WEST VIRGINIA CODE: §11-13D-3F

§11-13D-3f. Amount of credit allowed and application of credit for qualified investment in an aerospace industrial facility.

(a) Credit allowed. -- (1) There is allowed to eligible taxpayers which have made qualified investment in an aerospace industrial facility, a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter for qualified investment in an aerospace industrial facility. The amount of credit is determined as provided in this section.

(2) There is allowed to members, distributive interest holders and partners of eligible taxpayers described in paragraph (3), subsection (c) of this section, a credit against the taxes imposed by article twenty-four of this chapter for qualified investment in an aerospace industrial facility. The amount of credit is determined as provided in this section.

(b) Credit amount for qualified investment in property placed in service or use in an aerospace industrial facility after June 30, 1998. -- For property purchased or leased by an eligible taxpayer and placed in service or use after June 30, 1998, as part of an aerospace industrial facility, the amount of allowable credit is equal to fifteen percent of the qualified investment (as determined under subsection (e) of this section), and reduces the taxpayer's annual business franchise tax liability under article twenty-three of this chapter and the taxpayer's annual corporation net income tax liability under article twenty-four of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the qualified investment is first placed in service or use in this state.

(2) When in any taxable year a taxpayer is entitled to claim credit under this section and under any other section of this article, (or any combination thereof), the total amount of all credits allowed for the tax year under this article shall not exceed the sixty percent of total tax liability offset limitations set forth in subsection (c) of this section.

(3) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for any unused portion of any annual credit allowance. Such unused credit is forfeited.

(4) No credit is allowed under this article for investment in any property for which credit is allowed under article thirteen-c of this chapter.

(5) No credit is allowed under this section for investment in any property for which credit is allowed under any other section of this article.

(c) Application of credit. -- (1) The annual credit for qualified investment in an aerospace industrial facility is first applied to reduce the annual West Virginia business franchise tax

WV Legislature

liability imposed under article twenty-three of this chapter for the tax year. The amount of annual credit allowed may not reduce the annual liability for such tax year below sixty 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 in the absence of all other credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(2) After application of this credit against business franchise tax as provided in subdivision (1) of this subsection, the remaining annual credit, if any, is then applied to reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year. The amount of annual credit allowed may not reduce the annual corporation net income tax liability for such tax year below sixty 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 in the absence of all other credits against tax.

(3) In the case of an eligible taxpayer that:

(A) Is a limited liability company, partnership or other business organization taxed under article twenty-three of this chapter, but not taxed under article twenty-four of this chapter,

(B) Is not treated as a corporation for federal income tax purposes, and

(C) Is a "flow through" entity or conduit for income distributed to members, distributional interest holders or partners, the following applies: Members, distributional interest holders or partners, of the eligible taxpayer subject to the corporation net income tax imposed under article twenty-four of this chapter may apply this credit against that portion of their annual corporation net income tax liability imposed under article twenty-four of this chapter for the tax year on that distributive income directly and solely derived from the eligible taxpayer. The amount of annual credit allowed may not reduce the annual corporation net income tax liability for such tax year below sixty 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 in the absence of all other credits against tax.

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

(1) "Aerospace industrial facility" means a facility used by an eligible taxpayer for the manufacturing, rebuilding or physical refurbishment of:

(A) Aircraft,

(B) Aircraft engines,

(C) Aircraft engine parts,

(D) Other aircraft parts,

(E) Aircraft auxiliary equipment, including fluid power aircraft subassemblies,

WV Legislature

(F) Guided missiles,

(G) Space vehicles,

(H) Guided missile and space vehicle propulsion units,

(I) Guided missile parts,

(J) Propellers,

(K) Space vehicle parts, or

(L) Guided missile and space vehicle auxiliary parts.

(2) "Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations.

(3) "Corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument, and any organization which is treated as a corporation for federal income tax purposes.

(4) "Eligible taxpayer" means, for purposes of this section, a person subject to tax under article twenty-three or article twenty-four of this chapter, and regularly engaged in the business of manufacturing, rebuilding or physical refurbishment of:

(A) Aircraft,

(B) Aircraft engines,

(C) Aircraft engine parts,

(D) Other aircraft parts,

(E) Aircraft auxiliary equipment, including fluid power aircraft subassemblies,

(F) Guided missiles,

(G) Space vehicles,

(H) Guided missile and space vehicle propulsion units,

(I) Guided missile parts,

WV Legislature

(J) Propellers,

(K) Space vehicle parts, or

(L) Guided missile and space vehicle auxiliary parts.

The term "eligible taxpayer" does not include any person whose only activity with respect to an aerospace industrial facility is to lease it to another person or persons.

(5) "Placed in service or use." For purposes of the credit allowed by this section, property shall be considered "placed in service or use" on the earliest of the following dates:

(A) The date on which the property is physically placed in service or use in an aerospace industrial facility;

(B) The closing date of the eligible taxpayer's federal income tax year during which federal income tax depreciation with respect to the property has begun, or in the case of leased property, the closing date of the eligible taxpayer's federal income tax year during which expenses for lease payments for the property are first taken as a deduction from income for federal income tax purposes; or

(C) The closing date of the eligible taxpayer's federal income tax year during which the property is placed in a condition or state of readiness and availability for a specifically assigned function in an aerospace industrial facility, but where the property has not been physically placed in service or use in the aerospace industrial facility on that closing date.

