WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13L

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§11-13L-1. Short title.

This article shall be known and cited as the "Natural Gas Industry Jobs Retention Act".

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§11-13L-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.

(1) "Affiliate" means and includes all persons, as defined in this section, which are affiliates of each other when either directly or indirectly:

(A) One person controls or has the power to control the other, or

(B) A third party or third parties control or have the power to control two persons, the two thus being affiliates. In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(2) "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia, or the Tax Commissioner's delegate.

(3) "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.

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

(5) "Eligible taxpayer" means any person subject to the tax prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on January 1, 1996. "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 prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on January 1,1996. Affiliates not engaged in the unitary business with an affiliated group member subject to the tax prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on January 1, 1996, do not qualify as eligible taxpayers.

(6) "Full-time employee" means an employee who works, is on a work site, on paid vacation leave or other paid leave, in the aggregate, at least one thousand five hundred hours per year.

(7) "Natural person" or "individual" means a human being.

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(8) "New job" means a full-time employment position held by a West Virginia resident domiciled in this state which did not exist in this state with any employer prior to the taxpayer's current taxable year.

(9) "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.

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

(11) "Qualified employee" means a West Virginia resident domiciled in this state who is a full-time employee of a taxpayer.

(12) "Related entity", "related person", "entity related to" or "person related to" means:

(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.

For purposes of this article, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty 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 fifty 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, as amended: Provided, That paragraph (3) of section 267(c) of the United States Internal Revenue Code shall not apply.

(13) "Tax year" or "taxable year" means the tax year of the taxpayer for federal income tax purposes.

(14) "Taxpayer" means any person subject to the tax prescribed by section two-e, article thirteen of this chapter.

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(15) "Unitary business" means a business structured so that the operations of the business segments of a corporation, including segments consisting of members of an affiliated group of commonly owned and controlled corporations or entities, contribute to or depend on each other in such a way as to result in functional integration between business segments in engaging in the natural gas business. "Unitary natural gas business" includes business segments involved in the exploration, development, purchase, transportation, storage, marketing, distribution and sale of natural gas and distribution and sale of heavier hydrocarbons, such as propane, and such business segments or affiliates which provide services supporting any of the foregoing natural gas business activities. Where the taxpayer asserts that business segments are unitary, the taxpayer has the burden of proof.

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

There shall be allowed to every eligible taxpayer a credit against the tax prescribed under section two-e, article thirteen of this chapter, as determined under this article.

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§11-13L-4. Amount of credit allowed.

(a) Credit allowed. -- Eligible taxpayers shall be allowed a credit against the tax prescribed by section two-e, article thirteen of this chapter, the application of which and the amount of which shall be determined as provided in this article.

(b) Amount of credit. --

(1) The amount of credit allowed to the eligible taxpayer is $1,000 multiplied by the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article: Provided, That if the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article, is less than sixty percent of the number of qualified employees employed by the eligible taxpayer on January 1, 1996, as adjusted under subdivision (2) of this subsection, then no credit shall be allowed for the taxable year.

(2) For purposes of this section, the Tax Commissioner shall adjust the number of qualified employees determined to be in place on January 1, 1996, to reflect a sale, transfer or spin off of an affiliate or segment of the business of an eligible taxpayer in circumstances where the sale, transfer or spin off does not result in a decrease in the number of jobs in place in this state. A sale, transfer or spin off that results in no loss of jobs in this state shall not cause the eligible taxpayer to lose entitlement to the credit in circumstances where the sixty percent limitation set forth in this section would otherwise operate to cause a disallowance of the credit. This subsection shall not be construed to prevent adjustment of the amount of credit allowed to the eligible taxpayer based upon the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article.

(3) For any taxable year subsequent to a taxable year when credit was disallowed by reason of employment falling below the sixty percent level, an eligible taxpayer may be allowed credit under this article if the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article, has increased to a number equal to or greater than sixty percent of the number of qualified employees employed by the eligible taxpayer on January 1, 1996.

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

(a) Application of credit. -- The amount of credit allowed shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year prescribed by section two-e, article thirteen of this chapter. Any credit remaining after application of the credit against the tax liabilities for the current taxable year is forfeited and shall not carry back to any prior taxable year and shall not carry forward to any subsequent taxable year. The credit allowed under this article shall be applied after application of all other applicable tax credits allowed for the taxable year against the tax prescribed by section two-e, article thirteen of this chapter.

