

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1969

ENROLLED

SENATE BILL NO. 1

(By Mr. Jackson [Mr. President] and
Mr. Carugin)

PASSED July 25, 1969

In Effect from  Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 7-31-69

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Senate Bill No. 1

(BY MR. JACKSON [MR. PRESIDENT] AND MR. CARRIGAN)

[Passed July 25, 1969; in effect from passage.]

AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-c, and to amend and reenact section four of said article thirteen; to amend said chapter eleven by adding thereto a new article, designated article thirteen-c; and to amend and reenact section eight, article twenty-one, and section nine, article twenty-four, of said chapter eleven, all relating to taxation; providing a business and occupation tax credit for industrial expansion; defining eligible persons, amount and allowance of credit; defining qualified investment for industrial expansion; providing for forfeiture of unused tax credits and providing that the business and occupation tax credit allowed under the personal income tax and corporation net income tax shall not be reduced by the tax credit for industrial expansion.

Be it enacted by the Legislature of West Virginia:

That article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-c, and that section four of said article thirteen be amended and reenacted; that said chapter eleven be amended by adding thereto a new article, designated article thirteen-c; and that section eight, article twenty-one, and section nine, article twenty-four, of said chapter eleven be amended and reenacted, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.**§11-13-3c. Tax credit for industrial expansion.**

(1) There shall be allowed as a credit against tax imposed by this article the amount determined under article thirteen-c of this chapter relating to tax credit for industrial expansion.

(2) The tax commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section and article thirteen-c of this chapter.

§11-13-4. Computation of tax; payment.

The taxes levied hereunder shall be due and payable in quarterly installments on or before the expiration of one month from the end of the quarter in which they accrue. The taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he is liable for such quarter, sign the same, and mail the same together with a remittance, in the form required by section eleven of this article, of the amount of tax to the office of the tax commissioner. In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of the tax credit for industrial expansion allowable for the taxable year and one fourth of the total exemption allowed for the year. When the total tax for which any person is liable under this article does not exceed the sum of one hundred dollars in any year, the taxpayer may pay the same quarterly as aforesaid or, with the consent in writing of the tax commissioner, at the end of the month next following the close of the tax year.

Any other provision of this section notwithstanding, the tax commissioner, if he deems it necessary to insure payment of the tax, may require the return and payment under this section for periods of shorter duration than quarter-year period.

ARTICLE 13C. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION.**§11-13C-1. Legislative findings.**

In order to encourage the location of new industry within this state and in order to encourage the expansion of existing industry within this state and thereby increase employment, there is hereby provided a business and occupation tax credit for industrial expansion.

§11-13C-2. Definitions, meaning of terms.

(a) Any term used in this article shall have the same meaning as when used in comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context or by definition in this article.

(b) The term "industrial taxpayer" when used in this article shall mean any person liable for tax under article thirteen of this chapter exercising any of the following privileges:

(1) Any privilege taxable under section two-b of article thirteen of this chapter.

(2) Any privilege taxable under section two-h of article thirteen of this chapter: *Provided*, That such privilege is manufacturing for another, which privilege would be taxable under section two-b of article thirteen of this chapter if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of article thirteen of this chapter.

§11-13C-3. Eligible persons; amount and allowance of credit.

(a) There shall be allowed to industrial taxpayers as defined in section two of this article, a credit against business and occupation tax imposed by article thirteen of this chapter. The amount of credit shall be equal to ten percent of the cost of qualified investment made for industrial expansion as defined in section four of this article and shall be applied over a ten-year period to reduce the business and occupation tax imposed under article thirteen of this chapter at the rate of one tenth of the amount of such credit per taxable year, commencing with the taxable year that such qualified investment is first placed in service or use.

(b) Notwithstanding any provision herein to the contrary, the annual credit allowance shall not reduce the business and occupation tax imposed by article thirteen of this chapter below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax computed before application of the annual exemption allowed by section three of said article thirteen. No carryover shall be allowed for the amount of any unused portion of any annual credit allowance, nor shall any credit be allowed against any

tax liability for any year prior to the effective date of this article, by reason of an assessment issuing within any period after the effective date of this article, which assessment is, in whole or in part, for any period prior to the effective date of this article.

§11-13C-4. Qualified investment for industrial expansion.

