

CHAPTER 3

TAX INCENTIVES FOR BUSINESS DEVELOPMENT IN WEST VIRGINIA

The editor acknowledges the valuable contributions Lydia S. McKee made in updating chapter three over the past six years. We wish Lydia well in her future endeavors.

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¶ 301 ECONOMIC OPPORTUNITY CREDIT

¶ 301.1 Introduction

Law: W. Va. Code § 11-13Q -1 et seq.

The economic opportunity credit was enacted for investment made in periods beginning on or after January 1, 2003 and replaced the business investment and jobs expansion credit. There are various differences between the business investment and jobs expansion credit and the economic opportunity credit. For example, multi-party projects are not permitted under the economic opportunity credit and the number of new jobs required to obtain the credit is 20 under the economic opportunity credit rather than the 50 required under the prior business investment and jobs expansion credit.

There are also several specialized economic opportunity credits that target either specific types of businesses or types of investment. For example there is an economic opportunity credit for small businesses which requires a lesser number of jobs to be created to be eligible for the credit. The corporate headquarters relocation credit provides an incentive for businesses that move their corporate headquarters from out of state into West Virginia. Beginning in 2008, a high technology economic opportunity credit provides an enhanced incentive to businesses that are engaged in various high technology activities that create new jobs. In 2009, a jobs creation economic opportunity credit was enacted for businesses that meet the requirements of the economic opportunity credit, but fall short of creating the required number of jobs.

¶ 301.2 Eligible Taxpayers

Law: W. Va. Code §§ 11-13Q-3(b)(9) and 11-13Q-19

In order to qualify for the economic opportunity credit, the business must make qualified investment in a new or expanded business facility in West Virginia and be engaged in one of the following activities:

- manufacturing
- information processing
- warehousing
- non-retail goods distribution
- qualified research and development
- the relocation of a corporate headquarters
- destination –oriented recreation and tourism

The business must also create at least 20 new jobs within 3 years of its initial investment. In addition, the taxpayer must be subject to the business and occupation tax, the personal income tax, business franchise tax, or corporation net income tax.

For years prior to 2009, the term "eligible taxpayer" included members of an affiliated group of taxpayers if the group elected to file a consolidated corporation net income tax return. However, for years beginning on or after January 1, 2009, the filing

of a consolidated return is no longer allowed under West Virginia law. Instead of consolidated returns, combined filing for unitary groups is required for tax years beginning on or after January 1, 2009. Currently the definition of "eligible taxpayer" does not specifically include members of a unitary group filing a combined corporation net income tax return.

¶ 301.3 Amount of the Credit

Law: W. Va. Code § 11-13Q-4

The amount of the credit is calculated by taking the qualified investment and multiplying it by the applicable jobs percentage. The credit is taken over a period of ten years at the rate of 10% per year.

¶ 301.4 Eligible Investment

Law: W. Va. Code § 11-13Q-3(b)(20)

Qualified investment is property constructed, purchased, leased or transferred into West Virginia and placed in service or use as a component of a new or expanded business facility located in the state. A new or expanded business facility is a business facility which is employed by the taxpayer in the conduct of a business; the net income of which is or will be taxable in the future under the personal income tax or the corporation net income tax.

The facility must be purchased by, or leased to, the taxpayer on or after the first day of January 1, 2003 and cannot be purchased or leased by the taxpayer from a related person. The Commissioner may waive this requirement if the facility was acquired from a related party for its fair market value and the acquisition was not tax motivated.

The facility must not be in service or use during the 90 days immediately prior to transfer of the title to the facility, or prior to the commencement of the term of the lease of the facility: This 90-day period may be waived by the Commissioner if the Commissioner determines that persons employed at the facility may be treated as "new employees" because the jobs would be lost due to the facility being sold by the United States bankruptcy court in a liquidation sale, or the owner was insolvent, or the facility was destroyed in whole or in significant part by fire, flood, or other act of God.

A facility is not considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person or persons.

The types of property that are eligible for the credit are as follows:

- Real property and improvements with a useful life of four or more years; or
- Real property and improvements thereto, acquired by written lease having a primary term of ten or more years; or

- Tangible personal property placed in service or use by the taxpayer with respect to which depreciation or amortization in lieu of depreciation is allowable in determining the personal or corporation net income tax liability of the business taxpayer, and which has a useful life of four years or more years at the time it is placed in service; or
- Tangible personal property acquired by written lease having a primary term of four years or longer that is used as a component part of a new or expanded business facility; or
- Tangible personal property owned or leased, and used by the taxpayer at a business location outside the state which is moved into the state of West Virginia for use as a component part of a new or expanded business facility. In order to be eligible, the property must be depreciable or amortizable personal property for income tax purposes, and have a useful life of four or more years remaining at the time it is placed in service or use in the state, and if the property is leased, the primary term of the lease remaining at the time the leased property is placed in service or use in the state must be four or more years.

The types of property that are not eligible for the credit are as follows:

- Property owned or leased by the taxpayer for which the taxpayer was previously allowed tax credits;
- Repair costs, including materials used in the repair, unless the cost of the repair must be capitalized for federal income tax purposes, and not expensed.
- Airplanes;
- Property which is used outside of West Virginia, with use determined by the amount of time it is used within and without the state;
- Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the Tax Commissioner consents to waiving this requirement;
- Natural resources in place;
- Purchased or leased property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time the property is placed in service or use; and
- Property acquired from one component member of a controlled group from another component member of the same controlled group. This requirement can be waived by the Tax Commissioner if the property was acquired from a related party for its fair market value at the time of acquisition, and the basis

of the property is not determined by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired, or under IRC §1014 (e) as in effect on January 1, 2002.

¶ 301.5 Qualified Investment

Law: W. Va. Code § 11-13Q-8

In order to compute the credit, the amount of qualified investment must be determined. It is determined by taking the cost of the eligible investment and adjusting it by the useful life of the property as follows:

Useful Life of Property	Applicable Percentage
4 years or more but less than 6 years	33 1/3%
6 years or more but less than 8 years	66 2/3%
8 years or more	100%

For example, if a piece of equipment is purchased for \$100,000 and the useful life is six years, then the qualified investment related to this purchase would be \$66,667 (\$100,000 x 66 2/3%).

The useful life of any property is determined as of the date the property is first placed in service or use in this state.

Cost of the investment does not include the value of property given in trade or exchange for the property purchased for business expansion. If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss. Real property acquired by a written lease for a primary term of ten years or more is 100% of the rent reserved for the primary term of the lease, not to exceed twenty years. For tangible personal property, if the written lease is for four years but less than six years, the cost is one third of the rent reserved for the primary term of the lease. If it is six years but less than eight years, the cost is two thirds of the rent reserved for the primary term of the lease. If it is eight years or longer, the cost is 100% of the rent reserved for the primary term of the lease, not to exceed 20 years or the book life of the equipment using straight line depreciation.

In the case of self-constructed property, cost is the amount charged to the capital account for depreciation in accordance with federal income tax law. Transferred property is valued based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost is the original cost of the property to the taxpayer, less straight line depreciation for the tax years the property was used outside West Virginia. Leased property transferred into the state is valued based on the rent reserved for the remaining primary lease term, not to exceed twenty years or the remaining useful life of the property.

¶ 301.6 New Jobs Percentage

Law: W. Va. Code § 11-13Q-9

The new jobs percentage is based on the number of jobs created as a result of the qualified investment in a new or expanded business facility in West Virginia. It is applied to the qualified investment in order to determine the credit amount. In order to qualify for the economic opportunity credit, a taxpayer must create at least 20 new jobs. The new jobs credit can be as high as 30% if at least 520 new jobs are created.

New Jobs Created	New Jobs Percentage
520	30%
280	25%
20	20%
15*	10%
10**	10%

* A taxpayer can earn economic opportunity credit for corporate headquarters relocation by moving its headquarters to West Virginia and creating 10 new West Virginia jobs.

** A taxpayer that meets certain payroll and gross receipts requirements can earn economic opportunity small business credit by creating 10 new jobs.

This percentage are increased by 5% if the project has qualified investment of \$20,000,000 or more and is constructed using construction labor and mechanics numbering 75 or more employees or equivalent employees, who are paid average wages equal to at least the prevailing wage.

In order to determine the net increase in jobs, the taxpayers employment in the State must be determined on a controlled group basis rather than on an individual subsidiary basis.

¶ 301.7 “New Employee” Defined

Law: W. Va. Code § 11-13Q-3(b)(14)

In order to qualify as a “new employee” for purposes of the credit, the person must reside in and be domiciled in West Virginia. Except for the exceptions outlined below, the position or job that the employee fills must be a job that did not previously exist in the business prior to the qualified investment being made and placed in service.

There are two situations where a person that fills a position or job that previously existed may be treated as a “new employee.” If the position is saved as a result of the qualified investment being put into use and the Tax Commissioner finds on the basis of information supplied by the taxpayer that: (1) but for the new employer purchasing the assets of a business in bankruptcy under chapter seven or eleven of the United States bankruptcy code and making investment in the business, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs saved

would have been lost; or (2) but for the taxpayer making qualified investment in the property, the business would have been closed and the employees located at the facility would have lost their jobs. In order to make this certification, the Tax Commissioner must find that the taxpayer is insolvent as defined in 11 U.S.C. § 101(32) or that the taxpayer's business facility was destroyed, in whole or in significant part, by fire, flood or other act of God.

¶ 301.8 Application of the Credit

Law: W. Va. Code § 11-13Q-7

The economic opportunity tax credit can be used to offset the following taxes in the following order:

- The business and occupation tax
- The business franchise tax
- The corporation income tax
- The personal income tax on flow through business income

In order to be eligible for offset by the economic opportunity credit, the tax must be attributable to the qualified investment made to earn the credit. The amount of tax that is attributable to the qualified investment is determined by applying a payroll apportionment percentage factor to the total tax being offset. The payroll apportionment percentage is calculated by dividing the payroll attributable to the "new jobs" created by the investment over the total payroll of the taxpayer.

The credit can be used to offset up to 80% of the tax attributable to the investment. When the median salary of the new jobs is higher than the statewide average nonfarm payroll wage, the credit is allowed against 100% of the tax attributable to the qualified investment. In order to qualify for the higher offset percentage, the median compensation of the new jobs must be greater than the statewide average nonfarm payroll amount determined annually by the State Tax Commissioner.

For tax years beginning in: The Statewide Average Nonfarm Payroll Wage is:

2010	\$35,985
2011	\$36,895
2012	\$37,701
2013	\$39,091
2014	\$39,721
2015	\$40,198

¶ 301.9 Carryover of Unused Credit

Law: W. Va. Code § 11-13Q-7(h)

Unused credits may be carried forward from year to year during the initial 10-year period of the credit. After the initial 10-year period, unused credits may only be carried forward for 3 additional years, or years 11 through 13.

¶ 301.10 Certified Projects

Law: W. Va. Code § 11-13Q-6

A business that is making investment over a period of up to three years may apply for project certification from the Tax Commissioner. In order to be considered eligible for project certification, the investment must be made in accordance with a written business facility development plan, and the investment placed in service during the first year would not have been made without the expectation of making the qualified investment placed in service during the second and third years. The request for certification must be made prior to the claiming of any credit related to the project investment.

¶ 301.11 Forfeiture and Redetermination of the Credit

Law: W. Va. Code § 11-13Q-11

If a taxpayer disposes of qualified investment property before its useful life expires, or otherwise ceases to use the property in an eligible business, the remainder of the credit related to that investment is forfeited. The credit already claimed attributable to the disposed investment must be recalculated using the actual useful life. If an excess amount of credit has been previously claimed based on the actual useful life, then a reconciliation schedule must be filed with payment of any additional tax and interest due. If the investment property has been used for less than four years, all credit is forfeited.

Forfeiture and required redetermination of the credit can also occur if the taxpayer either ceases to operate the business facility or fails to maintain the required number of new jobs necessary to claim the credit. If a taxpayer fails to create the minimum number of jobs within the required time period, the entire credit is forfeited.

If the number of new jobs is not maintained during any of the years four through ten of the credit, the credit for that particular year is forfeited, but will be reinstated upon attainment of the minimum number of new jobs required for the credit.

If a jobs percentage of 25% - 30% has previously been attained, but the number of new jobs maintained for the year has decreased below the amount required, the credit must be recalculated using the redetermined new jobs percentage related to the number of new jobs actually maintained for the year.

If the business is sold to a successor and the property continues to be used in an eligible activity, then the successor may continue to claim the unused portion of the credit.

¶ 301.12 Recapture Tax

Law: W. Va. Code § 11-13Q-12

If a taxpayer does not maintain the required number of jobs for the economic opportunity credit or disposes of qualified investment property prior to its useful life, they will be responsible for a recapture tax.

If the amount of new jobs maintained falls below 20, the recapture tax will be equal to the amount of credit claimed for the current year and all prior years on the qualified investment that was removed from services prematurely. If the amount of new jobs maintained does not fall below 20, but falls below the threshold number that the credit was originally based upon, the recapture tax will be equal to the amount of credit claimed for the current years and all prior years less the amount of credit based on a recalculation using the revised new jobs percentage and revised qualified investment amount that is still in service.

The recapture tax is due and payable on the date the taxpayer's annual personal income tax return or corporation income tax return is due for the year in which the recapture occurs. If the taxpayer is a partnership or S corporation, the recapture tax is paid by the partner, members, or shareholders in the taxable year in which the recapture occurs.

¶ 301.13 Recordkeeping Requirements

Law: W. Va. Code § 11-13Q-15

A taxpayer must keep records that provide information on the qualified investment. Information that must be maintained on the qualified investment include its identity, its actual or determined cost, its straight line depreciation life, the date it was placed in service, the amount of credit taken, and the date the investment was disposed of or otherwise ceased to be qualified.

If these records are not maintained, then the taxpayer is treated as having disposed of any property that it cannot establish was still on hand at the end of the year. Also, if a taxpayer cannot establish when investment property was placed in service, it is treated as being placed in service in the most recent year that similar property was placed in use, unless it can be proved that the property placed in service in the most recent year is still on hand. In that case, the taxpayer will be treated as having placed the property in service in the next most recent year.

¶ 301.14 Filing Requirements

Law: W. Va. Code § 11-13Q-18

In order to claim the credit, the taxpayer must apply for the credit by filing an application, Form WV/EOTC-A, no later than the due date for filing either the corporation net income tax return or personal income tax return, including any authorized extension of time for filing the return for the taxable year to which the credit was placed in service or use. Failure to file the application in a timely manner will result in a forfeiture of 50% of the annual credit allowance. The penalty will apply annually until the application is filed.

In addition, a Form WV/EOTC-1 tax credit schedule must be filed with the tax return on which the credit is claimed.

¶ 301.15 Economic Opportunity Tax Credit for “Small Business”

Law: W. Va. Code § 11-13Q-10

Special rules apply to economic opportunity tax credits for “small businesses.” A “small business” is a business or a controlled group of affiliated companies with annual gross sales not exceeding \$7,000,000 with adjustment for a cost of living increase each year. The amount of adjusted annual gross sales per year is shown in the chart below:

2003	\$7,000,000	2010	\$8,384,000
2004	\$7,159,600	2011	\$8,507,850
2005	\$7,324,500	2012	\$8,714,300
2006	\$7,552,050	2013	\$8,938,250
2007	\$7,846,850	2014	\$9,089,800
2008	\$8,026,350	2015	\$9,233,450
2009	\$8,368,450		

A “small business” is allowed an economic opportunity credit if it makes eligible investment and creates at least 10 new jobs within twelve months. The amount of credit allowed is equal to 10% of the taxpayer’s qualified investment and is applied in the same manner as the other economic opportunity credits.

