

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 185**

7 (BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,

8 BY REQUEST OF THE EXECUTIVE)

9 _____
10 [Passed April 13, 2013; in effect from passage.]
11 _____

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14 AN ACT to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4,
15 §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West
16 Virginia, 1931, as amended, all relating to the tax credit for
17 alternative-fuel motor vehicles and qualified alternative-fuel
18 vehicle refueling infrastructure and qualified alternative-
19 fuel vehicle home refueling infrastructure; setting forth
20 legislative findings; defining terms; restricting credit to
21 purchases of and conversions to natural gas-fueled motor
22 vehicles and liquefied petroleum gas-fueled motor vehicles;
23 narrowing allowance of credit for alternative-fuel motor
24 vehicle purchases, alternative-fuel motor vehicle conversions

1 and alternative-fuel motor vehicle refueling infrastructure;
2 outlining eligibility for credit and cessation of eligibility
3 for credit for specified construction, purchases,
4 expenditures, investments, installations or conversions made
5 on or after cessation dates or tax years as specified;
6 requiring that not more than one tax credit be granted under
7 said article six-d, or any combination of articles set forth
8 in said chapter eleven for purchase of an alternative-fuel
9 motor vehicle or for costs relating to conversion of a motor
10 vehicle to an alternative-fuel motor vehicle, or for costs
11 associated with alternative-fuel vehicle refueling
12 infrastructure or for costs associated with alternative-fuel
13 home refueling infrastructure; providing amount of credit for
14 qualified alternative-fuel vehicle refueling infrastructure;
15 providing limitations on credit; allowing pass-through
16 entities to distribute credits to pass-through equity owners
17 in any manner such equity owners see fit; providing for the
18 termination of tax credit for alternative-fuel motor vehicles
19 purchased after December 31, 2017; providing for the
20 termination of tax credit for motor vehicles converted to
21 operate on alternative fuel after December 31, 2017; providing
22 for the termination of tax credit for construction or purchase
23 and installation of alternative-fuel vehicle refueling
24 infrastructure occurring after December 31, 2017; providing

1 for the termination of tax credit for construction or purchase
2 and installation of qualified alternative-fuel vehicle home
3 refueling infrastructure occurring on or after April 15, 2013;
4 providing for the termination of tax credit for purchases of
5 motor vehicles that operate on fuels other than compressed
6 natural gas or liquefied natural gas, or liquefied petroleum
7 gas, occurring on or after April 15, 2013; providing for the
8 termination of tax credit for conversions of motor vehicles to
9 operate on fuels other than compressed natural gas or
10 liquefied natural gas or liquefied petroleum gas occurring on
11 or after April 15, 2013; providing limitations and
12 restrictions of credit carryover; and providing that credit is
13 nontransferable.

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

15 That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5,
16 §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931,
17 as amended, be amended and reenacted, all to read as follows:

18 **ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT.**

19 **§11-6D-1. Legislative findings and purpose.**

20 Consistent with the public policy as stated in section one,
21 article two-d, chapter twenty-four of this code, the Legislature
22 hereby finds that the use of natural gas-based alternative fuels is
23 in the public interest and promotes the general welfare of the
24 people of this state insofar as it addresses serious concerns for

1 our environment and our state's and nation's dependence on foreign
2 oil as a source of energy. The Legislature further finds that by
3 encouraging the use of natural gas-fueled and liquefied petroleum
4 gas-fueled motor vehicles, the state will be reducing its
5 dependence on foreign oil and attempting to improve its air
6 quality. The Legislature further finds that the wholesale cost of
7 fuel for certain natural gas-fueled and liquefied petroleum gas-
8 fueled motor vehicles is significantly lower than the cost of fuel
9 for traditional motor vehicles.

10 However, because the cost of motor vehicles which utilize
11 natural gas-fueled or liquefied petroleum gas- fueled technologies
12 remains high in relation to motor vehicles that employ more
13 traditional technologies, citizens of this state who might
14 otherwise choose a natural gas- fueled or liquefied petroleum gas-
15 fueled motor vehicle are forced by economic necessity to continue
16 using motor vehicles that are fueled by more conventional means.
17 Additionally, the availability of commercial infrastructure to
18 support natural gas-fueled and liquefied petroleum gas-fueled
19 vehicles available to the public is inadequate to encourage the use
20 of natural gas-fueled and liquefied petroleum gas-fueled motor
21 vehicles. It is the intent of the Legislature that the
22 alternative-fuel motor vehicle tax credit previously expired in
23 2006 be hereby reinstated with changes and amendments as set forth
24 herein. Therefore, in order to encourage the use of natural gas-

1 fueled and liquefied petroleum gas-fueled motor vehicles and
2 possibly reduce unnecessary pollution of our environment and reduce
3 our dependence on foreign sources of energy, there is hereby
4 created an alternative-fuel motor vehicle tax credit and an
5 alternative-fuel vehicle refueling infrastructure tax credit.

