WEST VIRGINIA CODE: §11-13-2P

§11-13-2p. Credit against tax based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind.

(a) For taxable periods beginning on or after January 1, 2008, a credit shall be allowed against tax imposed by this article and calculated based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind. The total credit shall be equal to the amount of qualified contractually agreed contributions as defined in this section. The amount of total credit shall be reduced each year by the amount of credit annually applied to reduce tax under this section.

(b) Definitions. -- For purposes of this section:

(1) "Qualified contractually agreed contribution" means money paid, or the lower of the cost or fair market value, at the time of transfer, of property transferred, by the taxpayer, the owner of the taxpayer or the operator or owner of the wind turbine unit to a county in which the wind turbine unit is located, a county school board of the county in which the wind turbine unit is located or to a municipality located in the county in which the wind turbine unit is located pursuant to a written transfer agreement.

(A) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to any county, county school board or municipality or to any other governmental subdivision, agency or instrumentality of this state or of any county or municipality.

(B) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to any county, county school board or municipality or to any other governmental subdivision, agency or instrumentality of any state other than this state or of any county or municipality of any state other than this state.

(C) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to the United States or to any governmental subdivision of the United States or to any agency or instrumentality of the United States or to any foreign government or subdivision, agency or instrumentality thereof.

(2) "Taxpayer" means any person that is legally liable for tax imposed by this article that is calculated based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind.

(3) "Wind turbine unit" means, and is limited to, an electricity-generating unit utilizing a turbine powered primarily by wind that has a taxable generating capacity determined in accordance with subdivision (2), subsection (c), section two-o of this article.

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(4) "Written transfer agreement" means a written contract or written promise to transfer money or property to a county in which the wind turbine unit is located, a county school board of the county in which the wind turbine unit is located or a municipality located in the county in which the wind turbine unit is located, executed not later than March 1, 2007, by the taxpayer, the owner of the taxpayer or the operator or owner of the wind turbine unit and executed by the county commission of the county in which the wind turbine unit is located or by any officer or representative of the county commission having authority to execute binding legal documents for the county commission, the county school board of the county in which the wind turbine unit is located or any officer or representative of the county school board having authority to execute binding legal documents for the county school board, or the city council, mayor or city manager of a municipality located in the county in which the wind turbine unit is located or any officer or representative of the municipality having authority to execute binding legal documents for the municipality.

(c) Credit limitations. --

(1) The total amount of credit allowable under this section is limited to the amount of qualified contractually agreed contributions made pursuant to a written transfer agreement.

(2) The credit allowed under this section may only be applied to offset annual tax imposed by this article that is measured by the taxable generating capacity of the wind turbine unit. No other tax imposed by or under this article may be offset by the credit allowed under this section and no other tax imposed by this code may be offset by the credit.

(3) The credit allowed under this section shall be applied after application of the credit allowed under article thirteen-d of this chapter, as applicable, and after any other applicable credits allowed by this chapter against tax imposed by this article.

(4) The amount of credit allowed under this section and the amount of the credit allowed under article thirteen-d of this chapter may not, in combination, reduce the amount of annual tax imposed by this article on the taxable generating capacity of the wind turbine unit to an amount that is less than fifty percent of the amount of annual tax that would have been imposed by this article on the wind turbine unit if the taxable generating capacity of the wind turbine unit was set at five percent of the official capacity of the wind turbine unit.

(d) Time over which credit may be applied. --

(1) The total amount of credit determined under subsection (a) of this section shall be reduced annually by the amount of credit applied in each tax year to offset tax under this section.

(2) The credit allowed under this section may be applied annually, beginning on the later of:

(A) The year a qualified contractually agreed contribution in money was paid or a qualified contractually agreed contribution in property was delivered to the county, the county school

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board or the municipality; or

(B) The year in which title thereto irrevocably passed to the transferee;

(3) The credit may thereafter be taken in each succeeding tax year until the amount of total credit has been exhausted or until the ninth succeeding tax year after the contractually agreed contribution of money was so paid or the contractually agreed contribution of property was so delivered. Credit remaining after the ninth succeeding tax year is forfeited.

(4) Credit to which a taxpayer is entitled under this section shall be applied in an order and sequence such that the credit earned earliest in time shall be applied first in any tax year to offset tax under this section.

(e) Credit for successor businesses and transferees of a wind turbine unit; apportionment. --

(1) Mere change in form of business. -– The credit allowed under this section shall not be forfeited by reason of a mere change in the form of the entity or organization that is conducting the business so long as the successor business continues to remain a taxpayer, as defined in this section, in this state, operating the wind turbine unit that was originally owned or operated by the predecessor taxpayer. Such successor shall acquire the amount of credit that remains available under this section for each subsequent taxable year until the credit expires or is exhausted, based on the years remaining and amount of credit remaining to which the transferor was entitled at the time of the transfer.

(2) Transfer or sale to successor. –- The credit allowed under this section shall not be forfeited by reason of a transfer or sale to a successor business of a wind turbine unit so long as the successor business continues to remain a taxpayer, as defined in this section, in this state, operating the wind turbine unit that was originally owned or operated by the predecessor taxpayer. Upon transfer or sale of a wind turbine unit, the successor shall acquire the amount of credit that remains available under this section for each subsequent taxable year until the credit expires or is exhausted, based on the years remaining and amount of credit remaining to which the transferor was entitled at the time of the transfer.

(3) Apportionment in the year of transfer. -– Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this section for each taxable year subsequent to the taxable year of the transferor during which the transfer occurred and, for the year of transfer, an amount of annual credit for the year in the same proportion as the number of days remaining in the transferor's taxable year bears to the total number of days in the transferor's taxable year.

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