WEST VIRGINIA CODE: §11-13MM-5

§11-13MM-5. Small business property tax adjustment credit.

(a) Credit allowed. — There shall be allowed to every eligible small business taxpayer a credit, as determined under this section, against the tax imposed under §11-21-1 *et seq*. of this code, or against the tax imposed under §11-24-1 *et seq*. of this code, as applicable.

(b) Definitions – The following definitions apply to this section:

(1) "Aggregate appraised value" means the true and actual value of all property in the state owned by the eligible taxpayer including the true and actual value of all property of any related entity;

(2) "Related entity" 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 section, "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.

(3) "Small business" means a business with personal property located in this state with an aggregate appraised value of $1 million or less; *Provided*, That, for the purposes of this section, "small business" does not include any person holding a working interest in any oil, natural gas, or natural gas liquid producing property or any public service company that is centrally assessed by the state for property tax purposes.

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(c) Amount of credit. — The amount of credit allowed pursuant to this article to the eligible small business taxpayer is 50% of the amount of West Virginia ad valorem property tax due and owing and timely paid to a county sheriff by the eligible taxpayer on personal property, as that term is defined in this article: *Provided*, That in no case shall any credit be allowed under this article for any untimely ad valorem property tax paid, or any payment of delinquent ad valorem property tax, or payment of "back tax" ad valorem property taxes.

(d) Application of credit against personal income tax and corporation net income tax. – The amount of credit determined under this section is allowed as a credit against 100 percent of that portion of the taxpayer's state income tax liability and applied as provided in subsections (1) and (2), and in that order.

(1) Corporation net income taxes. — If the eligible taxpayer is subject to the corporation net income tax imposed by §11-24-1 *et seq*. of this code, the amount of credit allowed shall be taken against the corporation net income tax liability of the eligible taxpayer for the current corporation net income tax taxable year.

(2) Personal income taxes. — If the small business taxpayer 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.

(3) 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.

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

(e) Refundable portion of annual credit allowance. – If the annual tax credit allowed under this article exceeds the amount of personal income tax or corporation net income tax, as applicable, subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the excess amount as a refundable tax credit.

(f) Annual schedule. — The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section. For purposes of asserting the credit against tax, the taxpayer shall prepare and file an annual schedule showing the amount of personal income tax paid for the taxable year, and the amount of property tax paid on the personal property subject to ad valorem property taxation pursuant to this chapter and pursuant to Article X of the Constitution of this State, as applicable for the taxable year, and the amount of credit allowed pursuant to this article. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

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