6 **§11-6D-2. Definitions.**

7 As used in this article, the following terms have the meanings
8 ascribed to them in this section.

9 (a) "*Alternative fuel*". -

10 (1) For purchase or installations occurring on and after
11 January 1, 2011, but prior to April 15, 2013, the term "alternative
12 fuel" means and includes:

13 (A) Compressed natural gas;

14 (B) Liquefied natural gas;

15 (C) Liquefied petroleum gas;

16 (D) Ethanol;

17 (E) Fuel mixtures that contain eighty-five percent or more by
18 volume, when combined with gasoline or other fuels, of the
19 following:

20 (i) Methanol;

21 (ii) Ethanol; or

22 (iii) Other alcohols;

23 (F) Natural gas hydrocarbons and derivatives;

24 (G) Hydrogen;

1 (H) Coal-derived liquid fuels; and
2 (I) Electricity, including electricity from solar energy.
3 (2) For purchases or installations occurring on or after April
4 15, 2013, the term "alternative fuel" means and is limited to:
5 (A) Compressed natural gas;
6 (B) Liquefied natural gas; or
7 (C) Liquefied petroleum gas.
8 (b) "Alternative-fuel motor vehicle" or "qualified motor
9 vehicle" means a motor vehicle that as a new or retrofitted or
10 converted fuel vehicle:
11 (1) Operates solely on one alternative fuel;
12 (2) Is capable of operating on one or more alternative fuels,
13 singly or in combination; or
14 (3) Is capable of operating on an alternative fuel and is also
15 capable of operating on gasoline or diesel fuel.
16 (c) "Bi-fueled motor vehicle" means a motor vehicle fueled
17 from two or more tanks, each of which stores a separate type of
18 fuel, which has the ability to operate on an alternative fuel and
19 another form of fuel. "Bi-fueled motor vehicles" as here defined
20 are alternative-fuel motor vehicles.
21 (d) "Liquefied petroleum gas" means fuel commonly known and
22 designated as "liquefied petroleum gas" or "LP gas". The term
23 "liquefied petroleum gas" also means and includes:
24 (1) Propane;

1 (2) Butane; or

2 (3) A mix of gases used as motor fuel which is predominantly
3 propane or butane, or predominantly a mixture of propane and
4 butane.

5 (e) "Plug-in hybrid electric vehicle" means:

6 (1) A plug-in hybrid electric vehicle manufactured by an
7 established motor vehicle manufacturer of plug-in hybrid electric
8 vehicles that can operate solely on electric power and that is
9 capable of recharging its battery from an on-board generation
10 source and an off-board electricity source; and

11 (2) A plug-in hybrid electric vehicle conversion that provides
12 an increase in city fuel economy of seventy-five percent or more as
13 compared to a comparable nonhybrid version vehicle for a minimum of
14 twenty miles and that is capable of recharging its battery from an
15 on-board generation source and an off-board electricity source. A
16 vehicle is comparable if it is the same model year and the same
17 vehicle class as established by the United States Environmental
18 Protection Agency and is comparable in weight, size and use. Fuel
19 economy comparisons shall be made using city fuel economy standards
20 in a manner that is substantially similar to the manner in which
21 city fuel economy is measured in accordance with procedures set
22 forth in 40 C. F. R. 600 as in effect on January 1, 2011.

23 (f) "Qualified alternative-fuel vehicle refueling
24 infrastructure" means property owned by the applicant for the tax

1 credit and used for storing alternative fuels and for dispensing
2 such alternative fuels into fuel tanks of motor vehicles,
3 including, but not limited to, natural gas supply lines,
4 compression equipment, storage tanks and dispensing units for
5 alternative fuel at the point where the fuel is delivered into a
6 motor vehicle for consumption: *Provided*, That the property is
7 installed and located in this state and is not located in or on a
8 private residence or private home.

9 (g) "Qualified alternative-fuel vehicle home refueling
10 infrastructure" means property owned by the applicant for the tax
11 credit located on a private residence or private home and used for
12 storing alternative fuels and for dispensing such alternative fuels
13 into fuel tanks of motor vehicles, including, but not limited to,
14 compression equipment, storage tanks and dispensing units for
15 alternative fuel at the point where the fuel is delivered or for
16 providing electricity to plug-in hybrid electric vehicles or
17 electric vehicles: *Provided*, That the property is installed and
18 located in this state.

19 (h) "Taxpayer" means any natural person, corporation, limited
20 liability company or partnership subject to the tax imposed under
21 article twenty-one, article twenty-three or article twenty-four of
22 this chapter or any combination thereof.

