

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Originating

House Bill 4626

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[Originating in the Committee on Finance;

Reported on February 22, 2018.]

1 A BILL to amend and reenact §11-13BB-3, §11-13BB-4 and §11-13BB-14 of the Code of West
2 Virginia, 1931, as amended, all relating to the West Virginia innovative mine safety
3 technology tax credit act; requiring that proximity detection systems, cameras and
4 underground safety shelters and the refurbishing thereof be on the list of approved
5 innovative mine safety technology; providing exception to intent of the Legislature as to
6 description of what should be on the list; extending the tax credit authorized for qualified
7 investment in eligible safety property under the act; and correcting cross-references.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX
CREDIT ACT.**

§11-13BB-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 purposes of this article, the term:

4 (1) "Certified eligible safety property" means eligible safety property in which an eligible
5 taxpayer has made qualified investment for which credit has been certified under this article.

6 (2) "Coal mining company" means:

7 (A) A person subject to tax imposed on the severance of coal by section three, article
8 thirteen-a of this chapter; or

9 (B) A person working as a contract miner of coal, mining coal in this state, under contract
10 with a person subject to tax imposed on the severance of coal by section three, article thirteen-a
11 of this chapter.

12 (3) "Director" means the Director of the Office of Miners' Health, Safety and Training or
13 West Virginia Office of Miners' Health, Safety and Training established under article one, chapter
14 twenty two-a of this code.

15 (4) "Eligible safety property" means safety technology equipment that, at the time of
16 acquisition, is on the list of approved innovative mine safety technology: *Provided*, That eligible
17 safety property includes proximity detection systems and cameras used on continuous mining
18 machines and underground haulage equipment and machine mounted methane monitors
19 required by section forty-three, article two, chapter twenty-two-a of this code.

20 (5) "Eligible taxpayer" means a coal mining company that purchases eligible safety
21 property.

22 (6) "List of approved innovative mine safety technology" means the list required to be
23 compiled and maintained by the ~~Mine Safety Technology Task Force~~ Board of Coal Mine Health
24 and Safety and approved and published by the director under this article: *Provided*, That proximity
25 detection systems, cameras and underground safety shelters and the refurbishing thereof shall
26 qualify and be on the list whether required or not.

27 (7) "Office of Miners' Health, Safety and Training" or "West Virginia Office of Miners'
28 Health, Safety and Training" means the Office of Miners' Health, Safety and Training established
29 under article one, chapter twenty two-a of this code.

30 (8) "Person" includes any corporation, limited liability company or partnership.

31 (9) "Qualified investment" means the eligible taxpayer's investment in eligible safety
32 property pursuant to a qualified purchase as qualified and limited by section six of this article.

33 (10) "Qualified purchase" means and includes only acquisitions of eligible safety property
34 for use in this state.

35 (A) A lease of eligible safety property may constitute a qualified purchase if the lease was
36 entered into and became effective at a time when the equipment is on the list of approved
37 innovative mine safety technology and if the primary term of the lease for the eligible safety
38 property is five years or more. Leases having a primary term of less than five years do not qualify.

39 (B) "Qualified purchase" does not include:

40 (i) Purchases or leases of realty or any cost for, or related to, the construction of a building,
41 facility or structure attached to realty;

42 (ii) Purchases or leases of property not exclusively used in West Virginia;

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

45 (iv) Motor vehicles licensed by the Division of Motor Vehicles;

46 (v) Clothing;

47 (vi) Airplanes;

48 (vii) Off-premises transportation equipment;

49 (viii) Leases of tangible personal property having a primary term of less than five years;

50 (ix) Property that is used outside this state; and

51 (x) Property that is acquired incident to the purchase of the stock or assets of an industrial
52 taxpayer that was or had been used by the seller in his or her industrial business in this state or
53 in which investment was previously the basis of a credit against tax taken under any other article
54 of this chapter.

55 (C) Acquisitions, including leases, of eligible safety property may constitute qualified
56 purchases for purposes of this article only if:

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

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

64 (iii) The basis of the property for federal income tax purposes, in the hands of the person
65 acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of

66 the property in the hands of the person from whom it was acquired or under Section 1014(e) of
67 the United States Internal Revenue Code of 1986, as amended.