¶ 301.16 Economic Opportunity Credit for Corporate Headquarters Relocation

Law: W. Va. Code § 11-13Q-5

A company that relocates its corporate headquarters to West Virginia from a location outside of West Virginia may be eligible for the economic opportunity credit for corporate headquarters relocation. In order to be eligible, the company must create at least 15 new West Virginia jobs.

Qualified investment for purposes of the corporate headquarters relocation credit includes both the investment made in the real property and tangible personal property and the reasonable and necessary expenses incurred by the company to achieve the relocation. If the company creates between 15 and 20 new jobs, the economic opportunity credit is equal to 10% of the qualified investment.

The credit is applied in the same manner as the general economic opportunity credit, except for the corporation net income tax. The economic opportunity credit for corporate headquarters relocation can be applied to offset 100% of the corporation net income tax on allocated income and 80% of the corporate net income tax on apportioned income attributable to the investment.

¶ 301.17 Economic Opportunity Tax Credit for High Technology Manufacturers

Law: W. Va. Code § 11-13Q-10a

An economic opportunity credit is allowed eligible high technology manufacturing businesses that make qualified investment in a new or expanded high technology manufacturing business in West Virginia that results in the creation of 20 or more new jobs within 12 months of the qualified investment being placed in service and the median compensation of the new jobs is greater than \$46,900 for new jobs created in 2009. This credit is effective January 1, 2008.

A "high technology manufacturing business" must be classified as having one or more of the following North American Industry Classification System codes:

- **Computer and Peripheral Equipment**
 - o 334111 - Electronic Computers
 - o 334112 - Computer Storage Devices
- **Electronic Components**
 - o 334411 - Electron Tubes
 - o 334414 - Electronic Capacitors
- **Semiconductors**
 - o 334413 - Semiconductor & Related Devices
 - o 333295 - Semiconductor Machinery

The annual amount of credit allowable under this subsection is 100% of the tax attributable to qualified investment, for each consecutive year of a twenty-year credit period.

The annual credit allowance may offset up to 100% of the tax attributable to the qualified investment each year for 20 consecutive years. This is in contrast to the 80% offset normally allowed for the economic opportunity credit for other businesses.

The credit can be applied in the following order to the following taxes: business and occupation tax, the business franchise tax, the corporation net income tax, and the personal income tax. The credit can only be applied to the tax attributable to and the direct consequence of the qualified investment in the new or expanded high technology manufacturing business in this state. The amount of tax that is attributable to the qualified investment is determined by applying a payroll apportionment percentage factor to the total tax being offset. The payroll apportionment percentage is calculated by dividing the payroll attributable to the "new jobs" created by the investment over the total payroll of the taxpayer.

The annual credit allowance must be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the twenty-year credit period until the next succeeding taxable year. This election is made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment

is first placed in service or use. This election cannot be revoked. There is no carryover of the credit.

In order to be considered a new job for purposes of this credit, the job must be filled by a "new employee." In order to be a "new employee" the person must reside in and be domiciled in West Virginia. Except for the exceptions outlined below, the position or job that the employee fills must be a job that did not previously exist in the business prior to the qualified investment being made and placed in service.

There are two situations where a person that fills a position or job that previously existed may be treated as a "new employee." If the position is saved as a result of the qualified investment being put into use and the Tax Commissioner finds on the basis of information supplied by the taxpayer that: (1) but for the new employer purchasing the assets of a business in bankruptcy under chapter seven or eleven of the United States bankruptcy code and making investment in the business, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs saved would have been lost; or (2) but for the taxpayer making qualified investment in the property, the business would have been closed and the employees located at the facility would have lost their jobs. In order to make this certification, the Tax Commissioner must find that the taxpayer is insolvent as defined in 11 U.S.C. §101(32) or that the taxpayer's business facility was destroyed, in whole or in significant part, by fire, flood or other act of God.

Also, the new job must be attributable to the qualified investment. In order to be attributable to the qualified investment, the employee's service must be performed or his or her base of operation must be at the new or expanded business facility. Also, it is necessary that the position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment, and would not have existed, but for the qualified investment being made by the taxpayer.

The median compensation of the new jobs attributable to the qualified investment must be greater than forty-five thousand dollars per year, adjusted for inflation by application of a cost-of-living adjustment annually. The median compensation requirement will be applied each year of the twenty year credit period. Failure of the taxpayer to meet the median compensation requirement for any particular year will result in forfeiture of the credit for that year. However, if the median compensation requirement is then met in a later year, the taxpayer shall regain entitlement to take the credit for that year. No credit that was forfeited in an earlier year can be taken in a later year.

Year	Median Compensation
2008	\$45,000
2009	\$46,900
2010	\$47,000
2011	\$47,650
2012	\$48,850

2013	\$50,100
2014	\$50,950
2015	\$51,750

The Tax Commissioner may require the taxpayer who intends to claim the high technology manufacturing tax credit to file a notice of intent to claim this credit before the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated tax by the credit.

¶ 301.18 Economic Opportunity Tax Credit for Jobs Creation

Law: W. Va. Code § 11-13Q-22

Effective January 1, 2009, an Economic Opportunity Tax Credit for Jobs Creation is available to businesses that fail to meet the jobs creation requirement of the Economic Opportunity Tax Credit, but otherwise meet the requirements of the act.

To be eligible for the credit, the business must be engaged in the activities of manufacturing, warehousing, information processing, goods distribution, destination tourism, or research and development. In order to qualify for the credit, the jobs created must be full time, pay a minimum salary of \$32,000, and offer health benefits. The minimum salary will be increased annually by a cost of living adjustment. See table below. The business does not have to raise the wages of employees in jobs upon which the initial credit was based by reason of the cost of living adjustment.

Calendar Year	Minimum Salary
2009	\$32,000
2010	\$32,000
2011	\$32,450
2012	\$33,250
2013	\$34,100
2014	\$34,650
2015	\$35,200

The credit is equal to \$3,000 annually for a period of five years for each new job created. If the business has a net job decrease within the five years that the credit is allowed, counting both the new jobs and preexisting jobs, then the credit must be reduced by \$3,000 for each net job lost.

The credit is applied in order to the business and occupation tax, business franchise tax, corporation net income tax, and the personal income tax in the same manner as the economic opportunity credit. The credit may only offset tax attributable to the taxpayer's operation in West Virginia. There is no carryforward or carryback of excess credit.

The credit may be taken in addition to the business investment and jobs expansion credit, industrial expansion and revitalization credit, coal loading facilities credit, credit for reducing electric and natural gas utility rates for low income residential customers,

tax credit for reducing telephone utility rates for certain low-income residential customers, neighborhood investment tax credit, strategic research and development tax credit, and the manufacturing investment tax credit.

¶ 302 MANUFACTURING INVESTMENT CREDIT

¶ 302.1 Introduction

Law: W. Va. Code § 11-13S-2

The manufacturing investment credit was enacted to encourage the establishment of new industrial facilities and the revitalization of existing industrial facilities in West Virginia. It applies to investment made on or after January 1, 2003.

¶ 302.2 Eligible Taxpayers

Law: W. Va. Code § 11-13S-3

In order to claim the manufacturing investment credit, the taxpayer must make qualified investments in an industrial facility that is used in manufacturing. Manufacturing means any business activity classified under the North American Industry Classification System as having a sector identifier consisting of the first two digits of 31, 32, or 33 of the 6-digit sector identifier or the 6-digit code number 211112 (business of recovering liquid hydrocarbons from natural gas).

An additional requirement must be met by taxpayers who are engaged in the business of recovering liquid hydrocarbons from natural gas (NAICS 21112) that undertake to build a credit qualifying facility costing \$500,000 or more. In that instance, the taxpayer must hire at least 75% of the workers building the facility either from West Virginia or from counties at least a portion of which is within fifty miles of the West Virginia border. This requirement can be waived by the West Virginia Tax Commissioner if the taxpayer's efforts to comply are unsuccessful.

¶ 302.3 Eligible Investment

Law: W. Va. Code § 11-13S-3(b)(7)

In order to qualify for the Manufacturing Investment Credit, the purchases must be "property purchased for manufacturing investment." "Property purchased for manufacturing investment" includes real property, and improvements thereto, and tangible personal property, if the property was constructed, or purchased, for use as a component part of a new, expanded or revitalized industrial facility.

Only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the federal income tax liability of the industrial taxpayer and that has a useful life, at the time the property is placed in service or use in this state, of four years or more, is eligible for the credit. Property acquired by written lease, for a primary term of 10 years or longer, if used as a component part of a

new or expanded industrial facility, is also considered to be “property purchased for manufacturing investment.”

"Property purchased for manufacturing investment" does not include the following:

- •Repair costs including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;
- •Motor vehicles licensed by the Department of Motor Vehicles;
- •Airplanes;
- •Off-premises transportation equipment;
- •Property which is primarily used outside this state; and
- •Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his or her industrial business in this state, or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.
- Purchases or acquisitions of land or depreciable property qualify as purchases of property purchased for manufacturing investment for purposes of this article only if the following are true:
 - The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under IRC § 267 or §707(b);
 - The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and
 - The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired; or under IRC § 1014(e).

¶ 302.4 Amount of the Credit

Law: W. Va. Code § 11-13S-4

The credit amount is 5% of the qualified manufacturing investment and is taken over a 10-year period. One-tenth of the credit is taken each year.

¶ 302.5 Qualified Investment

Law: W. Va. Code § 11-13S-5

The qualified manufacturing investment is the cost of the property purchased for manufacturing investment, adjusted for the useful life of the property. The investment is adjusted for the useful life of the property as follows:

Useful Life of Property	Applicable Percentage
4 years or more but less than 6 years	33 1/3%
6 years or more but less than 8 years	66 2/3%
8 years or more	100%

The cost of property does not include the value of property given in trade or exchange for property purchased for manufacturing investment. It also does not include insurance proceeds received in compensation for the loss of property damaged or destroyed by fire, flood, storm or other casualty, or stolen. The cost of rental property that is leased for a primary term of 10 years or longer is 100% of the rent reserved for the primary term of the lease, not to exceed 20 years. The cost of self-constructed property shall be the amount properly charged to the capital account for purposes of depreciation. If property is purchased for multiple uses, the cost is apportioned between the eligible use and the non-eligible use, and the amount apportioned to the manufacturing business is treated as a qualified manufacturing investment.

¶ 302.6 Application of the Credit

Law: W. Va. Code § 11-13S-4

The manufacturing investment credit can be used to offset up to 50% of the severance tax, business franchise tax, and corporation net income tax in that order. If the entity that is claiming the credit is also claiming the industrial expansion and revitalization credit, the sum of the two credits may not offset more than 50% of the total severance, business franchise, or corporation net income tax.

If the eligible entity is a limited liability company, small business corporation or a partnership, any unused credit, after application to severance tax, business franchise tax, and corporation net income tax, is allowed as a credit against the corporation net income tax on owners of the eligible taxpayer on conduit income directly derived from the eligible taxpayer by its owners. Personal income tax is not eligible for offset by the credit. Unused credit is forfeited and cannot be carried forward or backward.

Beginning in 2009, the manufacturing investment credit can be used to offset up to 60% of the severance tax, business franchise tax, and the corporation net income tax in that order.

¶ 302.7 Forfeiture and Redetermination of Credits

Law: W. Va. Code § 11-13S-6

If property for which the credit was allowed ceases to be used in an industrial facility, the unused portion of the credit derived from that property for that year and future years is forfeited. Also, in the event of such cessation of use or disposition, the credits taken in prior years are to be redetermined with the useful life of the property to be considered the period for which it was actually used. The percentage of the cost of the property which is an eligible investment is then redetermined accordingly. Any additional tax, interest and penalties owed should be filed together with a reconciliation statement.

A cessation due to a casualty loss of the eligible investment will not cause a redetermination of the credit for prior years although the credit is forfeited for that year and future years. Cessations for other reasons such as those resulting from labor disputes or lack of market are not similarly exempted. It is unclear how permanent a cessation must be before a redetermination of the credit is required. Presumably a temporary shutdown of business which is not a permanent abandonment of the use of the facility would not cause a redetermination of the credit. A sale to a purchaser who continues to operate the facility is not a disposition causing a redetermination of the credit. In the event of a transfer to a successor, the successor may take the remaining available credit.

¶ 302.8 Filing for the Credit

Law: W. Va. Code § 11-13S-4(d)(1)

In order to claim the credit, the taxpayer must file a written application (Form WV/MITC-A) on or before the last day for filing the annual return, determined by including any authorized extension of time for filing the return for the taxable year in which the property to which the credit relates is placed in service or use. Failure to file the application for credit will result in forfeiture of the 50% of the annual credit allowance until the application is filed.

The taxpayer must also file a Schedule MITC-1 Credit for Manufacturing Investment with the tax return on which they claim the credit.

¶ 303 MANUFACTURING PROPERTY TAX CREDIT ADJUSTMENT

¶ 303.1 Introduction

Law: W. Va. Code § 11-13Y-1

Effective January 1, 2009, the Manufacturing Property Tax Adjustment Act was enacted to provide a credit against business franchise tax and corporate income tax for property tax paid during the tax year on manufacturing inventory.

¶ 303.2 Eligible Taxpayers

Law: W. Va. Code § 11-13Y-2(b)(5) and (6)

In order to be eligible for the credit, the taxpayer must be engaged in a business that is classified under the North American Industry Classification System (NAICS) codes as

having a 31, 32, or 33 as the first two digits of its sector identifier. The taxpayer must be subject to West Virginia business franchise tax or corporation net income tax and have paid property tax on manufacturing inventory in a West Virginia county. Taxpayers owning property assessed by the Board of Public Works are not eligible taxpayers for this credit.

Members of an affiliated group of taxpayers engaged in a unitary business in which one of the group members is subject to either business franchise tax or corporation net income tax are eligible for this credit.

¶ 303.3 Amount of the Credit

Law: W. Va. Code § 11-13Y-4(b)

The amount of the credit is equal to the property tax paid during the tax year on manufacturing inventory.

¶ 303.4 Application of the Credit

Law: W. Va. Code § 11-13Y-5

The credit is applied first to business franchise tax and then to corporation net income tax credit. Any excess credit is forfeited and cannot be carried forward or backward.

Note: For taxable years beginning after December 31, 2014, the business franchise tax is no longer in effect. This credit may not be applied against personal income taxes.

¶ 303.5 Filing for the Credit

Law: W. Va. Code § 11-13Y-5(d)

The taxpayer must prepare and file an annual schedule as required by the Tax Department with its business franchise tax and corporation net income tax returns in order to claim the credit.

¶ 304 INDUSTRIAL EXPANSION AND REVITALIZATION CREDIT FOR ELECTRIC POWER PRODUCERS

¶ 304.1 Introduction

Law: W. Va. Code § 11-13D-10

This credit is the vestige of the earlier industrial expansion and revitalization credit that was repealed for other types of taxpayers. The current credit only applies to electric power producers as described in West Virginia Code §11-13-20 on or after January 1, 2003.

¶ 304.2 Eligible Taxpayers

Law: W. Va. Code § 11-13D-10

Persons engaging or continuing within this State in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both that make eligible investment in an electric power generation facility located in West Virginia are eligible for the credit.

