

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4653

FISCAL  
NOTE

BY DELEGATES HOWELL, HAYNES, LINVILLE, FOSTER,  
MAYNOR, HOUSEHOLDER, MARTIN, TULLY, RILEY,  
HANSHAW (MR. SPEAKER), AND HAMRICK

[Introduced February 11, 2022; Referred to the Select  
Committee on Tourism and Economic Diversification  
then Finance]

1 A BILL to amend and reenact §11-6F-2 and §11-13S-4 of the Code of West Virginia, 1931, as  
2 amended; to amend said code by adding thereto a new article, designated §11-13LL-1,  
3 §11-13LL-2, §11-13LL-3, §11-13LL-4, §11-13LL-5, §11-13LL-6, §11-13LL-7, §11-13LL-8,  
4 §11-13LL-9, §11-13LL-10, §11-13LL-11, §11-13LL-12, §11-13LL-13, §11-13LL-14, §11-  
5 13LL-15, §11-13LL-16, §11-13LL-17; and to amend said code by adding thereto a new  
6 section, designated §11-15-9u, all relating generally to taxation for the manufacturing,  
7 sale, and use of certain defined products to encourage economic growth; amending the  
8 definition of manufacturing for purposes of special method for appraising qualified capital  
9 additions to manufacturing facilities for property tax purposes; amending the formula for  
10 calculating the manufacturing investment tax credit amount allowed for manufacturing  
11 investment to include tire manufacturing, sport fishing equipment manufacturing, bow,  
12 quiver, broadhead, and point manufacturing, arrow shaft manufacturing, vaccine  
13 manufacturing, feed stock manufacturing, and fuel refinery manufacturing; increasing the  
14 amount of such allowable credit for said industries; creating the West Virginia Economic  
15 Diversification Act; providing for administration and enforcement of the tax credit; making  
16 legislative findings; stating legislative purpose; defining terms; specifying an amount of  
17 credit allowable based upon the amount of federal excise tax paid, providing limitations  
18 based upon qualified investment amount; providing conditions for qualification and use;  
19 defining in service or use; providing for the application of the credit to the corporate net  
20 income tax and the personal income tax, as appropriate; providing for methods of  
21 calculation of the qualified investment; providing for carry over and forfeiture of unused  
22 tax credits; providing limitations for credits being carried over; allowing transfer of qualified  
23 investment property without forfeiture under certain circumstances; requiring identification  
24 of qualified investment property and record keeping; providing penalties for failure to keep  
25 required records; providing for interpretation and construction; requiring timely filing of  
26 application for credit; specifying burden of proof; requiring periodic tax credit review and

27           accountability reports; authorizing rulemaking; making credit subject to West Virginia Tax  
28           Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act; and  
29           providing for severability; providing effective dates; and providing for certain exemptions.

*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           “Certified capital addition property” means all real property and personal property included  
3           within or to be included within a qualified capital addition to a manufacturing facility that has been  
4           certified by the State Tax Commissioner in accordance with §11-6F-4 of this code: *Provided*, That  
5           airplanes and motor vehicles licensed by the Division of Motor Vehicles are not certified capital  
6           addition property.

7           “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 31, 32, or 33. For purposes of this article, manufacturing also includes the processing  
10          of raw natural gas or oil to recover or extract liquid hydrocarbons, which activity is classified under  
11          North American Industry Classification System code number 211130. This definition does not  
12          mean or include any other processes or activities classified, categorized, grouped, or identified  
13          under North American Industry Classification System code number 211130.

14          “Manufacturing facility” means any factory, mill, chemical plant, refinery, warehouse,  
15          building or complex of buildings, including land on which it is located, and all machinery,  
16          equipment, improvements, and other real property and personal property located at or within the  
17          facility used in connection with the operation of the facility in a manufacturing business.

18          “Personal property” means all property specified in §2-2-10(q) of this code and includes,

19 but is not limited to, furniture, fixtures, machinery, and equipment, pollution control equipment,  
20 computers, and related data processing equipment, spare parts, and supplies.

21 “Qualified capital addition to a manufacturing facility” means either:

22 (1) All real property and personal property, the combined original cost of which exceeds  
23 \$50 million to be constructed, located, or installed at or within two miles of a manufacturing facility  
24 owned or operated by the person making the capital addition that has a total original cost before  
25 the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical, or  
26 polymer alliance zone as designated from time-to-time by executive order of the Governor, then  
27 the person making the capital addition may, for purposes of satisfying the requirements of this  
28 subsection, join in a multiparty project with a person owning or operating a manufacturing facility  
29 that has a total original cost before the capital addition of at least \$100 million if the capital addition  
30 creates additional production capacity of existing or related products or feedstock or derivative  
31 products respecting the manufacturing facility, consists of a facility used to store, handle, process,  
32 or produce raw materials for the manufacturing facility, consists of a facility used to store, handle,  
33 or process natural gas to produce fuel for the generation of steam or electricity for the  
34 manufacturing facility or consists of a facility that generates steam or electricity for the  
35 manufacturing facility, including, but not limited to, a facility that converts coal to a gas or liquid  
36 for the manufacturing facility’s use in heating, manufacturing or generation of electricity. When  
37 the new capital addition is a facility that is or will be processing raw natural gas or oil to recover  
38 or extract liquid hydrocarbons, or is a manufacturing facility that uses product produced at a facility  
39 engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons, then  
40 wherever the term “100 million” is used in this subsection, the term “20 million” shall be substituted  
41 and where the term “50 million” is used, the term “10 million” shall be substituted; and where the  
42 term “50 million” is used, the term “10 million” shall be substituted; and that beginning on and after  
43 July 1, 2021, when the new capital addition is a facility that is or may be classified under the North  
44 American Industry Classification System with a six-digit North American Industry Classification

45 System code for a product produced at a facility with code numbers 332992 or 332994, as defined  
46 on January 1, 2021, then wherever the term “100 million” is used in this subsection, the term “2  
47 million” shall be substituted and where the term “50 million” is used, the term “1 million” shall be  
48 substituted; or when the new capital addition is a facility that is or will be processing tires for  
49 manufacturing, then wherever the term “100 million” is used in this subsection, the term “20  
50 million” shall be substituted and where the term “50 million” is used, the term “10 million” shall be  
51 substituted; and where the term “50 million” is used, the term “10 million” shall be substituted; and  
52 that beginning on and after July 1, 2022, when the new capital addition is a facility that is or may  
53 be classified under the North American Industry Classification System with a six-digit North  
54 American Industry Classification System code for a product produced at a facility with code  
55 numbers 441320, 326211, 326212, 314994, or 423130, as defined on January 1, 2022, then  
56 wherever the term “100 million” is used in this subsection, the term “2 million” shall be substituted  
57 and where the term “50 million” is used, the term “1 million” shall be substituted; or when the new  
58 capital addition is a facility that is or will be for sport fishing equipment manufacturing, then  
59 wherever the term “100 million” is used in this subsection, the term “20 million” shall be substituted  
60 and where the term “50 million” is used, the term “10 million” shall be substituted; and where the  
61 term “50 million” is used, the term “10 million” shall be substituted; and that beginning on and after  
62 July 1, 2022, when the new capital addition is a facility that is or may be classified under the North  
63 American Industry Classification System with a six-digit North American Industry Classification  
64 System code for a product produced at a facility with code number 339920, as defined on January  
65 1, 2022, then wherever the term “100 million” is used in this subsection, the term “2 million” shall  
66 be substituted and where the term “50 million” is used, the term “1 million” shall be substituted; or  
67 when the new capital addition is a facility that is or will be for bow, quiver, broadhead, and point  
68 manufacturing, then wherever the term “100 million” is used in this subsection, the term “20  
69 million” shall be substituted and where the term “50 million” is used, the term “10 million” shall be  
70 substituted; and where the term “50 million” is used, the term “10 million” shall be substituted; and

