WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13EE

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§11-13EE-1. Findings and purpose.

The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in the coal industry in this state and thereby increase economic development, there is hereby provided a coal severance tax rebate.

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§11-13EE-2. Definitions.

(a) *General.* — When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) *Terms defined.* —

(1) "Affiliated group" means one or more chains of corporations, limited liability entities, or partnerships, or any combination thereof, connected through the ownership of stock or ownership interests with a common parent which is a corporation, limited liability entity, or partnership, but only if the common parent owns directly, or indirectly, a controlling interest in each of the members of the group.

(2) "Base period" means the five-year period directly preceding the year the qualifying capital investment in new machinery and equipment was placed into service.

(3) "Base period annual average severance taxes" means the annual average of the State portion of severance taxes paid under §11-13A-3 of this code during the five-year period directly preceding the year the qualifying capital investment in new machinery and equipment was placed into service. The annual average of the state portion of severance taxes is found by taking the cumulative total of the state portion of severance taxes paid from all mines operated within the State by the eligible taxpayer and dividing the aggregate cumulative total of the state portion of severance taxes by five.

(4) "Capital investment in new machinery and equipment" means:

(A) Tangible personal property in the form of machinery and equipment that is purchased on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the machinery or equipment in this state commences on or after the effective date of this article;

(B) Tangible personal property in the form of machinery and equipment that is leased by the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or after the effective date of this article, if the original or first use of the machinery or equipment commences in this state, with the taxpayer, on or after the effective date of this article and the machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes.

(C) Tangible personal property in the form of materials used for infrastructure improvements to real property on or after the effective date of this article and placed in service for direct use in the production of coal, when the original or first use of the materials used for the infrastructure upgrades commences in this state on or after the effective date of this article. Such infrastructure upgrades include, but are not limited to, materials used for construction

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of haul roads or access roads, culverts, belt lines, and ventilation fans; and

(D) Repair or refurbishment costs to tangible personal property directly used in the production of coal that are incurred on or after the effective date of this article, which are capitalized for federal income tax purposes.

(5) "Coal mine" or "mine" includes:

(A) A "surface mine" or "surface mining operation" which means:

(i) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(ii) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities: *Provided*, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting. Surface mining does not include any of the following:

(I) Coal extraction authorized pursuant to a government-financed reclamation contract;

(II) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial or civic use; or

(III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract; and

(B) An "underground mine" which includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one

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or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(6) "Coal mining operation" includes the mine and the coal preparation and processing plant.

(7) "Coal preparation and processing plant" means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

(8) "Coal production" means the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at a coal preparation and processing plant.

(9) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate.

(10) "Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 50 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 50 percent of the voting power of all classes of stock of at least one of the other corporations.

(11) "Controlling interest" means:

(A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all classes of stock of the corporation;

(B) For a partnership, association, trust or other entity other than a limited liability company, more than 50 percent, ownership, directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity;

(C) For a limited liability company, either more than 50 percent ownership, directly or indirectly, of the total membership interest of the limited liability company, or more than 50 percent ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of the limited liability company.

(12) "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.

(13) "Delegate" used in the phrase "or his delegate," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized

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by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(14) "Directly used or consumed in the production of coal" means used or consumed in those activities or operations which constitute an integral and essential part of the production of coal, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the production of coal.

(A) Uses of tangible personal property which constitute direct use or consumption in the production of coal include only:

(i) New machinery and equipment that is depreciable, or amortizable, for federal income tax purposes, that has a useful life of five or more years for federal income tax purposes, and that are directly used in the production of coal in this state;

(ii) Transportation of coal within the coal mine from the coal face or coal deposit to the exterior of the mine or to a point where the extracted coal is transported away from the mine;

(iii) Directly and physically recording the flow of coal during the production of coal including those coal treatment processes specified in §11-13A-4 of this code;

(iv) Safety equipment and apparatus directly used in the production of coal, or to secure the safety of mine personnel is direct use in the production of coal;

(v) Controlling or otherwise regulating atmospheric conditions required for the production of coal;

(vi) Transformers, pumps, rock dusting equipment and other property used to supply electricity or water, or to supply or apply rock dust directly used in the production of coal;

(vii) Storing, removal or transportation of economic waste, including coal gob, resulting from the production of coal;

(viii) Engaging in pollution control or environmental quality or protection activity directly relating to the production of coal; or

(ix) Otherwise using as an integral and essential part of the production of coal.

