WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13BB

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§11-13BB-1. Short title.

This article may be cited as the "West Virginia Innovative Mine Safety Technology Tax Credit Act".

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§11-13BB-2. Legislative findings and purpose.

The Legislature finds that the encouragement of new investment in innovative coal mine safety technology in this state is in the public interest and promotes the general welfare of the people of this state.

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§11-13BB-3. Definitions.

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) "Certified eligible safety property" means eligible safety property in which an eligible taxpayer has made qualified investment for which credit has been certified under this article.

(2) "Coal mining company" means:

(A) A person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter; or

(B) A person working as a contract miner of coal, mining coal in this state, under contract with a person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter.

(3) "Director" means the Director of the Office of Miners' Health, Safety and Training or West Virginia Office of Miners' Health, Safety and Training established under article one, chapter twenty two-a of this code.

(4) "Eligible safety property" means safety technology equipment that, at the time of acquisition, is on the list of approved innovative mine safety technology: Provided, That eligible safety property includes proximity detection systems and cameras used on continuous mining machines and underground haulage equipment and machine mounted methane monitors required by section forty-three, article two, chapter twenty-two-a of this code.

(5) "Eligible taxpayer" means a coal mining company that purchases eligible safety property.

(6) "List of approved innovative mine safety technology" means the list required to be compiled and maintained by the Board of Coal Mine Health and Safety and approved and published by the director under this article: Provided, That proximity detection systems, cameras and underground safety shelters and the refurbishing thereof shall qualify and be on the list whether required or not.

(7) "Office of Miners' Health, Safety and Training" or "West Virginia Office of Miners' Health, Safety and Training" means the Office of Miners' Health, Safety and Training established under article one, chapter twenty two-a of this code.

(8) "Person" includes any corporation, limited liability company or partnership.

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(9) “Qualified investment” means the eligible taxpayer’s investment in eligible safety property pursuant to a qualified purchase as qualified and limited by section six of this article.

(10) “Qualified purchase” means and includes only acquisitions of eligible safety property for use in this state.

(A) A lease of eligible safety property may constitute a qualified purchase if the lease was entered into and became effective at a time when the equipment is on the list of approved innovative mine safety technology and if the primary term of the lease for the eligible safety property is five years or more. Leases having a primary term of less than five years do not qualify.

(B) “Qualified purchase” does not include:

(i) Purchases or leases of realty or any cost for, or related to, the construction of a building, facility or structure attached to realty;

(ii) Purchases or leases of property not exclusively used in West Virginia;

(iii) Repair costs including materials used in the repair unless, for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iv) Motor vehicles licensed by the Division of Motor Vehicles;

(v) Clothing;

(vi) Airplanes;

(vii) Off-premises transportation equipment;

(viii) Leases of tangible personal property having a primary term of less than five years;

(ix) Property that is used outside this state; and

(x) Property that is acquired incident to the purchase of the stock or assets of an industrial taxpayer that was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(C) Acquisitions, including leases, of eligible safety property may constitute qualified purchases for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

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(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group but the Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(11) "Safety technology" means depreciable tangible personal property and equipment, other than clothing, principally designed to directly minimize workplace injuries and fatalities in coal mines.

(12) "Taxpayer" means a person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter.

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§11-13BB-4. List of approved innovative mine safety technology.

(a) List of approved innovative mine safety technology. -(The Board of Coal Mine Health and Safety, established in section two, article eleven, chapter twenty-two-a of this code, shall annually compile a proposed list of approved innovative mine safety technologies as required by subsection (g), section three, article eleven, chapter twenty-two-a of this code. The list shall be transmitted to the director for approval. The director has thirty days to approve or amend the list. At the expiration of thirty days, the director shall publish the list of approved innovative mine safety technologies. The list shall describe and specifically identify safety equipment for use in West Virginia coal mines which, in the fiscal year when the equipment is added to the list, is not required by the Mine Safety and Health Administration of the United States Department of Labor or the West Virginia Office Of Miners' Health, Safety And Training or any other state or federal agency, to be used in a coal mine or on a mine site or on any other industrial site. Safety equipment shall remain on the list from year to year until the director removes it from the list. The Office of Miners' Health, Safety and Training may establish by legislative rule or interpretive rule a shorter time period for issuance of and updating of the list of approved innovative mine safety technologies.

(b) It is the intent of the Legislature that the list of approved innovative mine safety technologies include only safety equipment that is depreciable tangible personal property for federal income tax purposes, which is so new to the industry and so innovative in concept, design, operation or performance that, in the fiscal year when it is added to the list of approved innovative mine safety technologies, the equipment has not yet been adopted by the Federal Mine Safety and Health Administration or the West Virginia Office of Miners' Health, Safety and Training or any other state or federal agency as required equipment to be used in a coal mine or on a mine site or on any other industrial site, except as specified herein.

(c) Delisting. — (1) If any item of equipment or any line of equipment or class of equipment is listed on the list of approved innovative mine safety technologies in any fiscal year, but then is subsequently adopted by the Federal Mine Safety and Health Administration or the West Virginia Office of Mine Safety or any other state or federal agency as required equipment to be used in a coal mine or on a mine site or on any other industrial site, the equipment shall be removed from the list of approved innovative mine safety technologies compiled and issued for the next succeeding periodic issuance thereafter of the list of approved innovative mine safety technologies.