68 (11) "Safety technology" means depreciable tangible personal property and equipment,
69 other than clothing, principally designed to directly minimize workplace injuries and fatalities in
70 coal mines.

71 (12) "Taxpayer" means a person subject to any of the taxes imposed by article thirteen-a,
72 twenty-three or twenty-four of this chapter.

§11-13BB-4. List of approved innovative mine safety technology.

1 (a) *List of approved innovative mine safety technology.* -- The ~~Mine Safety Technology~~
2 ~~Task Force~~ Board of Coal Mine Health and Safety, established in section two, article eleven,
3 chapter twenty-two-a of this code, shall annually compile a proposed list of approved innovative
4 mine safety technologies as required by subsection (g), section three, article eleven, chapter
5 twenty-two-a of this code. The list shall be transmitted to the director for approval. The director
6 has thirty days to approve or amend the list. At the expiration of thirty days, the director shall
7 publish the list of approved innovative mine safety technologies. The list shall describe and
8 specifically identify safety equipment for use in West Virginia coal mines which, in the fiscal year
9 when the equipment is added to the list, is not required by the Mine Safety and Health
10 Administration of the United States Department of Labor or the West Virginia Office Of Miners'
11 Health, Safety And Training or any other state or federal agency, to be used in a coal mine or on
12 a mine site or on any other industrial site. Safety equipment shall remain on the list from year to
13 year until the director removes it from the list. The Office of Miners' Health, Safety and Training
14 may establish by legislative rule or interpretive rule a shorter time period for issuance of and
15 updating of the list of approved innovative mine safety technologies.

16 (b) It is the intent of the Legislature that the list of approved innovative mine safety
17 technologies include only safety equipment that is depreciable tangible personal property for
18 federal income tax purposes, which is so new to the industry and so innovative in concept, design,

19 operation or performance that, in the fiscal year when it is added to the list of approved innovative
20 mine safety technologies, the equipment has not yet been adopted by the Federal Mine Safety
21 and Health Administration or the West Virginia Office of Miners' Health, Safety and Training or
22 any other state or federal agency as required equipment to be used in a coal mine or on a mine
23 site or on any other industrial site, except as specified herein.

24 (c) *Delisting.* — (1) If any item of equipment or any line of equipment or class of equipment
25 is listed on the list of approved innovative mine safety technologies in any fiscal year, but then is
26 subsequently adopted by the Federal Mine Safety and Health Administration or the West Virginia
27 Office of Mine Safety or any other state or federal agency as required equipment to be used in a
28 coal mine or on a mine site or on any other industrial site, the equipment shall be removed from
29 the list of approved innovative mine safety technologies compiled and issued for the next
30 succeeding periodic issuance thereafter of the list of approved innovative mine safety
31 technologies.

32 (2) If it is determined by the director that any item of equipment or any line of equipment
33 or class of equipment that is listed on the list of approved innovative mine safety technology has
34 ceased to be innovative in concept, design, operation or performance, or is ineffective, or has
35 failed to meet the expectations of the ~~Mine Safety Technology Task Force~~ Board of Coal Mine
36 Health and Safety, or has failed to prove its value in directly minimizing workplace injuries and
37 fatalities in coal mines, the equipment shall be removed from the list of approved innovative mine
38 safety technologies that is compiled and issued for the next succeeding periodic issuance of the
39 list of approved innovative mine safety technologies after the determination has been reached.

40 (3) However, any eligible taxpayer who invested in the equipment as certified eligible
41 safety property during the time the equipment was lawfully listed on the list of approved innovative
42 mine safety technologies, shall not forfeit the credit authorized by this article as a result of the
43 delisting of the equipment under either subdivision (1) or subdivision (2) of this subsection, so

44 long as the requirements of this article are otherwise fulfilled by the taxpayer for entitlement to the
45 credit.

§11-13BB-14. Termination.

1 The tax credit authorized in this article shall terminate December 31, 2018 2025.