WEST VIRGINIA CODE: §11-13AA-4

§11-13AA-4. Tax incentive for developing patents in this state.

(a) Allowance of credit. -- A person engaging in this state in developing plant patent, design patent or patents for direct use in a manufacturing process or product and who has an agreement, as defined in section three of this article, is allowed a credit, when computing the person's liability for business franchise tax imposed by article twenty-three of this chapter and corporation net income tax imposed by article twenty-four of this chapter, in the amount allowed under subsection (b) of this section. When the developer is a sole proprietor or a pass-through entity, that amount of the credit remaining after first applying it against the tax liability under article twenty-three of this chapter for the taxable year is allowed when computing the tax imposed by article twenty-one of this chapter on income from the person's business activity. No credit is allowed under this article for any activity, investment, assets, or expenditures for which any of the tax credits authorized under articles thirteen-d, thirteen-e, thirteen-q, thirteen-r, thirteen-s, or thirteen-x of this chapter, has been authorized, taken or allowed. No credit is allowed under this article for any activity, investment, assets, or expenditures for which the tax credits authorized under article thirteen, chapter eighteen-b, has been, authorized, taken or allowed.

(b) Amount of credit. -- The amount of credit allowed under this section is equal to twenty percent of the royalties, license fees or other consideration received by the developer during the taxable year from the sale, lease or licensing of a patent developed in this state for direct use in a manufacturing process or product by the person in taxable years beginning on or after January 1, 2011: Provided, That the amount of credit allowed under this section is thirty percent, rather than twenty percent, when the person reinvests at least eighty percent of the amount of the credit claimed for the taxable year in depreciable property purchased for purposes of developing additional patents in this state in taxable years beginning on or after January 1, 2011, or improving upon a patent developed in this state or contributing to a stipend to retain a graduate or post-doctoral student in this state integral to the development of the patents or related technology in taxable years beginning on or after January 1, 2011, during the next taxable year of the person, and the person has an agreement, as defined in section three of this article, for the development of a patent.

(c) Rules for application of credit. -- The amount of credit computed under this section is allowed in accordance with the following rules and applied as provided in subsection (d) of this section:

(1) No credit is allowed under this section for royalties, rents, license fees or other consideration received by the developer of the patent for a patent developed outside this state, except as provided in subdivision (2) of this subsection;

(2) When the person developed the patent for direct use in a manufacturing process or product through that person's activity in this state and through that person's activity in one

or more other states, the consideration received by the developer during the taxable year from the sale, lease or license of the patent developed through multistate activity of the developer is multiplied by a fraction, the numerator of which is the direct costs of developing the patent in this state and the denominator of which is the total direct costs of developing the patent. The product of this computation establishes the consideration to be used in subsection (b) of this section;

(3) If a person receives a portion of a royalty that would be eligible for a tax credit under this section because of a business association, licensing agreement or otherwise, the person may receive the tax credit allowable to the portion of royalties that person receives provided the person has an agreement, as defined in section three of this article and otherwise meets the requirements for entitlement to this credit, as set forth in subsection (a) of this section;

(4) Unused credit may be carried forward until the earlier of the tax year when the credit is used up or the ninth consecutive tax year after the first tax year in which the taxpayer is eligible to claim the credit. When the person is an owner of a pass-through entity, credit may be taken by the owner beginning in the tax year when credit may be taken by the pass-through entity or when the pass through entity gains entitlement to the credit;

(5) No credit is allowed under this section for consideration received by the developer for patents developed for direct use in a manufacturing process or product before the taxable year beginning January 1, 2011. For purposes of this subdivision, a patent was developed for direct use in a manufacturing process or product before January 1, 2011, if it was sold, leased or licensed to a third party prior to January 1, 2011, or before that day it was reduced to practice for purely commercial purposes by the developer or a person related to the developer, as defined in subsection (b), Section 267 of the Internal Revenue Code of 1986, as amended;

(6) No credit is allowed under this section for consideration received by the developer from a person related to the developer, as defined in subsection (b), Section 267 of the Internal Revenue Code of 1986, as amended for patents developed for direct use in a manufacturing process or product; and

(7) No credit is allowed under this section beginning with the eleventh taxable year after the patent was first directly used in a manufacturing process or product.

(d) Application of credit. -- The amount of the credit computed under this section is allowed as a credit against tax as provided in this subsection, but the credit may not reduce the tax below zero.

(1) Business franchise tax.-- The amount of the allowable credit shall first be taken as a credit against the tax liability of the developer for the taxable year under article twenty-three of this chapter.

(2) Corporation net income tax. -- The amount of the allowable credit remaining, if any, after

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first applying the credit against the tax imposed by article twenty-three of this chapter shall then be taken as a credit when computing the liability of the developer for the taxable year under article twenty-four of this chapter.

(3) Personal income tax on business income. --

(A) When the developer is a sole proprietor, the amount of the allowable credit is taken as a credit when computing the liability of the developer for the taxable year on business income under article twenty-one of this chapter.

(B) When the developer is a pass-through entity, the amount of allowable credit remaining, if any, after first applying the credit against the tax imposed by article twenty-three of this chapter for the taxable year is allowed as a credit against the tax imposed for the taxable year on the West Virginia source income of the pass-through entity under article twenty-one of this chapter and the amount of the credit is distributed to the owners of the pass-through entity in the same manner as items of partnership income, gain loss or deduction are distributed or allocated for the taxable year.

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