

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 506

BY SENATORS SWOPE AND SYPOLT

[Originating in the Committee on Energy, Industry,
and Mining; reported on February 8, 2022]

1 A BILL to amend and reenact §11-13S-4 and §11-13Y-5 of the Code of West Virginia, 1931, as
2 amended, all relating to authorizing application of the manufacturing investment tax credit
3 and the manufacturing property tax adjustment credit against personal income tax;
4 defining terms; deleting superannuated language; specifying application of tax credit;
5 specifying effective date; and making stylistic revisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-4. Amount of credit allowed for manufacturing investment, definition, effective date.

1 (a) Credit allowed. —

2 (1) There is allowed to eligible taxpayers and to persons described in subdivision (4),
3 subsection (b) of this section a credit against the taxes imposed by § 11-13A-1 et seq., §11-21-1
4 et seq. and §11-24-1 et seq. of this code: *Provided*, That a tax credit for any eligible taxpayer
5 operating a business activity classified as having a sector identifier, consisting of the six-digit code
6 number 211112 such eligible taxpayer ~~must~~ shall comply with the provisions of subsection ~~(e)~~ (d)
7 of this section for all construction related thereto in order to be eligible for any credit under this
8 article. The amount of credit shall be determined as hereinafter provided in this section.

9 (2) For tax years beginning on and after January 1, 2023, “eligible taxpayer” means any
10 manufacturing business that is subject to the tax imposed under §11-24-1 et seq. of this code, or
11 any manufacturing business that is a pass through entity, the owners or interest holders of which
12 are subject to the tax imposed under §11-24-1 et seq. of this code, on the conduit income thereof
13 directly attributable to the manufacturing activity, or the tax imposed under §11-21-1 et seq. of
14 this code, on the conduit income thereof directly attributable to the manufacturing activity, or any
15 manufacturing business that is a sole proprietorship, the net income of which is subject to the tax
16 imposed under §11-21-1 et seq. of this code, on income directly attributable to the manufacturing
17 activity: *Provided*, That taxpayers owning property assessed by the Board of Public Works are

18 not eligible taxpayers for purposes of this article. “Eligible taxpayer” includes those members of
19 an affiliated group of taxpayers engaged in a unitary business, in which one or more members of
20 the affiliated group is a person subject to the tax imposed under §11-24-1 et seq. of this code.
21 Application of credit under this article is subject to §11-24-13a(g) and §11-24-13c(b)(2) of this
22 code. Affiliates not engaged in the unitary business do not qualify as eligible taxpayers.

23 (b) Amount of credit allowable. — The amount of allowable credit under this article is
24 equal to five percent of the qualified manufacturing investment as determined in §11-13S-5 of this
25 code: *Provided*, That the amount of allowable credit under this article is equal to 50 percent of the
26 qualified manufacturing investment as determined in §11-13S-5. of this code or any eligible
27 taxpayer operating a business that is or may be classified as having a sector identifier, consisting
28 of the six-digit code number 332992 or 332994, as defined on January 1, 2021. This credit shall
29 reduce the severance tax, imposed under §11-13A-1 et seq. of this code and the corporation net
30 income tax imposed under §11-24-1 et seq. of this code, in that order, subject to the following
31 conditions and limitations:

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

35 (2) Severance tax. — The credit is applied to reduce the severance tax imposed under
36 §11-13A-1 et seq. of this code determined before application of the credit allowed by §11-12B-3
37 of this code and before any other allowable credits against tax and before application of the annual
38 exemption allowed by §11-13A-10 of this code. The amount of annual credit allowed may not
39 reduce the severance tax, imposed under §11-13A-1 et seq. of this code, below 50 percent of the
40 amount which would be imposed for such taxable year in the absence of this credit against tax:
41 *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit
42 allowed may not reduce the severance tax, imposed under §11-13A-1 et seq. of this code, below
43 40 percent of the amount which would be imposed for such taxable year in the absence of this

