WEST VIRGINIA CODE: §11-13C-5

§11-13C-5. Application of annual credit allowance.

(a) In general. -- The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of the following as modified under subsections (o) and (p) of this section:

(1) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during a prior taxable year; plus

(2) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during the current taxable year; plus

(3) The one-tenth part allowed under section four-a of this article for locating corporate headquarters in this state; or the amount allowed under section seven-a of this article of the taxable year.

(b) Application of current year annual credit allowance. -- The amount determined under subsection (a) of this section shall be allowed as a credit against that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and shall be applied as provided in subsections (c) through (k), both inclusive, of this section, and in that order.

(c) Business and occupation taxes. --

(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen of this chapter shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined before application of allowable credits against tax and the annual exemption).

(2) If the taxes due under article thirteen of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article, for the taxable year (determined before application of any allowable credits against tax and the annual exemption), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

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(3) The annual exemption allowed by section three, article thirteen of this chapter, plus any credits allowable under articles thirteen-d and thirteen-e of this chapter, shall be applied against and reduce only the portion of article thirteen taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(d) Carrier income taxes. --

(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article twelve-a of this chapter shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year.

(2) If the taxes due under article twelve-a of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year, by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(e) Severance taxes. --

(1) On and after July 1, 1984, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the tax imposed by article thirteen-a of this chapter, and qualified investment in a business or activity that was subject to the tax imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article thirteen-a of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined before application of any allowable credits against tax).

(2) If the taxes due under article thirteen-a of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to

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the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter shall be applied against and reduce only the portion of article thirteen-a taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(f) Telecommunications taxes. --

(1) On and after July 1, 1987, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen-b of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the taxable year (determined before application of allowable credits against tax) and qualified investment in a business or activity that was subject to the taxes imposed by article twelve-a of this chapter prior to said first day of July, but on and after said first day of July is subject to the tax imposed by article thirteen-b of this chapter.

(2) If the taxes due under article thirteen-b of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(g) Business franchise tax. --

(1) On and after July 1, 1987, that portion of the allowable credit attributable to qualified investment in a business or activity subject to the taxes imposed by article twenty-three of this chapter, and qualified investment in a business or activity that was subject to the taxes imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article twenty-three of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by said article for the

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taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

(2) If the taxes due under article twenty-three of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under said article for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under said article. The denominator of the fraction shall be wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under said article.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter shall be applied against and reduce only the portion of article twenty-three taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article twenty-three taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(h) Corporation net income taxes. --

(1) After application of subsections (c) through (g), both inclusive of this section, any unused credit shall next be applied to reduce up to eighty percent of the taxes imposed by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).

(2) If the taxes due under article twenty-four of this chapter (determined before application of allowable credits against tax) are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of such taxes which are so attributable, shall be determined by multiplying the amount of taxes due under said article for the taxable year (determined before application of allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(3) Any credits allowable under article twenty-four of this chapter shall be applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article

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that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(i) Personal income taxes. --

(1) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1954, as amended), a partnership or a sole proprietorship, then any unused credit (after application of subsections (c), (d), (e), (f) and (g)) shall be allowed as a credit against up to eighty percent of the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twelve-a, thirteen, thirteen-a, thirteen-b or twenty-three of this chapter.

(2) Electing small business corporations, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax) that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, partnership, other unincorporated organization or sole proprietorship, the amount of such taxes which are so attributable shall be determined by multiplying the amount of taxes due under said article (determined before application of allowable credits against tax), that is attributable to business by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the electing small business corporation, partnership, other unincorporated organization or sole proprietorship employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer.

(4) No credit shall be allowed under this section against any employer withholding taxes imposed by article twenty-one of this chapter.

(j) For tax years beginning after December 31, 1992, and thereafter, if the formula provisions of subsections (c) through (i) of this section, inclusive, do not fairly represent the taxes solely attributable to and the direct result of the taxpayer's qualified investment of the taxpayer and all other project participants in the business or other activity subject to tax, the commissioner may require, in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

(1) Separate accounting or identification; or

(2) Adjustment to the wages formula to reflect all components of the tax liability; or

(3) The inclusion of one or more additional factors which will fairly represent the taxes solely

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attributable to and the direct result of the qualified investment of the taxpayer and all other project participants in the businesses or other activities subject to tax; or

(4) The employment of any other method to effectuate an equitable attribution of the taxes.

In order to effectuate the purposes of this subsection, the commissioner shall propose for promulgation legislative rules in accordance with article three, chapter twenty-nine-a of this code: Provided, That the initial promulgation may be by emergency rule. The rule shall set forth the standards by which this subsection will be implemented and enforced: Provided, however, That with regard to investment placed in service prior to the passage of this provision, taxpayers having a specific written determination from the Tax Commissioner that the taxpayer is authorized or required to take credit against tax not attributable to qualified investment shall not be subject to the alternative allocation of credit provided for under this subsection.