(b) For purposes of asserting the credit against tax, the taxpayer shall prepare and file with the monthly tax return filed under section two-e, article thirteen of this chapter for the last month of the taxpayer's tax year, 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. The credit allowed under this article shall be allowed against a pro rata portion of monthly tax liabilities of the qualified taxpayer under section two-e, article thirteen of this chapter, in accordance with the procedures and requirements prescribed by the Tax Commissioner. The annual total tax liability and total tax credit allowed under this article are subject to adjustment and reconciliation pursuant to the filing of the annual schedule. The taxpayer shall pay any tax due or claim any credit allowable for the taxable year and shown on the annual schedule, with the monthly tax return filed under section two-e, article thirteen of this chapter for the last month of the taxpayer's tax year.

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§11-13L-6. Annual computation of the number of jobs held by qualified employees.

(a) The taxpayer shall determine the number of jobs held by qualified employees of the taxpayer in the taxable year by calculating the average number of qualified employees holding jobs for each month of the taxable year by averaging the beginning and ending monthly employment of qualified employees, then totalling the monthly averages and dividing that total by twelve.

(b) If, as a result of business growth, merger, expansion or any other growth in the number of jobs in place, the number of full-time employees employed by a taxpayer in the taxable year exceeds (1) the number of qualified employees employed by the taxpayer on January 1, 1996, or (2) the number of qualified employees employed by the taxpayer during the prior taxable year, then only that portion of the increase in the number of full-time jobs that results from the creation of new jobs, as defined in section two of this article, shall be counted, along with qualified jobs in place from the prior taxable year, as part of the total number of qualified jobs in place for the taxable year. Preexisting jobs carried over from a corporation or other entity merged with the taxpayer, and not reflective of a true increase in the number of jobs in West Virginia, or preexisting jobs formerly in place with a contract service provider which are taken over or supplanted by the internal operations of the taxpayer, or any other increase in the count of jobs in place with a taxpayer which is not reflective of new jobs, as defined in section two of this article, shall not count as qualified jobs for purposes of the credit allowed under this article.

(c) The Tax Commissioner may prescribe alternative methods for determining the number of jobs held by qualified employees in place in the taxable year upon a finding by the Tax Commissioner that an alternative method is appropriate for ascertaining an accurate and realistic determination of jobs held by qualified employees in the taxable year. For purposes of prescribing alternative methods, the Tax Commissioner may require the deduction or inclusion of jobs in place with contract service providers that provide or at any time provided any service to any eligible taxpayer or to any member of the affiliated group related to any eligible taxpayer or to any one or more entities related to the eligible taxpayer: Provided, That deduction, or inclusion of those jobs shall only pertain to jobs held by employees of the contract service provider that are attributable or that were formerly attributable to the service provided by the contract service provider to the taxpayer. The Tax Commissioner may require any deconsolidation of any filing entity, or may require an alternative method based on separate accounting, unitary combination, combination of the affiliated group or combination of the taxpayer and one or more entities related to the taxpayer, or any other method determined by the Tax Commissioner to be appropriate for ascertaining an accurate and realistic determination of jobs held by qualified employees in the taxable year.

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§11-13L-7. Availability of credit to successors.

(a) (1) Where there has been a transfer or sale of the business assets of an eligible taxpayer to a successor taxpayer which continues to operate the business in this state, and remains subject to the tax prescribed under section two-e, article thirteen of this chapter, the successor 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 taxpayer under this section occurs, or a merger allowed under this section occurs, the credit allowed under this article shall be apportioned between the predecessor eligible taxpayer and the successor taxpayer based on the number of days during the taxable year that each taxpayer acted as the legal employer of qualified employees upon which the credit allowed under this article is based and the number of days during the taxable year that each taxpayer owned the business assets transferred.

(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.

(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 shall be entitled to the credit to which the predecessor eligible taxpayer was originally entitled only if 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 taxpayer acted as the legal employer of qualified employees upon which the credit allowed under this article is based and the number of days during the tax year that each owned the transferred business assets.

(d) No provision of this section or of this article shall 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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§11-13L-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.

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§11-13L-9. Effective date.

This article shall be effective for tax years beginning on or after October 1, 1996.

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