

Senate Bill No. 534

(By Senators Browning, Foster, Klempa, Plymale and Beach)

[Introduced February 7, 2012; referred to the Committee on Economic Development; and then to the Committee on Finance.]

**FISCAL
NOTE**

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

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

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

21 That the Code of West Virginia, 1931, as amended, be amended
22 by adding thereto a new article, designated §11-6L-1, §11-6L-2,
23 §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and that said
24 code be amended by adding thereto a new article, designated

1 §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-4, §11-13CC-5,
2 §11-13CC-6, §11-13CC-7, §11-13CC-8, §11-13CC-9, §11-13CC-10,
3 §11-13CC-11, §11-13CC-12, §11-13CC-13, §11-13CC-14, §11-13CC-15,
4 §11-13CC-16, §11-13CC-17 and §11-13CC-18, all to read as follows:

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

7 **§11-6L-1. Short title.**

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

10 **§11-6L-2. Definitions.**

11 For the purposes of this article:

12 (1) "Innovative business technologies" means "innovative
13 business technologies" as defined in section three, article
14 thirteen-cc of this chapter when the owner of the property
15 qualifies or qualified for the tax credit allowed by that article.
16 Qualifications for that tax credit and the special valuation
17 methodology provided in this article include, but are not limited
18 to, a minimum capital investment requirement, a minimum new jobs
19 creation requirement and a requirement that the new jobs created be
20 good paying jobs with health insurance benefits, all as defined in
21 article thirteen-cc of this chapter; and

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

23 **§11-6L-3. Valuation of Innovation Free-Trade Act business**
24 **technology property.**

1 Notwithstanding any other provision of this code to the
2 contrary, the value of tangible personal property and improvements
3 to real property placed in service or use on or after July 1, 2012,
4 and directly used in an innovative business technology as defined
5 in section two of this article shall, for the purpose of ad valorem
6 property taxation under this chapter and under Article X of the
7 Constitution of West Virginia, be its salvage value.

8 **§11-6L-4. Initial determination by county assessor.**

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

21 (b) When the county assessor receives the report described in
22 subsection (a) of this section, the assessor shall review the
23 report and make such inquiries as he or she deems necessary to
24 determine whether the tangible personal property listed in the

1 report is eligible for valuation under this article. The county
2 assessor shall notify the taxpayer in writing of his or her
3 determination not later than January 15 of the assessment year.

4 (c) Upon making a determination that a taxpayer owns tangible
5 personal property directly used in an innovative business
6 technology that is eligible for valuation under this article, the
7 county assessor shall notify the Tax Commissioner of that
8 determination and shall provide information to the Tax Commissioner
9 as he or she requires relating to that determination.

10 **§11-6L-5. Protest and appeal.**

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

1 may require.

2 (b) The Tax Commissioner shall, as soon as possible on receipt
3 of the question, but in no case later than February 28 of the
4 assessment year, instruct the county assessor as to how the
5 property shall be treated. The instructions issued and forwarded by
6 mail to the county assessor are binding upon the county assessor,
7 but either the county assessor or the taxpayer may apply to the
8 circuit court of the county for review of the question of the
9 applicability of this article to the property in the same fashion
10 as is provided for appeals from the county commission in section
11 twenty-five, article three of this chapter. The Tax Commissioner
12 shall prescribe forms on which the questions under this section
13 shall be certified and the Tax Commissioner has the authority to
14 pursue any inquiry and procure any information necessary for
15 disposition of the matter.

16 **§11-6L-6. Report on economic benefit.**

17 The West Virginia Development Office shall provide to the
18 Joint Committee on Government and Finance by March 1, 2017, and
19 again by March 1, 2020, a report detailing the economic benefit of
20 the valuation method specified in this article. The report shall
21 include the number of new jobs created due to the provisions of
22 this article and the ad valorem property tax impact.

23 **§11-6L-7. Effective date.**

24 This article shall be effective on and after July 1, 2012, for

1 property placed in service or use on or after July 1, 2012, when
2 the property and its use meet the requirements of this article.

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

4 **§11-13CC-1. Short title.**

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

7 **§11-13CC-2. Purpose and legislative findings.**

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

12 (b) *Legislative findings.* --

13 (1) Future expansion and development of the West Virginia
14 economy, job creation potential and the physical environment are
15 driven by the flow of energy and the nonstop emergence of new
16 technologies.

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

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

24 (4) The Legislature finds that it is in the public interest of

1 the citizens of West Virginia to:

2 (A) Establish a foothold in the West Virginia economy for
3 manufacturers of advanced products and the development of
4 businesses employing other emerging technologies that are magnets
5 for capital investment and produce new jobs that are
6 characteristically knowledge-based;

7 (B) Encourage the application of nanotechnology and other
8 supporting technology to:

9 (i) Aeronautics and space;

10 (ii) Agriculture;

11 (iii) Biotechnology;

12 (iv) Environment;

13 (v) Manufacturing and materials science;

14 (vi) Medicine and health;

15 (vii) Nanoelectronics and computer technology;

16 (viii) National and homeland security; and

17 (ix) Photonics; and

18 (C) Encourage the manufacture, sale and use of alternative
19 fuel vehicles fueled by natural gas, electricity, hydrogen or other
20 alternative fuel and development of the infrastructure necessary to
21 the convenient and efficient refueling of such vehicles.

