purpose of this section.

25 (f) Redetermination of new jobs percentage. -- With the annual
26 return for the applicable taxes imposed, filed for the third

1 taxable year in which the qualified investment is in service or
2 use, the taxpayer shall certify the actual number of new jobs
3 created by it in this state that are directly attributable to the
4 qualified investment of the taxpayer.

5 (1) If the actual number of jobs created would result in a
6 higher new jobs percentage, the credit allowed under this article
7 shall be redetermined and amended returns filed for the first and
8 second taxable years that the qualified investment was in service
9 or use in this state.

10 (2) If the actual number of jobs created would result in a
11 lower new jobs percentage, the credit previously allowed under this
12 article shall be redetermined and amended returns filed for the
13 first and second taxable years. In applying the amount of
14 redetermined credit allowable for the two preceding taxable years,
15 the redetermined credit shall first be applied to the extent it was
16 originally applied in the prior two years to personal income taxes,
17 then to corporation net income taxes, then to business franchise
18 taxes and, lastly, to business and occupation taxes. Any
19 additional taxes due under this chapter shall be remitted with the
20 amended returns filed with the commissioner, along with interest,
21 as provided in section seventeen, article ten of this chapter, and
22 a ten-percent penalty determined on the amount of taxes due with
23 the amended return, which may be waived by the commissioner if the
24 taxpayer shows that the over-claimed amount of the new jobs
25 percentage was due to reasonable cause and not due to willful
26 neglect.

1 **§11-13CC-8. New jobs compensation and benefits requirement.**

2 (a) Notwithstanding any provision of this article to the
3 contrary, no credit shall be allowed under this article unless the
4 following compensation requirements are met beginning with the tax
5 year when the new employee first begins working at the new or
6 expanded business facility and continuing through the period for
7 which credit is allowed under this article:

8 (1) The median compensation paid to the employees filling the
9 new jobs must be at least \$50,000 annually: *Provided, That*
10 beginning November 1, 2013, and on or before every November 1
11 thereafter, the Tax Commissioner shall adjust this minimum annual
12 compensation requirement in the manner provided in subsection (b)
13 of this section, which adjustment shall apply to compensation paid
14 for employee services during the next calendar year;

15 (2) Health insurance benefits are provided to all full-time
16 permanent employees working at the new or expanded business
17 facility in this state; and

18 (3) Each new job is a full-time, permanent position, as those
19 terms are defined in section three, of this article.

20 Jobs that do not provide health insurance benefits do not
21 qualify as new jobs for purposes of the credit authorized by this
22 article. Additionally, jobs that are less than full-time,
23 permanent positions do not qualify as new jobs under this article.

24 (b) *Adjustment of annual compensation for inflation.* -- The
25 compensation requirements for credit under this article shall be
26 adjusted for inflation by application of a cost-of-living

1 adjustment. The annual compensation amount shall be applicable, as
2 adjusted, each year throughout the ten-year credit period. Failure
3 of a taxpayer entitled to credit under this article to meet the
4 annual compensation requirement for any year shall result in
5 forfeiture of the credit for that year. However, if in any
6 succeeding year within the original ten-year credit period, the
7 taxpayer pays annual compensation to its employees which exceeds
8 the inflation adjusted annual compensation amount for that year,
9 the taxpayer shall regain entitlement to take the credit for that
10 year only. No credit forfeited in a prior year may be taken, and
11 the tax year or years to which the forfeited credit would have been
12 applied shall be forfeited and deducted from the remainder of the
13 years over which the credit can be taken.

14 (1) *Cost-of-living adjustment.* -- For purposes of this
15 section, the cost-of-living adjustment for any calendar year is the
16 percentage, if any, by which the consumer price index for the
17 preceding calendar year exceeds the consumer price index for
18 calendar year 2012.

19 (2) *Consumer price index for any calendar year.* -- For
20 purposes of this section, the consumer price index for any calendar
21 year is the average of the federal consumer price index as of the
22 close of the twelve-month period ending on August 31 of such
23 calendar year.