23 **§11-6D-3. Credit allowed for alternative-fuel motor vehicles and**
24 **qualified alternative-fuel vehicle refueling**

1 **infrastructure; application against personal income**
2 **tax, business franchise tax or corporate net income**
3 **tax; effective date.**

4 The tax credits for the purchase of alternative-fuel motor
5 vehicles or conversion to alternative-fuel motor vehicles,
6 qualified alternative-fuel vehicle refueling infrastructure and
7 qualified alternative-fuel vehicle home refueling infrastructure
8 provided in this article may be applied against the tax liability
9 of a taxpayer imposed by the provisions of either article
10 twenty-one, article twenty-three or article twenty-four of this
11 chapter, but in no case may more than one tax credit be granted
12 under this article or any combination of articles set forth in this
13 chapter for purchase of an alternative-fuel motor vehicle or for
14 costs relating to conversion to an alternative-fuel motor vehicle,
15 or for costs associated with alternative-fuel vehicle refueling
16 infrastructure or for costs associated with alternative-fuel home
17 refueling infrastructure as defined in this article. This credit
18 shall be available for those tax years beginning on or after
19 January 1, 2011, but shall not be available for, or with relation
20 to, any purchase, expenditure, investment, installation,
21 construction or conversion made in any tax year beginning after the
22 termination dates specified in this article, as applicable to
23 specified purchases, expenditures, investments, installations,
24 construction or conversions.

1 **§11-6D-4. Eligibility for credit.**

2 A taxpayer is eligible to claim the credit against tax
3 provided in this article if the taxpayer:

4 (a) Converts a motor vehicle that is presently registered in
5 West Virginia to operate exclusively on an alternative fuel as
6 defined in this article or to operate as a bi-fueled
7 alternative-fuel motor vehicle; or

8 (b) Purchases from an original equipment manufacturer or an
9 after-market conversion facility or any other automobile retailer,
10 a new dedicated alternative-fuel motor vehicle or bi-fueled
11 alternative-fuel motor vehicle for which the taxpayer then obtains
12 a valid West Virginia registration; or

13 (c) Constructs or purchases and installs qualified
14 alternative-fuel vehicle refueling infrastructure that is capable
15 of dispensing alternative fuel for alternative-fuel motor vehicles.

16 (d) (1) The credit provided in this article is not available
17 to and may not be claimed by any taxpayer under any obligation
18 pursuant to any federal or state law, policy or regulation to
19 convert to the use of alternative fuels for any motor vehicle.

20 (2) The credit provided in this article is not available to
21 and may not be claimed by any taxpayer for construction or purchase
22 and installation of alternative-fuel vehicle home refueling
23 infrastructure on or after April 15, 2013.

24 (e) The credit provided in this article for purchase of an

1 alternative-fuel motor vehicle or conversion of a motor vehicle to
2 an alternative-fuel motor vehicle, is not available to and may not
3 be claimed by any taxpayer in, or for, any tax year in which the
4 taxpayer did not own the alternative-fuel motor vehicle for which
5 the claim is filed on the last day of the taxpayer's tax year for
6 which the credit is claimed.

7 (f) *Effective date.* -

8 The amendments to this article enacted in the 2013 Regular
9 Legislative Session shall be effective upon passage.

10 **§11-6D-5. Amount of credit for alternative-fuel motor**
11 **vehicles.**

12 (a) For taxable years beginning on and after January 1, 2011,
13 but prior to termination or cessation of this credit as specified
14 in this article, the amount of the credit allowed under this
15 article for an alternative-fuel motor vehicle that weighs less than
16 twenty-six thousand pounds is thirty-five percent of the purchase
17 price of the alternative-fuel motor vehicle up to a maximum amount
18 of \$7,500 or fifty percent of the actual cost of converting from a
19 traditionally fueled motor vehicle to an alternative-fuel motor
20 vehicle up to a maximum amount of \$7,500.

21 (b) For taxable years beginning on and after January 1, 2011,
22 but prior to termination or cessation of this credit as specified
23 in this article, the amount of the credit allowed under this
24 article for an alternative-fuel motor vehicle that weighs more than

1 twenty-six thousand pounds is thirty-five percent of the purchase
2 price of the alternative-fuel motor vehicle up to a maximum amount
3 of \$25,000 or fifty percent of the actual cost of converting from
4 a traditionally fueled motor vehicle to an alternative-fuel motor
5 vehicle up to a maximum amount of \$25,000.

6 **§11-6D-6. Amount of credit for qualified alternative-fuel vehicle**
7 **refueling infrastructure.**

8 (a) For taxable years beginning on and after January 1, 2011,
9 but prior to January 1, 2014, the amount of the credit allowed
10 under this article for qualified alternative-fuel vehicle refueling
11 infrastructure is equal to fifty percent of the total costs
12 directly associated with the construction or purchase and
13 installation of the alternative-fuel vehicle refueling
14 infrastructure up to a maximum of \$250,000: *Provided*, That if the
15 qualified alternative-fuel vehicle refueling infrastructure is
16 generally accessible for public use, the amount of the credit
17 allowed will be multiplied by 1.25 and the maximum amount allowable
18 will be \$312,500. The amount of credit allowed may not exceed the
19 cost of construction of the alternative-fuel vehicle refueling
20 infrastructure.