71 that beginning on and after July 1, 2022, when the new capital addition is a facility that is or may  
72 be classified under the North American Industry Classification System with a six-digit North  
73 American Industry Classification System code for a product produced at a facility with code  
74 number 339920, as defined on January 1, 2022, then wherever the term “100 million” is used in  
75 this subsection, the term “2 million” shall be substituted and where the term “50 million” is used,  
76 the term “1 million” shall be substituted; or when the new capital addition is a facility that is or will  
77 be for arrow shaft manufacturing, then wherever the term “100 million” is used in this subsection,  
78 the term “20 million” shall be substituted and where the term “50 million” is used, the term “10  
79 million” shall be substituted; and where the term “50 million” is used, the term “10 million” shall be  
80 substituted; and that beginning on and after July 1, 2022, when the new capital addition is a facility  
81 that is or may be classified under the North American Industry Classification System with a six-  
82 digit North American Industry Classification System code for a product produced at a facility with  
83 code number 339920, as defined on January 1, 2022, then wherever the term “100 million” is  
84 used in this subsection, the term “2 million” shall be substituted and where the term “50 million” is  
85 used, the term “1 million” shall be substituted; or when the new capital addition is a facility that is  
86 or will be for vaccine manufacturing, then wherever the term “100 million” is used in this  
87 subsection, the term “20 million” shall be substituted and where the term “50 million” is used, the  
88 term “10 million” shall be substituted; and where the term “50 million” is used, the term “10 million”  
89 shall be substituted; and that beginning on and after July 1, 2022, when the new capital addition  
90 is a facility that is or may be classified under the North American Industry Classification System  
91 with a six-digit North American Industry Classification System code for a product produced at a  
92 facility with code number 325414, as defined on January 1, 2022, then wherever the term “100  
93 million” is used in this subsection, the term “2 million” shall be substituted and where the term “50  
94 million” is used, the term “1 million” shall be substituted; or when the new capital addition is a  
95 facility that is or will be for feed stock manufacturing, then wherever the term “100 million” is used  
96 in this subsection, the term “20 million” shall be substituted and where the term “50 million” is

97 used, the term “10 million” shall be substituted; and where the term “50 million” is used, the term  
98 “10 million” shall be substituted; and that beginning on and after July 1, 2022, when the new  
99 capital addition is a facility that is or may be classified under the North American Industry  
100 Classification System with a six-digit North American Industry Classification System code for a  
101 product produced at a facility with code number 311119, as defined on January 1, 2022, then  
102 wherever the term “100 million” is used in this subsection, the term “2 million” shall be substituted  
103 and where the term “50 million” is used, the term “1 million” shall be substituted; or when the new  
104 capital addition is a facility that is or will be for fuel refinery manufacturing, then wherever the term  
105 “100 million” is used in this subsection, the term “20 million” shall be substituted and where the  
106 term “50 million” is used, the term “10 million” shall be substituted; and where the term “50 million”  
107 is used, the term “10 million” shall be substituted; and that beginning on and after July 1, 2022,  
108 when the new capital addition is a facility that is or may be classified under the North American  
109 Industry Classification System with a six-digit North American Industry Classification System code  
110 for a product produced at a facility with code number 324110, as defined on January 1, 2022,  
111 then wherever the term “100 million” is used in this subsection, the term “2 million” shall be  
112 substituted and where the term “50 million” is used, the term “1 million” shall be substituted; or

113 (2)(A) All real property and personal property, the combined original cost of which exceeds  
114 \$2 billion to be constructed, located, or installed at a facility, or a combination of facilities by a  
115 single entity or combination of entities engaged in a unitary business, that:

116 (i) Is or will be engaged in processing of raw natural gas or oil to recover or extract liquid  
117 hydrocarbons; or

118 (ii) Is a manufacturing facility that uses one or more products produced at a facility  
119 described in subparagraph (i) above; or

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

122 (B) All real property and personal property, the combined original cost of which exceeds

123 \$2 million to be constructed, located, or installed at a facility, or a combination of facilities by a  
124 single entity or combination of entities engaged in a unitary business, that is or may be classified  
125 under North American Industry Classification System with a six-digit code number 332992 or  
126 332994 as defined on January 1, 2021.

127 (C) No preexisting investment made, or in place before the capital addition is required for  
128 property specified in this subdivision. The requirements set forth in subdivision (1) of this  
129 subsection do not apply to property specified in this subdivision relating to:

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

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

134 (iii) Multiparty projects.

135 “Real property” means all property specified in §2-2-10(p) of this code and includes, but  
136 is not limited to, lands, buildings, and improvements on the land such as sewers, fences, roads,  
137 paving, and leasehold improvements: *Provided*, That for capital additions certified on or after July  
138 1, 2011, the value of the land before any improvements shall be subtracted from the value of the  
139 capital addition and the unimproved land value shall not 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 (4), subsection (b) of this section a credit against the taxes imposed by §11-13A- 1 *et*  
3 *seq.*, and §11-24-1-1 *et seq.* of this code: *Provided*, That a tax credit for any eligible taxpayer  
4 operating a business activity classified as having a sector identifier, consisting of the six digit code  
5 number 211112 such eligible taxpayer must comply with the provisions of subsection (e) of this  
6 section for all construction related thereto in order to be eligible for any credit under this article.  
7 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 50 percent of  
11 the qualified manufacturing investment (as determined in §11-13S-5. of this code) for any eligible  
12 taxpayer operating a business that is or may be classified as having a sector identifier, consisting  
13 of the six-digit code number 332992 or 332994, as defined on January 1, 2021, as well as for  
14 code numbers 441320, 326211, 326212, 314994, 423130, 339920, 325414, 311119, or 324110  
15 as defined on January 1, 2022. This credit shall reduce the severance tax, imposed under §11-  
16 13A-1 *et seq.* of this code and the corporation net income tax imposed under §11-24-1 *et seq.* of  
17 this code, in that order, subject to the following conditions and limitations:

18           (1) The amount of credit allowable is applied over a 10-year period, at the rate of one-  
19 tenth thereof per taxable year, beginning with the taxable year in which the property purchased  
20 for manufacturing investment is first placed in service or use in this state;

21           (2) *Severance tax.* — The credit is applied to reduce the severance tax imposed under  
22 §11-13A-1 *et seq.* of this code (determined before application of the credit allowed by §11-12B-3  
23 of this code and before any other allowable credits against tax and before application of the annual  
24 exemption allowed by §11-13A-10 of this code). The amount of annual credit allowed may not  
25 reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 50 percent of the  
26 amount which would be imposed for such taxable year in the absence of this credit against tax:  
27 *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit  
28 allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below  
29 40 percent of the amount which would be imposed for such taxable year in the absence of this  
30 credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this  
31 article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable  
32 year may not reduce the amount of the severance tax, imposed under §11-13A-1 *et seq.* of this  
33 code, below 50 percent of the amount which would be imposed for such taxable year (determined

34 before application of the credit allowed by §11-12B-3 of this code and before any other allowable  
35 credits against tax and before application of the annual exemption allowed by §11-13A-10 of this  
36 code): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009,  
37 the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the  
38 total amount of all credits allowable for the taxable year may not reduce the amount of the  
39 severance tax imposed under §11-13A-1 *et seq.* of this code, below 40 percent of the amount  
40 which would be imposed for such taxable year as determined before application of the credit  
41 allowed by §11-12B-3 of this code and before any other allowable credits against tax and before  
42 application of the annual exemption allowed by §11-13A-10 of this code;

