WEST VIRGINIA CODE: §11-13D-3C

§11-13D-3c. Amount of credit allowed and application of credit for qualified investment in a management information services facility.

(a) Credit allowed. -- There shall be allowed to eligible taxpayers a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter for qualified investment in a management information services facility. The amount of credit shall be determined as hereinafter provided in this section.

(b) Investment period limitations subject to extension upon legislative amendment. -- It is the finding of the Legislature that certain tax credits heretofore enacted have not effectively fulfilled the intended legislative purpose of increasing employment and economic growth and development in this state. Therefore, the time period over which qualified investment property may be purchased or leased and placed in service or use by eligible taxpayers at a management information services facility is expressly limited, for purposes of this credit, to two years under paragraph (C), subdivision (17), subsection (b), section two of this article, subsection (c) of this section, and paragraph (B), subdivision (6), subsection (c), section five-b of this article. If the Legislature subsequently finds that this credit for a management information services facility effectively fulfills the legislative purpose for which it was enacted, the Legislature may, in its discretion, extend, by statutory amendment, the time period over which qualified investment may be purchased, or leased, and placed in service or use.

(c) Credit amount for qualified investment purchased and placed in service or use in a management information services facility after March 31, 1991 and prior to April 1, 1993. -- For property purchased or leased by an eligible taxpayer and placed in service or use after March 31, 1991, and prior to April 1, 1993, for use as a component part of a management information services facility, the amount of allowable credit shall be equal to one hundred percent of the qualified investment, as determined under section five-b of this article, and shall reduce the business franchise tax under article twenty-three of this chapter and the corporation net income tax under article twenty-four of this chapter, subject to the following conditions and limitations:

(1) Tax year time limitations for application of credit, credit forfeiture. --

(A) The amount of this credit allowable shall be applied over a time period of up to ten tax years.

(B) This credit shall first be applied against the tax liabilities in the manner specified in subdivision (2) of this subsection (c) beginning with the tax year during which the qualified investment was first placed in service or use in this state by the eligible taxpayer.

(C) Any amount of this credit remaining after application of this credit against tax as

specified in paragraph (B) of this subdivision (1) shall then be applied against the tax liabilities in the manner specified in subdivision (2) of this subsection (c) for the tax year immediately succeeding the tax year during which the qualified investment was first placed in service or use in this state and for each succeeding tax year thereafter up through the ninth tax year subsequent to the first tax year in which the qualified investment property was first placed in service or use.

(D) Any amount of this credit remaining after application of this credit against tax as specified in paragraph (B) and then paragraph (C) of this subdivision shall be forfeited and shall not carry forward to any subsequent tax year.

(E) No carryback of credit to a prior tax year shall be allowed.

(2) Tax liability percentage offset limitations. --

(A) This credit for qualified investment in a management information services facility shall first be applied to reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year by an amount such that this credit, in combined application with all other applicable credits allowable under articles thirteen-c, thirteen-d and thirteen-e of this chapter and under chapter five-e of this code and all other tax credits provided in this code, shall not reduce the annual business franchise tax liability for such tax year below fifty percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(B) After application of this credit against business franchise tax as provided in paragraph (A) of this subdivision (2), remaining credit for qualified investment in a management information services facility, if any, shall then be applied to reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit in combined application with all other applicable credits allowable under articles thirteen-c, thirteen-d, thirteen-f and thirteen-g of this chapter and under sections ten, eleven, eleven-a, twelve, twenty-two and twenty-three-a, article twenty-four of this chapter and under chapters five-e and eighteen-b of this code and all other tax credits provided in this code, shall not reduce the annual corporation net income tax liability for such tax year below fifty percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(C) After application of this credit against business franchise tax under paragraph (A) of this subdivision (2), and then against corporation net income tax under paragraph (B) of this subdivision (2); remaining credit for qualified investment in a management information services facility, if any, shall then be applied to further reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax

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year by an amount such that this credit shall not reduce the annual business franchise tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(D) After application of this credit against business franchise tax under paragraph (A) of this subdivision (2) and then against corporation net income tax under paragraph (B) of this subdivision (2), and then against business franchise tax under paragraph (C) of this subdivision (2); remaining credit for qualified investment in a management information services facility, if any, shall then be applied to further reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit shall not reduce the annual corporation net income tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(d) Maximum annual credit allowance. -- (1) Notwithstanding any other provision of this section, no taxpayer may take or apply more than $1,000,000 of this credit against all taxes, in the aggregate, against which this credit may apply in any taxable year, and no related person or persons as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended, may, in the aggregate, take or apply more than $1,000,000 of this credit against all taxes, in the aggregate, against which this credit may apply in any taxable year.