22 **§11-13CC-3. Definitions.**

23 (a) *General.* -- When used in this article, or in the
24 administration of this article, terms defined in subsection (b) of

1 this article have the meanings ascribed to them by this section,
2 unless a different meaning is clearly required by either the
3 context in which the term is used, or by specific definition, in
4 this article.

5 (b) *Terms defined.* --

6 (1) "Advanced coal technology" includes, but is not limited
7 to, a technology that is used in a new or existing energy
8 generating facility to reduce airborne carbon emissions associated
9 with the combustion or use of coal and includes, but is not limited
10 to, carbon dioxide capture and sequestration technology,
11 supercritical technology, advanced supercritical technology as that
12 technology is determined by the West Virginia Public Service
13 Commission, ultrasupercritical technology and pressurized fluidized
14 bed technology and any other resource, method, project or
15 technology certified by the Public Service Commission as advanced
16 coal technology: *Provided,* That the technology was not in
17 commercial use anywhere in the United States before July 1, 2012.

18 (2) "Advanced information technology" means the development,
19 installation and implementation of computer systems and
20 applications that utilize cloud computing, quantum computing or the
21 next evolution beyond cloud and quantum computing: *Provided,* That
22 the technology was not in commercial use anywhere in the United
23 States before July 1, 2012.

24 (3) "Advanced manufacturing" means the application of state-

1 of-the-art technologies, processes and methods to design and
2 manufacture tangible personal property for commercial or industrial
3 use or for use by consumers: *Provided*, That the technology was not
4 in commercial use anywhere in the United States before July 1,
5 2012.

6 (4) "Bioinformatics" means the application of statistics and
7 computer science to the field of molecular biology and entails the
8 creation and advancement of databases, algorithms, computational
9 and statistical techniques and theory to solve formal and practical
10 problems arising from the management and analysis of biological
11 data. The primary goal of bioinformatics is to increase the
12 understanding of biological processes. What sets bioinformatics
13 apart from other approaches is its focus on developing and applying
14 computationally intensive techniques (e.g., pattern recognition,
15 data mining, machine learning algorithms and visualization) to
16 achieve this goal: *Provided*, That the technology was not in
17 commercial use anywhere in the United States before July 1, 2012.

18 (5) "Bioscience" means the use of compositions, methods and
19 organisms in cellular and molecular research, development and
20 manufacturing processes for such diverse areas as pharmaceuticals,
21 medical therapeutics, medical diagnostics, medical devices, medical
22 instruments, biochemistry, microbiology, veterinary medicine, plant
23 biology, agriculture and industrial, environmental, and homeland
24 security applications of bioscience, and future developments in the

1 biosciences. Bioscience includes biotechnology and life sciences:
2 *Provided*, That the technology was not in commercial use anywhere in
3 the United States before July 1, 2012.

4 (6) "Bioscience company" means a corporation, limited
5 liability company, S corporation, partnership, registered limited
6 liability partnership, foundation, association, nonprofit entity,
7 business trust, group, or other entity that is engaged in the
8 business of bioscience in this state and has business operations in
9 this state, including, without limitation, research, development,
10 or production directed towards developing or providing bioscience
11 products or processes for specific commercial or public purposes
12 and are identified by the following NAICS codes: 325411, 325412,
13 325413, 325414, 325193, 325199, 325311, 32532, 334516, 339111,
14 339112, 339113, 334510, 334517, 339115, 621511, 621512, 541710,
15 541380, 541940, 622110. "Bioscience company" does not include a
16 sole proprietorship.

17 (7) "Biotechnology" means those fields focusing on
18 technological developments in areas such as biocomputing,
19 biodefense, bioinformatics, genetic engineering, genomics,
20 molecular biology, nanotechnology, proteomics and physiomics:
21 *Provided*, That the technology was not in commercial use anywhere in
22 the United States before July 1, 2012.

23 (8) "Business" means any activity engaged in by any person in
24 this state that is taxable under article twenty-one, twenty-three

1 or twenty-four of this chapter (or any combination of those
2 articles of this chapter).

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

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

14 (11) "Clean natural gas technology" means a technology first
15 used commercially in the United States on or after July 1, 2012,
16 that significantly reduces the environmental impact of natural gas:
17 *Provided*, That the technology was not in commercial use anywhere in
18 the United States before July 1, 2012.

19 (12) "Commissioner" and "Tax Commissioner" are used
20 interchangeably herein and mean the Tax Commissioner of the State
21 of West Virginia, or his or her designee.

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

1 (14) "Controlled group" means one or more chains of
2 corporations connected through stock ownership with a common parent
3 corporation if stock possessing at least fifty percent of the
4 voting power of all classes of stock of each of the corporations is
5 owned directly or indirectly by one or more of the corporations;
6 and the common parent owns directly stock possessing at least fifty
7 percent of the voting power of all classes of stock of at least one
8 of the other corporations.

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

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

19 (17) "Eligible taxpayer" means a new business or a new segment
20 of a business that is primarily engaged in an emerging technology
21 industry or that is primarily utilizing new innovative business
22 technologies, that makes at least the minimum required qualified
23 investment in a new or expanded business facility located in this
24 state and creates the required number of new jobs that pay good

1 salaries and provide health insurance benefits, and that is subject
2 to any of the taxes imposed by articles twenty-one, twenty-three
3 and twenty-four of this chapter (or any one or any combination of
4 those articles).

