WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13E

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§11-13E-1. Legislative finding and purpose.

The Legislature finds that production of coal is very important to the economy of this state, and that a sound economy is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in this state, through the construction of new or the expansion or revitalization of existing coal loading facilities, thereby increasing employment and economic development, there is hereby provided a business and occupation tax credit for investment in coal loading facilities.

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§11-13E-2. Definitions.

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

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

(1) "Coal loading facility" means any building or structure specifically designed and solely used to transfer coal from a coal processing or preparation facility, or from a coal storage facility, or both, or from any means of transportation, to any means of rail or barge transportation used to move coal, including such land as is directly associated with and solely used for the coal loading facility, and including any device or combination of machinery and equipment that is directly associated with and solely used for the loading of coal. This definition applies only when the transfer is to any means of rail or barge transportation and specifically excludes the transfer to any other form of transportation. This may include, but is not limited to, the coal loading tipple, conveyors, coal storage facilities, weighing equipment and rail trackage, if they are directly associated with and solely used for the loading of coal. In no event may the eligible investment in a coal loading facility, for purposes of this credit, include the cost of any coal processing, preparation, blending or sizing facility or equipment, or any combination thereof, even though physically a part of the coal loading facility, and even though such coal processing, preparation, blending or sizing facility or equipment, or any combination thereof, is necessary or essential to the loading of commercially usable or marketable coal.

(2) "Eligible taxpayer" means any person subject to tax under article thirteen, thirteen-a or twenty-three of this chapter who purchases real or personal property, or a combination thereof, for the purpose of building or constructing a new or expanded coal loading facility in this state, or who revitalizes an existing coal loading facility located in this state, and upon completion, operates the new or expanded or revitalized coal loading facility: Provided, That on and after July 1, 1987, the phrase "subject to tax under article thirteen of this chapter" shall mean "subject to tax under article thirteen-a or twenty-three of this chapter."

(3) "Revitalization" means capital investment in a coal loading facility located in this state to replace or modernize buildings, structures, equipment, machinery and other tangible personal property directly associated with and solely used in the operation of a coal loading facility, including the acquisition of any real property directly associated with and solely used in the operation of a revitalized coal loading facility.

(4) Subject to subdivision (5) below, "property purchased for a coal loading facility" means real property and improvements thereto and tangible personal property, but only if such real or personal property is constructed or purchased for use as a component part of a new or expanded coal loading facility, or the revitalization of an existing coal loading facility 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

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income tax or corporation net income tax due 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 term of ten years or longer, if used as a component part of a coal loading facility, shall be included within this definition.

(5) "Property purchased for a coal loading facility" shall not include:

(A) Property which qualifies or was qualified for credit under articles thirteen-c or thirteen-d of this chapter;

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

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

(D) Airplanes;

(E) Off-premise transportation equipment;

(F) Property which is primarily used outside this state;

(G) Property purchased prior to April 1, 1983; and

(H) Property which is acquired incident to the purchase of the stock or assets of a taxpayer which property was or had been used by the seller in his business in this state, or which property was previously designated "property purchased for industrial expansion" or "property purchased for industrial revitalization" under article thirteen-d of this chapter and used to qualify for the tax credit provided by either of said articles.

(6) 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.

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§11-13E-3. Amount of credit allowed for coal loading facilities.

(a) There shall be allowed to eligible taxpayers a credit against the business and occupation taxes imposed by article thirteen, thirteen-a or twenty-three of this chapter, for investment in a new or expanded or revitalized coal loading facility. The amount of this credit shall be determined as hereinafter provided in this section.

(b) Pre March 1, 1985 investment. -- For investment in a new or expanded or revitalized coal loading facility made on or after April 1, 1983, and prior to March 1, 1985, the amount of this credit shall be equal to ten percent of the cost of the eligible investment (as determined in section four) made in a coal loading facility and shall reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-a, two-b and two-h of said 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 section two-a of said article thirteen, on the business of producing coal; under section two-b of said article thirteen, on the business of manufacturing, compounding or preparing coal for sale; and under section two-h of said article thirteen, on the activity of loading coal, below fifty percent of the amount which would be imposed for the taxable year in the absence 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 this article and article thirteen-d of this chapter, the total amount of credits allowed under sections two-b and two-h, article thirteen of this chapter, shall not exceed fifty percent of the tax liability under said sections, on manufacturing or manufacturing-service activity.

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

(5) No credit shall be allowed under this subsection for any property purchased for a coal loading facility prior to April 1, 1983.

(c) Post February 28, 1985 investment. -- For investment in a new or expanded or revitalized coal loading facility made on or after March 1, 1985, the amount of the credit shall be equal to ten percent of the cost of eligible investment (as determined in section four) made in a coal loading facility and shall reduce the business and occupation tax imposed under article thirteen of this chapter, subject to the following conditions and limitations:

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(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 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) When in any taxable year the eligible taxpayer is entitled to claim credit computed under two or more subsections of this section, the total amount of all credits allowable under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection.

(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 eligible taxpayer is entitled to claim credit under this article and article thirteen-d 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 under 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 (c) for 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 (c) for any property purchased for a coal loading facility prior to March 1, 1985.

(d) Credit limitation. -- The aggregate amount of credit allowable under this article and article thirteen-d 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 article thirteen-d of this chapter, and the annual exemption provided by section three, article thirteen of this chapter.

(e) Application of credit after June 30, 1987. -- On and after July 1, 1987, the credits allowed under subsections (b), (c), (e) and (f) 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-d, or both, of this chapter.

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§11-13E-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-d, or both, of this chapter.

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§11-13E-3b. 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.

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§11-13E-4. Eligible investment.

(a) General. -- The eligible investment in property purchased for a new or expanded or revitalized coal loading facility shall be the applicable percentage of the cost of each property purchased for the purpose of such coal loading facility, which is placed in service or use in this state by the eligible taxpayer during the taxable year.

(b) Applicable percentage. -- For the purpose 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, and is the period during which the property may reasonably be expected to be useful to the taxpayer as part of a coal loading facility.

(c) Cost. -- For purposes of subsection (a), the cost of each property purchased for a coal loading facility shall be determined under the following rules:

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

(2) Damaged, destroyed or stolen property. -- If property is damaged or destroyed by fire, flood, storm or other casualty or is stolen, 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. Lease renewals, subleases or assignments shall not be considered.

(4) Property purchased for multiple use. -- The cost of property purchased for multiple business use including use as a component part of a coal loading facility business together with some other business or activity not eligible for credit under this article shall be apportioned between such businesses or activities. The amount apportioned to the activity of loading coal shall be considered 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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§11-13E-5. 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 three of this article; or

(2) Ceases to be used in a coal loading facility by the eligible taxpayer, in this state, prior to the end of its useful life, as determined under said section three of this article, 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 three of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state as a coal loading facility of the eligible taxpayer. The taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes, 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 coal loading facility. -- If during any taxable year the eligible taxpayer ceases operation of a coal loading facility in this state, for which credit was allowed under this article, before expiration of the useful life of the property with respect to which tax credit has been allowed under this article, 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 three of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a coal loading facility of the eligible taxpayer. The taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes, 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)."

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§11-13E-6. Transfer of eligible investment to successors.

(a) Mere change in form of business. -- Property shall not be treated as disposed of under section five of this article by reason of a mere change in the form of conducting the business as long as the property is used as or in a coal loading facility in this state and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the coal loading facility or facilities transferred and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

(b) Transfer or sale to successor. -- Property shall not be treated as disposed of under section five by reason of any sale to a successor business which continues to operate the coal loading facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

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§11-13E-7. 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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