44 credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this
45 article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable
46 year may not reduce the amount of the severance tax imposed under §11-13A-1 *et seq.* of this
47 code below 50 percent of the amount which would be imposed for such taxable year determined
48 before application of the credit allowed by §11-12B-3 of this code and before any other allowable
49 credits against tax and before application of the annual exemption allowed by §11-13A-10 of this
50 code: *Provided, however,* That when in any taxable year beginning on and after January 1, 2009,
51 the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the
52 total amount of all credits allowable for the taxable year may not reduce the amount of the
53 severance tax imposed under §11-13A-1 *et seq.* of this code, below 40 percent of the amount
54 which would be imposed for such taxable year as determined before application of the credit
55 allowed by §11-12B-3 of this code and before any other allowable credits against tax and before
56 application of the annual exemption allowed by §11-13A-10 of this code;

57 (3) Corporation net income tax. — After application of subdivision (2) of this subsection,
58 any unused credit is next applied to reduce the corporation net income tax imposed under §11-
59 24-1 *et seq.* of this code determined before application of any other allowable credits against tax.
60 The amount of annual credit allowed will not reduce corporation net income tax, imposed under
61 §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for such
62 taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on
63 and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net
64 income tax, imposed under §11-24-1 *et seq.* of this code, below 40 percent of the amount which
65 would be imposed for such taxable year in the absence of this credit against tax. When in any
66 taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this
67 code, the total amount of all credits allowable for the taxable year may not reduce the amount of
68 the corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 50 percent of
69 the amount which would be imposed for the taxable year determined before application of any

70 other allowable credits against tax: *Provided, however,* That when in any taxable year beginning
71 on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-
72 13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not
73 reduce the amount of the corporation net income tax imposed under article §11-24-1 *et seq.* of
74 this code below 40 percent of the amount which would be imposed for the taxable year as
75 determined before application of any other allowable credits against tax;

76 (4) Pass-through entities, personal income tax, proprietorships. —

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

84 (B) The amount of annual credit allowed will not reduce corporation net income tax
85 imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be
86 imposed on the conduit income directly derived from the eligible taxpayer by each owner for such
87 taxable year in the absence of this credit against the taxes determined before application of any
88 other allowable credits against tax: *Provided,* That for tax years beginning on and after January
89 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax imposed
90 under §11-24-1 *et seq.* of this code below 40 percent of the amount which would be imposed on
91 the conduit income directly derived from the eligible taxpayer by each owner for such taxable year
92 in the absence of this credit against the taxes as determined before application of any other
93 allowable credits against tax.

94 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and
95 §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will

96 not reduce the corporation net income tax imposed on the conduit income directly derived from
97 the eligible taxpayer by each owner below 50 percent of the amount that would be imposed for
98 such taxable year on the conduit income determined before application of any other allowable
99 credits against tax: *Provided*, That when in any taxable year beginning on and after January 1,
100 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code,
101 the total amount of all credits allowable for the taxable year will not reduce the corporation net
102 income tax imposed on the conduit income directly derived from the eligible taxpayer by each
103 owner below 40 percent of the amount that would be imposed for such taxable year on the conduit
104 income as determined before application of any other allowable credits against tax;

105 (D) For tax years beginning on and after January 1, 2023, if the eligible taxpayer is a
106 limited liability company, small business corporation, or partnership, then any unused credit after
107 application of subdivisions (2) and (3) of this subsection is allowed as a credit against the taxes
108 imposed by §11-21-1 *et seq.* of this code on owners of the eligible taxpayer on the conduit income
109 directly derived from manufacturing activity of the eligible taxpayer by its owners. Only those
110 portions of the tax imposed by §11-21-1 *et seq.* of this code on income of each owner directly
111 derived from manufacturing activity of the eligible taxpayer are subject to offset by this credit.

112 (E) The amount of annual credit allowed may not reduce personal income tax imposed
113 under §11-21-1 *et seq.* of this code below 40 percent of the amount which would be imposed on
114 the conduit income directly derived from manufacturing activity of the eligible taxpayer by each
115 owner for such taxable year in the absence of this credit against the taxes as determined before
116 application of any other allowable credits against tax.

