WEST VIRGINIA CODE: §11-13C-7

§11-13C-7. New jobs percentage.

(a) In general. -- The new jobs percentage is based on the number of new jobs created in this state that are directly attributable to the qualified investment of the taxpayer.

(b) Applicable percentage. -- For the purpose of subsection (a), the applicable new jobs percentage shall be determined under the following table:

If number ofThe applicable

new jobs is:percentage is:

1,00090%

76080%

52070%

28060%

5050%

(c) When a job is attributable. -- An employee's position is directly attributable to the qualified investment if:

(1) The employee's service is performed or his base of operations is at the new or expanded business facility;

(2) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(3) But for the qualified investment, the position would not have existed.

(d) Certification of new jobs. -- With the annual return for the taxes imposed by article twelve-a or thirteen of this chapter, filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f), that are, or will be, directly attributable to the qualified investment of the taxpayer: Provided, That on and after July 1, 1987, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter)."

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(e) Equivalency of permanent employees. -- The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of subsection (b) hereof but not for the purposes of subsection (c) hereof.

(f) Redetermination of new jobs percentage. -- With the annual return for the taxes imposed by article twenty-one or twenty-four of this chapter, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state, that are directly attributable to the qualified investment of the taxpayer: Provided, That on and after July 1, 1987, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter)."

(1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended returns filed for the first and second taxable years that the qualified investment was in service or use in this state.

(2) If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in such prior two years to personal income taxes, then to corporation net income taxes, then to business franchise taxes, then to telecommunications taxes, then to severance taxes, then to carrier income taxes and lastly to business and occupation taxes. Any additional taxes due under this chapter shall be remitted with the amended returns filed with the Tax Commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty, which may be waived by the Tax Commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was due to reasonable cause and not due to willful neglect.

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