WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13CC

WV Legislature

§11-13CC-1. Short title.

This article may be cited as the "Energy Intensive Industrial Consumers Revitalization Tax Credit Act."

WV Legislature

§11-13CC-2. Legislative findings and purpose.

The Legislature finds that:

(a) West Virginia enjoys a competitive economic advantage among the states attributable to relatively low-cost electric power due in considerable measure to an abundance of coal resources, production from which powers electric generation in the state.

(b) As a consequence, a number of energy intensive industrial consumers of electric power have located in the state and have provided jobs for its citizens and an increased tax base that contributes to the support of schools, other institutions, and programs that benefit all West Virginians.

(c) As the result of competitive disadvantages emanating from outside the state and the current state of the national economy, some energy intensive industrial consumers of electric power have had to cease doing business in the state or are experiencing or may experience strains that could threaten their viability and continued operation.

(d) Conversely, coal production in the state is relatively stable and is benefitting from demand from coal purchasers inside the state, outside the state, and outside the country, which demand has increasingly benefitted the state in terms of its coal severance tax revenues.

(e) It is in the public interest for the state to assist eligible energy intensive industrial consumers of electric power determined to be in need of special rate assistance pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code, in order to encourage them to locate, to remain in operation, or to resume operation, in West Virginia on a long-term basis, by employing a portion of the coal severance tax revenues to reduce such industrial consumers' electric power costs without imposing an undue burden on electric utilities or their other customers.

(f) In furtherance of its findings, the Legislature's purpose in this article is to create a credit, as provided in section three of this article, against the coal severance tax imposed and levied under the provisions of subsections (a) and (b), section three, article thirteen-a of this chapter, of which the primary ultimate economic beneficiary shall be eligible energy intensive industrial consumers of electric power determined to be in need of special rate assistance pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code.

WV Legislature

§11-13CC-3. Amounts of credits; limitations.

(a) Every taxpayer which is a supplier of coal to a West Virginia electric utility providing a special rate to one or more eligible energy intensive industrial consumers of electric power pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code and which is subject to paying the tax on the privilege of severing coal levied and imposed by subsections (a) and (b), section three, article thirteen-a of this chapter, prior to the application of any other credits against the tax, shall be entitled to a credit against that tax in an amount determined by the Public Service Commission pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code, subject to the following limitations:

(1) The tax credits authorized by this article shall only be available when the eligible energy intensive industrial consumer of electric power receives a special rate from a West Virginia electric utility pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code;

(2) The total aggregate credits available to all taxpayers under this section shall not exceed $20 million in any calendar year; and

(3) The total credits available to any taxpayer in a given calendar year shall not exceed ninety-three percent of that taxpayer's tax liability imposed and levied under subsections (a) and (b), section three, article thirteen-a of this chapter, so as to preserve undiminished the seven percent of total coal severance tax revenues that is apportioned among counties and municipalities pursuant to section six, article thirteen-a of this chapter.

(b) If the full amount of the $20 million in credits authorized by this article is not allocated and claimed in any calendar year, during all periods when a special rate is in effect for any one or more eligible energy intensive industrial consumers, the unused credits may be carried forward to future years: Provided, That the maximum aggregate amount of unused credits that may be carried forward to future years shall not exceed $15 million at any time. In no event may the amount of credits allocated and claimed in any single year, including unused credits that have been carried forward, exceed $35 million.

(c) If in any year the taxpayers that are suppliers of coal to a West Virginia electric utility providing a special rate to one or more eligible energy intensive industrial consumers of electric power entitled to receive credits pursuant to this section cannot or do not claim credits in an amount equal to the amount of tax credits designated by the commission, then the affected public utility may allocate the unclaimed tax credits, with such allocated amounts subject to the approval of the Public Service Commission, to and the tax credits may be claimed by any taxpayer that is subject to paying the tax on the privilege of severing coal levied and imposed by subsections (a) and (b), section three, article thirteen-a of this chapter: Provided, That taxpayers receiving the reallocation shall comply with the requirements and procedures set forth in this article.

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(d) All unused credits authorized under this article expire and cease to be usable for tax years beginning on or after December 31, 2021.

(e) The credits authorized in this article shall not become available for any purpose prior to the Public Service Commission's first approval of a special rate for an eligible energy intensive industrial consumer. The credits provided in this article may be claimed by taxpayers against periodic installment payments of severance tax paid under the provisions of section nine, article thirteen-a of this chapter.

WV Legislature

§11-13CC-3a. Applicability to minimum severance tax credit.

Every taxpayer which applies the tax credit allowed under section three of this article for a tax year shall also be entitled to apply the tax credit against the minimum coal severance tax imposed by article twelve-b of this chapter for the same tax year in an amount up to the amount of the tax credit applied for the tax year under the provisions of section three of this article.

WV Legislature

§11-13CC-4. Required payments to public utilities.

(a) Each person claiming any tax credit pursuant to section three of this article shall, as a condition of receiving that tax credit, make payment equal to ninety-seven percent of the amount of that credit to the public utility providing electric power to the special rate customer whose special rate required the funding generated by that tax credit, as determined by the Public Service Commission pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code. Any payment made to the public utility providing electric power to the special rate customer shall be treated in the same manner as the payment of taxes under section three, article thirteen-a of the chapter, and shall not be treated as an adjustment to the price of coal sold to the public utility.

(b) Each taxpayer that elects to participate in this tax credit and required payment program shall notify the State Tax Department of its election to participate at the time and in such form of notification as prescribed by the State Tax Department. Notwithstanding the provisions of section five-d, article ten of this chapter or any other provision of this code, the State Tax Department shall provide updated notification to the Public Service Commission of the identity of taxpayers from which it has received notification of voluntary participation, and other information necessary for the efficient and accurate administration of this article. Notwithstanding any provision of this code to the contrary, the Public Service Commission shall disclose to the State Tax Department information necessary for the efficient and accurate administration of this article. This information may be provided to the electric utilities by the Public Service Commission for purpose of calculating, pursuant to subsection (g), section one-j, article two, chapter twenty-four of this code, the allocated share of tax credits that are available to each taxpayer, and payments that are required to be made to the public utility in order to qualify for the tax credit. Information disclosure to electric utilities by the Public Service Commission is limited to that information necessary for the calculations. Payment to the public utility shall be made no later than the time at which the tax against which the credit is taken would have been due and payable to the state under the provisions of section nine, article thirteen-a of this chapter.

(c) The three percent differential between a taxpayer's tax credit and its required payment to the public utility is intended as an inducement to the taxpayer to participate in the tax credit and required payment mechanism provided in this article and may be retained by the taxpayer as compensation for the costs of participation.

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§11-13CC-5. Expiration.

The provisions of this article shall be effective for tax years beginning on or after January 1, 2012. No new tax credits may be created for any tax year beginning on or after December 31, 2021. All unused tax credits expire and cease to be useable in tax years beginning on or after December 31, 2021.

WV Legislature