

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2110

FISCAL
NOTE

2015 Carryover

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[Introduced January 13, 2016; referred to the
Committee on Small Business, Entrepreneurship
and Economic Development then Finance]

1 A BILL to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §11-13S-3 and §11-13S-4 of said code, all relating generally to the
 3 tax treatment of manufacturing entities generally; amending definition of manufacturing for
 4 purposes of special method for appraising qualified capital additions to manufacturing
 5 facilities for property tax purposes; amending definition of manufacturing for purposes of
 6 manufacturing investment tax credit; and the amount of credit allowed for manufacturing
 7 investment, to include small arms manufacturing.

Be it enacted by the Legislature of West Virginia:

1 That §11-6F-2 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §11-13S-3 and §11-13S-4 of said code be amended and reenacted, all to
 3 read as follows:

**ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL
 ADDITIONS TO MANUFACTURING FACILITIES.**

§11-6F-2. Definitions.

1 As used in this article, the term:

2 (a) "Certified capital addition property" means all real property and personal property
 3 included within or to be included within a qualified capital addition to a manufacturing facility that
 4 has been certified by the State Tax Commissioner in accordance with section four of this article:
 5 *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles shall in no
 6 event constitute certified capital addition property.

7 (b) "Manufacturing" means any business activity classified as having a sector identifier,
 8 consisting of the first two digits of the six-digit North American Industry Classification System code
 9 number of thirty-one, thirty-two or thirty-three or the six digit code number 211112; or, the six-digit
 10 North American Industry Classification System code numbers 332992 and 332994.

11 (c) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse,
12 building or complex of buildings, including land on which it is located, and all machinery,
13 equipment, improvements and other real property and personal property located at or within the
14 facility used in connection with the operation of the facility in a manufacturing business.

15 (d) "Personal property" means all property specified in subdivision (q), section ten, article
16 two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and
17 equipment, pollution control equipment, computers and related data processing equipment, spare
18 parts and supplies.

19 (e) "Qualified capital addition to a manufacturing facility" means either:

20 (1) All real property and personal property, the combined original cost of which exceeds
21 \$50 million to be constructed, located or installed at or within two miles of a manufacturing facility
22 owned or operated by the person making the capital addition that has a total original cost before
23 the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical or
24 polymer alliance zone as designated from time-to-time by executive order of the Governor, then
25 the person making the capital addition may for purposes of satisfying the requirements of this
26 subsection join in a multiparty project with a person owning or operating a manufacturing facility
27 that has a total original cost before the capital addition of at least \$100 million if the capital addition
28 creates additional production capacity of existing or related products or feedstock or derivative
29 products respecting the manufacturing facility, consists of a facility used to store, handle, process
30 or produce raw materials for the manufacturing facility, consists of a facility used to store, handle
31 or process natural gas to produce fuel for the generation of steam or electricity for the
32 manufacturing facility or consists of a facility that generates steam or electricity for the
33 manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for
34 the manufacturing facility's use in heating, manufacturing or generation of electricity. Beginning

35 on and after July 1, 2011, when the new capital addition is a facility that is or will be classified
36 under the North American Industry Classification System with a six digit code number 211112, or
37 is a manufacturing facility that uses product produced at a facility with code number 211112, then
38 wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted
39 and where the term "50 million" is used, the term "10 million" shall be substituted; and that
40 beginning on and after July 1, 2015, when the new capital addition is a facility that is or will be
41 classified under the North American Industry Classification System with a six-digit North American
42 Industry Classification System code a product produced at a facility with code numbers 332992
43 and 332994, then wherever the term "100 million" is used in this subsection, the term "2 million"
44 shall be substituted and where the term "50 million" is used, the term "1 million" shall be
45 substituted; or

46 (2) (A) All real property and personal property, the combined original cost of which exceeds
47 \$2 billion to be constructed, located or installed at a facility, or a combination of facilities by a
48 single entity or combination of entities engaged in a unitary business, that:

49 (i) Is or will be classified under the North American Industry Classification System with a
50 six digit code number 211112, or, the six-digit North American Industry Classification System
51 code numbers 332992 and 332994; or

52 (ii) Is a manufacturing facility that uses one or more products produced at a facility with
53 code number 211112; or, the six-digit North American Industry Classification System code
54 numbers 332992 and 332994; or

55 (iii) Is a manufacturing facility that uses one or more products produced at a facility
56 described in subparagraph (ii) of this subdivision.

57 (B) No preexisting investment made, or in place before the capital addition shall be
58 required for property specified in this subdivision (2). The requirements set forth in subdivision (1)

59 of this subsection shall not apply to property specified in this subdivision (2) relating to:

60 (i) Location or installation of investment at or within two miles of a manufacturing facility
61 owned or operated by the person making the capital addition;

62 (ii) Total original cost of preexisting investment before the capital addition of at least \$100
63 million or \$20 million; or

64 (iii) Multiparty projects.

