WEST VIRGINIA CODE: §11-13KK-4

§11-13KK-4. Application of annual credit allowance.

(a) The amount determined under §11-13KK-3 is allowed as a credit against 100 percent of that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment and applied as provided in subsections (b) and (c), both inclusive of this section, and in that order.

(b) *Corporation net income taxes*. —

(1) That portion of the allowable credit attributable to qualified investment in a small arms and ammunition manufacturing facility may be applied to reduce the taxes imposed by §11-24-1 *et seq*. of this code for the taxable year as determined before application of allowable credits against tax.

(2) If the taxes due under §11-24-1 *et seq*. of this code, as determined before application of allowable credits against tax, are not solely attributable to and the direct result of the taxpayer's qualified investment in a small arms and ammunition manufacturing business, the amount of the taxes that is attributable are determined by multiplying the amount of taxes due under §11-24-1 *et seq*. of this code for the taxable year, as determined before application of allowable credits against tax, by a fraction, the numerator of which is all wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(c) *Personal income taxes*. —

(1) If the person making the qualified investment in a small arms and ammunition manufacturing facility is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code, a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit is allowed as a credit against the taxes imposed by §11-21-1 *et seq*. of this code on the income from small arms and ammunition manufacturing facility, or on income of a sole proprietor attributable to the small arms and ammunition manufacturing facility.

(2) Electing small business corporations, limited liability companies treated as partnerships for federal income tax purposes, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under §11-21-1 *et seq*. of this code, as determined before application of allowable credits against tax, that is attributable to business, is not solely

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attributable to and the direct result of the qualified investment of the electing small business corporation, limited liability company treated as a partnership for federal income tax purposes, other unincorporated organization, or sole proprietorship, the amount of the taxes that are so attributable are determined by multiplying the amount of taxes due under §11-21-1 *et seq*. of this code, as determined before application of allowable credits against tax that is attributable to business by a fraction, the numerator of which is all wages, salaries, and other compensation paid during the taxable year to all employees of the electing small business corporation, limited liability company, partnership, other unincorporated organization, or sole proprietorship employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer.

(4) No credit is allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq*. of this code.

(d) If the wages, salaries, and other compensation fraction formula provisions of subsections (b) and (c) of this section, inclusive, do not fairly represent the taxes solely attributable to and the direct result of qualified investment of the taxpayer the Tax Commissioner may require, in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

(1) Separate accounting or identification;

(2) Adjustment to the wages, salaries, and other compensation fraction formula to reflect all components of the tax liability;

(3) The inclusion of one or more additional factors that will fairly represent the taxes solely attributable to and the direct result of the qualified investment of the taxpayer and all other project participants in the businesses or other activities subject to tax; or

(4) The employment of any other method to effectuate an equitable attribution of the taxes. In order to effectuate the purposes of this subsection, the Tax Commissioner may propose for promulgation rules, including emergency rules, in accordance with §29A-3-1 *et seq*. of this code.

(e) *Unused credit.* — If any credit remains after application of subsection (a) of this section, the amount thereof is carried forward to each ensuing tax year until used or until the expiration of the tenth taxable year subsequent to the end of the initial 10-year credit application period. If any unused credit remains after the 20th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

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