WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13D

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§11-13D-1. Legislative findings and purpose.

The Legislature finds that the encouragement of the location of new industry in this state; the expansion, growth and revitalization of existing industrial facilities in this state; the conduct of research and development in this state, for purposes of expanding markets for sales and uses of this state's natural resources and industrial products, the construction of residential housing and the creation or expansion of management information services facilities are all in the public interest and promote the general welfare of the people of this state.

In order to encourage capital investment in this state and thereby increase employment and economic development, there is hereby provided a tax credit for industrial expansion and revitalization in this state, for certain research and development related expenditures in this state, for certain housing and development related expenditures in this state and for the creation or expansion of certain management information services facilities in this state.

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§11-13D-2. Definitions.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) "Eligible investment" means that amount determined under either section four of this article, for investment in a new or expanded or revitalized industrial facility, or under section five of this article, in the case of an eligible research and development project, under section five-a for a qualified housing development project, or under section five-b for a management information services facility.

(2) Eligible taxpayer.

(A) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion, or for the purpose of revitalizing an existing industrial facility in this state; or a taxpayer who purchases property or services, or both, for the purpose of conducting an eligible research and development project in this state or for the purpose of constructing a qualified housing development project in this state.

(B) An eligible taxpayer for purposes of the management information services facility credit means a taxpayer fulfilling the requirements of paragraph (C) or (D) of this subdivision which has purchased, or leased, and placed into service or use in a management information services facility, qualified investment, as defined under section five-b of this article, of $2 million or more over a time period of not more than three hundred sixty-five consecutive days and which operates such management information services facility, without regard to whether such taxpayer is an industrial taxpayer or engages in an industrial business or operates an industrial facility as herein defined.

(C) An eligible taxpayer for purposes of the management information services facility credit is a person or entity which had no operations and owned or leased no property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia, and which is not a successor in business to any person or entity which had operations or owned or leased property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia.

A person or entity shall not constitute an eligible taxpayer for purposes of the management information services facility credit if any related person (as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended) had operations or owned or leased property in West Virginia during the five-year period prior to the creation of the management information services facility in West Virginia or if any such related person is a successor in business to any person or entity which had operations or owned or leased property in West

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Virginia during the five-year period prior to the creation of the management information services facility in West Virginia.

(D) Notwithstanding paragraph (C) of this subdivision, a person, entity, successor in business which would otherwise not constitute an eligible taxpayer under paragraph (C) of this subdivision may nevertheless constitute an eligible taxpayer for purposes of this management information services facility credit if such person, entity, successor places qualified investment into service or use in West Virginia for the purpose of establishing in this state a management information services facility that is new to West Virginia and which services do not include any management information services previously conducted by such person, entity, successor, or a related person (as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended) in West Virginia, or if such person, entity or successor places qualified investment into service or use in West Virginia in a management information services facility for the purpose of consolidating or relocating significant existing national, regional or international management information services operations in West Virginia, and such consolidation or relocation results in the placement of at least $2 million of qualified investment into service or use in West Virginia within the time periods described in paragraph (B) of this subdivision, and such consolidation or relocation results in the relocation of significant management information services operations into West Virginia which did not previously exist in West Virginia, and the taxpayer otherwise constitutes an eligible taxpayer under such paragraph (B). For purposes of this section, the term "regional" means an area including more than one state or portions of more than one state of the United States.

(3) "Eligible research and development project" means a research and development project engaged in or conducted within this state, by a person who is engaged in this state in the business of producing natural resources or in an industrial business when such research and development project is conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for, and increasing sales of, this state's natural resource products, or industrial products, or both.

(4) "Industrial business" means any privilege taxable under section two-b or two-m, article thirteen of this chapter, and includes a manufacturing service taxable under section two-h of said article: Provided, That on and after July 1, 1987, the term "industrial business" shall mean the business of manufacturing, compounding or preparing tangible personal property for sale, profit or commercial use, the business of generating electric power, and the business of providing a manufacturing service, which were taxable, respectively, under sections two-b, two-m and two-h, article thirteen of this chapter, on January 1, 1985.

(5) "Industrial facility" means any factory, mill, plant, refinery, warehouse, buildings or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility in an industrial business.