(2) Notwithstanding any other provision of this section, the total amount of credit certified under this subsection (e) for all taxpayers shall not exceed $5,000,000 per year. The Tax Commissioner shall allocate this credit to eligible taxpayers in the order that such taxpayers are certified under subsection (e) of this section: Provided, That no taxpayer or any related person to such taxpayer (as amended in section 267(b) of the Internal Revenue Code of 1986, as amended), shall be allocated more than $5,000,000.

(e) Certification of credit required. --

(1) Application required. -- No credit shall be allowed or applied under this section for any investment in any management information services facility until the person asserting a claim for the allowance of credit under this article makes written application to the Tax Commissioner for allowance of credit as provided in this section and receives written certification of its claim from the Tax Commissioner. An application for credit shall be filed, in such form as the Tax Commissioner shall prescribe, prior to the first date when qualified investment property is first placed in service or use, and whether such property will be placed in service during the same tax year or over a period of two or more successive tax years. All information required by such form shall be provided. No credit shall be taken by a taxpayer applicant or prospective applicant pursuant to this section and the exemption from tax set forth under subsection (nn), section nine, article fifteen of this chapter shall not be

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available to a taxpayer applicant or prospective applicant until certification has been issued by the Tax Commissioner.

(2) Failure to file. -- The failure to timely apply for certification under this subsection (e) shall result in the forfeiture of the credit otherwise allowable under this section.

(f) Forfeiture for reductions of employment. --

(1) With the annual return for the tax imposed by article twenty-three of this chapter filed for the taxable year in which the qualified investment is first placed in service or use in this state, and for each succeeding taxable year thereafter during which the taxpayer seeks to apply this credit against tax, the taxpayer shall file a statement with the Tax Commissioner certifying that no West Virginia jobs have been lost or terminated and no decrease of working hours or layoffs of employees holding West Virginia jobs have resulted from the making of the qualified investment upon which this credit is based or from the establishment or operation of the management information services facility upon which this credit is based.

(2) The taxpayer shall forfeit all annual credit otherwise available under this section during any year when West Virginia jobs have been lost or terminated or decreases of working hours or layoffs of employees holding West Virginia jobs have occurred as a result of the making of the qualified investment upon which this credit is based or the establishment or operation of the management information services facility upon which this credit is based, and the exemption from tax set forth in subsection (nn), section nine, article fifteen of this chapter shall not be available to the taxpayer during such year of forfeiture.

(3) The Tax Commissioner shall conduct such audits or reviews of each taxpayer in any year a credit is asserted under this section to verify the accuracy of a taxpayer's statement certifying that no West Virginia jobs have been lost or terminated and that no decrease of working hours or layoffs of employees holding West Virginia jobs have resulted from the making of qualified investments upon which this credit is based or from the establishment or operation of the management information services facility upon which this credit is based. Such audits shall also verify that all other requirements applicable to the allowance under a credit under this section continue to be met by the taxpayer.

(g) Information disclosure. -- Providing that such disclosure can be made without directly or indirectly revealing the amount of credit available to any particular taxpayer or taxpayer return information other than the name and address of the taxpayer, and notwithstanding any other provision of this code to the contrary, the Tax Commissioner shall publish in the state register the name and address of every taxpayer receiving this credit allowed under this section by December 31, 1992, and annually thereafter by December 31, of each year. The Tax Commissioner shall publish in the state register the amount of the credit asserted, by amount category, for each taxpayer asserting such credit. The categories by dollar amount of credit received shall be as follows:

(1) More than $1.00 but not more than $50,000;

(2) More than $50,000 but not more than $100,000;

(3) More than $100,000 but not more than $250,000;

(4) More than $250,000 but not more than $500,000; and

(5) More than $500,000 but not more than $1,000,000.

(h) Report by the Governor's office of community and industrial development. -- The Governor's office of community and industrial development shall produce a report to the Legislature to be presented during the 1992 regular legislative session. Such report shall state the identity of taxpayers who have received this management information services facility credit, and shall contain an analysis of the expansion and growth of management information services facilities in the State of West Virginia, the expansion of commerce resulting from the creation of this credit, and the number of jobs created as a result of this credit. The report of the Governor's office of community and industrial development shall not directly or indirectly reveal the amount of credit available to any particular taxpayer or taxpayer return information other than the names and addresses of taxpayers.

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