¶ 304.3 Eligible Investment

Law: W. Va. Code §§ 11-13D-2(b)(1), 11-13D-2(b)(4), 11-13D-2(b)(5), 11-13D-2(b)(13) and 11-13D-4

An eligible investment is an investment for expansion or revitalization of an "industrial facility" in this State made by an electric power producer. An industrial facility is broadly defined as almost any real or tangible personal property located within this State used in an "industrial business." The eligible investment is the cost of the property acquired or constructed, adjusted for the useful life of the property. The eligible investment is adjusted for the useful life of the property as follows:

Useful Life of Property	Applicable Percentage
4 years or more but less than 6 years	33 1/3%
6 years or more but less than 8 years	66 2/3%
8 years or more	100%

Tangible personal property purchased to modernize buildings and equipment is an eligible investment if the property is capitalized for federal income tax purposes. If property is partly used in the expansion or revitalization of a business and is partly used for some non-qualifying purpose, the cost of the property is to be allocated in order to determine the eligible investment.

The cost of property acquired for industrial expansion or revitalization does not include credit given for trade-ins or insurance proceeds which are used to acquire replacement property. Property for which a credit was allowed which is acquired as a result of the acquisition of the assets or stock of a business does not qualify for the credit. However, property which was not previously used in this State and which was purchased as part of the acquisition of a business may be eligible for the credit. Property which is leased as part of an industrial expansion or revitalization is deemed to be an eligible investment if the lease is for a term of 10 years or longer, not including renewal periods. The cost of the leased property is considered to be the rentals that are to be paid over the primary term of the lease not to exceed 20 years.

¶ 304.4 Amount of the Credit

Law: W. Va. Code § 11-13D-3(e)

The amount of the credit is 10% of the eligible investment. One-tenth of the credit is taken each year for ten consecutive years beginning with the year in which the property is first placed in service or use in this State.

¶ 304.5 Application of the Credit

Law: W. Va. Code §§ 11-13D-3 and 11-13D-3a

The credit may be applied against the taxpayer's liability for the business and occupation tax, the sales and service tax, the use tax, the severance tax and the business franchise tax. This credit cannot reduce the sum of the taxes against which the credit may be taken below 50%. If the credit cannot be used in any one year because of these limitations, it is forfeited.

¶ 304.6 Forfeiture and Redetermination of the Credit

Law: W. Va. Code §§ 11-13D-6 and 11-13D-7

If property for which the credit was allowed ceases to be used in an electricity generation business, the unused portion of the credit derived from that property for that year and future years is forfeited. Also, in the event of such cessation of use or disposition, the credits taken in prior years are to be redetermined with the useful life of the property to be considered the period for which it was actually used. The percentage of the cost of the property which is an eligible investment is then redetermined accordingly.

Example: 100% of the cost of land acquired for an industrial site would be an eligible investment since the land would have a useful life of more than eight years. If the business conducted at the site was permanently shut down after five years, the useful life of the property would be considered to be five years and the allowable credit would be redetermined for all prior years, considering only one-third of the cost of the land as an eligible investment.

A cessation due to a casualty loss of the eligible investment will not cause a redetermination of the credit for prior years although the credit is forfeited for that year and future years. Cessations for other reasons such as those resulting from labor disputes or lack of market are not similarly exempted. It is unclear how permanent a cessation must be before a redetermination of the credit is required. Presumably a temporary shutdown of business which is not a permanent abandonment of the use of the facility would not cause a redetermination of the credit. A sale to one who continues to operate the facility is not a disposition causing a redetermination of the credit. In the event of a transfer to a successor, the successor may take the remaining available credit.

¶ 304.7 Example of the Industrial Expansion and Revitalization Credit for Electric Power Producers

A power company invests \$300,000,000 in scrubbers for its existing power generation plant. Only nine new jobs are created by the investment so it does not qualify for the economic opportunity credit, but it will qualify for the industrial expansion and revitalization credit.

The economic useful life of the scrubbers is greater than eight years so 100% of the cost of the equipment is an eligible investment. The credit is 10% of the total eligible investment. The total available credit is \$30,000,000. This credit is spread over 10 years so that there is a \$3,000,000 credit for each of the ten successive years commencing with the year in which the property is placed into service.

¶ 305 COAL LOADING FACILITY CREDIT

¶ 305.1 Introduction

Law: W. Va. Code § 11-13E-1 et seq.

An investment in a coal loading facility was not generally covered by the industrial expansion and revitalization credit due to the limitation on the type of business which was eligible for that credit. Consequently, a separate coal loading facilities credit was enacted.

¶ 305.2 Eligible Taxpayers

Law: W. Va. Code § 11-13E-2(h)(2)

Any taxpayer subject to the business and occupation tax, the severance tax or the business franchise tax is eligible to take the coal loading facility credit.

¶ 305.3 Eligible Investment

Law: W. Va. Code §§ 11-13E-2(b)(1), 11-13E-2(b)(2), 11-13E-2(b)(4) and 11-13E-4

Property purchased for the purpose of building, expanding or revitalizing a "coal loading facility" in this State is an investment eligible for the credit. A coal loading facility includes real and personal property used solely for the purpose of transferring coal from a coal preparation facility, from a coal storage facility or from *any* means of transportation to rail or barge transportation. It should be noted that only a coal tipple used to load railroad cars or river barges will qualify for this credit and any other type of coal tipple used, such as a truck tipple, will not be eligible. An investment in a coal loading facility does not include the cost of a coal preparation plant, or coal blending or sizing equipment. It does, however, include such items as conveyors, coal storage facilities, weighing equipment and railroad track, provided such items are directly associated with and used solely for the loading of coal. Therefore, land purchased to be used for the storage of coal in conjunction with a coal tipple will qualify for this credit as well as the cost of laying track to the tipple or the cost of constructing a dock for barges to be loaded from a coal tipple.

The cost of property purchased for the coal loading facility is adjusted for its useful life according to the following schedule:

Useful Life of Property	Applicable Percentage
4 years or more but less than 6 years	331/3%
6 years or more but less than 8 years	662/3%

8 years or more

100%

If property is partly used in a coal loading facility business and is partly used for some non-qualifying purpose, the cost of the property is to be allocated in order to determine the qualified investment. However, there is no procedure set forth for determining how such allocation is to be made. The cost of property acquired for the coal loading facility does not include credit given for trade-ins or insurance proceeds which are used to acquire replacement property.

Property which was previously used to compute any credit described in this chapter, which is acquired as a result of the acquisition of the assets or stock of a business, cannot be used to qualify for the coal loading credit. However, property which was not previously used in this State and which was purchased as part of the acquisition of a business may be eligible for the credit. Property which is leased as part of a coal loading facility is deemed to be an eligible investment if the lease is for a term of 10 years or longer, not including renewal periods. The cost of the leased property is considered to be the rentals that are to be paid over the primary term of the lease not to exceed 20 years.

¶ 305.4 Amount of the Credit

Law: W. Va. Code §§ 11-13E-3(c) and 11-13E-3(d)

The amount of the coal loading facility credit is 10% of the "eligible investment." One-tenth of the credit is taken each year for ten consecutive years beginning with the year in which the facility is first placed in service or use in this State. If the investment in the coal loading facility has been used to compute any other credit described in this chapter, it cannot be used to qualify for the coal loading facility credit.

¶ 305.5 Application of the Credit

Law: W. Va. Code § 11-13E-3(d)

The credit may be applied against the taxpayer's liability for the business and occupation tax, the severance tax and the business franchise tax. The credit cannot reduce the sum of the taxes against which the credit may be taken below 50%. If the credit cannot be used in any one year because of these limitations, it is forfeited.

¶ 305.6 Forfeiture and Redetermination of the Credit

Law: W. Va. Code §§ 11-13E-5 and 11-13E-6

If property for which the credit was allowed ceases to be used in a coal loading facility, the unused credits derived from that property for that year and future years are forfeited. Also, in the event of such cessation of use or disposition, the credits taken in prior years are to be redetermined considering the useful life of the property to be the period for which it was actually used. The percentage of the cost of the property which is an eligible investment is redetermined accordingly. A cessation due to a casualty loss of the eligible investment will not cause a redetermination of the credit for prior years

although the credit is forfeited for that year and future years. Cessations for other reasons such as economic decline are not similarly exempted. A sale to one who continues to operate the property as a coal loading facility is not a disposition causing a redetermination of the credit. In the event of a transfer to a successor, the successor may take the remaining available credit.

¶ 306 STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT

¶ 306.1 Introduction

Law: W. Va. Code § 11-13R-2

The strategic research and development tax credit was enacted to encourage research and development in West Virginia in order to promote economic development and increase employment.

Credit termination. This credit terminated on January 1, 2014 and no credit is available to any taxpayer for any qualified investment or expenditure made on or after that date. Taxpayers that have gained entitlement to the credit for investment made prior to January 1, 2014 will be able to apply the credit that they have earned within the guidelines of the credit.

¶ 306.2 Eligible Taxpayers

Law: W. Va. Code § 11-13R-3(b)(6)

A credit is available to any taxpayer who purchases property or services for the purpose of conducting qualified research and development activities prior to January 1, 2014.

¶ 306.3 Qualified Research and Development Activities

Law: W. Va. Code § 11-13R-3(b)(10)

Qualified research and development activities mean systematic scientific, engineering or technological study and investigation in a field of knowledge in the physical, computer or software sciences, often involving the formulation of hypotheses and experimentation, for the purpose of revealing new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis for new or enhanced products, equipment or manufacturing processes.

Research and development includes, but is not limited to, design, refinement and testing of prototypes of new or improved products, or equipment, or design, refinement and testing of manufacturing processes before commercial sales relating thereto have begun. Commercial sales include, but are not limited to, sales of prototypes or sales for market testing.

Research and development does not include: market research; sales research; efficiency surveys; consumer surveys; product market testing; product testing by

product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability; the ordinary testing or inspection of materials or products for quality control (quality control testing); management studies; advertising; promotions; the acquisition of another's patent, model, production or process or investigation or evaluation of the value or investment potential related thereto; research in connection with literary, historical or similar activities; research in the social sciences, economics, humanities or psychology and other non-technical activities; and the providing of sales services or any other service, whether technical service or non-technical service.

¶ 306.4 Eligible Investment

Law: W. Va. Code § 11-13R-4

The annual combined qualified research and development expenditure is the sum of the applicable percentage of the cost of depreciable property purchased for the conduct of a qualified research and development activity, which is placed in service or use in this State during the taxable year, plus the amount of qualified research and development expenses deducted by the eligible taxpayer, for federal income tax purposes for the taxable year. No credit may be claimed for investment made on or after January 1, 2014.

Qualified research and development credit property means depreciable property purchased for the conduct of qualified research and development. The amount of qualified investment property research and development property is determined by adjusting the cost of the property by a percentage based on the useful life of the property.

Useful Life of Property	Applicable Percentage
4 years or more but less than 6 years	33 1/3%
6 years or more but less than 8 years	66 2/3%
8 years or more	100%

Qualified research and development expenses means the sum of in-house and contract research and development expenses for qualified research and development allocated to West Virginia, which are paid or incurred by the eligible taxpayer during the taxable year. Ineligible expenses include any expenses that must be capitalized and depreciated for federal tax purposes, and any expenses related to the ascertaining the existence, location, extent or quality of any deposit of coal, limestone, oil and gas, or other natural resource. In addition, wage and salary expense reported on a Form W-2 for federal income tax purposes on which the West Virginia personal income tax is imposed and against which the strategic research and development credit is applied are also ineligible.

In house research and development expenses include wages paid or incurred to an employee for qualified services performed in this State by the employee; amounts paid or incurred for supplies used in the conduct of qualified research in this State; and

amounts paid or incurred to another person for the right to use personal property in the conduct of qualified research and development in this State.

Contract research and development expenses include 65% of any amount paid or incurred by the taxpayer to any person for qualified research and development. It does not include amounts paid to employees. The expenses are treated as paid or incurred during the taxable year during which the research is conducted, not the year they are paid.

Contract research and development expenses also include 65% of the amounts paid to colleges, universities, and nonprofit organizations exempt from federal income taxes, which are organized and operated primarily to conduct scientific research, and are not a private foundation for federal income tax purposes.

Property or expenses that were the basis of any other credit against tax is not eligible for the strategic research and development credit.

¶ 306.5 Amount of the Credit

Law: W. Va. Code § 11-13R-5

The amount of the credit is the greater of 3% of the annual qualified research and development expenditures within West Virginia, or 10% of the excess of the annual qualified research and development expenditure within West Virginia over the base amount. The base amount is the average annual research and development expenditure within West Virginia during the 3 years preceding the current year.

If a taxpayer has filed a business franchise tax return for fewer than three years, the base amount is the average annual combined qualified research and development expenditure for the number of taxable years immediately preceding, other than short taxable years, that the taxpayer has filed a business franchise tax return. If the taxpayer has not filed a business franchise tax return for at least 1 year, based on all the filings of the controlled group, the base amount is zero.

¶ 306.6 Application of the Credit

Law: W. Va. Code § 11-13R-6

The credit may be used to offset up to 100% of the taxpayer's annual liability for business franchise tax, corporation net income tax, and personal income tax on flow through business profits in that order. The credit is first applied to the business franchise tax before any other investment credits but after any credits contained in §11-23-17. Any remaining credit is then applied to the corporation income tax of the eligible taxpayer before application of any other investment credit. If the eligible taxpayer is a limited liability company, an electing small business corporation as defined in IRC §1361, or a partnership, any unused credit is then applied against the corporation net income tax liability of the owners of the eligible taxpayers. The tax credit shall be allocated among the owners in the same ratio as profits and losses. After application to

the business franchise tax and corporation income tax, any remaining credit may be applied to the personal income tax of the eligible taxpayer. If the eligible taxpayer is a limited liability company, an electing small business corporation as defined in IRC §1361, or a partnership, any unused credit is then applied against the personal income tax liability of the owners of the eligible taxpayers. The tax credit shall be allocated among the owners in the same ratio as profits and losses.

¶ 306.7 Refundable Credit for Small Qualified Research and Development Company

Law: W. Va. Code § 11-13R-6(i)

For investment made on or after July 1, 2004, but prior to January 1, 2008, the taxpayer and owners of the eligible taxpayer may claim for any year there is excess credit available after application of the credit to the business franchise tax, corporation net income tax and the personal income tax, the excess amount as a refundable credit, not to exceed one hundred thousand dollars. In order to claim a refundable credit, the eligible taxpayer must have gross revenues of not more than \$20,000,000 and a payroll of not more than \$2,500,000. If the taxpayer is a member of a controlled group, the gross revenues of all the members of the controlled group must be considered when determining if this test is met.

Not more than \$1,000,000 may be approved for refundable credit by the Tax Commissioner during any fiscal year. Eligibility for the refundable credit will be determined by the Tax Commissioner based on the filing date of the claim for refund with the earlier claims having priority over later claims.

¶ 306.8 Forfeiture and Redetermination of the Credit

Law: W. Va. Code § 11-13R-7

If a taxpayer disposes of qualified research and development property before its useful life expires, or otherwise ceases to use the property in a qualified research and development activity, the remainder of the credit related to that investment is forfeited. The credit already claimed attributable to the disposed property must be recalculated using the actual useful life. If an excess amount of credit has been previously claimed based on the actual useful life of the property, then a reconciliation schedule must be filed with payment of any additional tax and interest due. If the property has been used for less than four years, all credit is forfeited.

The forfeiture rules do not apply if the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen.