(B) Uses of tangible personal property which do not constitute direct use or consumption in the production of coal include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

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(iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly used in the production of coal or to secure the safety of mine personnel is direct use in the production of coal when the tangible personal property is depreciable, or amortizable, for federal income tax purposes and has a useful life of five or more years for federal income tax purposes when it is placed in service or use;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration;

(vi) Measuring or determining weight, and ash content, water content and other physical and chemical characteristics of the coal after production;

(vii) An activity or function incidental or convenient to the production of coal, rather than an integral and essential part of these activities.

(15) "Eligible taxpayer" means:

(A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of producing coal for sale, profit or commercial use for at least two years before the capital investment in machinery and equipment is placed in service or use in this state; or

(B) A taxpayer that has experienced a change in business composition through merger, acquisition, split-up, spin-off or other ownership changes or changes in the form of the business organization from limited liability company to C corporation, or partnership, or from one form of business organization to a different form of business organization, may constitute an eligible taxpayer if the entity currently operating in this state was operating in a different form of business organization in this state at least two years before the capital investment in new machinery and equipment is placed in service or use in this state. In the case of business composition change through merger, acquisition, split-up, spin-off or other ownership changes the current business may constitute an eligible taxpayer if at least 50 percent of the business assets of such component were actively and directly used in coal production activity in this state for such two-year period. If less than 50 percent of the assets of the current entity were not actively and directly used in coal production activity in this state for such two-year period, then the current entity resulting from a business composition change through merger, acquisition, split-up, spin-off or other ownership, shall not constitute an eligible taxpayer.

(C) When the rebate applicant is part of a controlled or affiliated group, for purposes of determining the increase in the state portion of severance taxes paid, the increase in coal production tonnage, and the increase in full-time and full-time equivalent employment, the term, "eligible taxpayer" includes all members of the rebate applicant's controlled or affiliated group. Thus, the increase in the state portion of severance taxes is determined by subtracting the base period annual average severance taxes paid by the eligible taxpayer's

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controlled or affiliated group for all coal mined in this state from the state portion of severance taxes paid by the eligible taxpayer's controlled or affiliated group for all coal mined in this state during the tax year for which the rebate is claimed. Likewise, the "eligible taxpayer's" total aggregate production tonnage and total employment figures referenced in §11-13EE-3(c)(1) and (2) are determined by reference to the controlled group or affiliated group's total aggregate production tonnage and total employment numbers across all mines operated by the controlled or affiliated group with in the state.

(16) "Full-time employee" means an employee who is compensated by an annual salary and who works, on average, at least 35 hours per week.

(17) "Full-time equivalent employee" means the quotient obtained by dividing the total number of hours for which hourly employees were compensated for employment over the 12-month period in question by 1,820.

(18) "Original use" means the first use to which the property is put by anyone in this state.

(19) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, operation or venture is carried on, which is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization taxed under Subchapter K of the Internal Revenue Code.

(20) "Person" includes any natural person, corporation, partnership, limited liability company or other business entity.

(21) "Production of coal" means privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use and includes the processing of coal at the coal preparation and processing plant.

(22) "Property" means tangible personal property and is limited to new machinery and equipment that is depreciable or amortizable for federal income tax purposes and that has a useful life of five or more years for federal income tax purposes.

(23) "Property purchased or leased for business expansion" means:

(A) Included property. — Except as provided in subparagraph (B) of this section, the term "property purchased or leased for business expansion" means tangible personal property, but only if the tangible personal property was purchased, or leased and placed in service or use by the taxpayer, for use in West Virginia. This term includes only:

(i) Tangible personal property placed in service or use by the taxpayer on or after the effective date of this article, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code,

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and which has a useful economic life at the time the property is placed in service or use in this state, of five or more years.