(6) "Industrial revitalization" means capital investment in an industrial facility located in this

state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of such facility in an industrial business of the taxpayer, including the acquisition of any real property necessary to the industrial revitalization.

(7) "Industrial expansion" means capital investment in a new or expanded industrial facility in this state.

(8) "Industrial taxpayer" means any person subject to business and occupation taxes under article thirteen of this chapter, exercising any privilege taxable under section two-b or two-m of said article thirteen, or providing a manufacturing service taxable under section two-h of said article thirteen: Provided, That on and after July 1, 1987, "industrial taxpayer" shall mean any person subject to tax under section two-m, article thirteen of this chapter; or any person subject to tax under article thirteen-a or twenty-three of this chapter engaging in any activity that was taxable under section two-b, article thirteen of this chapter, on January 1, 1985; or any person taxable under article twenty-three of this chapter providing a manufacturing service that was taxable under section two-h, article thirteen of this chapter on January 1, 1985.

(9) "Management information services facility" means a building, or any part thereof, or a complex of buildings, or any part thereof, including the machinery and equipment located therein, that is exclusively dedicated to providing management information services to the owner or operator thereof or to another person.

(10) "Management information services" means, and is limited to, data processing, data storage, data recovery and backup, programming recovery and backup, telecommunications, computation and computer processing, computer programming, electronic information, and data management activities, or any combination of such activities, when such activity, or activities, is not subject to regulation by the West Virginia Public Service Commission and such activity, or activities, is for the purpose of managing, planning for, organizing or operating, any industrial or commercial business, or any enterprise, facility or facilities of an industrial or commercial business, whether such industrial or commercial business or enterprise, facility or facilities of an industrial or commercial business is located within or without this state and without regard to whether such industrial or commercial business, or enterprise, facility or facilities of an industrial or commercial business is owned by the provider of the management information services or by a "related person", as defined in Section 267(b) of the Internal Revenue Code of 1986, as amended.

(11) "Manufacturing service" means a privilege that would be taxable under section two-b, article thirteen of this chapter, if title to the raw materials used in the manufacturing process was vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(12) Subject to subdivision (15) below, "property purchased for an eligible research and development project" means real property, and improvements thereto, and tangible personal

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property, but only if such real or personal property is constructed or purchased on or after July 1, 1985, for use as a component part of an eligible research and development project which is located within this state on or after July 1, 1985. This term includes only tangible personal property with respect to which depreciation or amortization, in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the purchaser under article twenty-one or twenty-four of this chapter. Property acquired by written lease for a term of ten years or longer, if used as a component part of an eligible research and development project, shall be included within this definition.

(13) Subject to subdivision (15) below, "property purchased for industrial expansion" means real property, and improvements thereto, and tangible personal property, but only if such property was constructed, or purchased, on or after July 1, 1969, for use as a component part of a new or expanded industrial facility as defined in subdivision (5) of this subsection located within this state. This term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under articles twenty-one or twenty-four of this chapter, and has a useful life, at the time such property is placed in service or use in this state, of four years or more. Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, shall be included within this definition.

(14) Subject to subdivision (15) below, "property purchased for industrial revitalization" means real property, and improvements thereto, and new tangible personal property, but only if such property was constructed, or purchased, on or after July 1, 1981, for use as a component part of an ongoing industrial facility as defined in subdivision (5) of this subsection located within this state. This term includes only tangible personal property with respect to which depreciation is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under article twenty-one or twenty-four of this chapter, and has a useful life at the time the property is placed in service or use in this state of four years or more. Property acquired by written lease for a primary term of ten years or longer, if used as a component part of an industrial revitalization, shall be included within this definition.

(15) "Property purchased for industrial expansion", "property purchased for industrial revitalization", "property purchased for an eligible research and development project", "property purchased for a qualified housing development project" and "property purchased or leased for a management information services facility" shall not include:

(A) Repair costs including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(B) Motor vehicles licensed by the department of motor vehicles;

(C) Airplanes;

(D) Off-premise transportation equipment;

(E) Property which is primarily used outside this state; and

(F) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his industrial business in this state, or which property was previously designated "property purchased for industrial expansion", or "property purchased for industrial revitalization", or "property purchased for an eligible research and development project", or "property purchased for a qualified housing development project", and used to qualify for business and occupation tax credit for industrial expansion or revitalization, or for an eligible research and development project, or for a qualified housing development project, or property which was subject to or gave rise to the management information services facility credit in the hands of the transferor, except that successors in business shall have successor credit available pursuant to section seven of this article.

