WEST VIRGINIA CODE: §11-13D-3D

§11-13D-3d. Amount of credit allowed and application of credit for qualified investment in a new industrial facility producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel.

(a) Credit allowed. -- There shall be allowed to eligible taxpayers which have made qualified investment of at least $10 million in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel. The amount of credit shall be determined as hereinafter provided in this section. Taxpayers who have not placed at least $10 million of qualified investment in service or use over a period of one year or less in a new industrial facility used to produce synthetic motor fuel or synthetic special fuel shall not be entitled to credit under this section.

(b) Credit amount for qualified investment purchased and placed in service or use in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel, after June 30, 1991. -- For property purchased or leased by an eligible taxpayer and placed in service or use after June 30, 1991, as part of a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel the amount of allowable credit shall be equal to one hundred percent of the qualified investment (as determined under section four of this article), and shall reduce that portion of the taxpayer's business franchise tax under article twenty-three of this chapter, which is attributable to and the direct result of the taxpayer's qualified investment, and that portion of the taxpayer's corporation net income tax under article twenty-four of this chapter, which is attributable to and the direct result of the taxpayer's qualified investment; subject to the following conditions and limitations:

(1) The total amount of credit allowable to all persons claiming credit under this section shall not exceed $10 million during any fiscal year of this state. If and to the extent credit is claimed under this section in excess of $10 million in any fiscal year of this state the amount in excess of $10 million is lost. In determining which taxpayer or taxpayers loses credit under this subdivision (1), the loss of credit shall apply first to qualified investment property most recently placed in service or use, going backwards in time, until the Tax Commissioner determines that the total amount of credit allowed under this section is not in excess of $10 million.

(2) The qualified investment must result in the creation of at least ten new jobs.

(3) If, during any taxable year of the ten year tax credit allowance period, 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 property is

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less than ten, the credit allowance for that taxable year is forfeited.

(4) 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 tax liabilities in the manner specified in subdivision (5) of this subsection (b), 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 (A) of subdivision (5) of this subsection (b) shall then be applied against the tax liabilities in the manner specified in paragraph (B), subdivision (5) of this subsection (b) 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 subdivision (5) of this subsection (b) 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.

(5) Tax liability percentage offset limitations.

(A) This credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel 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 (5), the remaining credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (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

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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 as 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 (5), and then against corporation net income tax under paragraph (B) of this subdivision (5), the remaining credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (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 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 (5) and then against corporation net income tax under paragraph (B) of this subdivision (5), and then against business franchise tax under paragraph (C) of this subdivision (5), the remaining credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (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 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.

(c) Application for credit required.

(1) Application required. -- No credit shall be allowed or applied under this section for any investment in any new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel 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 date when qualified investment property is first placed in service or use, and 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 until certification has been issued by the Tax Commissioner.

(2) Failure to file. -- The failure to timely apply for certification under this subsection (c)

shall result in forfeiture of the credit otherwise allowable under this section.

(d) Definitions. -- For purposes of this section:

(1) "Synthetic motor fuel" means any product suitable for use in an internal combustion engine except special fuel as defined in this section, containing at least ten percent coal-based liquids blended to meet specifications.

(2) "Synthetic special fuel" means special fuel containing at least ten percent coal-based liquids blended to meet specifications.

(e) 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 regular legislative session of 1993 and annually thereafter. Such report shall state the identity of taxpayers who have received this credit and shall contain an analysis of the expansion and growth of facilities in this state producing coal-based liquids used to produce synthetic fuels, 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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