(ii) Tangible personal property acquired by written lease having a primary term of five years or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax purposes and that has a useful life of five or more years for federal income purposes when it is placed in service or use, and when the lease commences and was executed by the parties thereto on or after the effective date of this article, if used as a component part of a new or expanded coal mining operation in this state shall be included within this definition.

(iii) Repair or refurbishment costs to tangible personal property directly used in the production of coal that are incurred on or after the effective date of this article, which are capitalized for federal income tax purposes.

(B) *Excluded property.* — The term "property purchased or leased for business expansion" shall not include:

(i) Machinery and equipment owned or leased by the taxpayer and for which credit was taken or is claimed under any other article of this chapter for capital investment in the new machinery and equipment;

(ii) 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;

(iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

(iv) Airplanes;

(v) Off-premise transportation equipment;

(vi) Machinery and equipment that is primarily used outside this state;

(vii) Machinery and equipment that is acquired incident to the purchase of the stock or assets of the seller; and

(viii) Used machinery and equipment.

(C) *Purchase date.* — New machinery and equipment shall be deemed to have been purchased prior to a specified date only if:

(i) The machinery or equipment was owned by the taxpayer prior to the effective date of this article or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the effective date of this article; or

(ii) In the case of leased machinery and equipment, there was a binding written lease or contract to lease identifiable machinery or equipment in effect prior to the effective date of

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this article.

(24) “Purchase” means any acquisition of new machinery or equipment, but only if:

(A) The machinery or equipment is not 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, as defined in §11-24-3 of this code;

(B) The machinery or equipment is not acquired by one component member of a controlled group from another component member of the same controlled group; and

(C) The basis of the machinery or equipment 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 the machinery or equipment in the hands of the person from whom it was acquired; or

(ii) Under Section 1014 (e) of the United States Internal Revenue Code.

(25) “Qualified coal mining activity” means any business or other activity subject to the tax imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use including the treatment process described as mining in §11-13A-4(a)(1) of this code.

(26) “Qualified investment” means capital investment in new machinery and equipment directly used in the production of coal in this state that is depreciable, or amortizable, for federal income tax purposes and has a useful life for federal income tax purposes of five or more years when it is placed in service or use in this state.

(27) “Rebate” means the amount of rebate allowable under §11-13EE-4 of this article.

(28) “Related person” means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this subdivision, the term “control,” with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote.

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"Control," with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267 (c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(29) "State portion of severance taxes paid" means the portion of severance taxes due under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

(30) "Tangible personal property" means and is limited to new machinery and equipment that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of five or more years for federal income tax purposes when it is placed in service or use in this state.

(31) "Taxpayer" means any person exercising the privilege of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use coal, which privilege is taxable under §11-13A-3 of this code.

(32) "This code" means the Code of West Virginia, 1931, as amended.

(33) "This state" means the State of West Virginia.

(34) "United States Internal Revenue Code" or "Internal Revenue Code" means the Internal Revenue Code as defined in §11-24-3 of this code

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§11-13EE-3. Rebate allowable.

(a) *Rebate allowable*. — Eligible taxpayers shall be allowed a rebate against a portion of severance taxes imposed by §11-13A-3 of this code on the privilege of engaging in the production of coal in an amount not to exceed 35 percent of the eligible taxpayer's qualified investment in tangible personal property purchased or leased for business expansion, subject to the limitations in subsections (b) and (c).

(b) *Maximum rebate limited to 80 percent of increase above base period severance taxes. —* The maximum amount of rebate allowable for any given tax year is limited to an amount not to exceed 80 percent of the increase in the state portion of severance taxes paid for coal mined at the specific mine where the qualified investment is made when compared to the state portion of severance taxes paid for coal mined at the specific mine where the qualified investment is made during the base period.