(16) Subject to subdivision (15) above, property purchased for a qualified housing development project means real property, and improvements thereto, and tangible personal property incorporated into real property, whether or not attached thereto, but only if such real or tangible personal property was constructed, or purchased, on or after July 1, 1986, for use as a component part of a housing development project, as defined in section five-a of this article, located within this state.

(17) Subject to subdivision (15) above, "property purchased or leased for a management information services facility" means tangible personal property purchased from a West Virginia vendor in West Virginia or leased through or from a West Virginia vendor for a primary lease term of three years or more. For purposes of this section the term "tangible personal property" shall include prewritten or "canned" computer software, "custom" software and computer programming services which result in the production of custom software: Provided, That the term "property purchased or leased for a management information services facility" shall not include:

(A) Land or building or any part thereof whether leased or purchased;

(B) Natural resources in place;

(C) 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;

(D) Property purchased or leased or placed in service or use prior to April 1, 1991, or property purchased or leased or placed in service or use after March 31, 1993; or

(E) Property purchased for use in a management information services facility when such property is not purchased for the purpose of either:

(i) Expanding an existing management information services facility in West Virginia pursuant

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to a relocation or consolidation of significant national, regional or international management information services operation to West Virginia; or

(ii) Establishing in this state a management information services facility that is new to West Virginia.

(18) Property shall be deemed to have been purchased prior to a specified date only if:

(A) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the taxpayer prior to the specified date;

(B) The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to such date; or

(C) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

(19) "Taxpayer" means any person taxable under article thirteen of this chapter: Provided, That on and after July 1, 1987, "taxpayer" shall mean any person taxable under article thirteen, thirteen-a or twenty-three of this chapter.

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§11-13D-3. Amount of credit allowed for industrial expansion or revitalization, for eligible research and development projects, and for qualified housing development projects.

(a) Credit allowed. -- There shall be allowed to eligible taxpayers a credit against the taxes imposed by article thirteen, thirteen-a or twenty-three of this chapter, for industrial expansion or revitalization, and for eligible research and development projects and for qualified housing development projects. The amount of credit shall be determined as hereinafter provided in this section.

(b) Qualified investment for industrial expansion; July 1, 1969 - March 31, 1978. -- For property purchased for industrial expansion during the period beginning July 1, 1969, and ending March 31, 1978, the amount of allowable credit shall be equal to ten percent of the qualified investment (as determined in section four) made for industrial expansion, and shall reduce the business and occupation tax liability of the industrial taxpayer under article thirteen of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable shall be 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) The amount of annual credit allowed shall not reduce the business and occupation tax under article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

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

(c) Qualified investment for industrial expansion; April 1, 1978 - February 28, 1985. -- For property purchased for industrial expansion during the period beginning March 1, 1978, and ending February 28, 1985, the amount of allowable credit shall be equal to ten percent of the qualified investment (as determined in section four) made for industrial expansion, and shall reduce the business and occupation tax liability of the industrial taxpayer under section two-b, two-h and two-m, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable shall be 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) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-b, two-h and two-m, article thirteen of this chapter, below fifty percent of the amount which would be imposed

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for such taxable year, in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter: Provided, That the tax under section two-h of said article thirteen, shall not be reduced by more than fifty percent of the tax attributable to the privilege of manufacturing for another, which privilege would be taxable under section two-b of said article thirteen, if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

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

(d) Eligible investment for industrial revitalization; July 1, 1981 - February 28, 1985. -- For property purchased for industrial revitalization during the period beginning July 1, 1981, and ending February 28, 1985, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined under section four) made for industrial revitalization, and shall reduce the business and occupation tax under sections two-b and two-h, article thirteen of this chapter, subject to the following conditions and limitations:

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

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-b and two-h of said article, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter: Provided, That the tax under section two-h of said article thirteen, shall not be reduced by more than fifty percent of the tax attributable to the privilege of manufacturing for another, which privilege would be taxable under section two-b of said article thirteen, if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(3) When in any taxable year the eligible industrial taxpayer is entitled to claim credit under both this subsection (d) and under subsections (b) or (c), or both, of this section, the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in paragraph (2) of this subsection (d).