24 (3) *Consumer price index.* -- For purposes of this section, the
25 term "Federal Consumer Price Index" means the last consumer price
26 index for all urban consumers published by the United States

1 Department of Labor.

2 (4) Rounding. -- If any increase in the annual compensation
3 amount under this section is not a multiple of \$50, such increase
4 shall be rounded to the next lowest multiple of \$50.

5 (c) Unused credit remaining in any tax year after application
6 against the taxes specified in section five of this article is
7 forfeited and does not carry forward to any succeeding tax year and
8 does not carry back to a prior tax year.

9 (d) Reduction in number of employees credit forfeiture. -- If
10 during the year when a new job was created for which credit was
11 granted under this section or during the remainder of the credit
12 period allowed by either subsection (b) or (c), section four of
13 this article, net jobs that are attributable to and the consequence
14 of the taxpayer's business operations in this state, decrease,
15 counting both new jobs for which credit was granted under this
16 article and preexisting jobs, then the total amount of credit to
17 which the taxpayer is entitled under this section shall be
18 decreased and forfeited in the amount of \$3,000 for each net job
19 lost.

20 **§11-13CC-9. Application for credit required; failure to make**
21 **timely application; burden of proof.**

22 (a) Application for credit required. -- Notwithstanding any
23 provision of this article to the contrary, no credit is allowed or
24 may be applied under this article for any qualified investment
25 property placed in service or use until the person asserting a

1 claim for the allowance of credit under this article makes written
2 application to the Tax Commissioner for allowance of credit as
3 provided in this subsection. An application for credit shall be
4 filed, in the form prescribed by the Tax Commissioner, no later
5 than the last day for filing the tax returns, determined by
6 including any authorized extension of time for filing the return,
7 required under article twenty-one or twenty-four of this chapter
8 for the taxable year in which the property to which the credit
9 relates is placed in service or use and all information required by
10 the form shall be provided.

11 (b) Failure to make timely application. -- The failure to
12 timely apply for the credit results in the forfeiture of fifty
13 percent of the annual credit allowance otherwise allowable under
14 this article. This penalty applies annually until the application
15 is filed.

16 (c) The burden of proof is on the taxpayer to establish by
17 clear and convincing evidence that the taxpayer is entitled to the
18 benefits allowed by this article.

19 **§11-13CC-10. Identification of investment credit property.**

20 Every taxpayer who claims credit under this article shall
21 maintain sufficient records to establish the following facts for
22 each item of qualified property:

23 (1) Its identity;

24 (2) Its actual or reasonably determined cost;

25 (3) Its straight-line depreciation life;

26 (4) The month and taxable year in which it was placed in

1 service;

2 (5) The amount of credit taken; and

3 (6) The date it was disposed of or otherwise ceased to be
4 qualified property.

5 **§11-13CC-11. Forfeiture of unused tax credits; redetermination of**
6 **credit allowed.**

7 (a) Disposition of property or cessation of use. -- If during
8 any taxable year, property with respect to which a tax credit has
9 been allowed under this article:

10 (1) Is disposed of prior to the end of its useful life, as
11 determined under section eight of this article; or

12 (2) Ceases to be used in an eligible business of the taxpayer
13 in this state prior to the end of its useful life, as determined
14 under section eight of this article, then the unused portion of the
15 credit allowed for the property is forfeited for the taxable year
16 and all ensuing years. Additionally, except when the property is
17 damaged or destroyed by fire, flood, storm or other casualty, or is
18 stolen, the taxpayer shall redetermine the amount of credit allowed
19 in all earlier years by reducing the applicable percentage of cost
20 of the property allowed under section eight of this article, to
21 correspond with the percentage of cost allowable for the period of
22 time that the property was actually used in this state in the new
23 or expanded business of the taxpayer. The taxpayer shall then file
24 a reconciliation statement for the year in which the forfeiture
25 occurs and pay any additional taxes owed due to reduction of the
26 amount of credit allowable for the earlier years, plus interest and

1 any applicable penalties. The reconciliation statement shall be
2 filed with the annual return for the primary tax for which the
3 taxpayer is liable under article twenty-three of this chapter, or
4 under article twenty-one or twenty-four of this chapter.