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

21 (19) "Expanded business facility" means any business facility
22 (other than a new or replacement facility) resulting from the
23 acquisition, construction, reconstruction, installation or erection
24 of improvements or additions to existing property in this state

1 when the improvements or additions are purchased on or after July
2 1, 2012, but only to the extent of the taxpayer's qualified
3 investment in the improvements or additions and the extent to which
4 the expansion of the business facility is directly used in a new
5 segment of the taxpayer that primarily employs an emerging
6 innovative business technology.

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

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

22 (22) "Innovative business technologies" means and includes,
23 but is not limited to, emerging technologies and other business
24 technologies that primarily use state-of-the-art methodologies,

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

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

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

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

22 (26) "Nanotechnology" means the branch of engineering that
23 deals with things smaller than one hundred nanometers.
24 Nanotechnology includes the materials and systems whose structures

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

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

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

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

24 (C) The new business is conducted in the same general location

1 as the preexisting business;

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

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

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

9 (G) If the new business and the preexisting business are
10 regulated or licensed, they are regulated or licensed by the same
11 or similar governmental authority; and

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

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

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

1 (A) The facility is employed by the taxpayer in a new business
2 or in a new segment of an existing business the conduct of a
3 business the net income of which is or will be taxable under
4 article twenty-one or twenty-four of this chapter. The facility is
5 not considered a new business facility in the hands of the taxpayer
6 if the taxpayer's only activity with respect to the facility is to
7 lease it to another person or persons;

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

10 (C) The facility was not purchased or leased by the taxpayer
11 from a related person: *Provided*, That the Tax Commissioner may
12 waive this requirement if the facility was acquired from a related
13 person for its fair market value and the acquisition was not tax
14 motivated; and

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

22 (29) "New employee" means:

23 (A) A person residing and domiciled in this state, hired by
24 the taxpayer to fill a position or a job in this state which

1 previously did not exist in the taxpayer's business enterprise in
2 this state prior to the date on which the taxpayer's qualified
3 investment is placed in service or use in this state. The term "new
4 employee" also includes a person employed by the taxpayer who works
5 outside this state who relocates in this state, becomes domiciled
6 in this state and is employed full-time at the new business
7 facility in this state. In no case may the number of new employees
8 directly attributable to the investment for purposes of this credit
9 exceed the total net increase in the taxpayer's employment in this
10 state: *Provided*, That the Tax Commissioner may require that the net
11 increase in the taxpayer's employment in this state be determined
12 and certified for the taxpayer's controlled group.

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

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

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

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

1 or

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

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

8 (31) "New property" means: (A) Property, the construction,
9 reconstruction or erection of which is completed on or after July
10 1, 2012, and placed in service or use after that date; and

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

15 (32) "NAICS" means the North American Industry Classification
16 System.

17 (33) "Original use" means the first use to which the property
18 is put, whether or not the use corresponds to the use of the
19 property by the taxpayer.

20 (34) "Partnership" includes a syndicate, group, pool, joint
21 venture or other unincorporated organization through or by means of
22 which any business or venture is carried on, and which is not a
23 trust or estate, a corporation or a sole proprietorship and which
24 is treated as a partnership for tax purposes under the laws of this

1 state. The term "partner" includes a member in such a syndicate,
2 group, pool, joint venture or other organization.

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

6 (36) "Photonics" includes the generation, emission,
7 transmission, modulation, signal processing, switching,
8 amplification, detection and sensing of light: *Provided*, That the
9 technology was not in commercial use anywhere in the United States
10 before July 1, 2012.

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

15 (38) "Property purchased or leased for business expansion"
16 means:

17 (A) *Included property*. -- Except as provided in paragraph (B)
18 of this subdivision, the term "property purchased or leased for
19 business expansion" means real property and improvements thereto,
20 and tangible personal property, but only if the real or personal
21 property was constructed, purchased, or leased and placed in
22 service or use by the taxpayer, for use as a component part of a
23 new business facility or expanded business facility as defined in
24 this section, which is located within the State of West Virginia.

1 This term includes only:

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

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

8 (iii) Tangible personal property placed in service or use by
9 the taxpayer on or after July 1, 2012, with respect to which
10 depreciation, or amortization in lieu of depreciation, is allowable
11 in determining the personal or corporation net income tax liability
12 of the business taxpayer under article twenty-one or twenty-four of
13 this chapter, and which has a useful life, at the time the property
14 is placed in service or use in the state, of four or more years;

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

20 (v) Tangible personal property owned or leased, and used by
21 the taxpayer at a business location outside the state which is
22 moved into the State of West Virginia on or after July 1, 2012, for
23 use as a component part of a new or expanded business facility
24 located in the state: *Provided*, That if the property is owned, it

1 must be depreciable or amortizable personal property for income tax
2 purposes, and have a useful life of four or more years remaining at
3 the time it is placed in service or use in the state, and if the
4 property is leased, the primary term of the lease remaining at the
5 time the leased property is placed in service or use in the state,
6 must be four or more years;

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

9 (i) Property owned or leased by the taxpayer and for which the
10 taxpayer was previously allowed tax credit under article thirteen-
11 c, thirteen-d, thirteen-e, thirteen-h, thirteen-q, thirteen-r,
12 thirteen-s, thirteen-t, thirteen-u, thirteen-aa or thirteen-bb of
13 this chapter, or the tax credits allowed by this article;