(2) If it is determined by the director that any item of equipment or any line of equipment or class of equipment that is listed on the list of approved innovative mine safety technology has ceased to be innovative in concept, design, operation or performance, or is ineffective, or has failed to meet the expectations of the Board of Coal Mine Health and Safety, or has failed to prove its value in directly minimizing workplace injuries and fatalities in coal mines, the equipment shall be removed from the list of approved innovative mine safety technologies that is compiled and issued for the next succeeding periodic issuance of the list

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of approved innovative mine safety technologies after the determination has been reached.

(3) However, any eligible taxpayer who invested in the equipment as certified eligible safety property during the time the equipment was lawfully listed on the list of approved innovative mine safety technologies, shall not forfeit the credit authorized by this article as a result of the delisting of the equipment under either subdivision (1) or subdivision (2) of this subsection, so long as the requirements of this article are otherwise fulfilled by the taxpayer for entitlement to the credit.

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

(5) Small business corporations, limited liability companies, partnerships and other

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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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§11-13BB-6. Qualified investment.

(a) General. -- The qualified investment is one hundred percent of the cost for eligible safety property pursuant to a qualified purchase, which is placed in service or use in this state by the eligible taxpayer during the tax year.

(b) Placed in service or use.-- For purposes of the credit allowed by this article, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for federal income tax depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(c) Cost. -- For purposes of this article, the cost for eligible safety property pursuant to a qualified purchase is determined under the following rules:

(1) Trade-ins. -- Cost for eligible safety property will not include the value of property given in trade or exchange for eligible safety property pursuant to a qualified purchase;

(2) Damaged, destroyed or stolen property. -- If eligible safety property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost for replacement of the eligible safety property, will not include any insurance proceeds received in compensation for the loss;

(3) Rental property. -- The cost for eligible safety property acquired by lease for a term of at least five years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed ten years; and

(4) Property purchased for multiple use. -- Any cost of acquisition of property that is not principally and directly used to minimize workplace injuries and fatalities in a coal mine does not qualify as qualified investment for purposes of this article.

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§11-13BB-7. Forfeiture of unused tax credits.

Disposition of property or cessation of use. -- If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of the fourth tax year subsequent to the end of the tax year in which the property was placed in service or use; or

(2) Ceases to be used in a coal mine of the eligible taxpayer in this state prior to the end of the fourth tax year subsequent to the end of the tax year in which the property was placed in service or use, then the unused portion of the credit allowed for such property is forfeited for the tax year in which the disposition or cessation of use occurred and all ensuing years.

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§11-13BB-8. Transfer of certified eligible safety property to successors.

(a) Mere change in form of business. -– Certified eligible safety property may not be treated as disposed of under section seven of this article, by reason of a mere change in the form of conducting the business as long as the certified eligible safety property is retained in a business in this state for use in a coal mine in West Virginia, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the certified eligible safety property transferred, and the taxpayer (transferor) may not be required to forfeit the credit for the years remaining at the time of transfer in the original five year credit period.

(b) Transfer or sale to successor. -– Certified eligible safety property will not be treated as disposed of under section seven of this article by reason of any transfer or sale to a successor business which continues to use the certified eligible safety property in a coal mine in West Virginia. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article in the original five year credit period for each subsequent taxable year, and the transferor shall not be required to forfeit the credit for subsequent years. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article 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 taxable year and the transferor shall not be required to redetermine the amount of credit allowed in earlier years.

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§11-13BB-9. Identification of investment credit property.

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of certified eligible safety property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its straight-line depreciation life;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and

(6) The date it was disposed of or otherwise ceased to be actively and directly used in a coal mine in this state.

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§11-13BB-10. Failure to keep records of certified eligible safety property.

A taxpayer who does not keep the records required for certified eligible safety property and the credit authorized under this article, is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any certified eligible safety property which the taxpayer cannot establish was still on hand and used in a coal mine in this state at the end of that year; and

(2) If a taxpayer cannot establish when certified eligible safety property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand and used in a coal mine in this state at the end of that year. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

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§11-13BB-11. Tax credit review and accountability.

(a) Beginning on August 1, 2012, and August 1 of every year thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost of the credit allowed under this article during the most recent period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year:

(1) The numbers of taxpayers claiming the credit; and

(2) The cost of the credit.

(b) Taxpayers claiming the credit shall provide whatever information the Tax Commissioner requires to prepare the report: Provided, That the information is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter. If, in any reporting period under this section, fewer than ten eligible taxpayers have taken or applied for the credit authorized under this article, then no report shall be filed for that reporting period under this section.

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§11-13BB-12. Disclosure of tax credits.

Notwithstanding section five-d, article ten of this chapter or any other provision in this code to the contrary, the Tax Commissioner shall annually publish in the State Register the name and address of every eligible taxpayer and the amount of any tax credit asserted under this article.

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§11-13BB-13. Rules.

The Tax Commissioner and the Office of Miners' Health, Safety and Training may each promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article and to efficiently provide for the general administration of this article.

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§11-13BB-14. Termination.

The tax credit authorized in this article shall terminate December 31, 2030.

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