¶ 306.9 Transfer of Qualified Research and Development Property to Successors

Law: W. Va. Code § 11-13R-8

If a taxpayer changes the form of conducting its business, but retains a controlling interest in the successor business, and the qualified research and development property is retained in a business in West Virginia and used in research and development, the

forfeiture and redetermination rules do not apply, and the successor business is allowed to claim the amount of credit still available for subsequent years. The same is true where property is transferred or sold to a successor business that continues to use the property in a qualified research and development activity.

¶ 306.10 Filing Requirements

Law: W. Va. Code § 11-13R-6(j)

In order to claim the credit, taxpayer must file an application (Form WV/SRDTC-A) with the Tax Commissioner in order to receive certification of the research and development project or program. The application must be filed by no later than the due date of the annual state income tax, including lawful extensions of time to file, for the tax year in which the qualified research and development activity occurred. Failure to file the application will result in forfeiture of 100% of the tax credit for the time periods until the application is filed.

In addition, a schedule WV/SRDTC-1 must be filed with the tax return on which the credit is claimed.

No credit may be claimed for investment made on or after January 1, 2014.

¶ 307 HIGH GROWTH BUSINESS INVESTMENT TAX CREDIT

¶ 307.1 Introduction

Law: W. Va. Code § 11-13U-2; WVCSR § 117-5-1 et seq.

The high growth business investment tax credit was enacted in 2005 to encourage investment in start-up, growth-oriented, research and development businesses in this State and thereby increase employment and economic development. (NOTE: This credit program expired July 1, 2008. However, taxpayers who became entitled to the credit before that date may continue to apply the credit in subsequent years as if the program had not expired.)

¶ 307.2 Eligible Taxpayers

Law: W. Va. Code § 11-13U-3(3)

An eligible taxpayer is a person that is subject to business franchise tax, corporation net income tax, or personal income tax that has made investment in a qualified research and development company, and received certification from the economic development authority that a portion of the annual available high growth business investment credit has been allocated to it.

¶ 307.3 Eligible Investment

Law: W. Va. Code §§ 11-13U-3(5) and 11-13U-5

“Qualified investment” means an equity financing of a West Virginia qualified strategic research and development company. The investment must be in cash or in cash equivalents and cannot be an exchange of in-kind property. A “qualified strategic research and development company is an entity that has been certified by the State Tax Commissioner as eligible for the West Virginia research and development tax credit as provided in W. Va. Code § 1-13R that has annual gross receipts of less than \$20,000,000, annual payroll of less than \$2,500,000, and maintains its corporate headquarters in West Virginia. The total amount of qualified investment that a qualified research and development company may accept from all eligible taxpayers in any particular taxable year is one million dollars.

Investment must be maintained in a qualified strategic research and development company for a minimum period of five years. If an investment is repaid before the expiration, the eligible taxpayer has 3 months from the date of repayment to reinvest the repaid amount in another qualified research and development company for a period of at least equal to the remaining period of the initial 5-year term.

Investment may not be made in an entity that is the alter ego of an eligible taxpayer. The alter ego of an eligible taxpayer means a qualified research and development company where the ownership of the business is “substantially related to the ownership of the eligible taxpayer or where the board of directors of the qualified research and development company is controlled by the eligible taxpayer. “Substantially related” means a 5% common ownership interest exists between the eligible taxpayer and the qualified research and development company. An eligible taxpayer is considered to have control of the qualified research and development company when it controls a simple majority of the board of directors.

¶ 307.4 Amount of the Credit

Law: W. Va. Credit § 11-13U-4(a)

The high growth business investment credit will be equal to 50% of the total value of the qualified investment in the taxable year when the qualified investment was actually made. The total amount of credits allocated by the Economic Development Authority for any one fiscal year cannot exceed \$1,000,000. The credits are allocated by the Economic Development Authority in the order in which applications are received.

¶ 307.5 Application of the Credit

Law: W. Va. Code § 11-13U-4

The credit is first applied to the business franchise tax before any other investment credits but after any credits contained in § 11-23-17. Any remaining credit is then applied to the corporation income tax of the eligible taxpayer before application of any other investment credit. If the eligible taxpayer is a limited liability company, an electing small business corporation as defined in IRC § 1361, or a partnership, any unused credit is then applied against the corporation net income tax liability of the owners of the eligible taxpayers. The tax credit shall be allocated among the owners in the same ratio

as profits and losses. After application to the business franchise tax and corporation income tax, any remaining credit may be applied to the personal income tax of the eligible taxpayer. If the eligible taxpayer is a limited liability company, an electing small business corporation as defined in IRC § 1361, or a partnership, any unused credit is then applied against the personal income tax liability of the owners of the eligible taxpayers. The tax credit shall be allocated among the owners in the same ratio as profits and losses.

The total amount of tax credit that may be used in any taxable year by an eligible taxpayer in conjunction with the owners of the taxpayer is \$50,000. Excess credit may be carried forward for a period of four years from the year the investment was initially made. Any remaining credit is forfeited.

¶ 307.6 Filing for the Credit

Law: W. Va. Code § 11-13U-4(j)

In order to receive the credit, an eligible taxpayer must make written application to the economic development authority to receive the amount of tax credit to be allocated to it. In addition to the written application, the eligible taxpayer must file with the economic development authority the certification received from the Tax Commissioner by the qualified research and development company and the certificate of incorporation for the qualified research and development company.

In order to claim the credit, the eligible taxpayer must file with the Tax Commissioner, Schedule WV/HGBITC-1.

¶ 308 TOURISM DEVELOPMENT CREDIT/ PROFESSIONAL SERVICES DESTINATION FACILITY CREDIT

¶ 308.1 Introduction

Law: W. Va. Code § 5B-2E-2

The tourism development credit allows an approved company that invests in and operates a new or expanding tourism destination project to retain some of the sales tax that it collect from its customers on sales from operation of the tourism attraction or facility. The amount is based on a percentage of approved costs and is prorated over a 10-year period.

The professional services destination facility credit is available to an eligible company that constructs a qualified professional services destination facility with a minimum qualified investment of not less than \$80 million that is located at or adjacent to an existing historic resort hotel with at least five hundred rooms in West Virginia. Professional services include only services provided by certain medical professionals licensed to practice in West Virginia. The credit is equal to 25% of the qualified investment and is prorated over a ten year period.

The tourism development credit and tourism development expansion credit and their rules and requirements will be discussed first in this section and then the professional services destination facility credit and the professional services destination facility project expansion credit and its rules and requirements will be discussed in the latter part of this section.

¶ 308.2 Eligible Taxpayers – Tourism Development Credit

Law: W. Va. Code § 5B-2E-3(7)

In order to qualify for the tourism development credit, the taxpayer must operate either a tourism development project or a tourism development expansion project that has been approved for the credit by the West Virginia Development Office. An eligible taxpayer may operate the project directly or indirectly through a lessee.

¶ 308.3 Tourism Development Project

Law: W. Va. Code §§ 5B-2E-3(14) and (15)

A new or expanded tourism development project involves the acquisition, constructing and equipping of a tourism attraction or the expansion of an existing tourism attraction, including the acquisition of real estate by a leasehold interest with a minimum term of ten years, the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, installation of a new tourism attraction or the expansion of an existing tourist attraction. The improvements may include surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities, and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons. It does not include a project that will be substantially owned, managed or controlled by an eligible company with an existing project located within a 10 mile radius, or by a person or persons related by a family relationship to the owner of an eligible company with an existing project located within a 10 mile radius.

A tourism attraction means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a West Virginia crafts and products center, or an entertainment destination center or a qualified professional service destination facility.

It does not include lodging facilities unless: (1) the facility constitutes less than fifty percent of the total approved cost of the project, or the facility is to be located on recreational property owned or leased by the state or federal government and the facility has received prior approval from the appropriate state or federal agency; (2) the facility involves the restoration or rehabilitation of a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district and the rehabilitation or restoration project has been

approved in advance the state historic preservation officer; or (3) the facility involves the construction, reconstruction, restoration, rehabilitation or upgrade of a full-service lodging facility or the reconstruction, restoration, rehabilitation or upgrade of an existing structure into a full-service lodging facility having not less than five hundred guest rooms, with construction, reconstruction, restoration, rehabilitation, or upgrade costs exceeding ten million dollars.

A tourism attraction does not include a facility that is primarily devoted to the retail sale of goods, other than an entertainment destination center, a West Virginia crafts and products center or a project where the sale of goods is a secondary and subordinate component of the project.

A tourism attraction also does not include a recreational facility that does not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the project or existing attraction.

¶ 308.4 Application and Approval Process for Tourism Development Project

Law: W. Va. Code §§ 5B-2E-4 and 5B-2E-5

In order to qualify for the tourism development project credit or tourism development expansion project credit, an eligible company must file a written application for approval of the project with the development office. A nonrefundable application fee of \$10,000 must be paid to the Development Office upon the filing of the application. The application must include a description and location of the project, capital and other anticipated expenditures for the project and the sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans that indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenue and expenses generated by the project.

Within sixty days of receipt of the application, the director of the development office will either grant or deny approval of the application. The development office will base its approval of the project on whether the project will meet the following criteria:

- (1) The project will attract at least 25% of its visitors from outside of this State;
- (2) Will have approved costs in excess of \$1,000,000;
- (3) Will have a significant and positive economic impact on this State considering, among other factors, the extent to which the project will compete directly with or complement existing tourism attractions in this State and the amount by which increased tax revenues from the project will exceed the credit given to the approved company;
- (4) Will produce sufficient revenues and public demand to be operating and open to the public for a minimum of 100 days per year; and

- (5) Will provide additional employment opportunities in this State.
- (6) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located.
- (7) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion.
- (8) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses.
- (9) Whether the project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the project will be located.
- (10) Whether the project helps to diversify the local economy.
- (11) Whether the project is consistent with the goals of the law establishing the credit.
- (12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting.
- (13) The ability of the eligible company to carry out the project.

The Development Office may establish additional criteria for consideration when reviewing the applications. The decision by the Director of the Development Office is final.

¶ 308.5 Agreement between West Virginia Development Office and Approved Company for Tourism Development Credit

Law: W. Va. Code § 5B-2E-6

Upon approval of the project, the development office and approved company will enter into an agreement containing provisions outlining the amount of approved costs of the project that will qualify for the sales tax credit and a date certain that the project will be completed and opened to the public. Within 3 months of the completion date, the approved company must provide a certification of the actual costs of the project reviewed by a certified public accountant acceptable to the Development Office.

Extensions of time to complete and open the project not exceeding 3 years from the date of final approval can be given by the Development Office.

¶ 308.6 Amount of the Tourism Development Credit and Tourism Development Project Expansion Credit

Law: W. Va. Code §§ 5B-2E-7 and 5B-2E-7a

An approved company is allowed a credit against the sales tax that has been collected on sales generated by or arising from the operations of the tourism development project. The credit cannot be taken against sales tax arising from activities other than the new or expanded tourist development project.

In the case of an expanded tourist development project, only the increase in sales tax attributable to the expansion of the project may be offset by the credit. In order to determine the increase in sales tax, a baseline is determined by the Development Office and only the sales tax that is in excess of the baseline may be offset by the credit.

Except as set forth below, the maximum amount of the credit is 25% of the approved company's approved costs as provided in the agreement between the Development Office and the approved company.

If the tourism development project site is located within the permit area or an adjacent area of a surface mining operation from which all coal has been extracted prior to commencement the tourism development project, or adjacent to recreational property owned by the state or federal government, the maximum amount of the credit allowable will be 35% of the approved company's costs as provided in the agreement between the Development Office and the approved company.

However, "approved cost" does not include any portion of the cost for the acquisition, construction, equipping or installation of a project that is financed with governmental incentives, grants or bonds or for which the eligible taxpayer elects to qualify for other tax credits, including, but not limited to, the economic opportunity tax credit discussed in ¶ 301 above.

¶ 308.7 Application of the Tourism Development Project Credit or Tourism Development Expansion Project Credit

Law: W. Va. Code §§ 5B-2E-7 and 5B-2E-7a

The credit allowable is taken over a 10 year period, at the rate of one tenth of the total credit per year. The credit is first taken in the year the tourism development project or tourism development expansion project is opened to the public, unless the approved company opts to delay the beginning of the ten-year period until the next succeeding tax year. This election is made with the first sales tax return filed by the approved company following the opening of the project, and cannot be revoked.

The credit is claimed on the monthly sales tax returns filed by the approved company by reducing the monthly tax remittance amount until the annual allowance has been claimed. If there is any excess annual credit allowance remaining, it may be

carried over to the next tax year until the third tax year following the end of the initial ten year period. No carryback of the credit to a prior year is allowed.

¶ 308.8 Eligible Taxpayer – Professional Services Destination Facility Credit

Law: W. Va. Code §§5B-2E-7b(b)(5) and 5B-2E-7b (b)(11)

In order to qualify for the professional services destination facility credit, the taxpayer must operate a qualified professional services destination facility located at or adjacent to an existing historic resort hotel with at least five hundred rooms. The facility may be either owned or leased. The taxpayer must perform the following:

- Create at least one hundred twenty-five new jobs in this state within thirty-six months after the date the qualified investment is placed into service or use, and maintain those jobs for the entire ten year life of the tax credit.
- Make a minimum investment of \$80 million
- Make available to its full-time employees health insurance coverage and pay at least fifty percent of the premium for the health insurance.
- Generate, within thirty-six months after the date the qualified investment is placed into service or use, not less than \$10 million of gross receipts upon which West Virginia Healthcare Provider Tax (W. Va. Code §11-27 et. seq.) is paid.
- Meet the standards, limitations and requirement of the West Virginia Development Office.

Professional services for purposes of the credit includes only those services provided directly by a physician, surgeon, dentist, podiatrist, osteopathic physician, psychologist, optometrist, registered nurse, physician assistant, licensed practical nurse, social worker or other medical professional licensed to practice in West Virginia.

¶ 308.9 Qualified Investment – Professional Services Destination Facility Credit

Law: W. Va. Code §5B-2E-7b (b)(12) and 5B-2E-7B(c)(2)

One hundred percent (100%) of the cost of the property purchased or leased by an eligible company for the construction and equipping of a qualified professional services destination facility which is placed in service or use in West Virginia is considered to be qualified investment.

The cost of the property purchased for a qualified professional services destination facility includes the cost of real property acquired by written lease for a primary term of ten years or longer. The cost is one hundred percent of the rent reserved for the primary term of the lease, not to exceed ten years. Qualified investment also includes the cost of tangible personal property acquired by written lease for a primary term of not less than four years. In the case of self-constructed property, the cost is the amount properly

charged to the capital account for depreciation in accordance with federal income tax law. The value of property given in trade or exchange for the property purchased for business expansion is not included in qualified investment. If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

Property is considered to be placed in service or use in the earlier of the following two taxable years:

1. The taxable year in which, under the eligible company's depreciation practice, the period for depreciation with respect to the property begins; or
2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

¶ 308.10 Certified Multiple Year Projects – Professional Services Destination Facility Credit

Law: W. Va. Code §5B-2E-7b(f)(1)

A professional services destination facility project credit can be obtained where the required minimum number of new jobs is created and the qualified investment is placed in service or use over a period of up to three successive tax years. In order to qualify for a multiple year project credit, the qualified investment must be made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities. Also it is required that the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years. A copy of the business plan must be attached to the taxpayer's application for project certification and approved by the West Virginia Development Office.