43 (3) *Corporation net income tax.* —

44 After application of subdivision (2) of this subsection, any unused credit is next applied to  
45 reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code (determined  
46 before application of any other allowable credits against tax). The amount of annual credit allowed  
47 will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below  
48 50 percent of the amount which would be imposed for such taxable year in the absence of this  
49 credit against tax: *Provided,* That for tax years beginning on and after January 1, 2009, the amount  
50 of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et*  
51 *seq.* of this code, below 40 percent of the amount which would be imposed for such taxable year  
52 in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim  
53 credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable  
54 for the taxable year may not reduce the amount of the corporation net income tax, imposed under  
55 §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for the  
56 taxable year (determined before application of any other allowable credits against tax): *Provided,*  
57 *however,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is  
58 entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of  
59 all credits allowable for the taxable year may not reduce the amount of the corporation net income

60 tax, imposed under article §11-24-1 *et seq.* of this code, below 40 percent of the amount which  
61 would be imposed for the taxable year as determined before application of any other allowable  
62 credits against tax;

63 (4) *Pass-through entities.* —

64 (A) If the eligible taxpayer is a limited liability company, small business corporation or a  
65 partnership, then any unused credit (after application of subdivisions (2) and (3) of this subsection)  
66 is allowed as a credit against the taxes imposed by §11-24-1 *et seq.* of this code on owners of  
67 the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its  
68 owners. Only those portions of the tax imposed by §11-24-1 *et seq.* of this code that are imposed  
69 on income directly derived by the owner from the eligible taxpayer are subject to offset by this  
70 credit.

71 (B) The amount of annual credit allowed will not reduce corporation net income tax,  
72 imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be  
73 imposed on the conduit income directly derived from the eligible taxpayer by each owner for such  
74 taxable year in the absence of this credit against the taxes (determined before application of any  
75 other allowable credits against tax): *Provided*, That for tax years beginning on and after January  
76 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed  
77 under §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed on  
78 the conduit income directly derived from the eligible taxpayer by each owner for such taxable year  
79 in the absence of this credit against the taxes as determined before application of any other  
80 allowable credits against tax.

81 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and  
82 §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will  
83 not reduce the corporation net income tax imposed on the conduit income directly derived from  
84 the eligible taxpayer by each owner below 50 percent of the amount that would be imposed for  
85 such taxable year on the conduit income (determined before application of any other allowable

86 credits against tax): *Provided*, That when in any taxable year beginning on and after January 1,  
87 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code,  
88 the total amount of all credits allowable for the taxable year will not reduce the corporation net  
89 income tax imposed on the conduit income directly derived from the eligible taxpayer by each  
90 owner below 40 percent of the amount that would be imposed for such taxable year on the conduit  
91 income as determined before application of any other allowable credits against tax;

92 (5) Small business corporations, limited liability companies, partnerships and other  
93 unincorporated organizations shall allocate any unused credit after application of subdivisions (2)  
94 and (3) of this subsection among their members in the same manner as profits and losses are  
95 allocated for the taxable year; and

96 (6) No credit is allowed under this article against any tax imposed by §11-21-1 *et seq.* of  
97 this code.

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

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

102 (1) *Application required.* — Notwithstanding any provision of this article to the contrary, no  
103 credit is allowed or may be applied under this article for any qualified investment property placed  
104 in service or use until the person claiming the credit makes written application to the Tax  
105 Commissioner for allowance of credit as provided in this section. This application shall be in the  
106 form prescribed by the Tax Commissioner and shall provide the number and type of jobs created,  
107 if any, by the manufacturing investment, the average wage rates and benefits paid to employees  
108 filling the new jobs and any other information the Tax Commissioner may require. This application  
109 shall be filed with the Tax Commissioner no later than the last day for filing the annual return,  
110 determined by including any authorized extension of time for filing the return, required under §11-  
111 21-1 *et seq.* or §11-24-1-1 *et seq.* of this code for the taxable year in which the property to which

112 the credit relates is placed in service or use.

113 (2) *Failure to file.* — The failure to timely apply the application for credit under this section  
114 results in forfeiture of 50 percent of the annual credit allowance otherwise allowable under this  
115 article. This penalty applies annually until the application is filed.

116 (e) (1) Any person or entity undertaking any construction related to any business activity  
117 included within North American Industrial Code six-digit code number 211112, the value of which  
118 is an amount equal to or greater than \$500,000, shall hire at least 75 percent of employees for  
119 said construction from the local labor market, to be rounded off, with at least two employees from  
120 outside the local labor market permissible for each employer per project, “the local labor market”  
121 being defined as every county in West Virginia and any county outside of West Virginia if any  
122 portion of that county is within 50 miles of the border of West Virginia.

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

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

## **ARTICLE 13LL. WEST VIRGINIA ECONOMIC DIVERSIFICATION ACT.**

### **§11-13LL-1. Legislative finding and purpose.**

1 The Legislature finds that the encouragement of manufacturing in this state is in the public

2 interest and promotes the general welfare of the people of this state. In order to encourage capital  
3 investment in the manufacturing in this state and thereby increase economic opportunity for its  
4 citizens there is hereby enacted the tax credit for the benefit of tire manufacturing, sport fishing  
5 equipment manufacturing, bow, quiver, broadhead, and point manufacturing, arrow shaft  
6 manufacturing, vaccine manufacturing, feed stock manufacturing, and fuel refinery  
7 manufacturing.

**§11-13LL-2. Definitions.**

1 (a) General. — When used in this article, or in the administration of §11-13LL-1 et seq. of  
2 this code, terms defined in subsection (b) have the meanings ascribed to them by this section,  
3 unless a different meaning is clearly required by either the context in which the term is used, or  
4 by specific definition in §11-13LL-1 et seq. of this code.

5 (b) Terms defined. —

6 (1) “Affiliated group” means any affiliated group within the meaning section 1504(a) of the  
7 Internal Revenue Code, or any similar group defined under a similar provision of state, local, or  
8 foreign law, except that section 1504 of Internal Revenue Code shall be applied by substituting  
9 “more than 50 percent” for “at least 80 percent” each place it appears in that section.

10 (2) “Business” means tire manufacturing, sport fishing equipment manufacturing, bow,  
11 quiver, broadhead, and point manufacturing, arrow shaft manufacturing, vaccine manufacturing,  
12 feed stock manufacturing, and fuel refinery manufacturing business activity, which is or may be  
13 classified under the North American Industry Classification System with a six-digit code for a  
14 product produced at a facility under code numbers 441320, 326211, 326212, 314994, 423130,  
15 339920, 325414, 311119, or 324110 as they are defined on January 1, 2022, which is engaged  
16 in by any person in this state which is taxable under §11-21-1 et seq. or §11-24-1 et seq. of this  
17 code.

18 (3) “Business expansion” means capital investment in a new or used tire manufacturing,  
19 sport fishing equipment manufacturing, bow, quiver, broadhead, and point manufacturing, arrow

20 shaft manufacturing, vaccine manufacturing, feed stock manufacturing, and fuel refinery  
21 manufacturing facility in this state, which is or may be classified under the North American Industry  
22 Classification System with a six-digit code for a product produced at a facility under code numbers  
23 441320, 326211, 326212, 314994, 423130, 339920, 325414, 311119, or 324110 as they are  
24 defined on January 1, 2022.

25 (4) "Commissioner" or "Tax Commissioner" are used interchangeably in this article and  
26 mean the Tax Commissioner of the State of West Virginia, or his or her designee.

27 (5) "Controlled group of corporations" means a controlled group of corporations as defined  
28 in section 1563(a) of the Internal Revenue Code.

29 (6) "Corporation" means any corporation, joint-stock company, association, or other entity  
30 treated as a corporation for federal income tax purposes, and any business conducted by a trustee  
31 or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or  
32 similar written instrument.

33 (7) "Designee" in the phrase "or his or her designee," when used in reference to the Tax  
34 Commissioner, means any officer or employee of the State Tax Department duly authorized by  
35 the commissioner directly, or indirectly by one or more redelegations of authority, to perform the  
36 functions mentioned or described in this article.

