WEST VIRGINIA CODE: §11-13L-8

§11-13L-8. 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 section seventeen, article ten of this chapter and a ten percent penalty and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(b) Recapture for jobs loss. --

(1) In any tax year when the number of qualified employees employed by the taxpayer, as determined under section six of this article, is less than sixty percent of the number of qualified employees employed by the taxpayer on January 1, 1996, as adjusted, in addition to the loss of credit allowed under this article for the tax year, credit recapture shall apply, and the tax payer shall return to the state an amount of tax determined by subtracting the number of qualified employees for such tax year from sixty percent of the number of qualified employees employed by the taxpayer as of January 1, one 1996, as adjusted, and multiplying the difference by $1,000. An amended return shall be filed for the prior tax year for which credit recapture is required. Any additional taxes due under this chapter shall be remitted with the amended return filed with the Tax Commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(2) Notwithstanding the provisions of article ten of this chapter, penalties and additions to tax imposed under article ten of this chapter and the ten percent penalty imposed under this section may be waived at the discretion of the Tax Commissioner. However, interest is not subject to waiver.

(c) Notwithstanding the provisions of article ten of this chapter, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner shall be 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.

WV Legislature