117 (F) For tax years beginning on and after January 1, 2023, if the eligible taxpayer is a sole
118 proprietorship, then any unused credit after application of subdivisions (2) and (3) of this
119 subsection is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of this code on
120 income directly derived from manufacturing activity by the eligible taxpayer. Only those portions
121 of the tax imposed by §11-21-1 *et seq.* of this code on income of the owner directly derived from

122 manufacturing activity are subject to offset by this credit.

123 (G) The amount of annual credit allowed will not reduce personal income tax imposed
124 under §11-21-1 et seq. of this code below 40 percent of the amount which would be imposed on
125 the conduit income directly derived from manufacturing activity of the eligible taxpayer for such
126 taxable year in the absence of this credit against the taxes as determined before application of
127 any other allowable credits against tax.

128 (5) Small business corporations, limited liability companies, partnerships, and other
129 unincorporated organizations shall allocate any unused credit after application of subdivisions (2)
130 and (3) of this subsection among their members in the same manner as profits and losses are
131 allocated for the taxable year. ~~and~~

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

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

137 (d) Application for credit required. —

138 (1) Application required. — Notwithstanding any provision of this article to the contrary,
139 no credit is allowed or may be applied under this article for any qualified investment property
140 placed in service or use until the person claiming the credit makes written application to the Tax
141 Commissioner for allowance of credit as provided in this section. This application shall be in the
142 form prescribed by the Tax Commissioner and shall provide the number and type of jobs created,
143 if any, by the manufacturing investment, the average wage rates and benefits paid to employees
144 filling the new jobs, and any other information the Tax Commissioner may require. This application
145 shall be filed with the Tax Commissioner no later than the last day for filing the annual return,
146 determined by including any authorized extension of time for filing the return, required under §11-
147 21-1 et seq. or §11-24-1-1 et seq. of this code for the taxable year in which the property to which

148 the credit relates is placed in service or use.

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

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

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

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

171 (c) Carryover credit disallowed. — Any credit remaining after application of the credit
172 against the tax liabilities specified in subsections (a) and (b) of this section for the current taxable
173 year is forfeited and shall not carry back to any prior taxable year and shall not carry forward to

174 any subsequent taxable year. The credit allowed under this article shall be applied after
175 application of all other applicable tax credits allowed for the taxable year against the taxes
176 imposed by ~~article twenty-three~~ §11-24-1 et seq. of this code ~~of this chapter~~ and after application
177 of all other applicable tax credits allowed for the taxable year against the taxes imposed by ~~article~~
178 ~~twenty-four~~ §11-21-1 et seq. of this code.

179 (d) Annual schedule. — For purposes of asserting the credit against tax, the taxpayer
180 shall prepare and file an annual schedule showing the amount of tax paid for the taxable year and
181 the amount of credit allowed under this article. The annual schedule shall set forth the information
182 and be in the form prescribed by the Tax Commissioner.

ARTICLE 13Y. WEST VIRGINIA MANUFACTURING PROPERTY TAX ADJUSTMENT CREDIT.

§11-13Y-5. Application of annual credit allowance, definition, effective date.

1 ~~(a) Application of credit against business franchise tax. — The amount of credit allowed~~
2 ~~shall first be taken against the tax liabilities of the eligible taxpayer for the current taxable year~~
3 ~~imposed by article twenty-three of this chapter~~

4 (a) For tax years beginning on and after January 1, 2023, “eligible taxpayer” means a
5 manufacturing business that is subject to the tax imposed under §11-24-1 et seq. of this code on
6 income directly attributable to manufacturing activity in this state, or any manufacturing business
7 that is a pass through entity, the owners or interest holders of which are subject to the tax imposed
8 under §11-24-1 et seq. of this code, on the conduit income thereof directly attributable to
9 manufacturing activity in this state, or the tax imposed under §11-21-1 et seq. of this code, on the
10 conduit income thereof directly attributable to manufacturing activity in this state, or a
11 manufacturing business that is a sole proprietorship, the net income of which is subject to the tax
12 imposed under §11-21-1 et seq. of this code, on income directly attributable to manufacturing
13 activity in this state: *Provided*, That taxpayers owning property assessed by the Board of Public