37 (8) "Tire manufacturing" refers to a facility which is or may be classified under the North  
38 American Industry Classification System with a six-digit North American Industry Classification  
39 System code for a product produced at a facility with code numbers 441320, 326211, 326212,  
40 314994, or 423130 as they are defined on January 1, 2022.

41 (9) "Tire manufacturing business" means a business primarily engaged in this state in tire  
42 manufacturing which is or may be classified under the North American Industry Classification  
43 System with a six-digit North American Industry Classification System code for a product  
44 produced at a facility with code numbers 441320, 326211, 326212, 314994, or 423130 as they  
45 are defined on January 1, 2022.

46           (10) “Tire manufacturing facility” means any factory, mill, plant, warehouse, building, or  
47 complex of buildings located within this state, including the land on which it is located, and all  
48 machinery, equipment, and other real and personal property located at or within the facility, used  
49 in connection with the operation of the facility, and all site preparation and start-up costs of the  
50 taxpayer for the tire manufacturing facility, which is or may be classified under the North American  
51 Industry Classification System with a six-digit North American Industry Classification System code  
52 for a product produced at a facility with code numbers 441320, 326211, 326212, 314994, or  
53 423130 as they are defined on January 1, 2022, and which it capitalizes for federal income tax  
54 purposes in a business that is taxable in this state.

55           (11) “Sport fishing equipment manufacturing” refers to a facility which is or may be  
56 classified under the North American Industry Classification System with a six-digit North American  
57 Industry Classification System code for a product produced at a facility with code number 339920  
58 as it is defined on January 1, 2022.

59           (12) “Sport fishing equipment business” means a business primarily engaged in this state  
60 in manufacturing sport fishing equipment which is or may be classified under the North American  
61 Industry Classification System with a six-digit North American Industry Classification System code  
62 for a product produced at a facility with code number 339920 as defined on January 1, 2022.

63           (13) “Sport fishing equipment manufacturing facility” means any factory, mill, plant,  
64 warehouse, building, or complex of buildings located within this state, including the land on which  
65 it is located, and all machinery, equipment, and other real and personal property located at or  
66 within the facility, used in connection with the operation of the facility, and all site preparation and  
67 start-up costs of the taxpayer for the sport fishing equipment manufacturing facility, which is or  
68 may be classified under the North American Industry Classification System with a six-digit North  
69 American Industry Classification System code for a product produced at a facility with code  
70 number 339920 as defined on January 1, 2022, and which it capitalizes for federal income tax  
71 purposes in a business that is taxable in this state.

72 (14) “Bow, quiver, broadhead, and point manufacturing” refers to a facility which is or may  
73 be classified under the North American Industry Classification System with a six-digit North  
74 American Industry Classification System code for a product produced at a facility with code  
75 number 339920 as defined on January 1, 2022.

76 (15) “Bow, quiver, broadhead, and point manufacturing business” means a business  
77 primarily engaged in this state in bow, quiver, broadhead, and point manufacturing which is or  
78 may be classified under the North American Industry Classification System with a six-digit North  
79 American Industry Classification System code for a product produced at a facility with code  
80 number 339920 as defined on January 1, 2022.

81 (16) “Bow, quiver, broadhead, and point manufacturing facility” means any factory, mill,  
82 plant, warehouse, building, or complex of buildings located within this state, including the land on  
83 which it is located, and all machinery, equipment, and other real and personal property located at  
84 or within the facility, used in connection with the operation of the facility, and all site preparation  
85 and start-up costs of the taxpayer for the bow, quiver, broadhead, and point manufacturing facility,  
86 which is or may be classified under the North American Industry Classification System with a six-  
87 digit North American Industry Classification System code for a product produced at a facility with  
88 code number 339920 as defined on January 1, 2022, and which it capitalizes for federal income  
89 tax purposes in a business that is taxable in this state.

90 (17) “Arrow shaft manufacturing” refers to a facility which is or may be classified under the  
91 North American Industry Classification System with a six-digit North American Industry  
92 Classification System code for a product produced at a facility with code number 339920 as  
93 defined on January 1, 2022.

94 (18) “Arrow shaft manufacturing business” means a business primarily engaged in this  
95 state in arrow shaft manufacturing which is or may be classified under the North American Industry  
96 Classification System with a six-digit North American Industry Classification System code for a  
97 product produced at a facility with code number 339920 as defined on January 1, 2022.

98           (19) “Arrow shaft manufacturing facility” means any factory, mill, plant, warehouse,  
99 building, or complex of buildings located within this state, including the land on which it is located,  
100 and all machinery, equipment, and other real and personal property located at or within the facility,  
101 used in connection with the operation of the facility, and all site preparation and start-up costs of  
102 the taxpayer for the arrow shaft manufacturing facility, which is or may be classified under the  
103 North American Industry Classification System with a six-digit North American Industry  
104 Classification System code for a product produced at a facility with code number 339920 as  
105 defined on January 1, 2022, and which it capitalizes for federal income tax purposes in a business  
106 that is taxable in this state.

107           (20) “Vaccine manufacturing” refers to a facility which is or may be classified under the  
108 North American Industry Classification System with a six-digit North American Industry  
109 Classification System code for a product produced at a facility with code number 325414 as  
110 defined on January 1, 2022.

111           (21) “Vaccine manufacturing business” means a business primarily engaged in this state  
112 in vaccine manufacturing which is or may be classified under the North American Industry  
113 Classification System with a six-digit North American Industry Classification System code for a  
114 product produced at a facility with code number 325414 as defined on January 1, 2022.

115           (22) “Vaccine manufacturing facility” means any factory, mill, plant, warehouse, building,  
116 or complex of buildings located within this state, including the land on which it is located, and all  
117 machinery, equipment, and other real and personal property located at or within the facility, used  
118 in connection with the operation of the facility, and all site preparation and start-up costs of the  
119 taxpayer for the vaccine manufacturing facility, which is or may be classified under the North  
120 American Industry Classification System with a six-digit North American Industry Classification  
121 System code for a product produced at a facility with code number 325414 as defined on January  
122 1, 2022, and which it capitalizes for federal income tax purposes in a business that is taxable in  
123 this state.

124 (23) “Feed stock manufacturing” refers to a facility which is or may be classified under the  
125 North American Industry Classification System with a six-digit North American Industry  
126 Classification System code for a product produced at a facility with code number 311119 as  
127 defined on January 1, 2022.

128 (24) “Feed stock manufacturing business” means a business primarily engaged in this  
129 state in feed stock manufacturing which is or may be classified under the North American Industry  
130 Classification System with a six-digit North American Industry Classification System code for a  
131 product produced at a facility with code number 311119 as defined on January 1, 2022.

132 (25) “Feed stock manufacturing facility” means any factory, mill, plant, warehouse,  
133 building, or complex of buildings located within this state, including the land on which it is located,  
134 and all machinery, equipment, and other real and personal property located at or within the facility,  
135 used in connection with the operation of the facility, and all site preparation and start-up costs of  
136 the taxpayer for the feed stock manufacturing facility, which is or may be classified under the  
137 North American Industry Classification System with a six-digit North American Industry  
138 Classification System code for a product produced at a facility with code number 311119 as  
139 defined on January 1, 2022, and which it capitalizes for federal income tax purposes in a business  
140 that is taxable in this state.

141 (26) “Fuel refinery manufacturing” refers to a facility which is or may be classified under  
142 the North American Industry Classification System with a six-digit North American Industry  
143 Classification System code for a product produced at a facility with code number 324110 as  
144 defined on January 1, 2022.

145 (27) “Fuel refinery manufacturing business” means a business primarily engaged in this  
146 state in fuel refinery manufacturing which is or may be classified under the North American  
147 Industry Classification System with a six-digit North American Industry Classification System code  
148 for a product produced at a facility with code number 324110 as defined on January 1, 2022.