(4) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this section for any property purchased for industrial revitalization prior to July 1, 1981.

(e) Eligible investment for industrial expansion or revitalization after February 28, 1985. -- For property purchased for industrial expansion or industrial revitalization on or after March 1, 1985, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section four) made for industrial expansion or industrial revitalization, and shall reduce the business and occupation tax imposed under article thirteen of this chapter subject to the following conditions and limitations:

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

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the industrial taxpayer is entitled to claim credit under this subsection (e) and under subsections (b), (c) or (d) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in paragraph (2) of this subsection (e).

(4) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(5) When in any taxable year the industrial taxpayer is entitled to claim credit under this article and article thirteen-e of this chapter, the total amount of all such credits allowable for the taxable year shall not reduce the amount of business and occupation taxes imposed by article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year, computed before allowance of the annual exemption allowed by section three, article thirteen of this chapter.

(6) No credit shall be allowed under this subsection (e) or any property purchased on or after March 1, 1985, for which credit is allowed under article thirteen-c of this chapter.

(7) No credit shall be allowed under this subsection (e) or any property purchased for industrial expansion or industrial revitalization prior to March 1, 1985.

(f) Eligible investment for research and development project after June 30, 1985. -- For property and services purchased for an eligible research and development project on or after July 1, 1985, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section five) made for an eligible research and development project, and shall reduce the business and occupation taxes under sections two-a, two-b, two-m, article thirteen of this chapter, subject to the following conditions and limitations:

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(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state, or is expensed for federal income tax purposes.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under section two-a of said article, on the business of producing natural resources; under section two-b of said article thirteen, on the business or manufacturing, compounding or preparing tangible personal property for sale; under section two-h of said article thirteen on the providing of a manufacturing service; and under section two-m of said article thirteen, on the business of generating electric power, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible taxpayer is entitled to claim credit under both this subsection (f) and subsections (b), (c), (d) or (e) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in paragraph (2) of this subsection (f).

(4) No carryover to a subsequent tax year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this subsection (f) for any property purchased for an eligible research and development project, when such property is used to determine the eligible investment under section four of this article, or determine the amount of credit allowable under article thirteen-c of this chapter.

(6) No credit shall be allowed under this subsection (f) for any property purchased for research and development prior to July 1, 1985.

(g) Eligible investment for qualified housing development project after June 30, 1986. -- For property and services purchased for a qualified housing development project on or after July 1, 1986, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section five-a) made for a qualified housing development project, and shall reduce the business and occupation taxes under sections two-c and two-e, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which any combination of residential housing units (as defined in section five-a of this article) available for occupancy or occupied in the qualified housing development project is five or more residential housing units.

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(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under section two-c of said article on the business of selling tangible property and under section two-e on the business of contracting below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible taxpayer is entitled to claim credit under both this subsection (g) and subsections (b), (c), (d), (e) or (f) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in paragraph (2) of this subsection (g).

(4) No carryover to a subsequent tax year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this subsection (g) for any property purchased for an eligible housing development project, when such property is used to determine the eligible investment under section four of this article, or determine the amount of credit allowable under article thirteen-c of this chapter.

(6) No credit shall be allowed under this subsection (g) for any property purchased for an eligible housing development project, when such property is used to determine the eligible investment under section four of this article, or determine the amount of credit allowable under article thirteen-c of this chapter.

(h) Credit limitation. -- The aggregate amount of credit allowable under this article and article thirteen-e of this chapter, against the taxes imposed by article thirteen of this chapter for the taxable year, shall in no event exceed fifty percent of the tax due for the taxable year, computed prior to application of the tax credits provided by this article and articles thirteen-c and thirteen-e of this chapter, and the annual exemption allowed provided by section three, article thirteen of this chapter.