(a) The term "qualified investment" means with respect to any taxable year, the aggregate of the applicable percentage of the cost of each property purchased for the purpose of industrial expansion as defined in subsection (b) of this section in West Virginia, which is placed in service or use in this state by an industrial taxpayer during such taxable year, determined under the following table:

If useful life is—	The applicable percentage is:
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 purposes of this subsection, the useful life of any property shall be determined as of the time such property is placed in service or use in this state by the taxpayer.

(b) The term "property purchased for industrial expansion" means real property and improvements thereto and tangible personal property but only if such property is constructed or purchased for use as a component part of a new or expanded business of an industrial taxpayer as defined in section two of this article, which property is located within West Virginia. Such term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax under articles twenty-one and twenty-four of this chapter and has a useful life (determined as of the time such property is placed in service or use) of four years or more. The term "property purchased for industrial expansion" does not include replacement property, motor vehicles licensed by the department of motor vehicles, airplanes, off-premises transportation equipment or property which is used outside this state, nor does the term include property purchased prior to the effective date of this article,

nor property the construction, reconstruction or erection of which has begun (or contract therefor let) prior to the effective date of this article, nor does the term include property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer as defined in section two of this article which property had been used by the seller in such business in this state, or which property had been previously designated "property purchased for industrial expansion" and so used to qualify for the tax credit provided by this article.

(c) The term "cost" shall not include the value of any property given in trade or exchange for such new property purchased for industrial expansion.

(d) Property acquired by lease for a term of ten years or longer if used as a component part of a new or expanded business of an industrial taxpayer as defined in section two of this article shall be considered "property purchased for industrial expansion" and the applicable percentage of the cost of such property shall be one hundred percent of the rent reserved for the primary term of the lease not to exceed twenty years. Lease renewals, subleases, or assignments shall not be considered "property purchased for industrial expansion."

(e) The cost of property purchased for multiple business use including use as a component part of a new or expanded business of an industrial taxpayer together with some other business or occupation not qualifying under section three of this article, shall be apportioned between such businesses and occupations and the proportion allocated to businesses of industrial taxpayers shall be considered as "qualified investment" subject to the conditions and limitations of subsections (a) and (b) of this section.

§11-13C-5. Forfeiture of unused tax credits.

If, during any taxable year, property with respect to which a tax credit has been allowed is disposed of or ceases to be used in a business of an industrial taxpayer in this state, or if the industrial taxpayer ceases operation of such business before expiration of the useful life as set forth under section four of this article in computing the credit allowable under section three of this article, then the unused portion of such credit shall be forfeited for the taxable year in which such

event occurs and all ensuing taxable years. Property shall not be treated as disposed of with respect to the industrial taxpayer or his successor by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such business and the taxpayer or his successor retains a substantial interest therein, and such taxpayer or his successor continues to qualify under section three of this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credit against tax.

(a) *Business and occupation tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen of chapter eleven of this code: *Provided*, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed by the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen of chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion allowed for such year.

(b) *Carrier income tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-

a, chapter eleven of this code: *Provided*, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect of which said income tax under article twelve-a was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust, or corporation under said article twelve-a shall be allowed to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation which is included in the taxpayer's West Virginia taxable income.

(c) *Cross reference.*—For credit in respect of:

- (1) Taxes withheld on wages, see section seventy-three,
- (2) Taxes imposed on a resident by other states, see section twenty,
- (3) Taxes imposed on a nonresident by the state of his residence, see section forty.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9. Credits against tax.

(a) *Credit for taxes imposed under article thirteen, chapter eleven of this code.*

A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: *Provided*, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: *Provided further*, That no such credit shall be allowed for any tax imposed under article thirteen with re-

spect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

For purposes of this section, the tax imposed under article thirteen of chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion allowed for such year.

(b) *Credit for taxes imposed under article twelve-a, chapter eleven of this code.*

A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: *Provided*, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: *Provided further*, That no such credit shall be allowed for any tax imposed under article twelve-a with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompa
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Johnson McGeary
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Leah G. Jackson
President of the Senate

Ivan F. Boiarisky
Speaker House of Delegates

The within approved this the 30th
day of July, 1969.

Arch A. Shaw Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 1/30/69

Time 1:55 p.m.

RECEIVED
JAN 31 1969
U.S. DEPT. OF JUSTICE