14 (ii) Property owned or leased by the taxpayer and for which
15 the seller, lessor, or other transferor, was previously allowed tax
16 credit under article thirteen-c, thirteen-d, thirteen-e, thirteen-
17 h, thirteen-q, thirteen-r, thirteen-s, thirteen-t, thirteen-u,
18 thirteen-aa or thirteen-bb of this chapter, or the tax credits
19 allowed by this article;

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

23 (iv) Repair costs, including materials used in the repair,
24 unless for federal income tax purposes the cost of the repair must

1 be capitalized and not expensed;

2 (v) Airplanes;

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

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

9 (viii) Natural resources in place; or

10 (ix) Purchased or leased property the cost or consideration
11 for which cannot be quantified with any reasonable degree of
12 accuracy at the time the property is placed in service or use:
13 *Provided*, That when the contract of purchase or lease specifies a
14 minimum purchase price or minimum annual rent the amount thereof
15 shall be used to determine the qualified investment in the property
16 under section eight of this article if the property otherwise
17 qualifies as property purchased or leased for business expansion.

18 (39) "Purchase" means any acquisition of property, but only
19 if:

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

24 (B) The property is not acquired by one component member of a

1 controlled group from another component member of the same
2 controlled group. The commissioner may waive this requirement if
3 the property was acquired from a related party for its then fair
4 market value; and

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

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

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

12 (40) "Qualified activity" means any business or other activity
13 subject to any of the taxes imposed by article thirteen, twenty-
14 one, twenty-three or twenty-four of this chapter (or any
15 combination of those articles of this chapter), but does not
16 include the activity of severance or production of natural
17 resources.

18 (41) "Related person" means:

19 (A) A corporation, partnership, association or trust
20 controlled by the taxpayer;

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

23 (C) A corporation, partnership, association or trust
24 controlled by an individual, corporation, partnership, association

1 or trust that is in control of the taxpayer; or

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

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

15 (42) "Replacement facility" means any property (other than an
16 expanded facility) that replaces or supersedes any other property
17 located within this state that:

18 (A) The taxpayer or a related person used in or in connection
19 with any activity for more than two years during the period of five
20 consecutive years ending on the date the replacement or superseding
21 property is placed in service by the taxpayer; or

22 (B) Is not used by the taxpayer or a related person in or in
23 connection with any qualified activity for a continuous period of
24 one year or more commencing with the date the replacement or

1 superseding property is placed in service by the taxpayer.

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

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

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

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

13 (47) "Used property" means property acquired after June 30,
14 2012, that is not "new property".

15 **§11-13CC-4. Amount of credit allowed.**

16 (a) *Credit allowed.* -- Eligible taxpayers are allowed a credit
17 against the portion of taxes imposed by this state that are
18 attributable to and the consequence of the taxpayer's qualified
19 investment, as described in section six of this article, in a new
20 business, or in a new segment of an existing business, in this
21 state that utilizes innovative business technology, which results
22 in the creation of new jobs. The amount of this credit is
23 determined and applied as provided in this article.

24 (b) *Amount of credit.* -- When the eligible taxpayer creates

1 at least ten new jobs but less than fifteen new jobs in a new
2 business in this state that utilizes innovative business technology
3 and whose qualified investment in this state is at least \$5 million
4 but is less than \$10 million, the eligible taxpayer shall for the
5 tax year in which the ten employees are first employed by the
6 eligible taxpayer and for the next four tax years thereafter be
7 exempt from payment of the taxes imposed by articles twenty-three
8 and twenty-four of this chapter on the taxable capital and West
9 Virginia taxable income of the new business utilizing innovative
10 business technologies in this state: *Provided*, That the eligible
11 taxpayer may elect to defer for one tax year the start of this
12 five-year period. When the eligible business is a partnership or
13 other entity treated as a partnership for federal income tax
14 purposes, the partners, S corporation shareholders or members of
15 the limited liability company shall be exempt from paying the tax
16 imposed by article twenty-one of this chapter on his or her
17 distributive share attributable to the emerging technology business
18 activity in this state. The eligible business shall also be exempt
19 from paying the taxes imposed by articles fifteen and fifteen-a of
20 this chapter on tangible personal property and services purchased
21 for use or consumption by the eligible taxpayer in the emerging
22 technology business activity during the same five-year period,
23 except that this exemption shall not apply to the purchase of motor
24 fuel or alternative fuels to power a vehicle or to the purchase or

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

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

24 **§11-13CC-5. Application of annual credit allowance.**

1 (a) *In general.* - The aggregate annual credit allowance for
2 the current taxable year is an amount equal to the sum of the
3 following:

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

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

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

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

1 applied to reduce any tax imposed by under any other section of
2 article thirteen of this chapter except section two-o.

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

22 (2) The annual exemption allowed by section three, article
23 thirteen of this chapter, plus any credits allowable under articles
24 thirteen-d, thirteen-e, thirteen-q, thirteen-r and thirteen-s of

1 this chapter, shall be applied against and reduce only the portion
2 of article thirteen taxes not apportioned to the qualified
3 investment under this article: *Provided*, That any excess exemption
4 or credits may be applied against the amount of article thirteen
5 taxes apportioned to the qualified investment under this article,
6 that is not offset by the amount of annual credit against the taxes
7 allowed under this article for the taxable year, unless their
8 application is otherwise prohibited by this chapter.