149 (28) “Fuel refinery manufacturing facility” means any factory, mill, plant, warehouse,

150 building, or complex of buildings located within this state, including the land on which it is located,  
151 and all machinery, equipment, and other real and personal property located at or within the facility,  
152 used in connection with the operation of the facility, and all site preparation and start-up costs of  
153 the taxpayer for the fuel refinery manufacturing facility, which is or may be classified under the  
154 North American Industry Classification System with a six-digit North American Industry  
155 Classification System code for a product produced at a facility with code number 324110 as  
156 defined on January 1, 2022, and which it capitalizes for federal income tax purposes in a business  
157 that is taxable in this state.

158 (29) "Eligible taxpayer" means any person who makes a qualified investment in a new or  
159 expanded tire manufacturing, sport fishing equipment manufacturing, bow, quiver, broadhead,  
160 and point manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed stock  
161 manufacturing, and fuel refinery manufacturing facility located in this state and who is subject to  
162 any of the taxes imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code.

163 (30) "Expanded facility" means any manufacturing facility, other than a new or replacement  
164 business facility, resulting from the acquisition, construction, reconstruction, installation, or  
165 erection of improvements or additions to existing property if the improvements or additions are  
166 purchased on or after July 1, 2022, but only to the extent of the taxpayer's qualified investment in  
167 the improvements or additions.

168 (31) "Includes" and "including" when used in a definition contained in this article, may not  
169 be considered to exclude other things otherwise within the meaning of the term defined.

170 (32) "Leased property" does not include property which the taxpayer is required to show  
171 on its books and records as an asset under generally accepted principles of financial accounting.  
172 If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes,  
173 the property shall be treated as purchased property under this section.

174 (33) "New manufacturing facility" means a business facility which satisfies all the  
175 requirements of paragraphs (A), (B), (C), and (D) of this subsection:

176 (A) The facility is employed by the taxpayer in the conduct of a manufacturing activity the  
177 net income of which is or would be taxable under §11-21-1 et seq. or §11-24-1 et seq. of this  
178 code. The facility is not considered a new tire manufacturing, sport fishing equipment  
179 manufacturing, bow, quiver, broadhead, and point manufacturing, arrow shaft manufacturing,  
180 vaccine manufacturing, feed stock manufacturing, or fuel refinery manufacturing facility in the  
181 hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to  
182 another person or persons.

183 (B) The facility is purchased by, or leased to, the taxpayer on or after July 1, 2022.

184 (C) The facility was not purchased or leased by the taxpayer from a related person. The  
185 commissioner may waive this requirement if the facility was acquired from a related party for its  
186 fair market value and the acquisition was not tax motivated.

187 (D) The facility was not in service or use during the 90 days immediately prior to transfer  
188 of the title to the facility, or prior to the commencement of the term of the lease of the facility.

189 (34) "New property" means:

190 (A) Property, the construction, reconstruction, or erection of which is completed on or after  
191 July 1, 2022, and placed in service or use after that date; and

192 (B) Property leased or acquired by the taxpayer that is placed in service or use in this state  
193 on or after July 1, 2022, if the original use of the property commences with the taxpayer and  
194 commences after that date.

195 (35) "Original use" means the first use to which the property is put, whether or not the use  
196 corresponds to the use of the property by the taxpayer.

197 (36) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated  
198 organization through or by means of which any business, financial operation, or venture is carried  
199 on, which is treated as a partnership for federal income tax purposes, and which is not a trust or  
200 estate, a corporation, or a sole proprietorship.

201 (37) "Partner" includes a member in such a syndicate, group, pool, joint venture, or other

202 organization.

203 (38) "Person" includes any natural person, corporation, or partnership.

204 (39) "Property purchased or leased for business expansion" —

205 (A) *Included property.* — Except as provided in paragraph (B) of this subdivision, the term  
206 "property purchased or leased for business expansion" means real property and improvements  
207 thereto, and tangible personal property, but only if the real or personal property was constructed,  
208 purchased, or leased and placed in service or use by the taxpayer, for use as a component part  
209 of a new or expanded tire manufacturing, sport fishing equipment manufacturing, bow, quiver,  
210 broadhead, and point manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed  
211 stock manufacturing, or fuel refinery manufacturing facility as defined in this section, which is  
212 located within the State of West Virginia. This term includes only:

213 (i) Real property and improvements thereto having a useful life of four or more years,  
214 placed in service or use on or after July 1, 2022, by the taxpayer.

215 (ii) Real property and improvements thereto, acquired by written lease having a primary  
216 term of 10 or more years and placed in service or use by the taxpayer on or after July 1, 2022.

217 (iii) Tangible personal property placed in service or use by the taxpayer on or after July 1,  
218 2022, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in  
219 determining the personal or corporation net income tax liability of the business taxpayer under  
220 §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful life, at the time the  
221 property is placed in service or use in this state, of four or more years.

222 (iv) Tangible personal property acquired by written lease having a primary term of four  
223 years or longer, that commenced and was executed by the parties thereto on or after July 1, 2022,  
224 if used as a component part of a new or expanded tire manufacturing, sport fishing equipment  
225 manufacturing, bow, quiver, broadhead, and point manufacturing, arrow shaft manufacturing,  
226 vaccine manufacturing, feed stock manufacturing, and fuel refinery manufacturing business  
227 facility, shall be included within this definition.

228 (v) Tangible personal property owned or leased, and used by the taxpayer at a business  
229 location outside this state which is moved into the State of West Virginia on or after July 1, 2022,  
230 for use as a component part of a new or expanded tire manufacturing, sport fishing equipment  
231 manufacturing, bow, quiver, broadhead, and point manufacturing, arrow shaft manufacturing,  
232 vaccine manufacturing, feed stock manufacturing, and fuel refinery manufacturing facility located  
233 in this state: *Provided*, That if the property is owned, it must be depreciable or amortizable  
234 personal property for income tax purposes, and have a useful life of four or more years remaining  
235 at the time it is placed in service or use in this state, and if the property is leased, the primary term  
236 of the lease remaining at the time the leased property is placed in service or use in this state,  
237 must be four or more years.

238 (B) *Excluded property*. — The term property purchased or leased for business expansion  
239 does not include:

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

242 (ii) Airplanes and helicopters.

243 (iii) Property, which is primarily used outside this state, with use being determined based  
244 upon the amount of time the property is actually used both within and outside this state.

245 (iv) Property which is acquired incident to the purchase of the stock or assets of the seller,  
246 unless for good cause shown, the Tax Commissioner consents to waiving this requirement.

247 (v) Purchased or leased property, the cost or consideration for which cannot be quantified  
248 with any reasonable degree of accuracy at the time the property is placed in service or use:

249 *Provided*, That when the contract of purchase or lease specifies a minimum purchase price or  
250 minimum annual rent the amount thereof shall be used to determine the qualified investment in

251 the property under §11-13LL-6 of this code if the property otherwise qualifies as property  
252 purchased or leased for expansion of a tire manufacturing, sport fishing equipment manufacturing,

253 bow, quiver, broadhead, and point manufacturing, arrow shaft manufacturing, vaccine

254 manufacturing, feed stock manufacturing, or fuel refinery manufacturing facility.

255 (40) "Purchase" means any acquisition of property, but only if:

256 (A) The property is not acquired from a person whose relationship to the person acquiring  
257 it would result in the disallowance of deductions under section 267 or 707 (b) of the United States  
258 Internal Revenue Code.

259 (B) The property is not acquired by one component member of an affiliated or controlled  
260 group from another component member of the same affiliated or controlled group, as applicable.  
261 The Tax Commissioner may waive this requirement if the property was acquired from a related  
262 party for its then fair market value; and

263 (C) The basis of the property for federal income tax purposes, in the hands of the person  
264 acquiring it, is not determined:

265 (i) In whole or in part, by reference to the federal adjusted basis of the property in the  
266 hands of the person from whom it was acquired; or

267 (ii) Under Section 1014(e) of the United States Internal Revenue Code.