65 (f) "Real property" means all property specified in subdivision (p), section ten, article two,
66 chapter two of this code and includes, but is not limited to, lands, buildings and improvements on
67 the land such as sewers, fences, roads, paving and leasehold improvements: *Provided, That*
68 for capital additions certified on or after July 1, 2011, the value of the land before any
69 improvements shall be subtracted from the value of the capital addition and the unimproved land
70 value shall not be given salvage value treatment.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-3. Definitions.

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

3 (b) For purpose of this article, the term:

4 (1) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the
5 purpose of industrial expansion or for the purpose of industrial revitalization of an existing
6 industrial facility in this state.

7 (2) "Industrial expansion" means capital investment in a new or expanded industrial facility
8 in this state.

9 (3) "Industrial facility" means any factory, mill, plant, refinery, warehouse, building or
10 complex of buildings located within this state, including the land on which it is located, and all

11 machinery, equipment and other real and tangible personal property located at or within the facility
12 primarily used in connection with the operation of the manufacturing business.

13 (4) "Industrial revitalization" or "revitalization" means capital investment in an industrial
14 facility located in this state to replace or modernize buildings, equipment, machinery and other
15 tangible personal property used in connection with the operation of the facility in an industrial
16 business of the taxpayer including the acquisition of any real property necessary to the industrial
17 revitalization.

18 (5) "Industrial taxpayer" means any taxpayer who is primarily engaged in a manufacturing
19 business.

20 (6) "Manufacturing" means any business activity classified as having a sector identifier,
21 consisting of the first two digits of the six-digit North American Industry Classification System code
22 number, of thirty-one, thirty-two or thirty-three or the six digit code number 211112 or the six digit
23 code number 211112 or the six-digit North American Industry Classification System code
24 numbers 332992 and 332994.

25 (7) "Property purchased for manufacturing investment" means real property, and
26 improvements thereto, and tangible personal property but only if the property was constructed or
27 purchased on or after January 1, 2003, for use as a component part of a new, expanded or
28 revitalized industrial facility. This term includes only that tangible personal property with respect
29 to which depreciation, or amortization in lieu of depreciation, is allowable in determining the
30 federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property
31 is placed in service or use in this state, of four years or more. Property acquired by written lease
32 for a primary term of ten years or longer, if used as a component part of a new or expanded
33 industrial facility, is included within this definition.

34 (A) "Property purchased for manufacturing investment" does not include:

35 (i) Repair costs, including materials used in the repair, unless for federal income tax
36 purposes, the cost of the repair must be capitalized and not expensed;

37 (ii) Motor vehicles licensed by the Department of Motor Vehicles;

38 (iii) Airplanes;

39 (iv) Off-premises transportation equipment;

40 (v) Property which is primarily used outside this state; and

41 (vi) Property which is acquired incident to the purchase of the stock or assets of an
42 industrial taxpayer which property was or had been used by the seller in his or her industrial
43 business in this state or in which investment was previously the basis of a credit against tax taken
44 under any other article of this chapter.

45 (B) Purchases or acquisitions of land or depreciable property qualify as purchases of
46 property purchased for manufacturing investment for purposes of this article only if:

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

50 (ii) The property is not acquired from a related person or by one component member of a
51 controlled group from another component member of the same controlled group. The Tax
52 Commissioner may waive this requirement if the property was acquired from a related party for
53 its then fair market value; and

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

58 (8) "Qualified manufacturing investment" means that amount determined under section

59 five of this article as qualified manufacturing investment.

60 (9) "Taxpayer" means any person subject to any of the taxes imposed by article thirteen-a,
61 twenty-three or twenty-four of this chapter or any combination of those articles of this chapter.

§11-13S-4. Amount of credit allowed for manufacturing investment.

1 (a) *Credit allowed.* -- There is allowed to eligible taxpayers and to persons described in
2 subdivision (5), subsection (b) of this section a credit against the taxes imposed by articles
3 thirteen-a, twenty-three and twenty-four of this chapter: *Provided*, That a tax credit for any eligible
4 taxpayer operating a business activity classified as having a sector identifier, consisting of the six
5 digit code number 211112 or, the six-digit North American Industry Classification System code
6 numbers 332992 and 332994 such eligible taxpayer must comply with the provisions of
7 subsection (e) of this section for all construction related thereto in order to be eligible for any credit
8 under this article. The amount of credit shall be determined as hereinafter provided in this
9 section.