(i) Application of credit after June 30, 1987. -- On and after July 1, 1987, the credits allowed under subsections (b), (c), (d), (e), (f) and (g) of this section shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this chapter, for the taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and article thirteen-c or thirteen-e, or both, of this chapter.

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§11-13D-3a. Application of credit after June 30, 1987.

On and after July 1, 1987, the credits allowed under section three shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a, fifteen, fifteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this chapter, or under articles fifteen and fifteen-a of this chapter on purchases directly used or consumed in taxpayer's qualified investment activity, for the taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and article thirteen-c or thirteen-e, or both, of this chapter.

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§11-13D-3b. Application of credit after June 30, 1989.

For taxable years ending on and after July 1, 1989, the credits allowed under section three shall continue to be applied as provided in section three-a. In addition, the credit allowed under subsection (f) of section three that remains after its application as provided in section three-a of this article shall be applied to reduce the tax imposed by article twenty-four of this chapter: Provided, That this credit may not reduce by more than fifty percent the amount of the net tax liability of the taxpayer for the taxable year under article twenty-four of this chapter, which amount of net tax liability shall be determined before application of the credit allowed by article thirteen-c of this chapter.

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§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

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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 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

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

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(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;

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

(4) Tax year time limitations for application of credit; credit forfeiture.

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(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 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

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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:

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(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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§11-13D-3e. Application of credit after June 30, 1993.

Notwithstanding any other provision of this code to the contrary, for taxable years ending on and after July 1, 1993, the credits allowed under section three may not be applied to reduce the taxes imposed by articles fifteen and fifteen-a of this chapter: Provided, That this section shall not apply to credits allowed under subsection (g), section three of this article for qualified housing development projects existing in this state on or before July 1, 1992.

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§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 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

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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,

(F) Guided missiles,

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(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,

(J) Propellers,

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(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%

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

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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 or portions thereof taxpayer used the property outside this state.

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(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 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.

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(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:

(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

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

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§11-13D-4. Eligible investment for industrial expansion or revitalization.

(a) General. -- The eligible or qualified investment in property purchased for industrial expansion or revitalization shall be the applicable percentage of the cost of each property purchased for the purpose of industrial expansion or revitalization, which is placed in service or use in this state, by the eligible taxpayer during the taxable year.

(b) Applicable percentage. -- For the purposes of subsection (a), 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

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost. -- For purposes of subsection (a), the cost of each property purchased for industrial expansion or revitalization, or for conduct of an eligible research and development project, shall be determined under the following rules:

(1) Trade-ins. -- Cost shall not include the value of property given in trade or exchange for the property purchased for industrial expansion or revitalization.

(2) 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 shall not include any insurance proceeds received in compensation for the loss.

(3) Rental property. -- The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(4) Property purchased for multiple use. -- The cost of property purchased for multiple business use including use as a component part of a new or expanded or revitalized industrial business, together with some other business or activity not eligible for credit under this article, shall be apportioned between such businesses and occupations. The amount apportioned to the new or expanded or revitalized industrial business, shall be considered to be as an eligible investment, subject to the conditions and limitations of this section.

(5) Self-constructed property. -- In the case of self-constructed property, the cost thereof

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shall be the amount properly charged to the capital account for purposes of depreciation.

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§11-13D-5. Eligible investment for research and development.

(a) General. -- The eligible investment in a research and development project shall be the sum of the applicable percentage of the cost of land and depreciable property purchased for the conduct of an eligible research and development project, which is placed in service or use in this state during the taxable year, plus the amount of qualified research expenses (as defined in this section) deducted by the eligible taxpayer, for federal income tax purposes.

(b) Applicable percentage of property. -- For the purpose of subsection (a), the applicable percentage for land and depreciable property shall be determined under the following table:

If useful life is: The applicable percentage is:

Less than 6 years 33 1/3

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

8 years or more 100

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost of property. -- For purposes of subsection (a), the cost of each property purchased for the conduct of an eligible research and development project shall be determined under the following rules:

(1) Trade-ins. -- Cost shall not include the value of property given in trade or exchange for the property purchased for conduct of the research and development project.

(2) 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 shall not include any insurance proceeds received in compensation for the loss.