¶ 308.11 New Jobs and New Job Compensation Requirements – Professional Services Destination Facility Credit

Law: W. Va. Code §5B-2E-7b (d)

In order to qualify as a new job for purposes of meeting the one hundred twenty-five new job requirement for obtaining the professional services destination facility credit, the job must meet the following requirements:

- (1) It must be a new job that did not exist in the business of the taxpayer in West Virginia prior to the filing of the application for credit.
- (2) It must be filled by a person residing and domiciled in West Virginia who is filling a position that did not previously exist in the taxpayer's business enterprise in West Virginia prior to the filing of the application for credit.

- (3) The compensation of an employee filling a new job position must be a median wage of at least \$37,000 annually, adjusted annually by a cost-of-living adjustment.
- (4) The new job position must provide health insurance benefits. Other benefits such as child care, retirement and other benefits may also be provided by the employer.
- (5) The new job must be a full-time, permanent position. A full-time position means employment for at least eighty hours per month at the required compensation rate. Permanent employment does not include employment that is temporary or seasonal even if the compensation paid meets the credit requirements.

¶ 308.12 Amount of Credit – Professional Services Destination Facility Credit

Law: W. Va. Code §5B-2E-7b (c)

The professional services destination facility credit is twenty-five percent (25%) of the qualified investment made by an eligible company in a professional services destination facility credit.

The professional services destination facility credit and any follow-up project expansion credit is limited to \$37.5 million total aggregate tax credit per taxpayer or group of taxpayers and to \$2.5 million annual credit in any tax year per taxpayer or group of taxpayers, if taken either in the form of a refund or an offset to a tax liability.

¶ 308.13 Application of the Credit – Professional Services Destination Facility Credit

Law: W. Va. Code §5B-2E-7b (c)

The professional services destination facility credit is taken over a ten-year period, at the rate of one tenth of the total per taxable year. The credit can be taken beginning in the first year that the professional services destination facility is placed in service or use.

The eligible company can elect to delay the claiming of the credit for one year. This election must be made in the annual income tax return for the first year in which the qualified professional destination facility is first placed in service or use. This election may not be revoked.

The credit can first be claimed to offset one hundred percent of an eligible company's liability for corporation net income calculated before application of any other allowable credits against tax. If the eligible company is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended, a partnership, or a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then the credit may then be claimed against personal income taxes of the members, owners, partners or interest holders in the eligible company. The credit must be allocated using the same

manner that the profits and losses are allocated the members. Employer withholding taxes may not be offset by the credit.

The Neighborhood Investment Program Tax Credit, Economic Opportunity Tax Credit, Manufacturing Investment Tax Credit, Strategic Research and Development Tax Credit, Apprenticeship Training Tax Credit, and Commercial Patent Incentives Tax Credit may not be applied against any tax liability that is being offset by the professional services destination facility credit. No other credit may be obtained by any eligible company authorized or entitled to the professional services destination facility credit that is related to the investment or activity upon which the credit was based.

The Tax Commissioner may apply any amount of the tax credit otherwise available to a taxpayer to pay any delinquent West Virginia state tax liability of the taxpayer. The tax credit may also be used to pay any outstanding obligation to the Workers' Compensation Fund, or any outstanding obligation under the West Virginia Unemployment Compensation Act., or any delinquent or unpaid assessment, fee, fine, civil penalty or monetary imposition imposed by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

If any annual credit remains after application to the corporation income tax or personal income tax or any outstanding tax liability, that amount will be refunded annually to the eligible company, and distributed in accordance with the credit distribution described previously. The limitation on annual tax credit or limitation on total aggregate tax credit cannot be exceeded.

If any credit remains after the initial ten year credit application period, the amount of remaining credit can be carried forward to each taxable year for five years. If any credit remains after expiration of the fifth taxable year subsequent to the end of the initial ten year credit application period, such credit is forfeited, and may not be used to offset any West Virginia tax liability. No carryback to a prior taxable year is allowed for any unused portion of any annual credit allowance.

¶ 308.14 Application and Approval Process for Professional Services Destination Facility Credit

Law: W. Va. Code §§5B-2E-4 and 5B-2e-7b(e)

In order to obtain the credit, the eligible taxpayer must file an application with the West Virginia Development Office. A nonrefundable application fee of \$10,000 must be paid to the Development Office upon the filing of the application.

The taxpayer must provide the following information with the application: (1) the name and address of the applicant; (2) documentation that the applicant is a eligible company; (3) documentation that the applicant meets the requirements of this section; (4) documentation that the taxpayer does not owe any delinquent taxes or any other

amounts to the federal government, this state or any political subdivision of this state; (5) An affidavit that the applicant has not filed for or publicly announced its intention to file for bankruptcy protection and that the company will not seek bankruptcy protection within the next six calendar months following the date of the application; (6) A waiver of confidentiality for information provided in the application; and (7) any other information required by the Development Office.

The Development Office, in conjunction with the Tax Department, will review the application to determine if the taxpayer is an eligible company and if the requirements for obtaining the credit have been met. The Development Office will approve or deny the application and will notify the applicant in writing. No credit may be claimed by the eligible company until the application is approved. If the application is approved the Development Office will enter into an agreement with the eligible company for benefits. An application that is not approved by the Development Office within thirty days will be deemed denied.

¶ 308.15 Agreement between the West Virginia Development Office and the Eligible Company for the Professional Services Destination Facility Credit

Law: W. Va. Code §5B-2E-7(b)(g)

Once an application is approved, an agreement that specifies the terms and conditions that the eligible company must comply with to receive the credit will be entered into between the West Virginia Development Office and the eligible company. The agreement will also require the Development Office to certify to the West Virginia Tax Department each year that the eligible company is eligible to receive benefits, the number of new jobs created during each taxable year, the amount of gross wages determined in accordance with Form W-2 guidelines being paid to each individual in a new job, the amount of qualified investment made by the eligible company, the maximum credit allowable to the eligible company and any other information deemed necessary by the Development Office.

¶ 308.16 Filing of Annual Information Form with West Virginia Tax Department – Professional Services Destination Facility Credit

Law: W. Va. Code § 5B-2E-7b (h)

Each year on or before the due date of the income tax return the eligible company must file with the West Virginia Tax Department a form prescribed by the Tax Commissioner that requires the name and employer identification number of the eligible company, the effective date of the agreement, the reporting period end date, information relating to each individual employed in a new job as required by the Tax Commissioner, the aggregate gross receipts for the tax period and gross receipts on which tax has been paid under the West Virginia Healthcare Provider Tax (W. Va. Code §11-27 et.seq.), and any other information required by the Tax Commissioner. Taxpayers claiming the credit must also file with their annual income tax returns (1) certification that the qualified investment property continues to be used in the project, and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(2) certification that the new jobs created by the project's qualified investment continue to exist and are filled by persons who are residents of this State; and (3) any other information that the Tax Commissioner requires to determine continuing eligibility to claim the annual credit allowance of the project's qualified investment.

¶ 308.17 Certified Follow-Up Project Expansion Credit – Professional Services Destination Facility Credit

Law: W. Va. Code §5B-2E-7b(f)(2)

An eligible company that has earned entitlement to a professional services destination facility credit can obtain credit for a one-time follow-up project expansion to a professional service destination facility. The follow-up expansion must create and maintain at least twenty-five new jobs held by new employees in addition to the jobs created by the initial qualified professional services destination facility project. The follow-up project expansion must be on property that is contiguous to, or within not more than one mile of the initial qualified professional services destination facility. It must be placed in service within the fourth tax year subsequent to the tax year in which qualified investment was first placed into service or use in the initial qualified professional services destination facility project, or under a multiple year project certification, in the fourth, fifth and sixth tax year subsequent to the tax year in which qualified investment was first placed into service or use in the initial qualified professional services destination facility project.

The credit is equal to the lesser of twenty-five percent of qualified investment in the follow-up project expansion or \$12.5 million. However, the annual credit per taxpayer or group of taxpayers in the aggregate, including both the professional services destination facility project facility and the certified follow-up project expansion credit may not exceed \$2.5 million, either in the form of a refund or directly against a tax liability or in any combination.

¶ 308.18 Forfeiture of Tax Credits and Credit Recapture for Tourism Development Credit and Professional Services Destination Facility Credit

Law: W. Va. Code § 5B-2E-8

If after the first year of operation, the new or expanded tourism development project fails to attract at least 25% of its visitors from among person who are not residents of this State or is not open to the public for at least one hundred days, then the credit will be forfeited and the recapture tax will be due and owing. The credit will also be forfeited and the recapture tax due and owing if the approved company has an outstanding Worker's Compensation obligation, unemployment compensation tax obligation, or other State tax obligation.

Any company earning the professional services destination facility credit that does not meet the requirements specified to be a "eligible taxpayer" or a "qualified professional services destination facility" including those relating to jobs maintenance, employee wage and employee health benefits, aggregate gross receipts and amount of

gross receipts taxable under the West Virginia Health Care Provider Tax will forfeit the credit. Also the credit will be forfeited if the approved company is delinquent in payment of any assessment, fee, fine, civil penalty or monetary imposition issued by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations. Delinquency in compliance with any order, injunction, compliance agreement, agreed order, court order, mandamus or other enforcement or compliance instrumentality of those agencies or failure to comply with any citation or order issued by those agencies requiring that a condition be abated or corrected will also result in forfeiture of the credit.

If either of the credits is forfeited, then a credit recapture tax will be imposed. The recapture tax will be equal to all previously claimed tourism development project tax credit or professional services destination facility credit taken by the approved company. The recapture tax will be paid by the filing of amended returns and the payment of any tax due together with applicable interest. For purposes of the credit recapture tax, the statute of limitations will not begin to run until the eighteenth year subsequent to the earlier of the year when qualified investment was first placed into service or use, or the year when the application for the tax credit was filed with the West Virginia Development Office.

¶ 308.19 Annual Reporting-Tourism Development Credit and Professional Services Destination Facility Credit

Law: W. Va. Code § 5B-2E-8(c)

Within 45 days after the end of each calendar year during the term of the agreement, the approved company will provide the development office with all reports and certifications required by the development office to demonstrate that the project is in compliance with all applicable laws. The Development Office will then review this documentation and certify to the Tax Commissioner that the project is in compliance.

¶ 308.20 Transferability to Successor

Law: W. Va. Code § 5B-2E-8(d)

These tax credits are transferable to an eligible successor company that continues to operate the approved project. The Development Office must give written consent to the transfer.

¶ 308.21 Termination of the Tax Credit Program

Law: W. Va. Code §5B-2E-11

Applications for the Tourism Development Project Credit and Tourism Development Expansion Project Credit and the Professional Services Destination Facility Credit and Professional Services Destination Facility Project Expansion Credit that have not been approved prior to January 1, 2020 will be null and void as of that date. No applications will be accepted by the West Virginia Development Office after December 31, 2019.

¶ 309 ENVIRONMENTAL AGRICULTURAL EQUIPMENT TAX CREDIT

¶ 309.1 Introduction

Law: W. Va. Code § 11-13K-1.

This credit was enacted to encourage the agricultural industry to invest in equipment and structures that are protective of the environment.

¶ 309.2 Eligible Taxpayers

Law: W. Va. Code § 11-13K-2

To be eligible for the credit, the taxpayer must be engaged in agricultural operations in West Virginia and purchase and install qualified agricultural equipment for use in that activity. Agricultural operations include the commercial production of food, fiber, or woodland products (but not timbering activity) by means of cultivation, tillage, of the soil or by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, aquacultural activity, horticultural activity, or any other plant or animal production activity and all farm practices related, usual or incidental to the operations.

Commercial production consists of annual sales by the producer of at least \$1,000 of agricultural products. This requirement does not need to be met in order for the activity to be commercial production of an agricultural product in the first twelve months after: (1) the occurrence of a catastrophe (such as fire, drought or flood), other than mere mechanical breakdowns, which substantially destroyed the agricultural product being produced or the means for harvesting that product, or (2) the commercial producer of an agricultural product has first commenced the production activity.

¶ 309.3 Qualified Agricultural Equipment and Structures

Law: W. Va. Code § 11-13K-2(g)

Equipment and structures that are considered to be qualified agricultural equipment and structures and eligible for the credit include the following:

- Advanced technology pesticide and fertilizer application equipment
- Conservation tillage equipment
- Dead poultry composting facility
- Mortality incinerator
- Nutrient management system
- Stream bank and shoreline protection system
- Stream channel stabilization systems
- Stream crossing or access plans
- Waste management systems
- Waste storage facilities
- Waste treatment lagoons

¶ 309.4 Amount of the Credit

Law: W. Va. Code § 11-13K-3

The credit is equal to 25% of the price of all certified expenditures for qualified agricultural equipment. Expenditures for land do not qualify.

¶ 309.5 Application of the Credit

Law: W. Va. Code § 11-13K-3

The amount of claim claimed in any one year may not exceed \$2500 or the total amount of the taxpayer's liability under either the corporation net income tax, personal income tax, or personal income tax attributable to the flow through of income from an S corporation, partnership, or limited liability company that is attributable to agricultural operations in this State. Excess credits may be carried forward for five years and must be used before any credit earned from new purchases is applied.

¶ 309.6 Filing Requirements

Law: W. Va. Code § 11-13K-1

In order to claim the credit, the taxpayer must file Form WV/AG1, the West Virginia Environmental Agricultural Equipment Tax Credit Schedule. The taxpayer must also provide proof of purchase and installation specific to identify the item as qualified agricultural equipment. Written certification by the Commissioner of Agriculture that each item purchased is in fact qualified agricultural equipment must also be attached to the tax credit schedule. If the qualified agricultural equipment is advanced technology pesticide and fertilizer application equipment, the written certification must be obtained from the West Virginia Department of Environmental Protection. If the qualified equipment is a mortality incinerator, the written certification is obtained from the Office of Air Quality at the Department of Environmental Protection.

¶ 310 HISTORIC REHABILITATED BUILDINGS INVESTMENT CREDIT

¶ 310.1 Introduction

Law: W. Va. Code §§ 11-24-23a and 11-24-23g

This credit was enacted to encourage the restoration of historic buildings in West Virginia and is modeled on the Federal Certified Historic Structure Credit. The standards are the same as the federal program. Unlike most other credits, eligible taxpayers may transfer, sell, or assign these credits upon approval by the West Virginia Department of Culture and History.

¶ 310.2 Eligible Taxpayers

Law: W. Va. Code § 11-24-23a

Taxpayers eligible for the historic rehabilitated buildings investment credit include taxpayers who make qualified rehabilitation project expenditures on or after June 6,

1990 on residential and nonresidential properties located in West Virginia that are designated by the National Park Service, Department of the Interior, as “certified historic structures” and as “qualified rehabilitated structures.”

¶ 310.3 Eligible Investment

Law: W. Va. Code § 11-24-23a

Rehabilitation costs are the same as those that qualify for the federal credit. In order to qualify for the credit, rehabilitation costs must within a 24-month period within the total period of the renovation exceed the greater of \$5,000, or the adjusted basis of the property.

¶ 310.4 Amount of Credit

Law: W. Va. Code § 11-24-23a

The credit is equal to 10% of the qualified expenditures. Excess credits may be carried back one year and forward for 20 years similar to the federal credit.

¶ 310.3 Application of the Credit

Law: W. Va. Code §§ 11-24-23f and 11-24-23g

The credit may be used to offset the personal income tax and the corporation income tax. It is applied after all other allowable tax credits.