268 (41) "Qualified activity" means any manufacturing business activity subject to any of the  
269 taxes imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code which is or may be classified  
270 under the North American Industry Classification System with a six-digit North American Industry  
271 Classification System code for a product produced at a facility with code numbers 441320,  
272 326211, 326212, 314994, 423130, 339920, 325414, 311119, or 324110 as they are defined on  
273 January 1, 2022.

274 (42) "Related person" means:

275 (A) A corporation, partnership, association, or trust controlled by the taxpayer;

276 (B) An individual, corporation, partnership, association, or trust that is in control of the  
277 taxpayer;

278 (C) A corporation, partnership, association, or trust controlled by an individual, corporation,  
279 partnership, association, or trust that is in control of the taxpayer; or

280 (D) A member of the same affiliated or controlled group as the taxpayer.

281 For purposes of this subdivision, control, with respect to a corporation, means ownership,  
282 directly or indirectly, of stock possessing 50 percent or more of the total combined voting power  
283 of all classes of the stock of the corporation entitled to vote.

284 Control, with respect to a trust, means ownership, directly or indirectly, of 50 percent or  
285 more of the beneficial interest in the principal or income of the trust. The ownership of stock in a  
286 corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest  
287 in a trust is determined in accordance with the rules for constructive ownership of stock provided  
288 in section 267(c) of the United States Internal Revenue Code, other than paragraph (3) of that  
289 section.

290 (43) "Replacement manufacturing facility" means any property (other than an expanded  
291 manufacturing facility) that replaces or supersedes any other property located within this state  
292 that:

293 (A) The taxpayer or a related person used in or in connection with any tire manufacturing,  
294 sport fishing equipment manufacturing, bow, quiver, broadhead, and point manufacturing, arrow  
295 shaft manufacturing, vaccine manufacturing, feed stock manufacturing, or fuel refinery  
296 manufacturing facility for more than two years during the period of five consecutive years ending  
297 on the date the replacement or superseding property is placed in service by the taxpayer; or

298 (B) Is not used by the taxpayer or a related person in or in connection with any tire  
299 manufacturing, sport fishing equipment manufacturing, bow, quiver, broadhead, and point  
300 manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed stock manufacturing, or  
301 fuel refinery manufacturing facility for a continuous period of one year or more commencing with  
302 the date the replacement or superseding property is placed in service by the taxpayer.

303 (44) "Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 et  
304 seq. or §11-24-1 et seq. of this code.

305 (45) "This code" means the Code of West Virginia, 1931, as amended.

306 (46) “This state” means the State of West Virginia.

307 (47) “United States Internal Revenue Code” or “I.R.C.” means the Internal Revenue Code  
308 as defined in §11-21-1 et seq. or §11-24-1 et seq. of this code.

309 (48) “Used property” means property acquired after June 30, 2023, that is not “new  
310 property”.

311 (49) “Federal excise tax” means all excise taxes paid to the government of the United  
312 States under section 4071 of Title 26 of the Internal Revenue Code imposed upon tire, sport  
313 fishing equipment, bow, quiver, broadhead, and point, arrow shaft, vaccine, feed stock, or fuel  
314 refinery manufacturers, producers, or importers.

**§11-13LL-3. Amount of credit allowed.**

1 (a) Credit allowed. — Notwithstanding any other provision of this code, eligible taxpayers  
2 are allowed a credit against the portion of taxes imposed by this state that are attributable to and  
3 the consequence of the taxpayer’s qualified investment in a new or expanded tire manufacturing,  
4 sport fishing equipment manufacturing, bow, quiver, broadhead, and point manufacturing, arrow  
5 shaft manufacturing, vaccine manufacturing, feed stock manufacturing, or fuel refinery  
6 manufacturing facility in this state: *Provided*, That such qualified investment is equal to or greater  
7 than \$2 million. The amount of this credit is determined and applied as provided in this article.

8 (b) Amount of credit. — The amount of credit allowable is 100 percent of amount of federal  
9 excise tax paid in a tax year under section 4071, Title 26 of the Internal Revenue Code, which are  
10 attributable to and the consequence of the taxpayer’s qualified investment. The product of this  
11 calculation establishes the maximum amount of credit allowable under this article due to the  
12 qualified investment.

13 (c) Application of credit over 10 years. — The amount of credit allowable shall be taken  
14 over a 10-year period, beginning with the taxable year in which the taxpayer places the qualified  
15 investment in service or use in this state, unless the taxpayer elected to delay the beginning of  
16 the 10-year period until the next succeeding taxable year. This election shall be made in the

17 annual income tax return filed under this chapter for the taxable year in which qualified investment  
18 is first placed into service or use by the taxpayer. Once made, the election cannot be revoked.  
19 The annual credit allowance is taken in the manner prescribed in §11-13LL-4 of this code.

20 (d) *Placed in service or use.* — For purposes of the credit allowed by this section, property  
21 is considered placed in service or use in the earlier of the following taxable years:

22 (1) The taxable year in which, under the taxpayer's depreciation practice, the period for  
23 depreciation with respect to the property begins; or

24 (2) The taxable year in which the property is placed in a condition or state of readiness  
25 and availability for a specifically assigned function.

**§11-13LL-4. Application of annual credit allowance.**

1 (a) The amount determined under §11-13LL-3 is allowed as a credit against 100 percent  
2 of that portion of the taxpayer's state tax liability which is attributable to and the direct result of the  
3 taxpayer's qualified investment and applied as provided in subsections (b) and (c), both inclusive  
4 of this section, and in that order.

5 (b) *Corporation net income taxes.* —

6 (1) That portion of the allowable credit attributable to qualified investment in a tire  
7 manufacturing, sport fishing equipment manufacturing, bow, quiver, broadhead, and point  
8 manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed stock manufacturing, and  
9 fuel refinery manufacturing facility may be applied to reduce the taxes imposed by §11-24-1 *et*  
10 *seq.* of this code for the taxable year as determined before application of allowable credits against  
11 tax.

12 (2) If the taxes due under §11-24-1 *et seq.* of this code, as determined before application  
13 of allowable credits against tax, are not solely attributable to and the direct result of the taxpayer's  
14 qualified investment in a tire manufacturing, sport fishing equipment manufacturing, bow, quiver,  
15 broadhead, and point manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed  
16 stock manufacturing, and fuel refinery manufacturing business, the amount of the taxes that is

17 attributable are determined by multiplying the amount of taxes due under §11-24-1 et seq. of this  
18 code for the taxable year, as determined before application of allowable credits against tax, by a  
19 fraction, the numerator of which is all wages, salaries, and other compensation paid during the  
20 taxable year to all employees of the taxpayer employed in this state whose positions are directly  
21 attributable to the qualified investment. The denominator of the fraction is the wages, salaries,  
22 and other compensation paid during the taxable year to all employees of the taxpayer employed  
23 in this state.

24 (c) Personal income taxes. —

25 (1) If the person making the qualified investment in a tire manufacturing, sport fishing  
26 equipment manufacturing, bow, quiver, broadhead, and point manufacturing, arrow shaft  
27 manufacturing, vaccine manufacturing, feed stock manufacturing, or fuel refinery manufacturing  
28 facility is an electing small business corporation, as defined in section 1361 of the United States  
29 Internal Revenue Code, a partnership, a limited liability company that is treated as a partnership  
30 for federal income tax purposes, or a sole proprietorship, then any unused credit is allowed as a  
31 credit against the taxes imposed by §11-21-1 et seq. of this code on the income from tire  
32 manufacturing, sport fishing equipment manufacturing, bow, quiver, broadhead, and point  
33 manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed stock manufacturing, or  
34 fuel refinery manufacturing facility, or on income of a sole proprietor attributable to the  
35 manufacturing facility.

36 (2) Electing small business corporations, limited liability companies treated as  
37 partnerships for federal income tax purposes, partnerships, and other unincorporated  
38 organizations shall allocate the credit allowed by this article among its members in the same  
39 manner as profits and losses are allocated for the taxable year.

