

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2513

**FISCAL
NOTE**

BY DELEGATE HOWELL

[Introduced February 16, 2017; 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-4 of said code, all relating to the tax treatment of
 3 manufacturing entities generally; amending definition of manufacturing for purposes of
 4 special method for appraising qualified capital additions to manufacturing facilities for
 5 property tax purposes; amending the formula for calculating credit allowed for
 6 manufacturing investment to include Small Arms Ammunition Manufacturing and Small
 7 Arms, Ordinance and Ordinance Accessories Manufacturing; and increasing the amount
 8 of such allowable credit.

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-4 of said code be amended and reenacted, all to 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.

10 (c) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse,
 11 building or complex of buildings, including land on which it is located, and all machinery,

12 equipment, improvements and other real property and personal property located at or within the
13 facility used in connection with the operation of the facility in a manufacturing business.

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

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

19 (1) All real property and personal property, the combined original cost of which exceeds
20 \$50 million to be constructed, located or installed at or within two miles of a manufacturing facility
21 owned or operated by the person making the capital addition that has a total original cost before
22 the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical or
23 polymer alliance zone as designated from time-to-time by executive order of the Governor, then
24 the person making the capital addition may for purposes of satisfying the requirements of this
25 subsection join in a multiparty project with a person owning or operating a manufacturing facility
26 that has a total original cost before the capital addition of at least \$100 million if the capital addition
27 creates additional production capacity of existing or related products or feedstock or derivative
28 products respecting the manufacturing facility, consists of a facility used to store, handle, process
29 or produce raw materials for the manufacturing facility, consists of a facility used to store, handle
30 or process natural gas to produce fuel for the generation of steam or electricity for the
31 manufacturing facility or consists of a facility that generates steam or electricity for the
32 manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for
33 the manufacturing facility's use in heating, manufacturing or generation of electricity. Beginning
34 on and after July 1, 2011, when the new capital addition is a facility that is or will be classified
35 under the North American Industry Classification System with a six digit code number 211112, or
36 is a manufacturing facility that uses product produced at a facility with code number 211112, then
37 wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted

38 and where the term “50 million” is used, the term “10 million” shall be substituted; and that
39 beginning on and after July 1, 2017, when the new capital addition is a facility that is or will be
40 classified under the North American Industry Classification System with a six-digit North American
41 Industry Classification System code a product produced at a facility with code numbers 332992
42 and 332994, then wherever the term “100 million” is used in this subsection, the term “2 million”
43 shall be substituted and where the term “50 million” is used, the term “1 million” shall be
44 substituted; or

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

48 (i) Is or will be classified under the North American Industry Classification System with a
49 six digit code number 211112;

50 (ii) Is a manufacturing facility that uses one or more products produced at a facility with
51 code number 211112; or

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

54 (B) All real property and personal property, the combined original cost of which exceeds
55 \$2 million to be constructed, located or installed at a facility, or a combination of facilities by a
56 single entity or combination of entities engaged in a unitary business, that is or will be classified
57 under North American Industry Classification System with a six digit code number 332992 or
58 332994.

59 (C) No preexisting investment made, or in place before the capital addition shall be
60 required for property specified in this subdivision (2). The requirements set forth in subdivision (1)
61 of this subsection shall not apply to property specified in this subdivision (2) relating to:

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

64 (ii) Total original cost of preexisting investment before the capital addition of at least \$100
 65 million or, \$20 million or \$2 million; or

66 (iii) Multiparty projects.

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

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§§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 such eligible taxpayer must comply with the provisions of subsection
 6 (e) of this section for all construction related thereto in order to be eligible for any credit under this
 7 article. The amount of credit shall be determined as hereinafter provided in this section.

