

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 816

BY SENATOR BLAIR

[Introduced February 17, 2020; referred
to the Committee on 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 of said code, all relating generally to updating the North
3 American Industry Classification System code references; and making other technical
4 changes to conform to new bill-drafting requirements.

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 §11-6F-4 of this code:
5 *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles ~~shall in no~~
6 ~~event constitute~~ are not 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~~ 31, 32, or 33.
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 North American
12 Industry Classification System code number 211130. This definition does not mean or include any
13 other processes or activities classified, categorized, grouped, or identified under North American
14 Industry Classification System code 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 §2-2-10(q) of this code and
20 includes, but is not limited to, furniture, fixtures, machinery, and equipment, pollution control
21 equipment, computers, and related data processing equipment, spare parts, and supplies.

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

23 (1) All real property and personal property, the combined original cost of which exceeds
24 \$50 million to be constructed, located, or installed at or within two miles of a manufacturing facility
25 owned or operated by the person making the capital addition that has a total original cost before
26 the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical, or
27 polymer alliance zone as designated from time-to-time by executive order of the Governor, then
28 the person making the capital addition may, for purposes of satisfying the requirements of this
29 subsection, join in a multiparty project with a person owning or operating a manufacturing facility
30 that has a total original cost before the capital addition of at least \$100 million if the capital addition
31 creates additional production capacity of existing or related products or feedstock or derivative
32 products respecting the manufacturing facility, consists of a facility used to store, handle, process,
33 or produce raw materials for the manufacturing facility, consists of a facility used to store, handle,
34 or process natural gas to produce fuel for the generation of steam or electricity for the
35 manufacturing facility or consists of a facility that generates steam or electricity for the
36 manufacturing facility, including, but not limited to, a facility that converts coal to a gas or liquid
37 for the manufacturing facility's use in heating, manufacturing or generation of electricity. ~~Beginning~~
38 ~~on and after July 1, 2014~~ When the new capital addition is a facility that is or will be classified
39 ~~under the North American Industry Classification System with a six digit code number 211112~~
40 processing raw natural gas or oil to recover or extract liquid hydrocarbons, or is a manufacturing
41 facility that uses product produced at a facility ~~with code number 211112~~ engaged in processing
42 of raw natural gas or oil to recover or extract liquid hydrocarbons, then wherever the term "100
43 million" is used in this subsection, the term "20 million" shall be substituted and where the term

44 “50 million” is used, the term “10 million” shall be 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~~ engaged in processing of raw natural gas or oil to recover or extract
50 liquid hydrocarbons; or

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

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

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

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

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

62 (iii) Multiparty projects.

63 (f) “Real property” means all property specified in §2-2-10(p) of this code and includes, but
64 is not limited to, lands, buildings, and improvements on the land such as sewers, fences, roads,
65 paving, and leasehold improvements: *Provided*, That for capital additions certified on or after July
66 1, 2011, the value of the land before any improvements shall be subtracted from the value of the
67 capital addition and the unimproved 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
12 facility 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~~ of 31, 32, or
23 33. For purposes of this article, manufacturing also includes the processing of raw natural gas or
24 oil to recover or extract liquid hydrocarbons, which is classified under North American Industry
25 Classification System code number 211130. This definition does not mean or include any other
26 processes or activities classified, categorized, grouped, or identified under North American

27 Industry Classification System code number 211130.

28 (7) "Property purchased for manufacturing investment" means real property, and
29 improvements thereto, and tangible personal property but only if the property was constructed or
30 purchased on or after January 1, 2003, for use as a component part of a new, expanded, or
31 revitalized industrial facility. This term includes only that tangible personal property with respect
32 to which depreciation, or amortization in lieu of depreciation, is allowable in determining the
33 federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property
34 is placed in service or use in this state, of four years or more. Property acquired by written lease
35 for a primary term of 10 years or longer, if used as a component part of a new or expanded
36 industrial facility, is included within this definition.

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

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

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

41 (iii) Airplanes;

42 (iv) Off-premises transportation equipment;

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

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

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

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

53 this code;

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

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

62 (8) "Qualified manufacturing investment" means that amount determined under §11-13S-
63 5 of this code as qualified manufacturing investment.

64 (9) "Taxpayer" means any person subject to any of the taxes imposed by §11-13A-1 *et*
65 ~~seq.~~, ~~twenty-three~~ §11-21-1 *et seq.*, or §11-24-1 *et seq.* of this code, or any combination of those
66 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 211130 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.

In 2011, the definition of "manufacturing" in W. Va. Code §11-6F-2 and §11-13S-3 was amended to include business activity classified under code 211112, which at that time included natural gas liquid extraction. In 2017, the United States Bureau of the Census updated the NAIC and moved natural gas liquid extraction to code 211130, which also applies to natural gas extraction.

NAICS 211112 -- Natural Gas Liquid Extraction (**old classification**). This U.S. industry comprises establishments primarily engaged in the recovery of liquid hydrocarbons from oil and gas field gases. Establishments primarily engaged in sulfur recovery from natural gas are included in this industry.

NAICS 211130 -- Natural Gas Extraction (**new classification**). This industry comprises establishments primarily engaged in: (1) The exploration, development, and/or the production of natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal or enhanced drilling and extraction techniques; or (2) the recovery of liquid hydrocarbons from oil and gas field gases. Establishments primarily engaged in sulfur recovery from natural gas are included in this industry.

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