5 (b) Cessation of operation of business facility. -- If during
6 any taxable year the taxpayer ceases operation of a business
7 facility in this state for which credit was allowed under this
8 article, before expiration of the useful life of property with
9 respect to which tax credit has been allowed under this article,
10 then the unused portion of the allowed credit is forfeited for the
11 taxable year and for all ensuing years. Additionally, except when
12 the cessation is due to fire, flood, storm or other casualty, the
13 taxpayer shall redetermine the amount of credit allowed in earlier
14 years by reducing the applicable percentage of cost of the property
15 allowed under section eight of this article, to correspond with the
16 percentage of cost allowable for the period of time that the
17 property was actually used in this state in a business of the
18 taxpayer that is taxable under article twenty-three or twenty-four
19 of this chapter, or in the case of a partnership, the distributive
20 share of partnership items is taxable under article twenty-one of
21 this chapter. The taxpayer shall then file a reconciliation
22 statement with the annual return for the primary tax for which the
23 taxpayer is liable under article twenty-one, twenty-three or
24 twenty-four of this chapter, for the year in which the forfeiture
25 occurs, and pay any additional taxes owed due to the reduction of
26 the amount of credit allowable for the earlier years, plus interest

1 and any applicable penalties.

2 (c) Reduction in number of employees. -- If during any taxable
3 year subsequent to the taxable year in which the new jobs
4 percentage is redetermined as provided in section seven of this
5 article, the average number of employees of the taxpayer, for the
6 then current taxable year, employed in positions created because of
7 and directly attributable to the qualified investment falls below
8 the minimum number of new jobs created upon which the taxpayer's
9 annual credit allowance is based, the taxpayer shall calculate what
10 his or her annual credit allowance would have been had his or her
11 new jobs percentage been determined based upon the average number
12 of employees, for the then current taxable year, employed in
13 positions created because of and directly attributable to the
14 qualified investment. The difference between the result of this
15 calculation and the taxpayer's annual credit allowance for the
16 qualified investment as determined under section four of this
17 article, is forfeited for the then current taxable year, and for
18 each succeeding taxable year unless for a succeeding taxable year
19 the taxpayer's average employment in positions directly
20 attributable to the qualified investment once again meets the level
21 required to enable the taxpayer to utilize its full annual credit
22 allowance for that taxable year.

23 **§11-13CC-12. Recapture of credit; recapture tax imposed.**

24 (a) When recapture tax applies. --

25 (1) Any person who places qualified investment property in
26 service or use and who fails to use the qualified investment

1 property for at least the period of its useful life (determined as
2 of the time the property was placed in service or use), or the
3 period of time over which tax credits allowed under this article
4 with respect to the property are applied under this article,
5 whichever period is less, and who reduces the number of its
6 employees filling new jobs in its business in this state, which
7 were created and are directly attributable to the qualified
8 investment property, after the third taxable year in which the
9 qualified investment property was placed in service or use, or
10 fails to continue to employ individuals in all the new jobs created
11 as a direct result of the qualified investment property and used to
12 qualify for the credit allowed by this article, prior to the end of
13 the tenth taxable year after the qualified investment property was
14 placed in service or use, the person shall pay the recapture tax
15 imposed by subsection (b) of this section.

16 (2) This section does not apply when section thirteen of this
17 article applies. However, the successor, or the successors, and
18 the person, or persons, who previously claimed credit under this
19 article with respect to the qualified investment property and the
20 new jobs attributable thereto, are jointly and severally liable for
21 payment of any recapture tax subsequently imposed under this
22 section with respect to the qualified investment property and new
23 jobs.