¶ 310.4 Filing Requirements

Law: W. Va. Code § 11-24-23c

In order to claim the credits, the taxpayer must file Schedule RBIC, together with a copy of the request for a final National Park Service certification (NPS Form 10-168 c).

¶ 311 RESIDENTIAL HISTORIC REHABILITATED BUILDINGS INVESTMENT CREDIT

¶ 311.1 Introduction

This credit was enacted to encourage the rehabilitation of residential homesteads that are certified historic structures.

¶ 311.2 Eligible Taxpayers

Law: W. Va. Code §§ 11-21-8 and 11-21-8a

Taxpayers eligible for the residential historic rehabilitated building investment credit include persons who make qualified purchases on or after January 1, 2000 for the restoration of residential homesteads that have been designated by the West Virginia Department of Culture and History as “certified historic structures” and as a “qualified rehabilitated structures.” Unlike most other credits, eligible taxpayers may transfer, sell,

or assign these credits upon approval by the West Virginia Department of Culture and History.

¶ 311.3 Eligible Investment

Law: W. Va. Code §11-21-8g

The taxpayer must receive certification from the West Virginia Department of Culture and History for the expenditures made on the building. The certificate received from the West Virginia Department of Culture and History is attached to the credit schedule when claiming the credit.

¶ 311.4 Amount of Credit

Law: W. Va. Code § 11-21-8g

The credit is equal to 20% of the qualified expenditures.

¶ 311.5 Application of the Credit

Law: W. Va. Code § 11-21-8g

The credit can be used to offset up to 100% of the personal income tax liability of the taxpayer after application of all other credits. Any excess credit may be carried forward for a total of 5 years, similar to the treatment for the federal credit.

¶ 311.6 Filing Requirements

A copy of the request for certification (Form 10-168c) filed with the West Virginia Department of Culture and History should be attached to the personal income tax return, together with Schedule RBIC-A.

¶ 312 NEIGHBORHOOD INVESTMENT CREDIT

¶ 312.1 Introduction

Law: W. Va. Code § 11-13J-2; WVCSR § 145-7-1 et seq.

This legislation was enacted to provide credit to individuals or businesses that make eligible contributions to community based nonprofit organizations that establish projects to assist neighborhoods and local communities. The total tax credits allowed annually to project plans certified by the West Virginia Development Office is \$3,000,000.

¶ 312.2 Eligible Taxpayers

Law: W. Va. Code § 11-13J-3(b)(14)

An eligible taxpayer is a person or entity subject to the West Virginia business franchise tax, corporate income tax, or personal income tax that makes an eligible contribution to a qualified charitable organization pursuant to the terms of a Certified Neighborhood Investment Program Project Plan.

¶ 312.3 Eligible Contributions

Law: W. Va. Code § 11-13J-3(b)(13)

Eligible contributions include cash, tangible personal property (valued at fair market value), real property (valued at fair market value), and in kind professional services (valued at 75% of their fair market value). Publicly traded corporate stock can also be contributed, but must be sold within 180 days after its receipt. The maximum contribution by a taxpayer for a taxable year is \$200,000. The minimum annual contribution eligible for the credit is \$500.

¶ 312.4 Eligible Project Plans

Law: W. Va. Code § 11-13J-4

Eligible project plans are determined by the West Virginia Development Office and the Neighborhood Investment Advisory Board by qualification based on contributions destined for a certified economically disadvantaged area or by need.

¶ 312.5 Amount of Credit

Law: W. Va. Code § 11-13J-5(b)

The amount of the credit is 50% of the taxpayer's eligible contributions.

¶ 312.6 Application of the Credit

Law: W. Va. Code §§ 11-13J-5 and 11-13J-6(b)

The credit is first applied against the business franchise tax to offset up to 50% of that tax, after application of the credits contained in W. Va. Code § 11-23-17, but before any other tax credits. The credit is then applied against the corporation net income tax to offset up to 50% of the tax before application of any other tax credits.

If the taxpayer is either an electing small business corporation as defined in IRC §1361, a partnership, a limited liability company, treated as a partnership for federal tax purposes, or a sole proprietorship, then any unused credit, after application against the business franchise tax or corporate net income tax, is allowed against the personal income tax of the partners, members, or owners, to offset up to 50% of the personal income tax attributable to the income from the business. The credit is allocated to the members or partners in the same manner as profits or losses are allocated for the year.

An individual taxpayer, who makes an eligible contribution to a qualified charitable organization, and receives back from that organization a properly completed neighborhood investment program tax credit voucher, is eligible to claim the credit to offset up to 50% of their personal income tax regardless of the source of the income whether it is from wages, passive investment or retirement income, income from a trade or business or any other source.

The amount of the charitable contribution deduction taken for federal purposes must be added back to taxable income when computing the amount of tax eligible for offset by this credit. The maximum credit allowed per year per taxpayer is \$100,000. The credit must be taken over a 5-year period. Any unused credit available after the 5-year period is forfeited.

¶ 312.7 Termination Date

Law: W. Va. Code §11-13J-12

The Neighborhood Investment Program Act shall terminate on July 1, 2016, unless the program is extended by the Legislature before that date. No entitlement to the tax credit under this article shall result from any contribution made to any certified project after July 1, 2016, and no credit shall be available to any taxpayer for any contribution made after that date. Taxpayers which have gained entitlement to the credit pursuant to eligible contributions made to certified projects prior to that date shall retain that entitlement and apply the credit as prescribed.

¶ 312.8 Filing for the Credit

Law: W. Va. Code §11-13J-7

To claim the credit, the taxpayer must file Form WV/NIPA-2, Neighborhood Investment Program Tax Credit Schedule and attach it to their tax return. In addition, a copy of the Neighborhood Investment Program Tax Credit Voucher (WV/NIPS-1) issued by the organization sponsoring the Neighborhood Investment Project must be attached to the tax credit schedule.

¶ 313 APPRENTICESHIP TAX TRAINING CREDITS

¶ 313.1 Introduction

Law: W. Va. Code §11-13W-1

This credit is available to taxpayers who participate in a qualified apprenticeship training program for the construction trades on or after January 1, 2008.

¶ 313.2 Eligible Taxpayers

Law: W. Va. Code §§ 11-13W-1(a) and 11-13W-1(c)

To be eligible for the credit the taxpayer must participate in a qualified apprenticeship training program that is jointly administered by labor and management trustees in accordance with 29 USC § 50 and is certified according to regulations adopted by the U.S. Bureau of Apprenticeship and training. The program must consist of at least 2000, but no more than 10,000 hours of on the job apprenticeship. The apprentice must be registered with the U.S. Department of Labor, Office of Apprenticeship, West Virginia State Office.

¶ 313.3 Amount of Credit

Law: W. Va. Code § 11-13W-1(b)

For tax years beginning on or after January 1, 2012, the tax credit is equal to two dollars per hour multiplied by the total number of hours worked during the apprenticeship program. The total credit for tax years beginning on after January 1, 2012 may not exceed \$2000 or 50% of actual wages paid in the tax year for the apprenticeship, whichever is less. For tax years beginning prior to January 1, 2012, the tax credit is equal to one dollar per hour multiplied by the total number of hours worked during the apprenticeship program. The total credit may not exceed \$1000 or 50% of actual wages paid in the tax year for the apprenticeship, whichever is less.

¶ 313.4 Application of the Credit

Law: W. Va. Code § 11-13W-1(d)

The apprenticeship training credit may be used to offset business franchise tax, corporation net income tax, and personal income tax. The credit is applied first to the business franchise tax, after application of the credits contained in W. Va. Code § 11-23-17, but before any other tax credits. The credit is then applied against the corporation net income tax before any other tax credits.

If the taxpayer is either an electing small business corporation as defined in IRC §1361, a partnership, a limited liability company, treated as a partnership for federal tax purposes, a sole proprietorship, then any unused credit after application against the business franchise tax or corporate net income tax credit is allowed against the personal income tax attributable to the income from the business. The credit is allocated to the members or partners in the same manner as profits or losses are allocated for the year.

The credit may not be carried forward to a future taxable year or carried back into a prior taxable year. Any unused credit is forfeited.

¶ 314 FILM INDUSTRY INVESTMENT TAX CREDIT

¶ 314.1 Introduction

Law: W. Va. Code § 11-13X-1; WVCSR § 110-13X-1 et seq.

The credit was enacted in 2007 and amended in 2008 and 2009 to encourage economic growth through the production of motion pictures and other commercial film or audiovisual projects in West Virginia. The total amount of tax credits granted each year will not exceed \$5,000,000 and will be allocated by the Film Office based on the order the applications are received.

¶ 314.2 Eligible Taxpayers

Law: W. Va. Code § 11-13X-3

The film industry investment credit may be claimed by an "eligible company." An "eligible company" is a person or entity that engages in the business of producing "film industry productions." A "film industry production" is a "qualified project" intended for reasonable national or international commercial exploitation. A "qualified project" is a feature length theatrical or direct-to-video motion picture, a made-for-television motion picture, a commercial, a music video, commercial still photography, a television pilot program, a television series and a television mini-series that incurs a minimum of \$25,000 in direct production expenditures and post-production expenditures in West Virginia. It does not include news or current affairs programming, a weather or market program, an interview or talk show, a sporting event or show, an awards show, a gala, a production that solicits funds, a home shopping program, a program that primarily markets a product or service, political advertising or a concert production. The qualified project may be produced on any single media or multimedia program that is fixed on a delivery medium, can be viewed or reproduced, is not intended to violate a provision of W. Va. Code §68-8c, is not obscene or sexually explicit, is intended for reasonable commercial exploitation for the delivery medium used, and does not contain content that portrays the State of West Virginia in a significantly derogatory manner.

¶ 314.3 Eligible Investment

Law: W. Va. Code §§ 11-13X-4 and 11-13X-3

Eligible investment for the film investment tax credit includes the direct production expenditures and postproduction expenditures made in West Virginia and subject to taxation in West Virginia directly attributable to the production of a film or commercial audiovisual product.

Direct production expenditures include the payment of wages, fringe benefits or fees for talent, management, or labor that are subject to West Virginia income tax. Direct production expenditures also include payment to a personal services corporation for the services of a performing artist if the personal services corporation pays West Virginia income tax on those payments, and the performing artist receiving payments from the personal services corporation is subject to West Virginia income tax. Other direct production expenditures include payment provided by a vendor for the story and scenario to be used by a film, set construction and operations, wardrobe, accessories and related services, photography, sound synchronization, lighting, and related services, editing and related services, rental of facilities and equipment, leasing of vehicles, food or lodging, airfare if purchased through a West Virginia based travel agency or travel company, insurance coverage and bonding if purchased through a West Virginia based insurance agent, and other direct costs of producing a film in accordance with generally accepted entertainment industry practices.

Postproduction expenditures include an expenditure that occurs in West Virginia or with a West Virginia vendor after the completion of principal and ongoing photography, including an expenditure for editing and negative cutting, Foley recording and sound effects, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and

end credits, soundtrack production, subtitling or addition of sound or visual effects, but not including an expenditure for advertising, marketing, distribution or expense payments.

¶ 314.4 Amount of Credit

Law: W. Va. Code § 11-13X-5

The base amount of the credit is 22% of direct production and postproduction expenditures made in West Virginia that are directly attributable to the production in West Virginia of a film or commercial audiovisual product and subject to taxation by the State of West Virginia.

Additional credit is also allowed for the hiring of local workers. An additional 4% of credit is allowed if the film production company or its authorized payroll service company employs 10 or more West Virginia residents as full time employees working in this State or as apprentices working in this State.

¶ 314.5 Application of the Credit

Law: W. Va. Code §§ 11-13X-7 and 11-13X-8

The credit can be used to offset the business franchise tax, corporation net income tax, and the personal income tax. The credit is applied first to the business franchise tax, after application of the credits contained in W. Va. Code § 11-23-17, but before any other tax credits. The credit is then applied against the corporation net income tax before any other tax credits.

If the taxpayer is either an electing small business corporation as defined in IRC § 1361, a partnership, a limited liability company, treated as a partnership for federal tax purposes, a sole proprietorship, then any unused credit after application against the business franchise tax or corporate net income tax credit is allowed against the personal income tax attributable to the income from the business. The credit is allocated to the members or partners in the same manner as profits or losses are allocated for the year.

Any excess credit can be carried forward for two years and applied as described above. Any remaining credit after the two succeeding years is forfeited. Excess credit can also be transferred or sold to another West Virginia taxpayer provided that the film office approves the transfer or sale. The sale or transfer of the credit does not extend the period of time in which the credit may be used. Carryback of the credit is allowed, but only to a prior taxable year that does not have qualified expenditures for the amount of any unused portion of any annual credit allowance.

¶ 314.6 Filing Requirements

Law: W. Va. Code § 11-13X-6

In order to receive the credit, the film production company must file the forms the film office prescribes, file required West Virginia tax returns and pay the tax due on those returns, and file an expense verification report prepared by an independent CPA, utilizing "agreed upon procedures" which are prescribed by the film office in accordance with generally accepted accounting standards in the United States. In addition if the film production company is seeking the additional 4% credit, it must provide a listing of the names and addresses and home telephone numbers of all West Virginia residents employed full time or hired as apprentices in this State. Once all filing requirements are met, the Film Office will issue a document granting the appropriate tax credit.

¶ 314.7 Additional Requirements

Law: W. Va. Code § 11-13X-6

In order to claim the film industry investment credit, the taxpayer must agree that the phrase "Filmed in West Virginia with assistance of the Wet Virginia Film Industry Investment Act" appear in the closing credits of the film. The taxpayer must provide to the West Virginia Film Office the information required by it to demonstrate conformity to the following requirements in writing:

- (1) To pay all obligations the film production company has incurred in West Virginia;
- (2) To publish, at completion of principal photography, a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date;
- (3) That outstanding obligations are not waived should a creditor fail to file by the specified date; and
- (4) To delay filing of a claim for the film production tax credit until the film office delivers written notification to the Tax Commissioner that the film production company has fulfilled all requirements for the credit.

¶ 315 RESIDENTIAL SOLAR ENERGY TAX CREDIT

¶ 315.1 Introduction

Law: W. Va. Code § 11-13Z-1; WVCSR § 110-21D-1 et seq.

The residential solar energy credit was enacted in 2009 to provide a credit against personal income tax for persons who install a solar energy system in their home.

¶ 315.2 Eligible Taxpayers

Law: W. Va. Code §§ 11-13Z-1 and 11-13Z-2

Persons who install a solar energy system in their home are eligible for the residential solar energy tax credit. The system must be installed on or after July 1, 2009, but prior to June 30, 2013. In order to be eligible, the property must be located in West Virginia, used as a residence and owned by the taxpayer.

The solar energy system must use solar energy to either generate electricity, heat or cool a structure, or provide hot water for use in the structure or to provide solar process heat. If the system is used to provide hot water, at least 50% of its energy to heat or cool must be from the sun. Swimming pools, hot tubs or any other energy storage medium that has a function other than storage of energy are not eligible for the credit.

¶ 315.3 Amount of the Credit

Law: W. Va. Code §§ 11-13Z-2 and 11-13Z-3

The credit is equal to 30% of the cost to purchase and install the solar energy system up to a maximum amount of \$2,000. The credit may be carried over to subsequent years until exhausted.

¶ 316 NONFAMILY ADOPTION CREDIT

¶ 316.1 Introduction

Law: W. Va. Code § 11-21-10a

The nonfamily adoption credit was enacted to provide a credit to be applied against personal income tax for the adoption of a nonfamily child.