(k) Sales and use taxes. --

On and after July 1, 1987, for purchases of tangible personal property and taxable services made on or after that date, that portion of the allowable credit, which is attributable to qualified investment in a business or activity subject to the taxes imposed by articles fifteen and fifteen-a of this chapter on purchases for use or consumption in the conduct of such business or activity, shall be applied to reduce up to eighty percent of the taxes imposed by said articles on purchases that are directly used or consumed in the qualified investment activity. When property and services purchased for use or consumption are not solely used or consumed in the qualified investment activity, the cost thereof shall be apportioned between such activities. Only that amount apportioned to purchases directly used or consumed in the qualified investment activity shall be included when applying the credit allowable under this subsection. On and after July 1, 1993, for purchases of tangible personal property and taxable services made on or after that date for use or consumption in the conduct of business, no portion of the allowable credit may be applied against the taxes imposed by said articles.

(l) Ad valorem property taxes; unemployment taxes and workers' compensation premiums. --

(1) After application of subsections (a) through (i), both inclusive, of this section, any unused credit shall be applied as a rebate for payment of the sum of the following amounts:

(A) Eighty percent of the ad valorem property taxes imposed by levying bodies pursuant to article eight of this chapter, for the taxable year (including payments in lieu of such taxes), on property of the taxpayer that is directly attributable to the qualified investment (including property having a useful life of less than four years) of the taxpayer, in the new or expanded business facility of the taxpayer resulting in new jobs; plus

(B) Eighty percent of the taxes imposed by article five, chapter twenty-one-a of this code for the taxable year attributable to the compensation of new employees filling the new jobs that

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are directly attributable to the qualified investment; plus

(C) Twenty percent of the workers' compensation premiums imposed by article two, chapter twenty-three of this code, for the taxable year attributable to the compensation paid new employees filling the new jobs, that are directly attributable to the qualified investment.

(2) A taxpayer eligible to claim this rebate shall apply either the amount of the unused credit or the sum determined under subdivision (1) of this subsection, whichever is less, against the remaining twenty percent of the taxes imposed by articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter, attributable to the qualified investment under this article. If any amount of rebate remains after its application against the remaining twenty percent of taxes as aforesaid, the amount remaining shall be carried forward to each ensuing tax year until used or the expiration of the twelfth subsequent tax year in which the qualified investment was placed in service or use in this state by the taxpayer.

(m) Unused credit forfeited. -- If any credit remains after application of subsection (b) of this section, the amount thereof shall be forfeited. No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance, except as specifically provided in subsection (l), (o) or (p) of this section.

(n) Notwithstanding any provision of this section to the contrary and notwithstanding the reenactment of this section later in time than the enactment or reenactment of section fourteen of this article, the restrictions, limitations, constraints and provisions of said section shall apply to and supersede the provisions of this section.

(o) Deferral of twenty percent of annual credit, eighty percent current limitation. --

(1) Eighty percent of the amount of annual credit calculated under subsections (a) through (n) of this section before application of the minimum severance tax against coal and before the adjustment set forth in subsection (p) of this section, shall be applied against the taxes enumerated in subsections (c) through (i), inclusive, of this section for the current tax year.

(2) The remaining twenty percent of such annual credit so calculated in subsections (c) through (n) of this section shall be applied against the taxes enumerated in subsections (c) through (i), inclusive, of this section beginning in the tenth tax year subsequent to the tax year in which qualified investment was first placed in service or use in this state by the taxpayer, and the amount thereof remaining shall be carried forward each ensuing tax year until used or until the expiration of the twelfth tax year subsequent to the tax year in which qualified investment was first placed in service or use in this state by the taxpayer. No deferral of credit under this subsection shall apply to this credit when applied in such tenth through twelfth years.

(p) Additional allowance. --

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(1) After application of up to eighty percent of annual credit against the taxes enumerated in subsections (c) through (i), inclusive, of this section for the current tax year under subsection (o) of this section, there shall be allowed an additional amount of credit, as determined under subdivision (2) of this subsection, which may offset up to one hundred percent of the remaining taxes enumerated in subsections (g), (h) and (i), in that order, of this section for the current tax year. Any credit calculated and determined under this section which remains after application against the taxes enumerated in subsections (g), (h) and (i) under this section shall be forfeited and shall not carryover to any other taxable year.

(2) The amount of credit allowable under this subsection shall be the lesser of one third of the taxpayer's minimum severance tax on coal payable, or the taxpayer's net minimum severance tax on coal payable. For purposes of this subsection, the term "net minimum severance tax on coal payable" means the amount of the excess of the minimum severance tax on coal over the amount of the state severance tax on coal severed and extracted by the taxpayer in this state not including the additional severance tax on coal imposed by section six, article thirteen-a of this chapter, calculated after application of the credit allowed under this article, and before application of all other credits, and after application of the $500 exemption to the said severance tax on coal.

(q) Effective date. --

(1) This section, as amended in the year 1986, shall be effective upon passage. It shall be retroactive, and shall be in lieu of the method provided by this section for application of this credit prior to this amendment, for qualified investment made on or after March 1, 1985.

(2) This section, as amended in the year 1987, shall be effective for taxable years ending after June 30, 1987.

(3) This section, as amended in the year 1993, shall be effective for taxable years ending after May 31, 1993.

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