

# WEST VIRGINIA CODE: §11-13C-8

## **§11-13C-8. Forfeiture of unused tax credits; redetermination of credit allowed.**

(a) 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 its useful life, as determined under section six of this article; or

(2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end of its useful life, as determined under said section six, then the unused portion of the credit allowed for such property shall be forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under said section six, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the new or expanded business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return or carrier income tax return, for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That for taxable periods beginning on or after July 1, 1987, such reconciliation statement shall be filed with the annual return for the primary tax for which the taxpayer is liable under articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter.

(b) Cessation of operation of business facility. -- If during any taxable year the taxpayer ceases operation of a business facility in this state for which credit was allowed under this article, before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section six, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a business of the taxpayer that is taxable under article twelve-a or thirteen of this chapter. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return or carrier income tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That for taxable periods beginning on or after July 1, 1987, such reconciliation statement shall be filed with the annual return for the primary tax for which the taxpayer is liable under articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter.

(c) Reduction in number of employees. -- If during any taxable year subsequent to the taxable year in which the new jobs percentage is redetermined as provided in section seven of this article, the average number of employees of the taxpayer, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit allowance is based, the taxpayer shall calculate what his annual credit allowance would have been had his new jobs percentage been determined based upon the average number of employees, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment. The difference between the result of this calculation and the taxpayer's annual credit allowance for the qualified investment as determined under section four of this article, shall be forfeited for the then current taxable year, and for each succeeding taxable year unless for such succeeding taxable year the taxpayer's average employment in positions directly attributable to the qualified investment once again meets the level required to enable the taxpayer to utilize its full annual credit allowance for that taxable year.