9 (d) *Business franchise tax.* --

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

16 (2) If the taxes due under article twenty-three of this
17 chapter are not solely attributable to and the direct result of the
18 taxpayer's qualified investment in a business or other activity
19 taxable under article twenty-three of this chapter for the taxable
20 year, the amount of the taxes which are so attributable are
21 determined by multiplying the amount of taxes due (determined after
22 application of the credits against tax as provided in section
23 seventeen of article twenty-three of this chapter, but before
24 application of any other allowable credits), by a fraction, the

1 numerator of which is all wages, salaries and other compensation
2 paid during the taxable year to all employees of the taxpayer
3 employed in this state, whose positions are directly attributable
4 to the qualified investment in a business or other activity taxable
5 under article twenty-three of this chapter. The denominator of the
6 fraction is wages, salaries and other compensation paid during the
7 taxable year to all employees of the taxpayer employed in this
8 state, whose positions are directly attributable to the business or
9 other activity of the taxpayer that is taxable under article
10 twenty-three of this chapter.

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

21 (e) *Corporation net income taxes.* --

22 (1) After application of subsections (c) and (d) of this
23 section, any unused credit is next applied to reduce the taxes
24 imposed by article twenty-four of this chapter for the taxable year

1 (determined before application of allowable credits against tax).

2 (2) If the taxes due under article twenty-four of this chapter
3 (determined before application of allowable credits against tax)
4 are not solely attributable to and the direct result of the
5 taxpayer's qualified investment, the amount of the taxes that is
6 attributable are determined by multiplying the amount of taxes due
7 under article twenty-four of this chapter for the taxable year
8 (determined before application of allowable credits against tax),
9 by a fraction, the numerator of which is all wages, salaries and
10 other compensation paid during the taxable year to all employees of
11 the taxpayer employed in this state whose positions are directly
12 attributable to the qualified investment. The denominator of the
13 fraction is the wages, salaries and other compensation paid during
14 the taxable year to all employees of the taxpayer employed in this
15 state.

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

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

2 (1) If the person making the qualified investment is an
3 electing small business corporation (as defined in Section 1361 of
4 the United States Internal Revenue Code of 1986 as amended), a
5 partnership, or a limited liability company that is treated as a
6 partnership for federal income tax purposes, then any unused credit
7 (after application of subsections (c), (d) and (e) of this section)
8 is allowed as a credit against the taxes imposed by article twenty-
9 one of this chapter on the income from business or other activity
10 subject to tax under article thirteen or twenty-three of this
11 chapter that is attributable to the business activity for credit is
12 allowed under this article.

13 (2) Electing small business corporations, limited liability
14 companies, partnerships and other unincorporated organizations
15 shall allocate the credit allowed by this article among its members
16 in the same manner as profits and losses are allocated for the
17 taxable year.

18 (3) If the amount of taxes due under article twenty-one of
19 this chapter (determined before application of allowable credits
20 against tax) that is attributable to business, is not solely
21 attributable to and the direct result of the qualified investment
22 of the electing small business corporation, limited liability
23 company, partnership, other unincorporated organization or sole
24 proprietorship, the amount of the taxes that are so attributable

1 are determined by multiplying the amount of taxes due under article
2 twenty-one of this chapter (determined before application of
3 allowable credits against tax), that is attributable to business by
4 a fraction, the numerator of which is all wages, salaries and other
5 compensation paid during the taxable year to all employees of the
6 electing small business corporation, limited liability company,
7 partnership, other unincorporated organization or sole
8 proprietorship employed in this state, whose positions are directly
9 attributable to the qualified investment. The denominator of the
10 fraction is the wages, salaries and other compensation paid during
11 the taxable year to all employees of the taxpayer.

12 (4) No credit is allowed under this section against any
13 employer withholding taxes imposed by article twenty-one of this
14 chapter.

15 (g) If the wages, salaries and other compensation fraction
16 formula provisions of subsections (c) through (f) of this section,
17 inclusive, do not fairly represent the taxes solely attributable to
18 and the direct result of qualified investment of the taxpayer the
19 commissioner may require, in respect to all or any part of the
20 taxpayer's businesses or activities, if reasonable:

21 (1) Separate accounting or identification;

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

24 (3) The employment of any other method to effectuate an

1 equitable attribution of the taxes.

2 In order to effectuate the purposes of this subsection, the
3 commissioner may propose for promulgation rules, including
4 emergency rules, in accordance with article three, chapter twenty-
5 nine-a of this code.

6 (h) *Unused credit.* -- If any credit remains after application
7 of subsection (b) of this section, the amount thereof is carried
8 forward to each ensuing tax year until used or until the expiration
9 of the third taxable year subsequent to the end of the initial ten
10 year credit application period. If any unused credit remains after
11 the thirteenth year, the amount thereof is forfeited. No carryback
12 to a prior taxable year is allowed for the amount of any unused
13 portion of any annual credit allowance.

14 **§11-13CC-6. Qualified investment.**

15 (a) *General.* -- The qualified investment in property purchased
16 or leased for business expansion is the applicable percentage of
17 the cost of each property purchased or leased for the purpose of
18 business expansion which is placed in service or use in this state
19 by the taxpayer during the taxable year.