(3) Rental property. -- The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(4) Property purchased for multiple use. -- The cost of property purchased for multiple business use including direct use in the conduct of an eligible research and development project, together with some other business or activity not eligible under this section, shall be apportioned between such activities. The amount apportioned to the conduct of the eligible research and development project shall be considered to be eligible investment subject to the conditions and limitations of this section.

(5) Self-constructed property. -- In the case of self-constructed property, the cost thereof

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shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(d) Qualified research expenses. -- For purposes of this section:

(1) "Qualified research expenses" means the sum of in-house and contract research expenses for qualified research allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year in carrying on any trade or business taxable under sections two-a, two-b and two-m, article thirteen of this chapter, or under section two-h of said article thirteen (in the case of manufacturing services only): Provided, That on and after July 1, 1987, "qualified research expenses" shall mean the sum of in-house and contract research expenses for qualified research, allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year in carrying on any trade or business taxable under article thirteen, thirteen-a or twenty-three of this chapter, that would have been taxable under section two-a, two-b, two-m or two-h (in the case of manufacturing services only) of said article thirteen, as in effect on January 1, 1985.

In no event shall "qualified research expenses" include any expense that must be capitalized and depreciated for federal income tax purposes, or any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent or quality of any deposit of coal, limestone or other natural resource, including oil and natural gas.

(2) "In-house research expenses" means:

(A) Wages paid or incurred to an employee for qualified services performed in this state by such employee;

(B) Amounts paid or incurred for supplies used in the conduct of qualified research in this state; and

(C) Amounts paid or incurred to another person for the right to use personal property in the conduct of qualified research in this state.

(3) "Qualified services" means services consisting of:

(A) Engaging in qualified research in this state; or

(B) Engaging in the direct supervision or direct support of research activities in this state, which constitute qualified research.

If substantially all of the services performed by an individual for the taxpayer during the taxable year consist of services meeting the requirements of subparagraph (A) or (B), the term "qualified services" means all services performed by such individual for the taxable year.

(4) "Supplies" means any tangible property other than:

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(A) Land or improvements to land; and

(B) Property of a character subject to depreciation for federal income tax purposes.

(5) "Wages" has the meaning given to such term by Section 3401(a) (26 U.S.C. § 3401(a)) of the Internal Revenue Code of 1954, as amended. In the case of self-employed individuals and owner-employees (within the meaning of Section 401(c)(1) (26 U.S.C. § 401(c)(1)) of said Internal Revenue Code), the term "wages" includes the earned income (as defined in Section 401(c)(2) (26 U.S.C. § 401(c)(2)) of said Internal Revenue Code of such employee. The term "wages" shall not include any amount taken into account in determining the federal targeted jobs credit under Section 51(a) (26 U.S.C. § 51(a)) of said Internal Revenue Code.

(6) "Contract research expenses" means:

(A) In general, sixty-five percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

(B) If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of the taxable year, such amount shall be treated as paid or incurred during the taxable year during which the qualified research is conducted.

(7) "Qualified research" means research and development conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for and increasing sales of this state's natural resource products or manufactured products, or both: Provided, That it shall not include:

(A) Research or development conducted outside this state;

(B) Research or development not directly related to increasing the uses for and sales of this state's natural resource products and industrial products;

(C) Research in the social sciences or humanities; or

(D) Research and development to the extent funded by any grant, contract or otherwise by another person (or any governmental entity).

(e) Research by colleges, universities and certain research organizations. -- In general, sixty-five percent of the amount paid or incurred by a corporation to any nonprofit educational organization which is an institution of higher education (as defined in Section 3304(f) (26 U.S.C. § 3304(f)) of the Internal Revenue Code of 1954, as amended), an institution of higher education subject to the jurisdiction of the West Virginia board of regents, or any other nonprofit organization exempt from federal income taxes which is organized and operated primarily to conduct scientific research and is not a private foundation for federal income tax purposes for research to be performed by such organization shall be treated as contract research expenses. The preceding sentence shall apply only if the amount is paid or incurred

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pursuant to a written research agreement between the corporation and the qualified organization.