(c) *Additional Limiting Factors. —*

(1) In order to qualify for any severance tax rebate under this article in a given rebate year, the eligible taxpayer must meet the following requirements:

(A) No credit shall be allowed unless the aggregate total coal production tonnage from all mines operated by the eligible taxpayer in this state during the year for which the rebate or rebate carryover is claimed has increased above the annual average aggregate total coal production tonnage from all mines operated by the eligible taxpayer during the base period; and

(B) No credit shall be allowed unless the aggregate total number of full-time employees, along with full-time equivalent employees, at all mines operated by the eligible taxpayer in this state during the rebate year has increased above the annual average aggregate total number of full-time employees, along with full-time equivalent employees, at all mines operated by the eligible taxpayer in this state during the base period.

(2) The increase in the state portion of severance taxes paid against which the rebate may be taken is further limited by a factor, the numerator of which is the increase in coal production, measured in tons produced, at all mines operated by the taxpayer, the denominator of which is the increase in coal production, measured in tons produced, at the specific mine where investment is made: *Provided*, That in no instance may the factor exceed one. The increase in coal production is determined by subtracting the base period coal production, measured in tons produced, from the coal production, measured in tons produced, during the tax year for which the rebate is claimed.

(d) When the eligible taxpayer has produced coal in this state for two years before making the capital investment in new machinery and equipment, but was not in business during a full five-year base period, then the eligible taxpayer's base severance tax amount shall be the amount of state severance tax due under §11-13A-3 of this code on coal produced in this

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state during the most recent tax year prior to making the investment.

(e) No rebate shall be allowed under this article when credit is claimed under any other article of this chapter for capital investment in the new machinery and equipment. No credit shall be allowed under any other article of this chapter when rebate is allowed under this article for the capital investment in new machinery and equipment.

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§11-13EE-4. Information required to determine amount of rebate allowable.

(a) A taxpayer claiming rebate under this article who operates more than one coal mine in this state shall provide a schedule with the annual severance tax return filed under §11-13A-1 *et seq.* of this code that shows, for each coal mine, the number of tons of coal produced and the gross value of the coal produced at each mine during the taxable year.

(b) When a taxpayer claiming rebate under this article is a member of an affiliated or controlled group, as the case may be, that operates more than one coal mine in this state the group shall provide a schedule with its annual severance tax return filed under §11-13A-1 *et seq.* of this code for the taxable year that shows for each coal mine operated in this state by the affiliated or controlled group, as the case may be, the number of tons of coal produced at each mine and the gross value of the coal produced at each mine during the taxable year.

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§11-13EE-5. Claim for rebate.

(a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim under this article for rebate of up to 80 percent of the increase in the state portion of the severance taxes paid under §11-13A-3 of this code.

(b) When the amount of rebate claimed exceeds 80 percent of the additional state severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate amount may be carried forward and refunded by the Tax Commissioner after severance taxes due in subsequent years are paid: *Provided,* That the carryforward period may not exceed 10 years from the date the capital investment in new machinery and equipment is placed in service or use in this state.

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§11-13EE-6. Suspension of payment of rebate.

(a) No rebate may be paid under this article when the taxpayer, or any member of the taxpayer's combined or affiliated group, as the case may be, is delinquent in the payment of severance taxes imposed pursuant to §11-13A-3 of this code, and any local, state or federal tax or fee, until such time as the delinquency is cured.

(b) For purposes of this section, a taxpayer is not delinquent if the taxpayer is contesting an assessment in the Office of Tax Appeals or in any court of this state, or of the appropriate federal agency or court, or is complying with the terms of any payment plan agreement with the Tax Commissioner.

(c) In the case of a taxpayer that files a combined tax return as a member of a unitary group, no rebate under this article that is earned by one member of the combined group, but not fully used by or allowed to that member, may be claimed, in whole or in part, by another member of the group.

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§11-13EE-7. Burden of proof; application required; failure to make timely application.

(a) *Burden of proof*. — The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(b) *Application for rebate required*.

(1) Notwithstanding any provision of this article to the contrary, no rebate shall be paid under this article for any capital investment in new machinery and equipment placed in service or use until the person asserting a claim for the allowance of rebate under this article makes written application to the Tax Commissioner for allowance of rebate as provided in this section.