20 (b) *Applicable percentage.* -- For the purpose of subsection
21 (a), the applicable percentage of any property is determined under
22 the following table:

23	If useful life is:	The applicable percentage is:
24	Less than 4 years.....	0%

1	4 years or more but less than 6 years	33 1/3%
2	6 years or more but less than 8 years	66 2/3%
3	8 years or more	100%

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

8 (c) *Cost.* -- For purposes of subsection (a), the cost of each
9 property purchased for business expansion is determined under the
10 following rules:

11 (1) *Trade-ins.* - Cost does not include the value of property
12 given in trade or exchange for the property purchased for business
13 expansion.

14 (2) *Damaged, destroyed or stolen property.* -- If property is
15 damaged or destroyed by fire, flood, storm or other casualty, or is
16 stolen, then the cost of replacement property does not include any
17 insurance proceeds received in compensation for the loss.

18 (3) *Rental property.* --

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

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

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

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

5 (iii) Eight years, or longer, is one hundred percent of the
6 rent reserved for the primary term of the lease, not to exceed
7 twenty years: *Provided*, That in no event may rent reserved include
8 rent for any year subsequent to expiration of the book life of the
9 equipment, determined using the straight-line method of
10 depreciation.

11 (4) *Self-constructed property*. -- In the case of self-
12 constructed property, the cost thereof is the amount properly
13 charged to the capital account for depreciation in accordance with
14 federal income tax law.

15 (5) *Transferred property*. -- The cost of property used by the
16 taxpayer out-of-state and then brought into this state, is
17 determined based on the remaining useful life of the property at
18 the time it is placed in service or use in this state, and the cost
19 is the original cost of the property to the taxpayer less straight
20 line depreciation allowable for the tax years or portions thereof
21 the taxpayer used the property outside this state. In the case of
22 leased tangible personal property, cost is based on the period
23 remaining in the primary term of the lease after the property is
24 brought into this state for use in a new or expanded business

1 facility of the taxpayer, and is the rent reserved for the
2 remaining period of the primary term of the lease, not to exceed
3 twenty years, or the remaining useful life of the property
4 (determined as above), whichever is less.

5 **§11-13CC-7. New jobs; new jobs percentage.**

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

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

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

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

21 (3) But for the qualified investment, the position would not
22 have existed.

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

1	If number of new jobs	The applicable percentage is:
2	is at least:	
3	15	15%
4	20	20%
5	280	30%
6	520	40%

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

18 (e) *Equivalency of permanent employees.* -- The hours of part-
19 time employees shall be aggregated to determine the number of
20 equivalent full-time employees for the purpose of this section.

21 (f) *Redetermination of new jobs percentage.* -- With the annual
22 return for the applicable taxes imposed, filed for the third
23 taxable year in which the qualified investment is in service or
24 use, the taxpayer shall certify the actual number of new jobs

1 created by it in this state that are directly attributable to the
2 qualified investment of the taxpayer.

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

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

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

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

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

1 calendar year.

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

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

9 (c) Unused credit remaining in any tax year after application
10 against the taxes specified in section seven of this article is
11 forfeited and does not carry forward to any succeeding tax year and
12 does not carry back to a prior tax year.

13 (d) *Reduction in number of employees credit forfeiture.* -- If
14 during the year when a new job was created for which credit was
15 granted under this section or during any of the next succeeding
16 four tax years thereafter, net jobs that are attributable to and
17 the consequence of the taxpayer's business operations in this
18 state, decrease, counting both new jobs for which credit was
19 granted under this article and preexisting jobs, then the total
20 amount of credit to which the taxpayer is entitled under this
21 section shall be decreased and forfeited in the amount of \$3,000
22 for each net job lost.

23 **§11-13CC-9. Application for credit required; failure to make**
24 **timely application; burden of proof.**

1 (a) *Application for credit required.* -- Notwithstanding any
2 provision of this article to the contrary, no credit is allowed or
3 may be applied under this article for any qualified investment
4 property placed in service or use until the person asserting a
5 claim for the allowance of credit under this article makes written
6 application to the Tax Commissioner for allowance of credit as
7 provided in this subsection. An application for credit shall be
8 filed, in the form prescribed by the Tax Commissioner, no later
9 than the last day for filing the tax returns, determined by
10 including any authorized extension of time for filing the return,
11 required under article twenty-one or twenty-four of this chapter
12 for the taxable year in which the property to which the credit
13 relates is placed in service or use and all information required by
14 the form shall be provided.

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

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

23 **§11-13CC-10. Identification of investment credit property.**

24 Every taxpayer who claims credit under this article shall

1 maintain sufficient records to establish the following facts for
2 each item of qualified property:

3 (1) Its identity;

4 (2) Its actual or reasonably determined cost;

5 (3) Its straight-line depreciation life;

6 (4) The month and taxable year in which it was placed in
7 service;

8 (5) The amount of credit taken; and

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

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

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

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

18 (2) Ceases to be used in an eligible business of the taxpayer
19 in this state prior to the end of its useful life, as determined
20 under section eight of this article, then the unused portion of the
21 credit allowed for the property is forfeited for the taxable year
22 and all ensuing years. Additionally, except when the property is
23 damaged or destroyed by fire, flood, storm or other casualty, or is
24 stolen, the taxpayer shall redetermine the amount of credit allowed

1 in all earlier years by reducing the applicable percentage of cost
2 of the property allowed under section eight of this article, to
3 correspond with the percentage of cost allowable for the period of
4 time that the property was actually used in this state in the new
5 or expanded business of the taxpayer. The taxpayer shall then file
6 a reconciliation statement for the year in which the forfeiture
7 occurs and pay any additional taxes owed due to reduction of the
8 amount of credit allowable for the earlier years, plus interest and
9 any applicable penalties. The reconciliation statement shall be
10 filed with the annual return for the primary tax for which the
11 taxpayer is liable under article twenty-three of this chapter, or
12 under article twenty-one or twenty-four of this chapter.