8 (b) *Amount of credit allowable.* — The amount of allowable credit under this article is equal
 9 to five percent of the qualified manufacturing investment (as determined in section five of this
 10 article): *Provided*, That the amount of allowable credit under this article is equal to fifty percent of
 11 the qualified manufacturing investment (as determined in section five of this article) for any eligible
 12 taxpayer operating a business activity classified as having a sector identifier, consisting of the six
 13 digit code number 332992 or 332994. This credit shall reduce reduces the severance tax,
 14 imposed under article thirteen-a of this chapter, the business franchise tax imposed under article

15 twenty-three of this chapter and the corporation net income tax imposed under article twenty-four
16 of this chapter, in that order, subject to the following conditions and limitations:

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

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

41 the credit allowed by section three, article twelve-b of this chapter and before any other allowable
42 credits against tax and before application of the annual exemption allowed by section ten, article
43 thirteen-a of this chapter;

44 (3) *Business franchise tax.* —

45 After application of subdivision (2) of this subsection, any unused credit is next applied to
46 reduce the business franchise tax imposed under article twenty-three of this chapter (determined
47 after application of the credits against tax provided in section seventeen, article twenty-three of
48 this chapter, but before application of any other allowable credits against tax). The amount of
49 annual credit allowed will not reduce the business franchise tax, imposed under article twenty-
50 three of this chapter, below fifty percent of the amount which would be imposed for such taxable
51 year in the absence of this credit against tax: *Provided*, That for tax years beginning on and after
52 January 1, 2009, the amount of annual credit allowed will not reduce the business franchise tax,
53 imposed under article twenty-three of this chapter, below forty percent of the amount which would
54 be imposed for such taxable year in the absence of this credit against tax. When in any taxable
55 year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter,
56 the total amount of all credits allowable for the taxable year will not reduce the amount of the
57 business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of
58 the amount which would be imposed for the taxable year (determined after application of the
59 credits against tax provided in section seventeen, article twenty-three of this chapter, but before
60 application of any other allowable credits against tax): *Provided, however*, That when in any
61 taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under
62 this article and article thirteen-d of this chapter, the total amount of all credits allowable for the
63 taxable year will not reduce the amount of the business franchise tax, imposed under article
64 twenty-three of this chapter, below forty percent of the amount which would be imposed for the
65 taxable year as determined after application of the credits against tax provided in section
66 seventeen, article twenty-three of this chapter, but before application of any other allowable

67 credits against tax;

68 (4) *Corporation net income tax.* —

69 After application of subdivision (3) of this subsection, any unused credit is next applied to
70 reduce the corporation net income tax imposed under article twenty-four of this chapter
71 (determined before application of any other allowable credits against tax). The amount of annual
72 credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this
73 chapter, below fifty percent of the amount which would be imposed for such taxable year in the
74 absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1,
75 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed
76 under article twenty-four of this chapter, below forty percent of the amount which would be
77 imposed for such taxable year in the absence of this credit against tax. When in any taxable year
78 the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the
79 total amount of all credits allowable for the taxable year may not reduce the amount of the
80 corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent
81 of the amount which would be imposed for the taxable year (determined before application of any
82 other allowable credits against tax): *Provided, however*, That when in any taxable year beginning
83 on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article
84 thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not
85 reduce the amount of the corporation net income tax, imposed under article twenty-four of this
86 chapter, below forty percent of the amount which would be imposed for the taxable year as
87 determined before application of any other allowable credits against tax;

88 (5) *Pass-through entities.* —

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

93 by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that
94 are imposed on income directly derived by the owner from the eligible taxpayer are subject to
95 offset by this credit.

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

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

117 (6) Small business corporations, limited liability companies, partnerships and other
118 unincorporated organizations shall allocate any unused credit after application of subdivisions (2),

119 (3) and (4) of this subsection among their members in the same manner as profits and losses are
120 allocated for the taxable year; and

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

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

126 (d) *Application for credit required.* —

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

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

141 (e) (1) Any person or entity undertaking any construction related to any business activity
142 included within North American Industrial Code six-digit code number 211112, the value of which
143 is an amount equal to or greater than \$500,000, shall hire at least seventy-five percent of

144 employees for said construction from the local labor market, to be rounded off, with at least two
145 employees from outside the local labor market permissible for each employer per project, “the
146 local labor market” being defined as every county in West Virginia and any county outside of West
147 Virginia if any portion of that county is within fifty miles of the border of West Virginia.

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

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

NOTE: The purpose of this bill is to amend the definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes. The bill amends the formula for calculating credit allowed for manufacturing investment to include Small Arms Ammunition Manufacturing and Small Arms, Ordinance and Ordinance Accessories Manufacturing. The bill increases the amount of such allowable credit.

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