(f) Standards for determining qualified research expenses. -- In prescribing standards for determining which research and development expenses are considered to be West Virginia qualified research expenses for purposes of this section, the Tax Commissioner may consider: (1) The place where the services are performed; (2) the residence or business location of the person or persons performing the services; (3) the place where qualified research supplies are consumed; and (4) other factors that the Tax Commissioner believes relevant in determining whether or not the research and development expenses, land and depreciable property were purchased and used for qualified research, as defined in this article, during the taxable year.

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§11-13D-5a. Eligible investment for qualified housing development project.

(a) General. -- The eligible investment in a qualified housing development project shall be the sum of the applicable percentage of the cost of land and depreciable property purchased for the construction of a qualified housing development project, which is placed in service or use in this state during the taxable year.

(b) Applicable percentage of property. -- For the purpose of subsection (a), the applicable percentage for land and depreciable property shall be determined under the following table:

If useful life is: The applicable percentage is:

Less than 4 years 0

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

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost of property. -- For purposes of subsection (a), the cost of each item of property purchased for the conduct of an eligible housing development project shall be determined under the following rules:

(1) Trade-ins. -- Cost shall not include the value of property given in trade or exchange for the property purchased for construction of a qualified housing development project.

(2) 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 shall not include any insurance proceeds received in compensation for the loss.

(3) Self-constructed property. -- In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(d) "Qualified housing development" or "qualified housing development project" means a residential housing development located in this state that contains five or more single-family contiguous residential housing units or multifamily residential housing units or multifamily residential buildings containing five or more residential housing units, which are contiguously located.

(e) "Residential housing unit" means any single-family dwelling or a single-family unit in a

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multifamily dwelling that is constructed for sale or lease to nontransients for use and occupancy as their primary permanent residence.

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§11-13D-5b. Qualified investment for a management information services facility.

(a) General. -- The qualified investment in property purchased or leased for use as a component part of a management information services facility shall be the applicable percentage of the cost of each property purchased for a management information services 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) Applicable percentage. -- For the purposes of subsection (a), the applicable percentage for any property shall be determined under the following table:

If useful life or applicable The applicable

lease term is: percentage is:

3 yrs. or more but less than 6 yrs. 33-1/3%

6 yrs. or more but less than 8 yrs. 66-2/3%

8 yrs. or more 100%

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.

(c) Cost. -- For purposes of subsection (a), the cost of each property purchased for a management information services 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, furthermore the cost shall be determined under the following rules:

(1) Trade-ins. -- Cost shall not include the value of property given in trade or exchange for the property purchased for a management information services facility.

(2) 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 shall not include any insurance proceeds received in compensation for the loss.

(3) Rental property. -- The cost of tangible personal property acquired by lease for a primary lease term of three or more years shall be seventy-five percent of the rent reserved for the shorter of:

(A) The first ten years of the primary lease term; or

(B) The primary lease term.

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Such cost of leased tangible personal property shall then be multiplied by the applicable percentage determined under subsection (b) of this section based upon the shorter of the first ten years of the primary lease term or the primary lease term in order to determine qualified investment in such leased property.

(4) Property purchased for multiple use. -- Investment in property purchased for use in a management information services facility together with some other use shall not qualify for purposes of this credit.

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

(6) Specific exclusions. --

(A) Investment in land or buildings, whether purchased or leased, shall not qualify for purposes of this management information services facility credit.

(B) Investment by purchase or lease in natural resources in place; and investment by purchase or lease in 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, shall not qualify for purposes of this management information services facility credit.

(C) Investment in property purchased, or leased, or placed in service or use prior to April 1, 1991, or after March 31, 1993, shall not qualify for purposes of this management information services facility credit.

(D) Investment in property not purchased, or leased, either for the purpose of expanding an existing management information services facility in West Virginia pursuant to a national, regional or international relocation or consolidation of significant management information services in West Virginia; or for the purpose of establishing in this state a management information services facility that is new to West Virginia, shall not qualify for purposes of this management information services facility credit.

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§11-13D-6. Forfeiture of unused tax credits, redetermination of credit required.

