WEST VIRGINIA CODE: §11-13BB-5

§11-13BB-5. Amount of credit allowed.

(a) Credit allowed -- For tax years beginning after December 31, 2011, there is allowed to eligible taxpayers a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter. The amount of credit shall be determined as provided in this section.

(b) Amount of credit allowable. -- The amount of allowable credit under this article is equal to fifty percent of the qualified investment as determined in section six of this article, and shall reduce the business franchise tax imposed under article twenty-three of this chapter and the corporation net income tax imposed under article twenty-four of this chapter, in that order, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a five-year period, at the rate of one-fifth thereof per taxable year, beginning with the taxable year in which the eligible safety property is first placed in service or use in this state.

(2) Business franchise tax. -- The credit is applied to reduce the business franchise tax imposed under article twenty-three of this chapter determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax. The amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax.

(3) Corporation net income tax. -- After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under article twenty-four of this chapter determined before application of any other allowable credits against tax. The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax.

(4) Pass-through entities. -- (A) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit after application of subdivisions (2) and (3) of this subsection is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for

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such taxable year in the absence of this credit against the taxes.

(5) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit after application of subdivisions (2) and (3) of this subsection) among their members in the same manner as profits and losses are allocated for the taxable year; and

(6) No credit is allowed under this article against any tax imposed by article twenty-one of this chapter.

(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

(d) No tax credit is allowed or may be applied under this article until the taxpayer seeking to claim the tax credit has:

(1) Filed, with the Office of Miners' Health, Safety and Training, a written application for certification of the proposed tax credit; and

(2) Received, from the Office of Miners' Health, Safety and Training, certification of the amount of tax credit to be allocated to the eligible taxpayer.

(e) No more than $2 million of the tax credits allowed under this article shall be allocated by the Office of Miners' Health, Safety and Training during any fiscal year. The Office of Miners' Health, Safety and Training shall allocate the tax credits in the order the applications therefor are received.

(f) The total amount of tax credit that may be used in any taxable year by any eligible taxpayer in combination with the owners of the eligible taxpayer under this article may not exceed $100,000.

(g) Applications for certification of the proposed tax credit shall contain such information and be in such detail and in such form as required by the Office of Miners' Health, Safety and Training.

(h) The Tax Commissioner may prescribe the forms and schedules as necessary or appropriate for effective, efficient and lawful administration of this article.

(i) Notwithstanding the provisions of section five-d, article ten of this chapter, and notwithstanding any other provision of this code, the Tax Commissioner and Office of Miners' Health, Safety and Training may exchange tax information and other information as determined by the Tax Commissioner to be useful and necessary for the effective oversight and administration of the credit authorized pursuant to this article.

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