

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Originating

House Bill 4966

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[Originating in the Committee on Finance; Reported
on February 21, 2020]

1 A BILL to amend and reenact §11-6F-2 of the code of West Virginia, 1931, as amended; and to
2 amend §11-13S-3 of said code, all relating generally to updating the North American
3 Industry Classification System code references applicable to certain manufacturing
4 activities that include the processing of raw natural gas or oil to recover or extract liquid
5 hydrocarbons; and removing or revising obsolete, outdated, antiquated, inoperative,
6 surplus or superseded provisions.

Be it enacted by the Legislature of West Virginia:

**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 §11-6F-4 of this code: *Provided*, That airplanes and motor vehicles licensed by the Division of
6 Motor Vehicles shall in no 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~~ 31, 32 or 33, ~~or the six digit code number 211112~~
10 For purposes of this article, manufacturing also includes the processing of raw natural gas or oil
11 to recover or extract liquid hydrocarbons, which activity is classified under 211130. This definition
12 shall not be interpreted to mean or include any other processes, or activities classified,
13 categorized, grouped or identified under North American Industry Classification System code
14 number 211130.

15 (c) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse,

16 building or complex of buildings, including land on which it is located, and all machinery,
17 equipment, improvements and other real property and personal property located at or within the
18 facility used in connection with the operation of the facility in a manufacturing business.

19 (d) "Personal property" means all property specified in ~~subdivision (g), section ten, article~~
20 ~~two, chapter two~~ §2-2-10(g) of this code and includes, but is not limited to, furniture, fixtures,
21 machinery and equipment, pollution control equipment, computers and related data processing
22 equipment, spare parts and supplies.

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

24 (1) All real property and personal property, the combined original cost of which exceeds
25 \$50 million to be constructed, located or installed at or within two miles of a manufacturing facility
26 owned or operated by the person making the capital addition that has a total original cost before
27 the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical or
28 polymer alliance zone as designated from time-to-time by executive order of the Governor, then
29 the person making the capital addition may for purposes of satisfying the requirements of this
30 subsection join in a multiparty project with a person owning or operating a manufacturing facility
31 that has a total original cost before the capital addition of at least \$100 million if the capital addition
32 creates additional production capacity of existing or related products or feedstock or derivative
33 products respecting the manufacturing facility, consists of a facility used to store, handle, process
34 or produce raw materials for the manufacturing facility, consists of a facility used to store, handle
35 or process natural gas to produce fuel for the generation of steam or electricity for the
36 manufacturing facility or consists of a facility that generates steam or electricity for the
37 manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for
38 the manufacturing facility's use in heating, manufacturing or generation of electricity. ~~Beginning~~
39 ~~on and after July 1, 2011, when~~ 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 code number~~
41 211112 processing raw natural gas or oil to recover or extract liquid hydrocarbons, or is a

42 manufacturing facility that uses product produced at a facility ~~with code number 211112~~ engaged
43 in processing of raw natural gas or oil to recover or extract liquid hydrocarbons, then wherever
44 the term “100 million” is used in this subsection, the term “20 million” shall be substituted and
45 where the term “50 million” is used, the term “10 million” shall be 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~~ engaged in processing of raw natural gas or oil to recover or extract
51 liquid hydrocarbons; or

52 (ii) Is a manufacturing facility that uses one or more products produced at a facility ~~with~~
53 ~~code number 211112~~ described in subparagraph (i) of this paragraph; or

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

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

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

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

63 (iii) Multiparty projects.

64 (f) “Real property” means all property specified in ~~subdivision (p), section ten, article two,~~
65 ~~chapter two~~ §2-2-10(p) of this code and includes, but is not limited to, lands, buildings and
66 improvements on the land such as sewers, fences, roads, paving and leasehold improvements:
67 *Provided*, That for capital additions certified on or after July 1, 2011, the value of the land before

68 any improvements shall be subtracted from the value of the capital addition and the unimproved
69 land 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~~ 31, 32 or 33, or the six digit code number ~~211112~~.

23 For purposes of this article, manufacturing also includes the processing of raw natural gas or oil
24 to recover or extract liquid hydrocarbons, which is classified under 211130. This definition shall
25 not be interpreted to mean or include any other processes, or activities classified, categorized,
26 grouped or identified under North American Industry Classification System code number 211130.

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

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

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

39 (ii) Motor vehicles licensed by the ~~Department~~ Division of Motor Vehicles;

40 (iii) Airplanes;

41 (iv) Off-premises transportation equipment;

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

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

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

49 (i) The property is not acquired from a person whose relationship to the person acquiring
50 it would result in the disallowance of deductions under section 267 or 707(b) of the United States
51 Internal Revenue Code of 1986, as ~~amended~~ defined in §11-21-1 et seq. and §11-24-1 et seq. of
52 this code;

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

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

61 (8) "Qualified manufacturing investment" means that amount determined under ~~section~~
62 ~~five of this article~~ §11-13S-5 of this code as qualified manufacturing investment.

63 (9) "Taxpayer" means any person subject to any of the taxes imposed by §11-13A-1 *et*
64 ~~seq.~~, ~~twenty-three~~ §11-21-1 et seq., or §11-24-1 *et seq.* of this code, or any combination of those
65 articles of this chapter.

NOTE: The purpose of this bill is to update the North American Industrial Code (NAIC) reference in the definition of "manufacturing" as used in W. Va. Code §11-6F-2 and §11-13S-3 from 211112 to 21130 but only to the extent the classification applies to the processing of raw natural gas or oil to recover the liquid hydrocarbons, which activity is classified under 211130.

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