14 Works are not eligible taxpayers for purposes of this article. “Eligible taxpayer” includes those
15 members of an affiliated group of taxpayers engaged in a unitary business, in which one or more
16 members of the affiliated group is a person subject to the tax imposed under §11-24-1 et seq. of
17 this code. Application of credit under this article is subject to the provisions of §11-24-13a(g) and
18 §11-24-13c(b)(2) of this code. Affiliates not engaged in the unitary business do not qualify as
19 eligible taxpayers.

20 (b) Application of credit against corporate net income tax. — ~~Any credit remaining after~~
21 ~~application of the credit against the tax liabilities of the eligible taxpayer for the current taxable~~
22 ~~year imposed by article twenty-three [§11-23-1 et seq.] of this code shall next~~ The amount of
23 credit allowed under this article shall first be taken against the tax liabilities of the eligible taxpayer
24 for the current taxable year imposed by ~~article twenty-four~~ §11-24-1 et seq. of this code and
25 directly derived from manufacturing activity in this state.

26 (c) Application of credit, pass-through entities, personal income tax, and proprietorships.

27 =

28 (1) For corporation net income tax payers – For tax years beginning on and after January
29 1, 2023, if the eligible taxpayer is a limited liability company, small business corporation, or a
30 partnership, then the credit authorized under this article shall be taken against the tax liabilities
31 imposed by §11-24-1 et seq. of this code on owners of the eligible taxpayer on conduit income
32 directly derived from the eligible taxpayer and attributable to the manufacturing activity in this
33 State.

34 (2) For personal income tax payers –

35 (A) For tax years beginning on and after January 1, 2023, if the eligible taxpayer is a limited
36 liability company, small business corporation, or a partnership, then the credit authorized under
37 this article shall be taken against the tax liabilities imposed by §11-21-1 et seq. of this code on
38 owners of the eligible taxpayer on conduit income directly derived from the eligible taxpayer and
39 attributable to the manufacturing activity in this state.

40 (B) For tax years beginning on and after January 1, 2023, if the eligible taxpayer is a sole
41 proprietorship, then credit authorized under this article shall be taken against the tax liabilities
42 imposed by §11-21-1 et seq. of this code on income of the eligible taxpayer directly derived from
43 manufacturing activity in this state. Only those portions of the tax imposed by §11-21-1 et seq. of
44 this code on income of the owner directly derived from manufacturing activity are subject to offset
45 by this credit.

46 ~~(c)~~ (d) Carryover credit disallowed. — Any credit remaining after application of the credit
47 against the tax liabilities specified in ~~subsections (a) and (b)~~ of this section for the current taxable
48 year is forfeited and ~~shall~~ may not carry back to any prior taxable year, and ~~shall~~ may not carry
49 forward to any subsequent taxable year. The credit allowed under this article shall be applied after
50 application of all other applicable tax credits allowed for the taxable year against the taxes
51 imposed by ~~article twenty-three of this chapter and after application of all other applicable tax~~
52 ~~credits allowed for the taxable year against the taxes imposed by article twenty-four~~ §11-24-1 *et*
53 *seq.* of this code, and after application of all other applicable tax credits allowed for the taxable
54 year against the taxes imposed by §11-21-1 et seq. of this code.

55 ~~(d)~~ (e) Annual schedule. — For purposes of asserting the credit against tax, the taxpayer
56 shall prepare and file an annual schedule showing the amount of tax paid for the taxable year and
57 the amount of credit allowed under this article. The annual schedule shall set forth the information
58 and be in the form prescribed by the Tax Commissioner.