40 (3) If the amount of taxes due under §11-21-1 et seq. of this code, as determined before  
41 application of allowable credits against tax, that is attributable to business, is not solely attributable  
42 to and the direct result of the qualified investment of the electing small business corporation,

43 limited liability company treated as a partnership for federal income tax purposes, other  
44 unincorporated organization, or sole proprietorship, the amount of the taxes that are so  
45 attributable are determined by multiplying the amount of taxes due under §11-21-1 et seq. of this  
46 code, as determined before application of allowable credits against tax that is attributable to  
47 business by a fraction, the numerator of which is all wages, salaries, and other compensation paid  
48 during the taxable year to all employees of the electing small business corporation, limited liability  
49 company, partnership, other unincorporated organization, or sole proprietorship employed in this  
50 state, whose positions are directly attributable to the qualified investment. The denominator of the  
51 fraction is the wages, salaries, and other compensation paid during the taxable year to all  
52 employees of the taxpayer.

53 (4) No credit is allowed under this section against any employer withholding taxes imposed  
54 by §11-21-1 et seq. of this code.

55 (d) If the wages, salaries, and other compensation fraction formula provisions of  
56 subsections (b) and (c) of this section, inclusive, do not fairly represent the taxes solely attributable  
57 to and the direct result of qualified investment of the taxpayer the Tax Commissioner may require,  
58 in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

59 (1) Separate accounting or identification;

60 (2) Adjustment to the wages, salaries, and other compensation fraction formula to reflect  
61 all components of the tax liability;

62 (3) The inclusion of one or more additional factors that will fairly represent the taxes solely  
63 attributable to and the direct result of the qualified investment of the taxpayer and all other project  
64 participants in the businesses or other activities subject to tax; or

65 (4) The employment of any other method to effectuate an equitable attribution of the taxes.  
66 In order to effectuate the purposes of this subsection, the Tax Commissioner may propose for  
67 promulgation rules, including emergency rules, in accordance with §29A-3-1 et seq. of this code.

68 (e) Unused credit. — If any credit remains after application of subsection (a) of this section,

69 the amount thereof is carried forward to each ensuing tax year until used or until the expiration of  
70 the tenth taxable year subsequent to the end of the initial 10-year credit application period. If any  
71 unused credit remains after the 20th year, the amount thereof is forfeited. No carryback to a prior  
72 taxable year is allowed for the amount of any unused portion of any annual credit allowance.

**§11-13LL-5. Qualified investment.**

1 (a) General. — The qualified investment in property purchased or leased for a new, or  
2 expansion of an existing, tire manufacturing, sport fishing equipment manufacturing, bow, quiver,  
3 broadhead, and point manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed  
4 stock manufacturing, and fuel refinery manufacturing facility is the applicable percentage of the  
5 cost of each property purchased or leased for the purpose of the new, or expansion of an existing,  
6 manufacturing facility which is placed in service or use in this state by the taxpayer during the  
7 taxable year.

8 (b) Cost. — For purposes of subsection (a) of this section, the cost of each property  
9 purchased for a new, or expansion of an existing, manufacturing facility is determined under the  
10 following rules:

11 (1) Trade-ins. — Cost does not include the value of property given in trade or exchange  
12 for the property purchased for a new, or for expansion of an existing, manufacturing facility.

13 (2) Damaged, destroyed, or stolen property. — If property is damaged or destroyed by  
14 fire, flood, storm, or other casualty, or is stolen, then the cost of replacement property does not  
15 include any insurance proceeds received in compensation for the loss.

16 (3) Rental property. —

17 (A) The cost of real property acquired by written lease for a primary term of 10 years or  
18 longer is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20  
19 years.

20 (B) The cost of tangible personal property acquired by written lease for a primary term of:

21 (i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

22 (ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease;

23 or

24 (iii) Eight years, or longer, is 100 percent of the rent reserved for the primary term of the  
25 lease, not to exceed 20 years: *Provided*, That in no event may rent reserved include rent for any  
26 year subsequent to expiration of the book life of the equipment, determined using the straight-line  
27 method of depreciation.

28 (4) *Self-constructed property.* — In the case of self-constructed property, the cost thereof  
29 is the amount properly charged to the capital account for depreciation in accordance with federal  
30 income tax law.

31 (5) *Transferred property.* — The cost of property used by the taxpayer out-of-state and  
32 then brought into this state, is determined based on the remaining useful life of the property at the  
33 time it is placed in service or use in this state, and the cost is the original cost of the property to  
34 the taxpayer less straight line depreciation allowable for the tax years or portions thereof the  
35 taxpayer used the property outside this state. In the case of leased tangible personal property,  
36 cost is based on the period remaining in the primary term of the lease after the property is brought  
37 into this state for use in a new or expanded business facility of the taxpayer, and is the rent  
38 reserved for the remaining period of the primary term of the lease, not to exceed 20 years, or the  
39 remaining useful life of the property, as determined as aforesaid, whichever is less.

**§11-13LL-6. Forfeiture of unused tax credits; redetermination of credit allowed.**

1 (a) *Disposition of property or cessation of use.* — If during any taxable year, property with  
2 respect to which a tax credit has been allowed under §11-13LL-1 *et seq.* of this code is disposed  
3 of or ceases to be used in a tire manufacturing, sport fishing equipment manufacturing, bow,  
4 quiver, broadhead, and point manufacturing, arrow shaft manufacturing, vaccine manufacturing,  
5 feed stock manufacturing, or fuel refinery manufacturing facility of the taxpayer in this state, then  
6 the unused portion of the credit allowed for the property is forfeited for the taxable year and all  
7 ensuing years, except when the property is damaged or destroyed by fire, flood, storm, or other

8 casualty, or is stolen.

9 (b) Cessation of operation of tire manufacturing, sport fishing equipment manufacturing,  
10 bow, quiver, broadhead, and point manufacturing, arrow shaft manufacturing, vaccine  
11 manufacturing, feed stock manufacturing, and fuel refinery manufacturing facility. — If during any  
12 taxable year the taxpayer ceases operation of a tire manufacturing, sport fishing equipment  
13 manufacturing, bow, quiver, broadhead, and point manufacturing, arrow shaft manufacturing,  
14 vaccine manufacturing, feed stock manufacturing, and fuel refinery manufacturing facility in this  
15 state for which credit was allowed under this article, then the unused portion of the allowed credit  
16 is forfeited for the taxable year and for all ensuing years, except when the cessation is due to fire,  
17 flood, storm, or other casualty.

**§11-13LL-7. Transfer of qualified investment to successors.**

1 (a) Mere change in form of business. — Property may not be treated as disposed of under  
2 §11-13LL-8 of this code, by reason of a mere change in the form of conducting the business as  
3 long as the property is retained in the successor's manufacturing facility in this state, and the  
4 transferor business retains a controlling interest in the successor business. In this event, the  
5 successor business is allowed to claim the amount of credit still available with respect to the  
6 business facility or facilities transferred.

7 (b) Transfer or sale to successor. — Property is not treated as disposed of under §11-  
8 13LL-10 of this code by reason of any transfer or sale to a successor business which continues  
9 to operate the tire manufacturing, sport fishing equipment manufacturing, bow, quiver, broadhead,  
10 and point manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed stock  
11 manufacturing, or fuel refinery manufacturing facility in this state. Upon transfer or sale, the  
12 successor shall acquire the amount of credit that remains available under this article for each  
13 subsequent taxable year.