10 (b) *Amount of credit allowable.* -- The amount of allowable credit under this article is
11 equal to five percent of the qualified manufacturing investment (as determined in section five of
12 this article) and shall reduce the severance tax, imposed under article thirteen-a of this chapter,
13 the business franchise tax imposed under article twenty-three of this chapter and the corporation
14 net income tax imposed under article twenty-four of this chapter, in that order, subject to the
15 following conditions and limitations:

16 (1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth
17 thereof per taxable year, beginning with the taxable year in which the property purchased for
18 manufacturing investment is first placed in service or use in this state;

19 (2) *Severance tax.* -- The credit is applied to reduce the severance tax imposed under
20 article thirteen-a of this chapter (determined before application of the credit allowed by section

21 three, article twelve-b of this chapter and before any other allowable credits against tax and before
22 application of the annual exemption allowed by section ten, article thirteen-a of this chapter).
23 The amount of annual credit allowed may not reduce the severance tax, imposed under article
24 thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such
25 taxable year in the absence of this credit against tax: *Provided*, That for tax years beginning on
26 and after January 1, 2009, the amount of annual credit allowed may not reduce the severance
27 tax, imposed under article thirteen-a of this chapter, below forty percent of the amount which
28 would be imposed for such taxable year in the absence of this credit against tax. When in any
29 taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this
30 chapter, the total amount of all credits allowable for the taxable year may not reduce the amount
31 of the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the
32 amount which would be imposed for such taxable year (determined before application of the credit
33 allowed by section three, article twelve-b of this chapter and before any other allowable credits
34 against tax and before application of the annual exemption allowed by section ten, article
35 thirteen-a of this chapter): *Provided, however*, That when in any taxable year beginning on and
36 after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d
37 of this chapter, the total amount of all credits allowable for the taxable year may not reduce the
38 amount of the severance tax imposed under article thirteen-a of this chapter, below forty percent
39 of the amount which would be imposed for such taxable year as determined before application of
40 the credit allowed by section three, article twelve-b of this chapter and before any other allowable
41 credits against tax and before application of the annual exemption allowed by section ten, article
42 thirteen-a of this chapter;

43 (3) *Business franchise tax.* --

44 After application of subdivision (2) of this subsection, any unused credit is next applied to

45 reduce the business franchise tax imposed under article twenty-three of this chapter (determined
46 after application of the credits against tax provided in section seventeen, article twenty-three of
47 this chapter, but before application of any other allowable credits against tax). The amount of
48 annual credit allowed will not reduce the business franchise tax, imposed under article
49 twenty-three of this chapter, below fifty percent of the amount which would be imposed for such
50 taxable year in the absence of this credit against tax: *Provided*, That for tax years beginning on
51 and after January 1, 2009, the amount of annual credit allowed will not reduce the business
52 franchise tax, imposed under article twenty-three of this chapter, below forty percent of the
53 amount which would be imposed for such taxable year in the absence of this credit against tax.
54 When in any taxable year the taxpayer is entitled to claim credit under this article and article
55 thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not
56 reduce the amount of the business franchise tax, imposed under article twenty-three of this
57 chapter, below fifty percent of the amount which would be imposed for the taxable year
58 (determined after application of the credits against tax provided in section seventeen, article
59 twenty-three of this chapter, but before application of any other allowable credits against tax):
60 *Provided, however*, That when in any taxable year beginning on and after January 1, 2009, the
61 taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total
62 amount of all credits allowable for the taxable year will not reduce the amount of the business
63 franchise tax, imposed under article twenty-three of this chapter, below forty percent of the
64 amount which would be imposed for the taxable year as determined after application of the credits
65 against tax provided in section seventeen, article twenty-three of this chapter, but before
66 application of any other allowable credits against tax;

67 (4) *Corporation net income tax.* --

68 After application of subdivision (3) of this subsection, any unused credit is next applied to

69 reduce the corporation net income tax imposed under article twenty-four of this chapter
70 (determined before application of any other allowable credits against tax). The amount of annual
71 credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this
72 chapter, below fifty percent of the amount which would be imposed for such taxable year in the
73 absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1,
74 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed
75 under article twenty-four of this chapter, below forty percent of the amount which would be
76 imposed for such taxable year in the absence of this credit against tax. When in any taxable
77 year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter,
78 the total amount of all credits allowable for the taxable year may not reduce the amount of the
79 corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent
80 of the amount which would be imposed for the taxable year (determined before application of any
81 other allowable credits against tax): *Provided, however*, That when in any taxable year beginning
82 on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article
83 thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not
84 reduce the amount of the corporation net income tax, imposed under article twenty-four of this
85 chapter, below forty percent of the amount which would be imposed for the taxable year as
86 determined before application of any other allowable credits against tax;

87 (5) *Pass-through entities.* --

88 (A) If the eligible taxpayer is a limited liability company, small business corporation or a
89 partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this
90 subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter
91 on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer
92 by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that

93 are imposed on income directly derived by the owner from the eligible taxpayer are subject to
94 offset by this credit.

