WEST VIRGINIA CODE: §11-13LL-4

§11-13LL-4. Amount of qualified labor intensive heavy industrial manufacturing project tax credit allowed for manufacturing investment.

(a) *Credit allowed*. — There is allowed or allowable to eligible taxpayers and to persons described in subdivision (4), subsection (b) of this section a credit against the taxes imposed by §11-21-1 *et seq.* and §11-24-1-1 *et seq.* of this code.

(b) *Amount of credit allowable*. — The amount of allowable credit under this article is equal to 50 percent of the qualified manufacturing investment, as determined in §11-13LL-5 of this code, for any eligible certificate holder at the time of certification and thereafter for subsequent qualified manufacturing investment made in this state in excess of the amount of the certification. This credit shall reduce the personal income tax imposed under §11-21-1 *et seq.* of this code and the corporation net income tax imposed under §11-24-1 *et seq.* of this code and for any eligible certificate holder, subject to the following conditions and limitations:

(1) The amount of credit allowable for any eligible certificate holder is applied as utilized pursuant to subdivisions (2), (3), and (4) of this subsection (b) and any unused credit may be carried forward to subsequent taxable years until the credit is exhausted;

(2) *Corporation net income tax*. —

The credit is applied to reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code (determined after application of §11-13Y-1 *et seq.* of this code and any other allowable credits against tax) or any similar tax, including, but not limited to, local or foreign income, alternative, minimum, accumulated earnings, personal holding company, franchise, capital stock, profits, windfall profits, or gross receipts tax to zero. The amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code or any similar tax, including, but not limited to, local or foreign income, alternative, minimum, accumulated earnings, personal holding company, franchise, capital stock, profits, windfall profits, or gross receipts tax below zero. Notwithstanding §11-24-13a(g) and §11-24-13c(b)(2) of this code or any other provisions under this code, credit earned by one member of a combined group, but not fully used by that member, may be used, in whole or in part, by another member of the combined group to reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code or any similar tax, including, but not limited to, local or foreign income, alternative, minimum, accumulated earnings, personal holding company, franchise, capital stock, profits, windfall profits, or gross receipts tax to zero;

(3) *Flow-through entities*. —

(A) If the eligible taxpayer is a flow-through entity, then any unused credit (after application of subdivision (2) of this subsection) is allowed or allowable as a credit against the taxes

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imposed by §11-24-1 *et seq.* of this code on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-24-1 *et seq.* of this code that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit;

(B) For eligible certificate holders the amount of annual credit allowed or allowable may reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, to zero percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes as determined after application of §11-13Y-1 *et seq.* of this code any other allowable credits against tax;

(C) Flow-through entities shall allocate any unused credit after application of subdivisions (2) and, (3) of this subsection among their owners in the same manner as profits and losses are allocated for the taxable year; and

(4) *Personal income tax* – The tax credit authorized by this article may be applied against the tax imposed under §11-21-1 *et seq.* of this code, on a sole proprietor who is eligible certificate holder, or on flow-through income of an individual partner, owner, interest holder or S Corporation shareholder, which is net income from an eligible certificate holder directly and solely derived from the qualified labor intensive heavy industrial manufacturing project. Annual credit allowed will not reduce the tax imposed under §11-21-1 *et seq.* of this code on such flow-through income below zero.

(c) Application for credit required.

(1) *Application required*. — Prior to making written application to the Tax Commissioner, an eligible certificate holder may begin claiming credits pursuant to this article. An eligible certificate holder shall file an application with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq.* or §11-24-1-1 *et seq.* of this code for the taxable year in which the property to which the credit relates is placed in service or use.

(2) *Failure to file*. — The failure to timely apply the application for credit under this section results in forfeiture of five percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.

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