¶ 316.2 Eligible Taxpayers

Law: W. Va. Code § 11-21-10a

In order to be eligible for the credit, the taxpayer must adopt a nonfamily child whose age at adoption is less than 18 years of age. A nonfamily adoption means adoption of a child or children by a taxpayer or taxpayers who are not the father, mother, or stepparent of the child.

¶ 316.3 Amount of the Credit

Law: W. Va. Code § 11-21-10a

The amount of the credit is \$4000 in the tax year of the nonfamily adoption. The credit may be taken at the taxpayer's option over 3 years.

¶ 317 COMMERCIAL PATENT INCENTIVES CREDIT

¶ 317.1 Introduction

Law: W. Va. Code § 11-13AA-1 et seq.; WVCSR §110-13Q-1 et seq.

The commercial patent incentives credit was passed to encourage the development and use of patents in West Virginia. The bill was effective June 9, 2010, but only applies to patents developed or used in West Virginia for the first time during the years beginning January 1, 2011 and ending December 31, 2015. It does not apply to copyrights, trademarks, mask works, trade secrets or any intellectual property that is not a patent. A patent is a United States patent issued pursuant to 35 U.S.C. § 101, *et seq.* or the Patent Cooperation Treaty done at Washington, on June 19, 1970 and is limited to plant patents, design patents, and patents developed in West Virginia for direct use in a manufacturing process or product, or both developed for use and directly used in a manufacturing process or product in West Virginia.

¶ 317.2 Eligible Taxpayers

Law: W. Va. Code §§ 11-13AA-4 and §11-13AA-5

There are two types of persons who are eligible for the commercial patent incentives credit:

- A person who develops patents in West Virginia for direct use in a manufacturing process or product who has an agreement entered into after December 31, 2010, between a person developing patents in West Virginia and either a corporation formed with respect to Marshall University or West Virginia University as provided in W. Va. Code § 18B-12-3, or a center for economic development and technical advancement formed with respect to Marshall University or West Virginia University as provided in W. Va. Code § 18B-12A-3, for purposes of developing a patent eligible for this credit; or
- A person who directly uses a patent developed in West Virginia in a manufacturing process or product in West Virginia

"Development of a patent" means the act of inventing or discovering any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereto through significant investment of money, performance of research, or application of design or engineering expertise, which culminates in the issuance of a patent.

"Directly used in a manufacturing process or product" means application or incorporation of a patented process, machine, article of manufacture or composition of matter, in manufacturing operations or processes, or in manufactured products, in circumstances where United States or foreign patent laws require that the specific patent for the process, machine, article of manufacture or composition of matter be owned by the manufacturer, or purchased, leased, licensed or authorized by contract to be applied or incorporated in the manufacturing operation, processes or product, and where such lawful ownership, purchases, lease, licensure or contractual authorization is in effect.

The person may be a natural person, corporation, limited liability company, or partnership. Manufacturing includes those business activities classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System (NAICS) code number of 31, 32 or 33.

¶ 317.3 Amount of the Credit

Law: W. Va. Code §§ 11-13AA-4 and 11-13AA-5

The tax credit for developing patents in West Virginia for direct use in a manufacturing process or product is equal to 20% of the royalties, license fees, or other consideration received by the developer during the year from the sale, lease or licensing of the patent. However, no credit is allowed for consideration received by the developer from a related party as defined IRC §267. The tax credit increases to 30% when the developer reinvests at least 80% of the amount of the credit for the year in one of the following ways:

- In depreciable property purchased for purposes of developing additional patents in West Virginia or improving upon a patent developed in West Virginia; or
- By contributing to a stipend to retain a graduate or post-doctoral student in West Virginia integral to the development of the patents or related technology and the developer has an agreement entered into after December 31, 2010, with either a corporation formed with respect to Marshall University or West Virginia University as provided in W. Va. Code § 18B-12-3, or a center for economic development and technical advancement formed with respect to Marshall University or West Virginia University as provided in W. Va. Code § 18B-12A-3, for purposes of developing a patent eligible for this credit.

The tax credit for using a patent developed in West Virginia in a manufacturing process or product is equal to 20% of the "net profit attributable to the patent." The tax credit is increased to 30% of the "net profit attributable to the patent" when the taxpayer reinvests at least 80% of the tax credit for the year in capital improvements to add product lines to or increase productivity in West Virginia during the next taxable year.

The "net profit attributable to the patent" is calculated differently depending on whether the patent is being used in an ongoing or new manufacturing process or product.

If the patent is being used in an ongoing manufacturing process, the "net profit attributable to the patent" is the West Virginia taxable income that is in excess of the "base net profit" accrued through the manufacturing process that has an integrated patent eligible for the credit. The "base net profit" accrued through the manufacturing process is equal to the portion of the West Virginia taxable income attributable to the manufacturing process for the year immediately preceding the introduction of the patent.

If the patent is being used in a new manufacturing process, the "net profit attributable to the patent" is the total net profit from the manufacturing process multiplied

by a fraction, with the numerator being the total cost of using the patent, and the denominator being the total cost of the manufacturing process.

If the patent is being used in a new manufactured product, the "net product attributable to the patent" is the total net profit accrued through the sale or use of the product utilizing the product multiplied by a fraction, with the numerator being the total cost of using the patent and the denominator being the total cost of producing the product.

The total cost of using the patent is equal to the total amount of royalties, license fees or other consideration paid for the right to use a patent. For a developer, the total cost of using a patent is the total cost of developing the patent divided by the 20-year life of the patent. For any other patent holder, the total cost of a patent is the total cost of acquiring the patent divided by the remaining years of the 20-year life of the patent.

Amounts received from a related person as defined by IRC §267 are not allowed when calculation the net profit attributable to a patent.

¶ 317.4 Application of the Credit

Law: W. Va. Code §§ 11-13AA-4 and 11-13AA-5

The commercial patent tax credit can be applied only after all other allowable credits have been applied. It is not refundable and cannot offset the tax to below zero. The credit is not assignable. Credit is not allowed for any activity; investment, assets, or expenditures for which any other tax credits have been authorized, taken or allowed.

The credit shall be applied first against the taxpayer's business franchise tax liability. Any remaining credit may be applied against the taxpayer's corporate net income tax liability. If the taxpayer is a pass-thru entity or sole proprietorship, the credit may be applied against the personal income tax. If the taxpayer is a pass-thru entity and there is credit remaining after application to the business franchise tax liability, the remaining credit may be applied to the West Virginia personal income tax liabilities of the owners of the pass-through entity. The credit should be distributed to the owners of the pass-thru entity in the same manner as the items of income, gain, loss or deduction are distributed or allocated to the owners.

Any unused credit maybe carried forward for a period of 9 consecutive years from the year that the credit was earned. Any credit not used within the 10-year period will be forfeited.

¶ 317.5 Transfer of the Credit to Successors

Law: W. Va. Code §11-13AA-6

The commercial patent credit may be transferred or sold to a successor business as long as the patent continues to be used in a manufacturing process or product in West

Virginia. The successor business may claim the amount of credit that remains available when the transfer or sale occurred.

If the form of the business changes, the credit may be transferred to the successor business as long as the patent continues to be used in a manufacturing process or product in West Virginia and the person who developed the patent retains a controlling interest in the successor business.

¶ 317.6 Recordkeeping

Law: W. Va. Code §§ 11-13AA-7 and 11-13AA-8; WVCSR §110-13Q-8.3

Every developer of a patent in this State for direct use in a manufacturing process or product who claims a credit under this article must maintain sufficient records to establish the following facts for each item of a patent for which a credit is claimed:

- (1) The patent number and title.
- (2) The amount of royalties, license fees or the consideration received for use of the patent.
- (3) The month and taxable year in which the agreement with either a corporation formed with respect to Marshall University or West Virginia University as provided in W. Va. Code § 18B-12-3, or a center for economic development and technical advancement formed with respect to Marshall University or West Virginia University as provided in W. Va. Code § 18B-12A-3, for purposes of developing a patent eligible for this credit was entered into.
- (4) The month and taxable year in which the patent was first used, placed in service or directly used in the person's manufacturing process or product in this State.
- (5) The amount of credit taken.
- (6) The date the patent was disposed of or otherwise ceased to be used in a manufacturing process or product in West Virginia.
- (7) The direct cost for developing the patent.
- (8) The direct cost for developing the patent in this State.

Any person who develops a patent for use in a manufacturing process or product in West Virginia and claims the enhanced 30% credit under W. Va. Code § 11-13AA-4 must maintain sufficient records to clearly establish entitlement to claim the amount of the enhanced credit. At a minimum those records must identify all the items listed above as well as the following additional items:

- (1) Each and every item of depreciable property purchased for purposes of claiming the enhanced credit;

- (2) The date the depreciable property was purchased, its cost and its estimated useful life determined using the straight-line method of depreciation;
- (3) The date the depreciable property was placed in service or used in the person's business activity in West Virginia.
- (4) The date the depreciable property was taken out of service or use in the person's business activity in West Virginia and the reason why the property was taken out of service or use.

Every person who uses a patent directly in a manufacturing process or product in this State must maintain sufficient records to clearly establish entitlement to the credit and the following information concerning each patent.

- (1) The patent number and title.
- (2) The amount of net profit attributable to the patent along with all information used to derive this figure in accordance with the applicable law and regulations.
- (3) The month and taxable year in which the agreement with either a corporation formed with respect to Marshall University or West Virginia University as provided in W. Va. Code § 18B-12-3, or a center for economic development and technical advancement formed with respect to Marshall University or West Virginia University as provided in W. Va. Code § 18B-12A-3, for purposes of developing a patent eligible for this credit was entered into.
- (4) The month and taxable year in which the patent was first used, placed in service or directly used in the person's manufacturing process or product in this State.
- (5) The amount of credit taken.
- (6) The date the patent was disposed of or otherwise ceased to be used in a manufacturing process or product in West Virginia.

Any person who uses a patent in a manufacturing process or product in West Virginia and claims the enhanced 30% credit under W. Va. Code § 11-13AA-5 must maintain sufficient records to clearly establish entitlement to claim the amount of the enhanced credit. At a minimum those records must identify all the items listed above as well as the following additional items:

- (1) Each and every item of depreciable property purchased for purposes of claiming the enhanced credit;
- (2) The date the depreciable property was purchased, its cost and its estimated useful life determined using the straight-line method of depreciation;

- (3) The date the depreciable property was placed in service or used in the person's business activity in West Virginia.
- (4) The date the depreciable property was taken out of service or use in the person's business activity in West Virginia and the reason why the property was taken out of service or use.

Every person who claims a commercial patent incentives tax credit must also maintain sufficient records to establish the number and types of new jobs, if any created the wages and benefits paid to the employees filling the new jobs and the duration of each job.

These recordkeeping requirements do not apply to an owner of a pass-through entity that develops or uses a patent for which a credit is claimed.

If the taxpayer does not maintain the required records for identification of a patent for which a credit was claimed, the patent is treated as having been disposed of by the taxpayer during the taxable year in which the records are unavailable to establish that the patent was being directly used in the person's manufacturing process or product in West Virginia at the end of the taxable year. If the taxpayer cannot establish when a patent was placed in service in the manufacturing process or product in West Virginia, no credit will be allowed.

¶ 317.7 Filing Requirements

Law: W. Va. Code § 11-13AA-10; WVCSR §110-13Q-8.1

To claim the tax credit, the eligible taxpayer will timely provide any forms, returns, schedules or other information that the Tax Commissioner may require.

¶ 318 INNOVATIVE MINE SAFETY TECHNOLOGY TAX CREDIT

¶ 318.1 Introduction

Law: W. Va. Code § 11-13BB-1 et seq.

Beginning in 2010 and terminating on December 31, 2018, the Office of Miner's Health, Safety and Training will allocate \$2 million of tax credits during each fiscal year to taxpayers who invest in innovative mine safety technology. No one taxpayer may be allocated more than \$100,000 in credit in any given year. The allocation is done based on the order the applications are received by the Office of Mine Safety and Training. A list of the eligible taxpayers and amount of credit claimed will be published in the State Register by the State Tax Commissioner each year.

¶ 318.2 Eligible Taxpayers

Law: W. Va. Code § 11-13BB-3(b)(2)

In order to qualify for the credit, the taxpayer must be a coal mining company which purchases eligible safety property. A coal mining company includes companies subject

to the severance tax imposed by W. Va. Code §11-13A-3 or companies working as a contract miner, mining coal under contract with a person subject to the severance tax imposed by West Virginia Code § 11-13A-3.

¶ 318.3 Eligible Investment

Law: W. Va. Code §§ 11-13BB-3(b)10 and 11-13BB-4

Investment in "eligible safety equipment" is eligible for the credit. In order to qualify as "eligible safety equipment" the item must either be a machine mounted methane monitor or be on the list of approved innovative mine safety technology. This list will be compiled and maintained by the Mine Safety Technology Task Force. The list will be published by the West Virginia Office of Miner's Health Safety and Training. Eligible safety equipment includes proximity detection systems and cameras used on continuous mining machines and underground haulage equipment and machine mounted methane monitors.

According to the legislation, the list is to include only safety equipment that is so new to the industry and innovative in concept, design, operation or performance that it is not yet required by any state or federal agency to be used in a coal mine or on a mine site.

If any equipment on the list is later adopted as required safety equipment by a state or federal agency, or is determined to no longer be innovative or is determined to be ineffective, or to meet the expectations of the Mine Safety Technology Task Force, or fails to prove its value in minimizing workplace injuries or fatalities, the equipment shall be removed from the list of approved innovative mine safety technologies compiled and issued for the next period.

If the item is delisted, any taxpayer who invested in the equipment while it was on the list of approved innovative safety technologies will not have to forfeit the credit so long as all other requirements are met.

Qualified purchases will include leases of eligible safety property or equipment if the lease was entered into and became effective at a time when the equipment is on the list of approved innovative mine safety technology and the primary term of the lease is five years or more.

Qualified purchases do not include the following:

- Purchases or leases of realty or any cost for, or related to, the construction of any building, facility or structure attached to realty;
- Purchases or leases of any property not exclusively used in West Virginia;

- Repair costs including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;
- Motor vehicles licenses by the Department of motor Vehicles;
- Clothing;
- Airplanes;
- Off-premises transportation equipment
- Leases of tangible personal property having a primary term of less than five years;
- Property that is used outside West Virginia;
- Property that is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his or her business in West Virginia and any other tax credit was taken relating to the property.

The property may not be acquired from a related person or by one member of a controlled group from another member of the same controlled group. The Tax Commissioner can waive this requirement if the property was acquired from a related party for its fair market value.

The property may not be acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under IRC §§267 or 707(b). The property is only eligible if the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under IRC § 1014(e).

¶ 318.4 Qualified Investment

Law: W. Va. Code § 11-13BB-6

The qualified investment in eligible safety property is 100% of the cost of a qualified purchase. The property must be placed in service or use in West Virginia during the tax year. The property is considered placed in service or use during the earlier of either the taxable year when federal income tax depreciation begins in regard to the property, or the taxable year when the property is placed in condition or state of readiness and availability for a specifically assigned function.

The cost of the qualified investment does not include the value of property given in trade or exchange for eligible safety property. It also does not include insurance

proceeds received in compensation for the loss of property damaged or destroyed by fire, flood, storm or other casualty, or stolen. The cost of rental property that is leased for a term of 5 years or longer is 100% of the rent reserved for the primary term of the lease, not to exceed 10 years. If property is purchased for multiple uses and is not principally and directly used to minimize workplace injuries and fatalities in a coal mine, the cost does not qualify as qualified investment for purposes of this credit.

