WEST VIRGINIA CODE: §11-13EE-11

§11-13EE-11. Recapture of rebate; recapture tax imposed.

(a) *When recapture tax applies*. —

(1) Any person who places machinery and equipment in service or use for purposes of this credit and who fails to use the machinery and equipment for at least 5 years in the production of coal in this state shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when §11-13EE-10 of this article applies. However, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the machinery and equipment, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the machinery and equipment used to qualify for rebate under this article.

(b) *Recapture tax imposed*. — The recapture tax imposed by this subsection is the amount determined as follows. If the taxpayer prematurely removes machinery and equipment placed in service (when considered as a class) from economic service in the taxpayer's coal production activity in this state, the taxpayer shall recapture the amount of rebate claimed under this article for the taxable year, and all preceding taxable years, attributable to the machinery and equipment which has been prematurely removed from service. The amount of tax due under this subsection is an amount equal to the amount of rebate that is recaptured under this subsection.

(c) *Payment of recapture tax*. — The amount of tax recaptured under this section is due and payable on the day the person's annual return is due for the taxable year, in which this section applies, under §11-13A-1 *et seq.* of this code. When the employer is a partnership, limited liability company or S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture tax is imposed under this section.

WV Legislature