21 (b) For taxable years beginning on and after January 1, 2014,
22 but prior to termination or cessation of this credit as specified
23 in this article, the amount of the credit allowed under this
24 article for qualified alternative-fuel vehicle refueling

1 infrastructure is equal to twenty percent per facility of the total
2 costs directly associated with the construction or purchase and
3 installation of the alternative-fuel vehicle refueling
4 infrastructure up to a maximum of \$400,000 per facility.

5 (c) The cost of construction of the alternative-fuel vehicle
6 refueling infrastructure or alternative-fuel vehicle home refueling
7 infrastructure eligible for a tax credit under this article does
8 not include costs associated with exploration, development or
9 production activities necessary for severing natural resources from
10 the soil or ground.

11 (d) When the taxpayer is a pass-through entity treated like a
12 partnership for federal and state income tax purposes, the credit
13 allowed under this article for the year shall flow through to the
14 equity owners of the pass-through entity in any manner that such
15 equity owners see fit and is not required to flow through such
16 equity owners in the same manner as distributive share flows
17 through to the equity owners and in accordance with any legislative
18 rule the Tax Commissioner may propose for legislative approval in
19 accordance with article three, chapter twenty-nine-a of this code
20 to administer this section.

21 (e) No credit allowed by this article may be applied against
22 employer withholding taxes imposed by article twenty-one of this
23 chapter.

24 **§11-6D-7. Duration of availability of credit.**

1 No person is eligible to receive a tax credit under this
2 article for:

3 (1) An alternative-fuel motor vehicle purchased after December
4 31, 2017;

5 (2) A vehicle converted to an alternative-fuel motor vehicle
6 after December 31, 2017;

7 (3) The construction or purchase and installation of qualified
8 alternative-fuel vehicle refueling infrastructure occurring after
9 December 31, 2017;

10 (4) The construction or purchase and installation of qualified
11 alternative-fuel vehicle home refueling infrastructure occurring on
12 or after April 15, 2013;

13 (5) Purchases of motor vehicles that operate on fuels other
14 than compressed natural gas, liquefied natural gas or liquefied
15 petroleum gas, occurring on or after April 15, 2013; or

16 (6) Conversions of motor vehicles to operate on fuels other
17 than compressed natural gas, liquefied natural gas or liquefied
18 petroleum gas, occurring on or after April 15, 2013.

19 **§11-6D-9. Carryover credit allowed; recapture of credit.**

20 (a) If the alternative-fuel motor vehicle tax credit allowed
21 under this article in the first taxable year in which the tax
22 credit is allowable to offset tax exceeds the taxpayer's tax
23 liability as determined in accordance with article twenty-one,
24 article twenty-three and article twenty-four of this chapter for

1 that taxable year, the excess may be applied for not more than the
2 four next succeeding taxable years until the excess tax credit is
3 used or the end of the fourth next succeeding taxable year,
4 whichever occurs first. Any excess credit remaining at the end of
5 the fourth next succeeding taxable year shall be forfeited.

6 (b) If the qualified alternative-fuel vehicle refueling
7 infrastructure tax credit allowed under this article in any taxable
8 year exceeds the taxpayer's tax liability as determined in
9 accordance with article twenty-one, article twenty-three or article
10 twenty-four of this chapter for that taxable year, the excess may
11 be applied for succeeding taxable years until the full amount of
12 the excess tax credit is used.

13 (c) No carryback to a prior taxable year is allowed for the
14 amount of any unused credit in any taxable year.

15 (d) A tax credit is subject to recapture, elimination or
16 reduction if it is determined by the State Tax Commissioner that a
17 taxpayer was not entitled to the credit, in whole or in part, in
18 the tax year in which it was claimed by the taxpayer. The amount
19 of credit that flows through to equity owners of a pass-through
20 entity may be recaptured or recovered from either the taxpayer or
21 the equity owners in the discretion of the Tax Commissioner.

22 (e) The tax credit allowed under this article may not be sold,
23 transferred or assigned to any person or entity. The tax credit
24 allowed under this article does not attach to or follow the

1 qualified motor vehicle or qualified infrastructure upon sale,
2 resale, transfer, assignment or any other change of ownership of
3 such vehicle or infrastructure. Credit shall not be available to
4 any successor owner of any qualified motor vehicle or any qualified
5 infrastructure property for which the credit was available to the
6 original owner or predecessor owner.