

# WEST VIRGINIA CODE: §11-13C-4B

## §11-13C-4b. Credit allowable for certified projects.

(a) In general. -- A project certified by the Tax Commissioner shall be eligible for the credit allowable by this article. A project eligible for certification under this section is one where:

(1) The qualified investment under this article creates at least fifty new jobs but such qualified investment is placed in service or use over a period of three successive tax years: Provided, That such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the Tax Commissioner, and the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years;

(2) The qualified investment is made by one or more persons, but some or all of the new jobs created at each new or expanded business facility as a result of the qualified investment are created by one or more other persons: Provided, That at least fifty new jobs are created at the new or expanded business facility or facilities in which the qualified investment is made, and such jobs are, upon application, certified by the Tax Commissioner as new jobs created as a direct result of the qualified investment, and that such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the Tax Commissioner;

(3) The qualified investment is made by one or more persons but some or all of the new jobs created as a direct result of the qualified investment are created by one or more other persons: Provided, That at least fifty new jobs are created within a fifty mile radius of each new or expanded business facility in which the qualified investment is made, and such jobs are, upon application, certified by the Tax Commissioner as being new jobs created as a direct result of the qualified investment, and that such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the Tax Commissioner.

(b) Application for certification. -- The application for certification of a project under this section shall be filed with and approved by the Tax Commissioner prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the qualified investment. This application shall be approved in writing by all the participants in the project and shall contain such information as the Tax Commissioner may

require to determine whether the project should be certified as eligible for credit under this article.

(c) Taking of credit.

(1) If the certified project for which qualified investment is made involves one or more persons making the capital investment and one or more persons, or a combination thereof, creating at least fifty new jobs at the site of the new or expanded business facility or facilities, then credit shall be allowed under this article for the certified project based upon the qualified investment in the certified project (as determined under section six) multiplied by the project's new jobs percentage (determined under section seven).

(2) If the certified project for which qualified investment is made involves one or more persons making the capital investment and one or more persons, or a combination thereof, creating at least fifty new jobs located within a fifty mile radius of each new or expanded business facility in which the qualified investment is made, then credit shall be allowed under this article for the certified project based upon the qualified investment in the certified project (as determined under section six) multiplied by fifty percent.

(3) The amount of credit allowable, as determined under subdivision (1) or (2), above, shall be applied as provided in section five, and shall be claimed in the manner specified in the project's application to the Tax Commissioner for certification under this section, by one participant in the project or divided among the several participants in the project, and for this purpose the numerator of the payroll factor shall be the total compensation paid in this state during the taxable year by all project participants to all new employees filling the new jobs created and the denominator shall be the total compensation paid in this state during the taxable year by all project participants to their employees. Such allocation, if approved by the Tax Commissioner, shall constitute a binding election by the participants in the project for the entire term during which the credit attributable to the qualified investment in the certified project may be applied to reduce tax liabilities. The participant or participants claiming the credit for qualified investments in a certified project shall annually file with their income tax returns filed under this chapter:

(A) Certification that the participant's qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(B) Certification that the new jobs created by the project's qualified investment continue to exist and are filled by persons who are residents of this state; and

(C) Such other information as the Tax Commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project's qualified investment.

(d) Terms defined. -- For purposes of this section:

(1) New employee. -- The term "new employee" means a person residing and domiciled in this state, hired by a participant to fill a position for a job which previously did not exist in this state prior to the date on which the project's qualified investment is placed in service or use in this state. In no case shall the new employees allowed for purposes of this credit exceed the total increases in the number of persons employed by the project's participants (considered as a group) in this state. A person shall be deemed to be a "new employee" if such person's duties in connection with the operation of the certified project are on:

(A) A regular, full-time and permanent basis.

(1) "Full-time employment" means employment for at least one hundred twenty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

(2) "Permanent employment" does not include employment that is temporary or seasonal.

(B) A part-time basis, provided such person is customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(2) New job. -- The term "new job" means a job which did not exist in this state prior to the project's qualified investment being made, and which is filled by a new employee.

(3) Participant. -- The term "participant" means any person who directly makes a qualified investment in a certified project, or who employs persons filling the jobs certified by the Tax Commissioner as being new jobs created as a direct result of the project's qualified investment.

(e) Effective date.

(1) This section shall apply to a project having qualified investment of at least \$50,000,000 placed in service or use between March 1, 1985, and February 1, 1986, and shall also apply to qualified investment made on or after February 1, 1986.

(2) The application for project certification for a project having qualified investment of at least \$50,000,000 placed in service or use between March 1, 1985, and February 1, 1986, shall be deemed timely filed under subsection (b) of this section only if such application is filed with the Tax Commissioner prior to December 31, 1986: Provided, That the Tax Commissioner shall not certify such project until the project participants certify that at least fifty new jobs were created by them prior to January 1, 1988, as a direct result of their qualified investment in the project, and that such jobs did not previously exist in this state, determined as of January 1, 1986; that the inclusion of such property shall not give rise to a refund or credit of any taxes administered under this chapter for taxable years ending before January 1, 1987; and that the ten-year credit period for such certified project shall begin with the current taxable year of the project participant or participants who will be claiming the allowable credit.