WEST VIRGINIA CODE: §11-13C-16

§11-13C-16. Termination of credit; effective date.

(a) Notwithstanding any other provision of this article to the contrary, no entitlement to any tax credit under this article may result from, and no credit is available to any taxpayer for, investment placed in service or use after December 31, 2002.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of sections one through fifteen, of this article continue to apply to taxpayers that have gained entitlement to the credit pursuant to the placement of qualified investment into service or use prior to January 1, 2003.

(c) Transition rules. -- The general rule stated in subsection (a) of this section does not apply:

(1) To qualified investment property placed in service or use prior to January 1, 2003.

(2) To property purchased or leased for business expansion that is placed in service or use on or after January 1, 2003, if at least one of the following clauses applies to the property:

(A) The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to January 1, 2003, as limited to the provisions of the contract as of that date then binding on the taxpayer, but only to the extent the new or expanded business facility is placed in service or use prior to January 1, 2004;

(B) The new or expanded business facility is part of a project described in subdivision (1), subsection (a), section four-b of this article, for which the multiple year project investment period had commenced, but had not yet closed on or before January 1, 2003, and the new or expanded business facility constitutes or includes property placed in service or use prior to closure of the multiple year project investment period allowed for the project that is:

(i) Property constructed for a multiple year project certified before January 1, 2003, in accordance with section four-b of this article: Provided, That only that portion of the contract price attributable to that percentage of the construction contract completed prior to the last day of the multiple year project investment period (determined under principles set forth in Section 460(b) of the Internal Revenue Code of 1986, as in effect before January 1, 2003), which is placed in service or use prior to the last day of the multiple year project investment period allowed pursuant to subdivision (1), subsection (a), section four-b of this article, may be treated as property purchased for business expansion under section six of this article;

(ii) A new or expanded business facility purchased or leased for a multiple year project certified before January 1, 2003, in accordance with section four-b of this article; or

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(iii) Machinery or equipment or other tangible personal property purchased or leased for a multiple year project certified before January 1, 2003, in accordance with section four-b of this article.

For purposes of this paragraph, the multiple year project investment period will be treated as having commenced if the taxpayer has placed the qualified investment into service or use in accordance with section four of this article. A multiple year project period will not be treated as having commenced merely as a result of the issuance of certification of a project under section four-b of this article. No entitlement to any tax credit under this paragraph may result from, and no credit is available to any taxpayer for, investment placed in service or use after closure of the multiple year project investment period for which certification has been issued.

(C) The new or expanded business facility was purchased or leased pursuant to a written contract executed prior to January 1, 2003, as limited to the provisions then binding on the taxpayer as of that date, but only to the extent the new or expanded business facility is placed in service or use prior to January 1, 2004; or

(D) The machinery or equipment or other tangible personal property purchased or leased for business expansion at a new or expanded business facility was purchased or leased by the taxpayer pursuant to a written contract to purchase or lease identifiable tangible personal property executed before January 1, 2003, as limited to the provisions of the written contract then binding on the taxpayer, but only to the extent the tangible personal property purchased or leased under the contract is placed in service or use before January 1, 2004.

(d) Notice of election required. -- Any person intending to claim credit under one or more of the transition rules provided in subsection (c) of this section shall file written notice of his or her intention with the Tax Commissioner on or before December 31, 2002. In the case of a multiparticipant project, this notice may be filed by the managing project participant on behalf of all participants in the project. Notice is to be in a form prescribed by the Tax Commissioner and all information required by the form is to be provided.

(e) Failure to file notice. -- If any person fails to timely file the notice required by subsection (d) of this section, that person is precluded from claiming credit under this article for investment property placed in service or use after December 31, 2002, and may claim credit under article thirteen-q of this chapter to the extent credit is allowable under that article. For purposes of this section, notice, in proper and complete form, timely filed under section twenty-one, article thirteen-q of this chapter, fulfills the filing requirement of this section if that filing addresses the same qualified investment for which notice would be required under this section.

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