24 (b) Recapture tax imposed. -- The recapture tax imposed by
25 this subsection is the amount determined as follows:

26 (1) Full recapture. -- If the taxpayer prematurely removes

1 qualified investment property placed in service (when considered as
2 a class) from economic service in the taxpayer's qualified
3 investment business activity in this state, and the number of
4 employees filling the new jobs created by the person falls below
5 the number of new jobs required to be created in order to qualify
6 for the amount of credit being claimed or the requirements of
7 section eight of this article are not satisfied, the taxpayer shall
8 recapture the amount of credit claimed under section four of this
9 article for the taxable year, and all preceding taxable years, on
10 qualified investment property which has been prematurely removed
11 from service. Additionally, the property tax benefit allowed under
12 article six-L of this chapter shall be recaptured for a like
13 period. The amount of tax due under this subdivision is an amount
14 equal to the amount of credit that is recaptured under this
15 subdivision plus the amount of the property tax benefit recaptured
16 under this section.

17 (2) *Partial recapture.* -- If the taxpayer prematurely removes
18 qualified investment property from economic service in the
19 taxpayer's qualified investment business activity in this state,
20 and the number of employees filling the new jobs created by the
21 person remains ten or more, but falls below the number necessary to
22 sustain continued application of credit determined by use of the
23 new job percentage upon which the taxpayer's one-tenth annual
24 credit allowance was determined under section four or section ten
25 of this article, taxpayer shall recapture an amount of credit equal
26 to the difference between: (A) The amount of credit claimed under

1 section four of this article for the taxable year, and all
2 preceding taxable years; and (B) the amount of credit that would
3 have been claimed in those years if the amount of credit allowable
4 under section four of this article had been determined based on the
5 qualified investment property which remains in service using the
6 average number of new jobs filled by employees in the taxable year
7 for which recapture occurs. The amount of tax due under this
8 subdivision is an amount equal to the amount of credit that is
9 recaptured under this subdivision.

10 (3) Additional recapture. -- If after a partial recapture
11 under subdivision (2) of this subsection, the taxpayer further
12 reduces the number of employees filling new jobs, the taxpayer
13 shall recapture an additional amount determined as provided under
14 subdivision (1) of this subsection. The amount of tax due under
15 this subdivision is an amount equal to the amount of credit that is
16 recaptured under this subdivision.

17 (c) Payment of recapture tax. -- The amount of tax recaptured
18 under this section is due and payable on the day the person's
19 annual return is due for the taxable year in which this section
20 applies, under article twenty-one or twenty-four of this chapter.
21 When the employer is a partnership, limited liability company or
22 Subchapter S corporation for federal income tax purposes, the
23 recapture tax shall be paid by those persons who are partners in
24 the partnership, members in the company, or shareholders in the
25 Subchapter S corporation, in the taxable year in which recapture
26 occurs under this section. The Tax Commissioner shall cause the

1 property tax benefit recaptured to be paid over to the sheriff of
2 the county in which the property is or was located within sixty
3 days after the recapture tax is paid to the Tax Commissioner.

4 (d) Rules. -- The Tax Commissioner may promulgate such rules
5 as may be useful or necessary to carry out the purpose of this
6 section and to implement the intent of the Legislature. Rules
7 shall be promulgated in accordance with the provisions of article
8 three, chapter twenty-nine-a of this code.

9 **§11-13CC-13. Transfer of qualified investment to successors.**

10 (a) Mere change in form of business. -- Property may not be
11 treated as disposed of under section eleven of this article, by
12 reason of a mere change in the form of conducting the business as
13 long as the property is retained in the successor business in this
14 state, and the transferor business retains a controlling interest
15 in the successor business. In this event, the successor business
16 is allowed to claim the amount of credit still available with
17 respect to the business facility or facilities transferred, and the
18 transferor business may not be required to redetermine the amount
19 of credit allowed in earlier years.

20 (b) Transfer or sale to successor. -- Property is not treated
21 as disposed of under section eleven of this article by reason of
22 any transfer or sale to a successor business which continues to
23 operate the business facility in this state. Upon transfer or
24 sale, the successor shall acquire the amount of credit that remains
25 available under this article for each subsequent taxable year and
26 the transferor business is not required to redetermine the amount

1 of credit allowed in earlier years.