(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 four, five, five-a or five-b of this article; or

(2) Ceases to be used in the new or expanded or revitalized industrial business, or in the eligible research and development project, or in the qualified housing development project, or in a management information services facility of the taxpayer in this state prior to the end of its useful life, as determined under said section four, five, five-a or five-b, 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 four, five-a or five-b, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business or management information services business of the taxpayer. The taxpayer shall then file a reconciliation statement with its annual business franchise 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 on and after July 1, 1987, the phrase "taxes imposed by article twelve-a or thirteen, or both, of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter or any one or combination of such articles of this chapter".

(b) Cessation of operation of industrial facility or eligible research and development project, qualified housing development project or management information services facility. -- If during any taxable year, the taxpayer ceases operation of an industrial facility or a management information services facility in this state, or of an eligible research and development project, or a qualified housing development project, for which credit was allowed under this article, or article thirteen-c of this chapter prior to its repeal, before expiration of the useful life of the property with respect to which tax credit has been allowed under this article or article thirteen-c of this chapter prior to its repeal, 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 four, five, five-a or five-b, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business or management information services business of the taxpayer. The taxpayer shall then file a reconciliation statement with its annual business franchise 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 on and after

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July 1, 1987, the phrase "taxes imposed by article twelve-a or thirteen, or both, of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter, or any one or combination of such articles of this chapter".

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§11-13D-7. Transfer of eligible investment to successors.

(a) Mere change in form of business. -- Property may not be treated as disposed of under section six of this article by reason of a mere change in the form of conducting the business as long as the property is retained in a similar industrial business or management information services business activity in this state and the taxpayer retains a controlling interest in the successor business. In this event, the successor business may claim the amount of credit still available with respect to the industrial facility or facilities transferred or to the eligible research and development project or management information services facility and the taxpayer (transferor) may not be required to redetermine the amount of credit allowed in earlier years.

(b) Transfer or sale to successor. -- Provided that the Tax Commissioner gives prior approval for a transfer or sale, property may not be treated as disposed of under section six by reason of any transfer or sale to a successor business which continues to operate the industrial facility or management information services facility in this state. This requirement for prior approval may be waived by the Tax Commissioner at any time prior to, or subsequent to, the transfer or sale. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each taxable year subsequent to the taxable year of the transferor during which the transfer occurred and, for the year of transfer, an amount of annual credit for the year in the same proportion as the number of days remaining in the transferor's taxable year bears to the total number of days in the taxable year and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years. In determining whether or not to approve a disposition pursuant to this subsection, the Tax Commissioner shall take into account the legislative findings and purpose contained in section one of this article in making the decision.

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§11-13D-8. Prior industrial expansion credit preserved.

Any tax credit which an industrial taxpayer was legally entitled to claim under article thirteen-c of this chapter prior to its repeal effective March 1, 1985, shall be fully and completely preserved under the provisions of this article for the remainder of the ten-year credit period that was then in existence under said article thirteen-c.

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§11-13D-9. Severability.

(a) If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(b) If any provision of this article or the application thereof shall be made invalid or inapplicable by reason of the failure of the Legislature to enact any statute therein addressed or referred to, or by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such failure to reenact on such repeal or invalidation of any such statute shall not affect, impair or invalidate the remainder of the said article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the said statute, and the application of such provision with regard to other statutes or in other instances not affected by any such invalid or repealed statute shall not be abrogated or diminished in any way.

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§11-13D-10. Termination of credit, exception for electricity producers, preservation of entitlements.

(a) Except for persons taxable under section two-o, article thirteen of this chapter as described in subsection (b) of this section and persons described in subsection (c) of this section, no credit is available to any taxpayer under this article after December 31, 2002.

(b) Persons taxable under section two-o, article thirteen of this chapter that make eligible investment that qualifies for credit in accordance with the provisions of subsection (e), section three of this article in property used in the business activity taxable under section two-o, article thirteen of this chapter, are entitled to the credit determined under subsection (e), section three of this article, in accordance with the requirements and limitations of this article, without regard to whether such investment is made or credit claimed after December 31, 2002.

(c) Taxpayers who gained entitlement to any tax credit pursuant to the terms of this article prior to January 1, 2003, retain that entitlement, and may apply the credit in due course pursuant to the requirements and limitations of this article until the original ten-year entitlement has been exhausted or otherwise terminated.

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