**§11-13LL-8. Identification of investment credit property.**

1 Every taxpayer who claims credit under §11-13LL-1 et seq. of this code shall maintain

2 sufficient records to establish the following facts for each item of qualified property:

3 (1) Its identity;

4 (2) Its actual or reasonably determined cost;

5 (3) Its straight-line depreciation life;

6 (4) The month and taxable year in which it was placed in service;

7 (5) The amount of credit taken;

8 (6) The date it was disposed of or otherwise ceased to be use as qualified property in the  
9 tire manufacturing, sport fishing equipment manufacturing, bow, quiver, broadhead, and point  
10 manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed stock manufacturing, or  
11 fuel refinery manufacturing facility of the taxpayer; and

12 (7) Amounts and dates of federal excise tax paid.

**§11-13LL-9. Failure to keep records of investment credit property.**

1 A taxpayer who does not keep the records required for identification of investment credit  
2 property is subject to the following rules:

3 (1) A taxpayer is treated as having disposed of, during the taxable year, any investment  
4 credit property which the taxpayer cannot establish was still on hand, in this state, at the end of  
5 that year.

6 (2) If a taxpayer cannot establish when investment credit property reported for purposes  
7 of claiming this credit returned during the taxable year was placed in service, the taxpayer is  
8 treated as having placed it in service in the most recent prior year in which similar property was  
9 placed in service, unless the taxpayer can establish that the property placed in service in the most  
10 recent year is still on hand. In that event, the taxpayer will be treated as having placed the returned  
11 property in service in the next most recent year.

**§11-13LL-10. Interpretation and construction.**

1 (a) No inference, implication, or presumption of legislative construction or intent may be  
2 drawn or made by reason of the location or grouping of any particular section, provision, or portion

3 of §11-13LL-1 et seq. of this code; and no legal effect may be given to any descriptive matter or  
4 heading relating to any section, subsection, or paragraph of this article.

5 (b) The provisions of §11-13LL-1 et seq. of this code shall be reasonably construed in  
6 order to effectuate the legislative intent recited in §11-13LL-1 of this code.

**§11-13LL-11. Burden of proof; application required; failure to make timely application.**

1 (a) Burden of proof. — The burden of proof is on the taxpayer to establish by clear and  
2 convincing evidence that the taxpayer is entitled to the benefits allowed by §11-13LL-1 et seq. of  
3 this code.

4 (b) Application for credit required. —

5 (1) Application required. — Notwithstanding any provision of this article to the contrary, no  
6 credit is allowed or may be applied under §11-13LL-1 et seq. of this code for any qualified  
7 investment property placed in service or use until the person asserting a claim for the allowance  
8 of credit under this article makes written application to the commissioner for allowance of credit  
9 as provided in this subsection. An application for credit shall be filed, in the form prescribed by  
10 the Tax Commissioner, no later than the last day for filing the tax returns, determined by including  
11 any authorized extension of time for filing the return, required under §11-21-1 et seq. or §11-24-  
12 1 et seq. of this code for the taxable year in which the property to which the credit relates is placed  
13 in service or use and all information required by the form shall be provided.

14 (2) Failure to make timely application. — The failure to timely apply for the credit results  
15 in the forfeiture of 50 percent of the annual credit allowance otherwise allowable under §11-13LL-  
16 1 et seq. of this code. This penalty applies annually until the application is filed.

**§11-13LL-12. Tax credit review and accountability.**

1 (a) Beginning on February 1, 2027, and every fifth year thereafter, the Tax Commissioner  
2 shall submit to the Governor, the President of the Senate, and the Speaker of the House of  
3 Delegates a tax credit review and accountability report evaluating the cost effectiveness of this  
4 credit during the most recent five-year period for which information is available. The criteria to be

5 evaluated shall include, but not be limited to, for each year of the five-year period:

6 (1) The numbers of taxpayers claiming the credit;

7 (2) The moneys invested, and net number of new jobs created by all taxpayers claiming  
8 the credit;

9 (3) The cost of the credit;

10 (4) The cost of the credit per new job created; and

11 (5) Comparison of employment trends for an industry and for taxpayers within the industry  
12 that claim the credit.

13 (b) Taxpayers claiming the credit shall provide any information the Tax Commissioner may  
14 require to prepare the report required by this section: *Provided*, That the information provided is  
15 subject to the confidentiality and disclosure provisions of §11-10-5d of this code.

16 (c) On or before February 1, 2027, the Department of Commerce, in consultation with the  
17 Tax Commissioner, the Department of Transportation, and the Department of Environmental  
18 Protection shall submit to the Governor, the President of the Senate, and the Speaker of the  
19 House of Delegates a report of the impact of all the tax credits and other economic incentives  
20 provided in §11-13LL-1 *et seq.* of this code upon: (1) Economic development in this state,  
21 including, but not limited to, the moneys invested and jobs created in this state; (2) the state's  
22 infrastructure, including, but not limited to, the need for construction or maintenance of the roads  
23 and highways of the state; (3) the natural resources of the state; and (4) upon public and private  
24 property interests in the state.

**§11-13LL-13. Rules.**

1 The Tax Commissioner may promulgate such interpretive, legislative, and procedural  
2 rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13LL-  
3 1 *et seq.* of this code and to implement the intent of the Legislature. The Tax Commissioner may  
4 promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2023.  
5 All rules shall be promulgated in accordance with §29A-3-1 *et seq.* of this code.

**§11-13LL-14. General procedure and administration.**

1        Each provision of the “West Virginia Tax Procedure and Administration Act” set forth in  
2 §11-10-1 et seq. of this code applies to the tax credit allowed under §11-13LL-1 et seq. of this  
3 code, except as otherwise expressly provided in this article, with like effect as if that act were  
4 applicable only to the tax credit allowed by §11-13LL-1 et seq. of this code and were set forth in  
5 extenso in this article.

**§11-13LL-15. Crimes and penalties.**

1        Each provision of the “West Virginia Tax Crimes and Penalties Act” set forth in §11-9-1 et  
2 seq. of this code applies to the tax credit allowed by §11-13LL-1 et seq. of this code with like effect  
3 as if that act were applicable only to the tax credit §11-13LL-1 et seq. of this code and were set  
4 forth in extenso in this article.

**§11-13LL-16. Severability.**

1        (a) If any provision of §11-13LL-1 et seq. of this code, or the application thereof, is for any  
2 reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect,  
3 impair, or invalidate the remainder of §11-13LL-1 et seq. of this code, but shall be confined in its  
4 operation to the provision thereof directly involved in the controversy in which the judgment shall  
5 have been rendered, and the applicability of the provision to other persons or circumstances may  
6 not be affected thereby.

7        (b) If any provision of §11-13LL-1 et seq. of this code, or the application thereof, is made  
8 invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein  
9 addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate  
10 the remainder of §11-13LL-1 et seq. of this code, but shall be confined in its operation to the  
11 provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and  
12 the application of the provision with regard to other statutes or in other instances not affected by  
13 any such repealed or invalid statute may not be abrogated or diminished in any way.

**§11-13LL-17. Effective date.**

1           The credit allowed by this article is allowable for qualified investment property placed in  
2 service or use on or after July 1, 2022, subject to the rules contained in §11-13LL-1 *et seq.* of this  
3 code and rules promulgated by the Tax Commissioner pursuant to §29A-3-1 *et seq.* of this code.

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-9u. Exemption for sales of tires, sport fishing equipment, and archery equipment.**

1           Notwithstanding any provision of this code to the contrary, the sale of tires, sport fishing  
2 equipment, and archery equipment is exempted from the taxes imposed by this article and by  
3 §11-15A-1 *et seq.* of this code.

NOTE: The purpose of this bill is to create the West Virginia Economic Diversification Act. The bill stimulates economic growth in manufacturing industries by amending 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 the credit allowed for manufacturing investment to include tire manufacturing, sport fishing equipment manufacturing, bow, quiver, broadhead, and point manufacturing, arrow shaft manufacturing, vaccine manufacturing, feed stock manufacturing, or fuel refinery manufacturing facility. The bill provides for its administration and enforcement of the tax credit. Finally, the bill exempts certain taxes.

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