WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13HH

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§11-13HH-1. Short title.

This article shall be known and cited as the "West Virginia Natural Gas Liquids Property Tax Adjustment Act."

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§11-13HH-2. Definitions.

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

(b) *Terms defined.* –

"Affiliate" means and includes:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

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

"Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the Tax Commissioner's delegate.

"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 which entitles its owner to vote. "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 shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the United States Internal Revenue Code: *Provided,* That paragraph (3), Section 267(c) of the United States Internal Revenue Code does not apply.

"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.

"Delegate" means, when used in reference to the Tax Commissioner, any officer or employee of the Tax Division of the Department of Revenue duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

"Eligible taxpayer" means any natural gas liquids storer or natural gas liquids transporter that is subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

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"Eligible taxpayer" also means and includes those members of an affiliated group of taxpayers engaged in a unitary business, in which one or more members of the affiliated group is a person subject to the tax imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code. Application of the credit against the taxes is limited to the single entity, from among the affiliated group of taxpayers, that earned the credit. Application of the credit against tax is limited to that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group or applied, in whole or in part, against the total income of the combined group.

"Natural gas liquids" or "NGLs" means hydrocarbons removed from a hydrocarbon stream consisting primarily of natural gas (methane) by condensation, cryogenic cooling or other method and maintained in a liquid state for storage, transportation, use in manufacturing or consumption, including, but not limited to, ethane, propane, butane, isobutane and pentanes, and derivatives thereof including, but not limited to, ethylene and propylene, but do not include natural gas which may include some NGLs as part of the gas stream.

"Natural gas liquids inventory and equipment" means, and is limited to, natural gas liquids equipment used in the transport or storage of NGLs by a natural gas liquids transporter or natural gas liquids storer.

"Natural gas liquids transporter" means a person who owns or operates pipeline facilities used for the transportation and delivery of NGLs for storage, use in manufacturing or consumption, but does not include pipelines used for the transportation of natural gas that may include some NGLs as part of the gas stream.

"Natural gas liquids storer" means a person who owns or operates one or more underground facilities designed and developed for the receipt, storage and subsequent delivery of NGLs for use in manufacturing or consumption.

"Natural person" or "individual" means a human being.

"Partnership" and "partner" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in a syndicate, group, pool, joint venture or organization.

"Person" means and includes any natural person, corporation, limited liability company or partnership.

"Taxpayer" means any person subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

"Tax year" or "taxable year" means the tax year of the taxpayer for federal income tax

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purposes.

"Unitary business" means a unitary business as defined in §11-24-3a of this code.

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§11-13HH-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the taxes imposed under §11-21-1 et seq. or §11-24-1 et seq. of this code, as determined under this article.

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§11-13HH-4. Amount of credit allowed.

(a) Credit allowed. – Eligible taxpayers are allowed a credit against the tax imposed under §11-21-1 et seq. or §11-24-1 et seq. of this code, the application of which and the amount of which shall be determined as provided in this article.

(b) Amount of credit. – The amount of credit allowed to the eligible taxpayer is the amount of West Virginia ad valorem property tax paid on the value of inventory and equipment of the eligible taxpayer during the personal income tax year and corporate net income tax year, as applicable.

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§11-13HH-5. Application of annual credit allowance.

(a) Application of credit against personal income tax or corporate net income tax. – The amount of the credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code.

(b) *Carry forward credit allowed*. – Any credit remaining after application of the credit against the tax liabilities specified in subsection (a) of this section for the current taxable year does not carry back to any prior taxable year, but is carried forward to a subsequent taxable year for up to three taxable years. The credit allowed under this article shall be applied after application of all other applicable tax credits allowed for the taxable year against the taxes imposed by §11-21-1 *et seq.* of this code and after application of all other applicable tax credits allowed for the taxable year against the taxes imposed by §11-24-1 *et seq.* of this code.

(c) Annual schedule. – For purposes of asserting the credit against tax, the taxpayer must prepare and file an annual schedule showing the amount of tax paid for the taxable year and the amount of credit allowed under this article. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

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§11-13HH-6. Availability of credit to successors.

(a) Transfer or sale of assets. –

(1) Where there has been a transfer or sale of the business assets of an eligible taxpayer to a successor which subsequent to the transfer constitutes an eligible taxpayer as defined in this article and which remains subject to the taxes prescribed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, the successor eligible taxpayer is entitled to the credit allowed under this article: *Provided,* That the successor taxpayer otherwise remains in compliance with the requirements of this article for entitlement to the credit.

(2) For any taxable year during which a transfer, or sale of the business assets of an eligible taxpayer to a successor eligible taxpayer under this section occurs, or a merger occurs pursuant to which credit is allowed under this article, the credit allowed under this article shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each taxpayer owned the transferred business assets.

(b) *Stock purchases.* – Where a corporation which is an eligible taxpayer entitled to the credit allowed under this article is purchased through a stock purchase by a new owner and remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to the credit allowed under this article will not be affected by the ownership change: *Provided*, That the corporation otherwise remains in compliance with the requirements of this article for entitlement to the credit.

(c) *Mergers.* –

(1) Where a corporation or other entity which is an eligible taxpayer entitled to the credit allowed under this article is merged with another corporation or entity, the surviving corporation or entity is entitled to the credit to which the predecessor eligible taxpayer was originally entitled: *Provided*, That the surviving corporation or entity otherwise complies with the provisions of this article.

(2) The amount of credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each owned the transferred business assets.

(d) No provision of this section or of this article may be construed to allow sales or other transfers of the tax credit allowed under this article. The credit allowed under this article can be transferred only in circumstances where there is a valid successorship as described under this section.

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§11-13HH-7. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person or entity has taken the credit against tax allowed under this article and was not entitled to take the credit, then the credit improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in §11-10-17 of this code and such other penalties and additions to tax as may be applicable pursuant to the provisions of §11-10-1 et seq. of this code.

(b) Notwithstanding the provisions of §11-10-1 *et seq.* of this code to the contrary, penalties and additions to tax imposed under that article may be waived at the discretion of the Tax Commissioner: *Provided,* That interest is not subject to waiver.

(c) Notwithstanding the provisions of §11-10-1 et seq. of this code to the contrary, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner is five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.

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§11-13HH-8. Report on credit.

(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by July 1, 2022, and on July 1, of each year thereafter, a report detailing the amount of credit claimed pursuant to this article. The report is to include the amount of credit claimed against the personal income tax and the amount of credit claimed against the corporate net income tax.

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

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§11-13HH-9. Effective date and expiration date.

(a) This article shall be effective for corporate net income tax years and personal income tax years beginning on or after July 1, 2020.

(b) This article shall expire and have no further force or effect for all tax years which begin on or after July 1, 2030, and all accrued but unused credits shall be forfeited upon expiration of this article.

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§11-13HH-10. Rule-making.

In order to effectuate the purposes of this article, the Tax Commissioner may promulgate legislative rules, including emergency rules, in accordance with §29A-3-1 et seq. of this code.

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