13 (b) *Cessation of operation of business facility.* -- If during
14 any taxable year the taxpayer ceases operation of a business
15 facility in this state for which credit was allowed under this
16 article, before expiration of the useful life of property with
17 respect to which tax credit has been allowed under this article,
18 then the unused portion of the allowed credit is forfeited for the
19 taxable year and for all ensuing years. Additionally, except when
20 the cessation is due to fire, flood, storm or other casualty, the
21 taxpayer shall redetermine the amount of credit allowed in earlier
22 years by reducing the applicable percentage of cost of the property
23 allowed under section eight of this article, to correspond with the
24 percentage of cost allowable for the period of time that the

1 property was actually used in this state in a business of the
2 taxpayer that is taxable under article twenty-three or twenty-four
3 of this chapter, or in the case of a partnership, the distributive
4 share of partnership items is taxable under article twenty-one of
5 this chapter. The taxpayer shall then file a reconciliation
6 statement with the annual return for the primary tax for which the
7 taxpayer is liable under article twenty-one, twenty-three or
8 twenty-four of this chapter, for the year in which the forfeiture
9 occurs, and pay any additional taxes owed due to the reduction of
10 the amount of credit allowable for the earlier years, plus interest
11 and any applicable penalties.

12 (c) *Reduction in number of employees.* -- If during any taxable
13 year subsequent to the taxable year in which the new jobs
14 percentage is redetermined as provided in section nine of this
15 article, the average number of employees of the taxpayer, for the
16 then current taxable year, employed in positions created because of
17 and directly attributable to the qualified investment falls below
18 the minimum number of new jobs created upon which the taxpayer's
19 annual credit allowance is based, the taxpayer shall calculate what
20 his or her annual credit allowance would have been had his or her
21 new jobs percentage been determined based upon the average number
22 of employees, for the then current taxable year, employed in
23 positions created because of and directly attributable to the
24 qualified investment. The difference between the result of this

1 calculation and the taxpayer's annual credit allowance for the
2 qualified investment as determined under section four of this
3 article, is forfeited for the then current taxable year, and for
4 each succeeding taxable year unless for a succeeding taxable year
5 the taxpayer's average employment in positions directly
6 attributable to the qualified investment once again meets the level
7 required to enable the taxpayer to utilize its full annual credit
8 allowance for that taxable year.

9 **§11-13CC-12. Recapture of credit; recapture tax imposed.**

10 (a) *When recapture tax applies.* --

11 (1) Any person who places qualified investment property in
12 service or use and who fails to use the qualified investment
13 property for at least the period of its useful life (determined as
14 of the time the property was placed in service or use), or the
15 period of time over which tax credits allowed under this article
16 with respect to the property are applied under this article,
17 whichever period is less, and who reduces the number of its
18 employees filling new jobs in its business in this state, which
19 were created and are directly attributable to the qualified
20 investment property, after the third taxable year in which the
21 qualified investment property was placed in service or use, or
22 fails to continue to employ individuals in all the new jobs created
23 as a direct result of the qualified investment property and used to
24 qualify for the credit allowed by this article, prior to the end of

1 the tenth taxable year after the qualified investment property was
2 placed in service or use, the person shall pay the recapture tax
3 imposed by subsection (b) of this section.

4 (2) This section does not apply when section thirteen of this
5 article applies. However, the successor, or the successors, and
6 the person, or persons, who previously claimed credit under this
7 article with respect to the qualified investment property and the
8 new jobs attributable thereto, are jointly and severally liable for
9 payment of any recapture tax subsequently imposed under this
10 section with respect to the qualified investment property and new
11 jobs.

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

14 (1) *Full recapture.* -- If the taxpayer prematurely removes
15 qualified investment property placed in service (when considered as
16 a class) from economic service in the taxpayer's qualified
17 investment business activity in this state, and the number of
18 employees filling the new jobs created by the person falls below
19 the number of new jobs required to be created in order to qualify
20 for the amount of credit being claimed or the requirements of
21 section eight of this article are not satisfied, the taxpayer shall
22 recapture the amount of credit claimed under section seven of this
23 article for the taxable year, and all preceding taxable years, on
24 qualified investment property which has been prematurely removed

1 from service. Additionally, the property tax benefit allowed under
2 article six-1 of this chapter shall be recaptured for a like
3 period. The amount of tax due under this subdivision is an amount
4 equal to the amount of credit that is recaptured under this
5 subdivision plus the amount of the property tax benefit recaptured
6 under this section.