(2) An application for rebate shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the severance tax return, determined by including any authorized extension of time for filing the return, for the taxable year in which the machinery and equipment to which the rebate relates is placed in service or use and all information required by the form is provided.

(3) A separate application for rebate is required for each taxable year during which the taxpayer places new machinery and equipment in service or use in a mine or coal preparation and processing facility in this state.

(c) *Failure to make timely application*. — The failure to timely apply for the rebate results in the forfeiture of 25 percent of the rebate amount otherwise allowable under this article. This penalty applies annually until the application is filed.

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§11-13EE-8. Identification of capital investment property.

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified investment property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its useful life for federal income tax purposes;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and

(6) The date it was disposed of or otherwise ceased to be qualified investment property.

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§11-13EE-9. Failure to keep records of investment credit property.

A taxpayer who does not keep the records required for identification of investment credit property is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any machinery and equipment that the taxpayer cannot establish was still on hand, in this state, at the end of that year.

(2) If a taxpayer cannot establish when capital investment in new machinery and equipment property was reported for purposes of claiming this credit during the taxable year the machinery or equipment was placed in service or use, the taxpayer is treated as having placed it in service or use in the most recent prior taxable year in which similar machinery and equipment was placed in service or use, unless the taxpayer can establish that the machinery and equipment placed in service or use in the most recent taxable year is still on hand. In that event, the taxpayer will be treated as having placed the returned machinery and equipment in service or use in the next most recent taxable year.

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§11-13EE-10. Transfer of qualified investment property to successors.

(a) *Mere change in form of business*. — Machinery and equipment may not be treated as disposed of under §11-13EE-9 of this article, by reason of a mere change in the form of conducting the business as long as the machinery and equipment is retained in the successor business in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the rebate amount of credit still available with respect to the machinery and equipment transferred, and the transferor business may not be required to redetermine the amount of rebate allowed in earlier years.

(b) *Transfer or sale to successor*. — Machinery and equipment is not treated as disposed of under §11-13EE-11 of this article by reason of any transfer or sale to a successor business which continues to operate machinery and equipment at the mine in this state at which the machinery and equipment was first placed in service or use. Upon transfer or sale, the successor shall acquire the amount of rebate, if any, that remains available under this article, and the transferor business is not required to redetermine the amount of rebate allowed in earlier years.

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§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.

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§11-13EE-12. Interpretation and construction.

(a) No inference, implication or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection or paragraph of this article.

(b) The provisions of this article shall be reasonably construed in order to effectuate the legislative intent recited in §11-13EE-1 of this article.

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§11-13EE-13. Rebate report.

(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by July 1, 2022, and on the first day of July of each year thereafter, a report detailing the amount of rebate claimed pursuant to this article. The report is to include the amount of rebate claimed against the severance tax imposed pursuant to §11-13A-3 of this code.

(b) Taxpayers claiming the rebate shall provide the information the Tax Commissioner may require to prepare the report: *Provided*, That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

(c) The Tax Commissioner shall also identify any issues the Tax Commissioner has in the administration and enforcement of this rebate and make suggestions the Commissioner may have for improving the credit or the administration of the rebate.

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§11-13EE-14. Rules.

The Tax Commissioner may promulgate such interpretive, legislative and procedural rules as the Commissioner deems to be useful or necessary to carry out the purpose of this article and to implement the intent of the Legislature. The tax commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2020. All rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this code.

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§11-13EE-15. Severability.

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

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

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§11-13EE-16. Effective date.

The rebate allowed by this article is allowed for capital investment in new machinery and equipment placed in service or use in this state on or after July 1, 2019. As the changes in sections §11-13EE-2, §11-13EE-3, and §11-13EE-5 are intended to clarify the original intent and meaning of this article, the amendments to this article made during the 2021 legislative session are retroactive and shall be applied to any rebate claims made for all qualified investments placed into service after the original effective date of this article (July 1, 2019) for which no rebate claim has been previously made.

WV Legislature