95 (B) The amount of annual credit allowed will not reduce corporation net income tax,
96 imposed under article twenty-four of this chapter, below fifty percent of the amount which would
97 be imposed on the conduit income directly derived from the eligible taxpayer by each owner for
98 such taxable year in the absence of this credit against the taxes (determined before application
99 of any other allowable credits against tax): *Provided*, That for tax years beginning on and after
100 January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax,
101 imposed under article twenty-four of this chapter, below forty percent of the amount which would
102 be imposed on the conduit income directly derived from the eligible taxpayer by each owner for
103 such taxable year in the absence of this credit against the taxes as determined before application
104 of any other allowable credits against tax.

105 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and
106 article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will
107 not reduce the corporation net income tax imposed on the conduit income directly derived from
108 the eligible taxpayer by each owner below fifty percent of the amount that would be imposed for
109 such taxable year on the conduit income (determined before application of any other allowable
110 credits against tax): *Provided*, That when in any taxable year beginning on and after January 1,
111 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter,
112 the total amount of all credits allowable for the taxable year will not reduce the corporation net
113 income tax imposed on the conduit income directly derived from the eligible taxpayer by each
114 owner below forty percent of the amount that would be imposed for such taxable year on the
115 conduit income as determined before application of any other allowable credits against tax;

116 (6) Small business corporations, limited liability companies, partnerships and other

117 unincorporated organizations shall allocate any unused credit after application of subdivisions (2),
118 (3) and (4) of this subsection among their members in the same manner as profits and losses are
119 allocated for the taxable year; and

120 (7) No credit is allowed under this article against any tax imposed by article twenty-one of
121 this chapter.

122 (c) No carryover to a subsequent taxable year or carryback to a prior taxable year is
123 allowed for the amount of any unused portion of any annual credit allowance. Any unused credit
124 is forfeited.

125 (d) *Application for credit required.* --

126 (1) *Application required.* -- Notwithstanding any provision of this article to the contrary,
127 no credit is allowed or may be applied under this article for any qualified investment property
128 placed in service or use until the person claiming the credit makes written application to the Tax
129 Commissioner for allowance of credit as provided in this section. This application shall be in the
130 form prescribed by the Tax Commissioner and shall provide the number and type of jobs created,
131 if any, by the manufacturing investment, the average wage rates and benefits paid to employees
132 filling the new jobs and any other information the Tax Commissioner may require. This
133 application shall be filed with the Tax Commissioner no later than the last day for filing the annual
134 return, determined by including any authorized extension of time for filing the return, required
135 under article twenty-one or twenty-four of this chapter for the taxable year in which the property
136 to which the credit relates is placed in service or use.

137 (2) *Failure to file.* -- The failure to timely apply the application for credit under this section
138 results in forfeiture of fifty percent of the annual credit allowance otherwise allowable under this
139 article. This penalty applies annually until the application is filed.

140 (e) (1) Any person or entity undertaking any construction related to any business activity

141 included within North American Industrial Code six-digit code number 211112, the value of which
142 is an amount equal to or greater than \$500,000, shall hire at least seventy-five percent of
143 employees for said construction from the local labor market, to be rounded off, with at least two
144 employees from outside the local labor market permissible for each employer per project, “the
145 local labor market” being defined as every county in West Virginia and any county outside of West
146 Virginia if any portion of that county is within fifty miles of the border of West Virginia.

147 (2) Any person or entity unable to employ the minimum number of employees from the
148 local labor market shall inform the nearest office of the bureau of employment programs’ division
149 of employment services of the number of qualified employees needed and provide a job
150 description of the positions to be filled.

151 (3) If, within three business days following the placing of a job order, the division is unable
152 to refer any qualified job applicants to the person or entity engaged in said construction or refers
153 less qualified job applicants than the number requested, then the division shall issue a waiver to
154 the person or entity engaged in said construction stating the unavailability of applicants and shall
155 permit the person or entity engaged in said construction to fill any positions covered by the waiver
156 from outside the local labor market. The waiver shall be either oral or in writing and shall be
157 issued within the prescribed three days. A waiver certificate shall be sent to the person or entity
158 engaged in said construction for its permanent project records.

159 (f) The amendments made to section three of this article, this section and to section two,
160 article six-f of this chapter are enacted to provide manufacturing investment tax credit to small
161 arms manufacturers and may be cited as the “West Virginia Small Arms Investment Act”.

NOTE: The purpose of this bill is to provide manufacturing investment tax credit generally for small arms manufacturing. It amends the definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes and the definition of manufacturing for purposes of manufacturing investment tax credit.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.