7 (2) *Partial recapture.* -- If the taxpayer prematurely removes
8 qualified investment property from economic service in the
9 taxpayer's qualified investment business activity in this state,
10 and the number of employees filling the new jobs created by the
11 person remains ten or more, but falls below the number necessary to
12 sustain continued application of credit determined by use of the
13 new job percentage upon which the taxpayer's one-tenth annual
14 credit allowance was determined under section four or section ten
15 of this article, taxpayer shall recapture an amount of credit equal
16 to the difference between: (A) The amount of credit claimed under
17 section seven of this article for the taxable year, and all
18 preceding taxable years; and (B) the amount of credit that would
19 have been claimed in those years if the amount of credit allowable
20 under section four or ten of this article had been determined based
21 on the qualified investment property which remains in service using
22 the average number of new jobs filled by employees in the taxable
23 year for which recapture occurs. The amount of tax due under this
24 subdivision is an amount equal to the amount of credit that is

1 recaptured under this subdivision.

2 (3) *Additional recapture.* -- If after a partial recapture
3 under subdivision (2) of this subsection, the taxpayer further
4 reduces the number of employees filling new jobs, the taxpayer
5 shall recapture an additional amount determined as provided under
6 subdivision (1) of this subsection. The amount of tax due under
7 this subdivision is an amount equal to the amount of credit that is
8 recaptured under this subdivision.

9 (d) *Payment of recapture tax.* -- The amount of tax recaptured
10 under this section is due and payable on the day the person's
11 annual return is due for the taxable year in which this section
12 applies, under article twenty-one or twenty-four of this chapter.
13 When the employer is a partnership, limited liability company or
14 Subchapter S corporation for federal income tax purposes, the
15 recapture tax shall be paid by those persons who are partners in
16 the partnership, members in the company, or shareholders in the
17 Subchapter S corporation, in the taxable year in which recapture
18 occurs under this section. The Tax Commissioner shall cause the
19 property tax benefit recaptured to be paid over to the sheriff of
20 the county in which the property is or was located within sixty
21 days after the recapture tax is paid to the Tax Commissioner.

22 (e) *Rules.* -- The Tax Commissioner may promulgate such rules
23 as may be useful or necessary to carry out the purpose of this
24 section and to implement the intent of the Legislature. Rules

1 shall be promulgated in accordance with the provisions of article
2 three, chapter twenty-nine-a of this code.

3 **§11-13CC-13. Transfer of qualified investment to successors.**

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

14 (b) *Transfer or sale to successor.* -- Property is not treated
15 as disposed of under section eleven of this article by reason of
16 any transfer or sale to a successor business which continues to
17 operate the business facility in this state. Upon transfer or
18 sale, the successor shall acquire the amount of credit that remains
19 available under this article for each subsequent taxable year and
20 the transferor business is not required to redetermine the amount
21 of credit allowed in earlier years.

22 **§11-13CC-14. Failure to keep records of investment credit**
23 **property.**

24 A taxpayer who does not keep the records required for

1 identification of investment credit property is subject to the
2 following rules:

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

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

16 **§11-13CC-15. Interpretation and construction.**

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

23 (b) The provisions of this article shall be reasonably
24 construed in order to effectuate the legislative intent recited in

1 section two of this article.

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

5 **§11-13CC-16. Tax credit review and accountability.**

6 (a) On or before February 1, 2017, and on or before February
7 1 of every third year thereafter, the Tax Commissioner shall submit
8 to the Governor, the President of the Senate and the Speaker of the
9 House of Delegates, a tax credit review and accountability report
10 evaluating the cost effectiveness of the credit allowed by this
11 article during the most recent three-year period for which
12 information is available. The criteria to be evaluated shall
13 include, but not be limited to, for each year of the three-year
14 period:

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

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

18 (3) The cost of the credit;

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

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

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

24 *Provided*, That the information provided is subject to the

1 confidentiality and disclosure provisions of sections five-d and
2 five-s, article ten of this chapter.

3 **§11-13CC-17. Effective date; termination date.**

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

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

17 **§11-13CC-18. Severability.**

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

NOTE: The purpose of this bill is to enact the West Virginia Innovation Free-Trade Act of 2012 consisting of West Virginia Innovation Free-Trade Business Technology Property Valuation Act and the West Virginia Innovation Free-Trade Tax Credit Act, the purpose of which is to encourage the development and use in this state of emerging technologies to create good jobs and grow West Virginia's economy. The bill defines terms. The bill specifies the method for valuation of certain property. The bill provides for application to county assessors by specified date. The bill provides a procedure for protest and appeal of determination by county assessor. The bill requires the West Virginia Development Office to report to the Joint Committee on Government and Finance on the economic impact. The bill makes legislative findings. The bill allows credit and exemption from certain taxes. The bill provides for computation of credit, application of credit and period for which credit is allowed. The bill requires an application to claim the credit. The bill requires that new jobs be good-paying jobs with health benefits. The bill requires identification of investment credit property and recomputation of credit in event of premature disposition of investment property. The bill provides for forfeiture of unused tax credits and redetermination of credit allowed. The bill imposes recapture tax under specified circumstances to recover state taxes and property taxes. The bill allows transfer of qualified investment to successors. The bill provides rules for failure to keep records of

investment credit property. The bill provides rules for interpretation and construction of act. The bill provides for tax credit review and accountability. The bill specifies effective dates and termination dates. The bill provides rule-making authority. The bill provides a severability clause.

These articles are new, therefore strike-throughs and underscoring have been omitted.