(e) Qualified investment in an aerospace industrial facility. -- (1) Purchased property. -- The qualified investment in tangible personal property or real property purchased for use as a component part of an aerospace industrial facility is the applicable percentage of the cost of such property purchased for an aerospace industrial facility, which is placed in service or use in this state, by the eligible taxpayer during the tax year as determined under this section.

(2) Applicable percentage. -- For the purposes of this subsection, the applicable percentage for any property shall be determined under the following table:

If useful life is: The applicable

percentage is:

4 years or more but less than 6 years 33 1/3%

6 years or more but less than 8 years 66 2/3%

8 years or more 100%

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The useful life of any property for purposes of this section shall be the actual economic useful life determined as of the date such property is first placed in service or use in this state by the taxpayer, determined for financial accounting purposes in accordance with generally accepted principles of accounting.

(3)(A) Cost. -- For purposes of this subsection, the cost of each item of property purchased for use as a component part of an aerospace industrial facility shall be the fair market value or the actual cost, whichever is less, and in no event shall the cost exceed the fair market value as of the date such property is first placed in service or use in this state by the eligible taxpayer. Cost is determined under the following rules:

(B) Trade-ins. -- Cost does not include the value of property given in trade or exchange for the property purchased for use as a component part of an aerospace industrial facility.

(C) Damaged, destroyed or stolen property. -- If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(4) Rental property. -- (A) The qualified investment in tangible personal property or real property leased for use as a component part of an aerospace industrial facility is the portion specified in this subdivision of the cost of such property purchased for an aerospace industrial facility, which is placed in service or use in this state, by the eligible taxpayer during the tax year as determined under this section.

(B) The qualified investment in leases of real property acquired by written lease for a primary term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years. Leases of realty having a primary term of less than ten years do not qualify for purposes of this section.

(C) The qualified investment in leases of tangible personal property acquired by written lease for a primary term of:

(i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

(ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease; or

(iii) Eight years, or longer, is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years: Provided, That in no event does rent reserved include rent for any year subsequent to expiration of the book life of the property, determined using the straight-line method of depreciation.

(5) Transferred property. -- (A) The cost of property owned and used by the taxpayer out-of-state and then brought into this state, is determined based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years

WV Legislature

or portions thereof taxpayer used the property outside this state.

(B) In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this state for use in an aerospace industrial facility of an eligible taxpayer, and is the rent reserved for the remaining period of the primary term of the lease, not to exceed twenty years, or the remaining useful life of the property, whichever is less.

(C) Qualified investment in transferred property is computed by applying the four-year, six-year and eight-year requirements of this section to the cost thereof with the applicable four year, six year and eight year period determined based on the remaining useful life or remaining primary lease term at the time the property is placed in service or use in this state.

(6) Property purchased for multiple use. -- Investment in property purchased for use in an aerospace industrial facility and for some other use does not qualify for purposes of this credit.

(7) Self-constructed property. -- In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for purposes of depreciation for federal income tax purposes.

(8) Specific exclusions from qualification. -- The following investment does not constitute qualified investment in an aerospace industrial facility, and does not qualify for purposes of this credit.

(A) Investment by purchase or lease in natural resources in place.

(B) Investment in purchased or leased property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use: Provided, That when the contract of purchase or lease specifies a minimum purchase price which can be quantified or minimum annual rent which can be quantified, the amount thereof shall be used to determine the cost thereof. If the property and lease otherwise qualify under the primary lease term requirements and other requirements of this section for property purchased or leased for use as a component part of an aerospace industrial facility, then qualified investment in such property is determined in accordance with the four-year, six-year and eight-year useful life or primary lease term requirements of this subsection.

(C) Investment in property purchased, or leased, or placed in service or use prior to July 1, 1998.

(D) Investment in the purchase, acquisition or transfer of any facility or component thereof that was in service or use during the ninety days immediately prior to transfer of the title to such facility or component thereof, or to the commencement of the term of the lease of such

WV Legislature

facility or component thereof, unless upon application of the taxpayer, setting forth good and sufficient cause, the Tax Commissioner consents to waiving this ninety-day period.

(E) Investment in any facility or component part thereof that was acquired by the taxpayer from a related person. The Tax Commissioner may waive this requirement if the facility was acquired from a related party for its fair market value, and the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

(i) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended, and in effect on January 1, 1998.

(F) Investment in or cost incurred for property owned or leased by the taxpayer and for which credit was previously taken under article thirteen-c, article thirteen-d or thirteen-e of this chapter: Provided, That this paragraph shall not be construed to prevent the transfer of this credit in the event of a mere change in the form of doing business of an eligible taxpayer, or transfer of credit to successors in business in accordance with section seven of this article.

(G) Repair costs, including costs or materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized.

(H) Investment in airplanes.

(I) Investment in property which is primarily used outside this state.

(J) Investment in property acquired incident to the purchase of a corporation, business organization or ongoing business or a substantial portion thereof through transfer of stock, ownership interests or assets thereof, or any other transfer, merger or purchase, unless for good cause shown, the Tax Commissioner consents to waiving this requirement: Provided, That this paragraph shall not be construed to prevent the transfer of this credit in the event of a mere change in the form of doing business of an eligible taxpayer, or transfer of credit to successors in business in accordance with section seven of this article.

(K) Investment in property acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended, and in effect on January 1, 1999.

(L) Investment in property acquired by one component member of a controlled group from another component member of the same controlled group: Provided, That, the Tax Commissioner can waive this requirement if the property was acquired from a related party for its then fair market value, and the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined:

WV Legislature

(i) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

(ii) Under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended, and in effect on January 1, 1999.

WV Legislature