WEST VIRGINIA CODE: §11-13AA-5

§11-13AA-5. Tax credit for use of a patent in a manufacturing process or product in this state that was developed in this state.

(a) Allowance of credit. -- A person directly using a plant patent, design patent or patent developed in this state in a manufacturing process or product in this state is allowed a credit against 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, the amount computed under subsection (b) of this section. When the user of a patent is a sole proprietor or a pass-through entity, that amount of credit allowed against income taxes shall be against the tax imposed by article twenty-one of this chapter.

(b) Amount of credit. -- The amount of credit allowed under this section is equal to twenty percent of the net profit attributable to the patent: Provided, That the amount of credit allowed under this section is equal to thirty percent of the net profit attributable to the patent when the person claiming the credit reinvests in capital improvements to add product lines to or increase productivity in this state during the next taxable year an amount equal to at least eighty percent of the tax credit amount used for the taxable year.

(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) The credit allowed by this section is applied after all other credits allowed by this chapter have been applied against the person's business franchise tax and West Virginia income tax liabilities for the taxable year under this chapter;

(2) 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;

(3) Any credit not used within the ten-year period described in subdivision (2) of this subsection is forfeited beginning with the eleventh taxable year after the first tax year in which the taxpayer is eligible to claim the credit;

(4) No credit is allowed under this section for using a patent in this state when the person began using the patent before January 1, 2011;

(5) No credit is allowed under this section for using a patent in this state for which the taxpayer is allowed credit under another article of this chapter.

WV Legislature

(6) No credit is allowed under this section for any patent acquired from, by or between, leased from, by or between, licensed from, by or between, or otherwise authorized to be used from, by or between related persons, as defined in subsection (b), Section 267 of the Internal Revenue Code of 1986, as amended.

(7) Amounts received from, by or between related persons, as defined in subsection (b), Section 267 of the Internal Revenue Code of 1986, as amended, are disallowed when calculating net profit attributable to a patent.

(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 person allowed the credit 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 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 corporation for the taxable year under article twenty-four of this chapter.

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

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

(B) When the person allowed the credit 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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