¶ 318.5 Amount of the Credit

Law: W. Va. Code § 11-13BB-5

The amount of the credit is equal to 50% of the amount of the qualified investment in the eligible innovative mine safety equipment. The amount of credit is applied over a period of 5 years at the rate of one-fifth of the credit beginning with the year the equipment is first placed in service or use.

¶ 318.6 Application of the Credit

Law: W. Va. Code § 11-13BB-5

The credit is applied first against the taxpayer liability for the business franchise tax and then against the corporation net income tax. The credit may be used to offset up to 50% of the liability of the taxpayer for these taxes before application of any other credits other than the credit in W. Va. Code § 11-23-17 (credit for business franchise tax paid by a subsidiary).

If the taxpayer is an LLC, small business corporation or a partnership, then any credit remaining after application to business franchise tax or corporate net income tax of the eligible taxpayer is allowed to be applied to offset up to 50% of the corporation net income tax imposed on the owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer. This credit should be allocated among the owners in the same rates as profits and losses are allocated. The credit may not be used to offset personal income tax.

If the credit cannot be used due to these limitations, it is forfeited and cannot be carried forward or backward to another taxable year.

¶ 318.7 Filing Requirements

Law: W. Va. Code § 11-13BB-5

In order to obtain the credit, the taxpayer must file an application for certification of the proposed tax credit with the Office of Miner's Health, Safety and Training. The credit may not be claimed until the taxpayer receives from the Office of Miner's Health, Safety and Training, certification of the amount of tax credit to be allocated to them.

¶ 318.8 Forfeiture of Credit

Law: W. Va. Code § 11-13BB-7

If the taxpayer disposes of the eligible safety property or ceases to use the property in a coal mine prior to the end of the fourth tax year after the tax year in which the property was placed in service or use, then the unused portion of the credit allowed for the property is forfeited for the tax year in which the disposition or cessation of use occurred and for all ensuing years.

¶ 318.9 Transfer of Credit to Successors

Law: W. Va. Code § 11-13BB-8

If a taxpayer changes the form of conducting its business, but retains a controlling interest in the successor business, and the certified eligible safety equipment is retained in a business in West Virginia for use in a coal mine in West Virginia, the forfeiture and redetermination rules do not apply, and the successor business is allowed to claim the amount of credit still available for subsequent years. The same is true where property is transferred or sold to a successor business that continues to use the property in a coal mine in West Virginia.

Upon the transfer or sale of the property, the successor acquires the amount of credit still remaining for each taxable year subsequent to the year of transfer. The credit available to the successor for the year of transfer is based on the ratio of the number of days remaining in the transferor's taxable year to the total number of days in the transferor's year. The transferor does not have to redetermine the amount of credit taken in earlier years.

¶ 318.10 Recordkeeping Requirements

Law: W. Va. Code §§ 11-13BB-9 and 11-13BB-10

The taxpayer must keep records on their investment property. Information that must be maintained includes its identity and actual or reasonably determined cost, its straight-line depreciation life, the month and taxable year it was placed in service, the amount of credit taken, and the date the investment was either disposed of or ceased being actively used in the mine.

If these records are not maintained, then the taxpayer is treated as having disposed of any property that it cannot establish was still on hand and used in a coal mine at the end of the year. Also, if a taxpayer cannot establish when certified eligible safety property was placed in service, it is treated as being placed in service in the most recent year that similar property was placed in use, unless it can be proved that the property placed in service in the most recent year is still on hand. In that case, the taxpayer will be treated as having placed the property in service in the next most recent year.

¶ 318.11 Disclosure of Tax Credit Claimants

Law: W. Va. Code §11-13BB-12

Although most tax information is confidential under W. Va. Code §11-10-5d, the Tax Commissioner is required to annually publish in the State Register the name and address of every eligible taxpayer and the amount of the tax credit claimed.

¶ 319 ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT

¶ 319.1 Introduction

Law: W. Va. Code § 11-6D-1 et seq.

The alternative-fuel motor vehicles tax credit is available for tax years beginning on or after January 1, 2011. The credit was enacted to encourage the use of alternative fuel vehicles. **The credit was significantly narrowed through legislation passed in 2013 to apply only to motor vehicles fueled by compressed natural gas, liquefied natural gas and liquefied petroleum gas.** The credit expires December 31, 2017.

¶ 319.2 Eligible Taxpayers

Law: W. Va. Code § 11-6D-4

In order to qualify for the alternative-fuel motor vehicle tax credit, the taxpayer must do one of the following:

- (1) Convert a motor vehicle presently registered in West Virginia to operate exclusively on alternative fuels.
- (2) Purchase a new dedicated or bi-fueled alternative-fuel motor vehicle for which the taxpayer then obtains a valid West Virginia registration.
- (3) Construct or purchase and install a qualified alternative-fuel vehicle refueling infrastructure.
- (4) Construct or purchase and install a qualified alternative-fuel vehicle home refueling infrastructure prior to April 15, 2013 that is capable of dispensing alternative fuel for alternative-fuel motor vehicles.

A "qualified alternative-fuel vehicle refueling infrastructure" includes property owned by the applicant for the tax credit and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including but not limited to, compression equipment, storage tanks and dispensing units for alternative-fuel at the point where the fuel is delivered. This infrastructure must be in West Virginia and cannot be at a private residence or home.

A "qualified alternative-fuel vehicle home refueling infrastructure" includes property owned by the applicant for the tax credit located on a private residence or private home and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including but not limited to, compression equipment, storage tanks and dispensing units for alternative-fuel at the point where the fuel is delivered or

for providing electricity to plug-in hybrid electric vehicles or electric vehicles. Only the home refueling infrastructure includes dispensing units for electricity. The infrastructure must be in West Virginia. Purchases for “qualified alternative-fuel vehicle home refueling infrastructures” made after April 15, 2013 are not eligible for the credit.

The credit cannot be claimed by persons who are under an obligation set forth under state or federal law to convert to the use of alternative fuel vehicles.

¶ 319.3 Amount of Credit

Law: W. Va. Code § 11-6D-5

For credits related to the purchase or conversion of an alternative-fuel vehicle, the amount of the credit depends on the weight of the vehicle. The amount of the credit is as follows:

For vehicles weighing less than 26,000 pounds:

- 35% of the purchase price to a maximum of \$7,500
- 50% of the cost of conversion to a maximum of \$7,500

For vehicles weighing more than 26,000 pounds:

- 35% of the purchase price to a maximum of \$25,000
- 50% of the conversion costs to a maximum of \$25,000

For credits related to the construction or purchase and installation of an alternative-fuel vehicle refueling infrastructure, the amount of credit varies depending on the time period.

- For years 2011-2013, the credit is 50% of the costs up to a maximum of \$250,000 or 62.5% of the costs up to a maximum of \$312,500 if the facility is generally accessible for public use.
- For taxable years beginning on and after January 1, 2014, the amount of the credit allowed under this article for qualified alternative-fuel vehicle refueling infrastructure is equal to 20% per facility of the total costs directly associated with the construction or purchase and installation of the alternative-fuel vehicle refueling infrastructure up to a maximum of \$400,000 per facility. This credit expires December 31, 2017.
- For the period January 1, 2011 to April 15, 2013, the credit for construction or purchase and installation of an alternative-fuel vehicle home refueling infrastructure is 50% of the costs up to a maximum of \$10,000. There is no credit available for the construction or purchase and installation of an alternative-fuel vehicle home refueling infrastructure after April 15, 2013.

For periods prior to April 15, 2013, "alternative-fuel" includes compressed natural gas; liquefied natural gas; liquefied petroleum gas; ethanol; fuel mixtures that contain 85% or more by volume, when combined with gasoline or other fuels, of methanol, ethanol, or other alcohols; natural gas hydrocarbons and derivatives; hydrogen; coal derived liquid fuels; and electricity, including electricity from solar power. On or after April 15, 2013, the definition of "alternative-fuel" was narrowed to include only compressed natural gas, liquefied natural gas, and liquefied petroleum gas.

An "alternative-fuel motor vehicle" means a motor vehicle that as a new or retrofitted or converted fuel vehicles operates either solely on one alternative fuel, or is capable of operating on one or more alternative fuels, or is capable of operating on an alternative fuel and is also capable of operating on gasoline or diesel fuel. A "bi-fueled motor vehicle" is an alternative-fuel vehicle that can operate on an alternative fuel and another form of fuel.

A "plug-in hybrid electric vehicle" is a hybrid electric vehicle manufactured by an established motor vehicle manufacturer of plug-in hybrid electric vehicles that can operate solely on electric power and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A "plug-in hybrid electric vehicle" also includes a hybrid electric vehicle conversion that provides an increase in city fuel economy of 75% or more as compared to a comparable nonhybrid version vehicle for a minimum of twenty miles and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A vehicle is comparable if it is the same model year and the same vehicle class as established by the United States Environmental Protection Agency and is comparable in weight, size and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures set forth in 40 C.F.R. 600 as in effect on January 1, 2011.

¶ 319.4 Application of the Credit

Law: W. Va. Code §11-6D-3

The alternative-fuel motor vehicle tax credit may be applied against the taxpayer's personal income tax, business franchise tax or corporation net income tax. If the taxpayer is a pass-through entity treated like a partnership for federal and state income tax purposes, the credit shall flow through to the equity owners of the pass-through entity in the same manner that distributive share flows through to the equity owners. The credit cannot be applied against employer withholding taxes.

Unused alternative-fuel motor vehicle tax credits can be carried forward four years. Unused alternative-fuel vehicle refueling infrastructure tax credits may be carried forward until the full amount of the excess tax credit is used. No carryback of the credit is permitted.

¶ 319.5 Recapture of the Credit

Law: W. Va. Code § 11-6D-3

The tax credit can be recaptured or reduced if it is determined by the State Tax Commissioner that a taxpayer was not entitled to the credit, in whole or in part, in the tax year in which it was claimed by the taxpayer.

¶ 320 ENERGY INTENSIVE INDUSTRIAL CONSUMERS REVITALIZATION TAX CREDIT

¶ 320.1 Introduction

Law: W. Va. Code § 11-13CC-2

The Energy Intensive Industrial Consumers Revitalization Tax Credit was enacted in 2012 and provides a tax credit to coal producers that supply coal to a West Virginia electric utility that provides a special rate to one or more energy intensive industrial consumers of electric power. The credit is designed to encourage energy intensive industrial consumers to locate, remain, or resume operations in West Virginia.

¶ 320.2 Eligible Taxpayers

Law: W. Va. Code § 11-13CC-3

In order to be eligible for the credit, the taxpayer must be a coal producer subject to the coal severance tax imposed under W. Va. Code 11-13A-3(a) and (b). The coal producer must also provide coal to a West Virginia electric utility that provides a special rate to a eligible energy intensive industrial consumer as defined pursuant to W. Va. Code §24-2-1j (g).

¶ 320.3 Amount of the Credit

Law: W. Va. Code § 11-13CC-3

The amount of the credit is determined by the Public Service Commission under the provisions of W. Va. Code §24-2-1j(g). The total amount of credits available to all taxpayers cannot exceed \$20 million in any calendar year. If the total amount of \$20 million is not allocated and used during the calendar year, annual credit up to a total of \$15 million may be carried forward to future years.

The amount of credit available to any taxpayer in a calendar year cannot exceed 93% of the taxpayer's total annual coal severance tax liability.

¶ 320.4 Applicability to Minimum Severance Tax

Law: W. Va. Code § 11-13CC-3a

The tax credit can be used by the taxpayer to offset the minimum coal severance tax imposed by W. Va. Code §11-12b in an amount up to the amount of the tax credit

applied against the coal severance tax imposed under W. Va. Code § 11-13A-3(a) and (b).

¶ 320.5 Required Payment by Coal Producer to Electric Public Utility

Law: W. Va. Code §11-13CC-4

In order to receive the tax credit, the taxpayer must make payment of 97% of the amount of the credit to the public utility providing electric power to the special rate customer, whose special rate was determined by the Public Service Commission pursuant to the provisions of W. Va. Code § 24-2-1j(g).

This payment is treated in the same manner as a payment of coal severance tax and shall not be treated as an adjustment to the price of coal sold to the electric utility. The payment must be made to the electric utility no later than the date the coal severance tax would have been due to the State.

The remaining 3% of the tax credit may be kept by the taxpayer as an inducement to participate in this program and to offset the costs of participation.

¶ 320.6 Notification and Exchange of Information Between Parties

Law: W. Va. Code § 11-13CC-4

The taxpayer that wishes to participate in this tax credit program shall notify the West Virginia State Tax Department through the form of notification prescribed by the Department. The State Tax Department and Public Service Commission may exchange information necessary for the efficient and accurate administration of the tax credit program, including the identity of the taxpayer.

The Public Service Commission may also disclose to the electric utility providing the electricity to the special rate customer, necessary information to calculate the allocated share of tax credits available and the payments required to be made to the utility.

¶ 320.7 Expiration of Tax Credit Program

Law: W. Va. Code § 11-13CC-5

This tax credit expires and is no longer usable in tax years beginning on or after December 31, 2021.

¶ 321 RECLAMATION TAX CREDIT

Law: W. Va. Code § 22-3-11(g)(2)(A)

¶ 321.1 Introduction

A tax credit was enacted for tax years beginning on or after July 12, 2013 for mine operators who perform reclamation or remediation at a bond forfeiture mining site which otherwise would have been reclaimed using funds from the West Virginia Special

Reclamation Fund or the West Virginia Special Reclamation Water Trust Fund. The credit is used to offset the special reclamation tax imposed under W. Va. Code §22-3-11(i)(1)(A).

¶ 321.2 Eligible Taxpayers

Law: W. Va. Code § 22-3-11(g)(2)(A)

In order to be eligible for the credit, a mine operator must perform reclamation or remediation at a mining site where the bond has been forfeited and where the reclamation or remediation would have been performed using funds from the West Virginia Special Reclamation Fund or the West Virginia Special Reclamation Water Trust Fund.

¶ 321.3 Amount of the Credit

Law: W. Va. Code § 22-3-11(g)(2)(B)

The amount of the reclamation tax credit granted shall be equal to the amount that the Tax Commissioner determines, based on the project costs, as shown in the records of the Secretary of the Department of Environmental Protection, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation by the mine operator, including expenditures for water treatment.

¶ 321.4 Filing Requirements

Law: W. Va. Code § 22-3-11(g)(2)(C)

In order to claim the credit, the mine operator must file with the Tax Commissioner from time to time a written application seeking the amount of the credit earned. Within thirty days of receipt of the application, the Tax Commissioner will issue a certification of the amount of the tax credit to be allocated to the mine operator. If no response is received within thirty days, the application will be deemed certified. The application will contain the information and be in the detail and form required by the Tax Commissioner.

If the amount certified is less than the amount requested, the Tax Commissioner shall set forth in writing the reasons for the difference. The decision of the Tax Commissioner is appealable under the provisions of the “West Virginia Tax Procedure and Administration Act” set forth in Chapter 11 of the West Virginia Code.

¶ 321.5 Application of the Credit

Law: W. Va. Code § 22-3-11(g)(2)(A)

The credit can be used to offset the special reclamation tax of fourteen and four-tenths cents per ton of clean coal mined, imposed under W. Va. Code §22-3-11(i)(1)(A).

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