WEST VIRGINIA CODE: §11-13KK-11

§11-13KK-11. 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 §11-13KK-1 *et seq*. of this code.

(b) *Application for credit required*. —

(1) *Application required*. — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under §11-13KK-1 *et seq*. of this code for any qualified investment property placed in service or use until the person asserting a claim for the allowance of credit under this article makes written application to the commissioner for allowance of credit as provided in this subsection. An application for credit shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code for the taxable year in which the property to which the credit relates is placed in service or use and all information required by the form shall be provided.

(2) *Failure to make timely application*. — The failure to timely apply for the credit results in the forfeiture of 50 percent of the annual credit allowance otherwise allowable under §11-13KK-1 *et seq*. of this code. This penalty applies annually until the application is filed.

WV Legislature