2 **§11-13CC-14. Failure to keep records of investment credit**
3 **property.**

4 A taxpayer who does not keep the records required for
5 identification of investment credit property is subject to the
6 following rules:

7 (1) A taxpayer is treated as having disposed of, during the
8 taxable year, any investment credit property which the taxpayer
9 cannot establish was still on hand, in this state, at the end of
10 that year.

11 (2) If a taxpayer cannot establish when investment credit
12 property reported for purposes of claiming this credit returned
13 during the taxable year was placed in service, the taxpayer is
14 treated as having placed it in service in the most recent prior
15 year in which similar property was placed in service, unless the
16 taxpayer can establish that the property placed in service in the
17 most recent year is still on hand. In that event, the taxpayer
18 will be treated as having placed the returned property in service
19 in the next most recent year.

20 **§11-13CC-15. Interpretation and construction.**

21 (a) No inference, implication or presumption of legislative
22 construction or intent may be drawn or made by reason of the
23 location or grouping of any particular section, provision or
24 portion of this article; and no legal effect may be given to any
25 descriptive matter or heading relating to any section, subsection

1 or paragraph of this article.

2 (b) The provisions of this article shall be reasonably
3 construed in order to effectuate the legislative intent recited in
4 section two of this article.

5 (c) In no event may any property that is treated as qualified
6 investment property for purposes of this article be used to qualify
7 for credit under any other article of this chapter.

8 **§11-13CC-16. Tax credit review and accountability.**

9 (a) On or before February 1, 2017, and on or before February
10 1 of every third year thereafter, the Tax Commissioner shall submit
11 to the Governor, the President of the Senate and the Speaker of the
12 House of Delegates, a tax credit review and accountability report
13 evaluating the cost effectiveness of the credit allowed by this
14 article during the most recent three-year period for which
15 information is available. The criteria to be evaluated shall
16 include, but not be limited to, for each year of the three-year
17 period:

18 (1) The numbers of taxpayers claiming the credit;

19 (2) The net number of new jobs created by all taxpayers
20 claiming the credit;

21 (3) The cost of the credit;

22 (4) The cost of the credit per new job created; and

23 (5) Comparison of employment trends for an industry and for
24 taxpayers within the industry that claim the credit.

25 (b) Taxpayers claiming the credit shall provide any
26 information the Tax Commissioner may require to prepare the report:

1 Provided, That the information provided is subject to the
2 confidentiality and disclosure provisions of sections five-d and
3 five-s, article ten of this chapter.

4 **§11-13CC-17. Effective date; termination date.**

5 (a) Effective date. - The credit allowed by this article is
6 allowed for qualified investment placed in service or use on or
7 after July 1, 2012, subject to the rules contained in this section.

8 (b) Termination date. - Unless extended by the Legislature,
9 this credit shall not be allowed for any qualified investment
10 property placed in service or use after December 31, 2020:
11 Provided, That when the qualified investment property was placed in
12 service or use prior to January 1, 2020, taxpayers shall be allowed
13 the tax benefits allowed by section four of this article for the
14 remainder of the credit period allowed by subsection (b) of that
15 section, or the remainder of the credit period allowed under
16 subsection (c) of that section, depending upon which is applicable
17 to the taxpayer.

18 **§11-13CC-18. Severability.**

19 (a) If any provision of this article or the application
20 thereof is for any reason adjudged by any court of competent
21 jurisdiction to be invalid, the judgment may not affect, impair or
22 invalidate the remainder of the article, but shall be confined in
23 its operation to the provision thereof directly involved in the
24 controversy in which the judgment shall have been rendered, and the
25 applicability of the provision to other persons or circumstances

1 may not be affected thereby.

2 (b) If any provision of this article or the application
3 thereof is made invalid or inapplicable by reason of the repeal or
4 any other invalidation of any statute therein addressed or referred
5 to, such invalidation or inapplicability may not affect, impair or
6 invalidate the remainder of the article, but shall be confined in
7 its operation to the provision thereof directly involved with,
8 pertaining to, addressing or referring to the statute, and the
9 application of the provision with regard to other statutes or in
10 other instances not affected by any such repealed or invalid
11 statute may not be abrogated or diminished in any way.