WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13MM

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§11-13MM-1. Findings and Purpose

(a) This article shall be known and cited as the West Virginia Property Tax Adjustment Act.

(b) The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in business and industry in this state and thereby increase economic development, there is hereby provided certain tax credits against the taxes imposed under §11-21-1 *et seq*. of this code, or against the tax imposed under §11-24-1 *et seq*. of this code based upon the amount of property tax timely paid on certain property subject to ad valorem property taxation.

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§11-13MM-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) "Ad valorem property tax" means and is limited to the West Virginia ad valorem property tax.

(2) "Business" means any activity taxable under article §11-12-1 *et seq*. of this code, which is engaged in by any person in this State.

(3) "Disabled veteran taxpayer" means a person given an honorable discharge from any branch of the armed services of the United States and has been rated as having a 90 percent or greater service-connected disability by the United States Department of Veterans Affairs or meets the eligibility requirements for individual unemployability according to the disability ratings of the Department of Veterans Affairs.

(4) "Eligible motor vehicle" means a motor vehicle on which the ad valorem property tax has been paid for the taxable year by the eligible taxpayer, and which is a motor vehicle as defined in this article.

(5) "Eligible widowed spouse" means the unmarried surviving spouse of a disabled veteran taxpayer who had previously received the disabled veteran real property tax credit authorized by §11-13MM-4 of this code.

(6) "Flow-through entity", "conduit entity", or "pass through entity" means an S Corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term "flow-through entity", "conduit entity", or "pass through entity" includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 78l: *Provided*, That a publicly traded partnership as defined in section 7704 of the Internal Revenue Code having equity securities registered with the Securities and Exchange Commission under section 12 of Title I of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and any other person or entity that is treated as a C corporation for federal income tax purposes, shall be treated as a corporation taxable under article §11-24-1 *et seq*. of this code for purposes of this article.

(7) "Motor vehicle" means the following class of vehicles defined in §17A-10-1 of this code: Class A, Class B, Class G, Class H, Class T, Class V, Class X, and all-terrain vehicles and utility terrain vehicles as defined in §20-15-2 of this code.

(8) "Person" means and includes an individual, a trust, estate, partnership, pass through entity, association, company, or corporation.

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(9) "Personal property" shall have the same meaning as in §11-5-1 *et seq*. of this code: *Provided*, That, for the purposes of this article, the term "personal property" shall not include a working interest in any oil, natural gas, or natural gas liquid producing property or any property of a public service company.

(10) "Personal property taxes paid" means the aggregate of regular levies, excess levies, and bond levies extended against personal property that are paid during the calendar year and determined after any application of any discount for early payment of taxes. "Personal property taxes paid" does not include 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, or any penalty or interest for late payment of property taxes.

(11) "Public service company" means a corporation or other business entity which delivers services considered essential to the public interest that are regulated by the applicable federal or state regulatory body, including, but not limited to, businesses furnishing electricity, natural gas, telecommunications, and water, and those transporting personal property or passengers, including, but not limited to, airlines, railroads, trucking, and bus companies, and which are centrally assessed by the state for property tax purposes.

(12) "Real property taxes paid" means the aggregate of regular levies, excess levies, and bond levies that are paid during the calendar year and determined after any application of any discount for early payment of taxes. "Real property taxes paid" does not include 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, or any penalty or interest for late payment of property taxes.

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§11-13MM-3. Motor vehicle property tax adjustment credit.

(a) Credit allowed. — There shall be allowed to every eligible 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) "Eligible taxpayer" defined.—

(1) "Eligible taxpayer" – Owned motor vehicles — "Eligible taxpayer" means any person who owns a motor vehicle for which the ad valorem property tax has been paid during the corporation net income tax taxable year or the personal income tax taxable year, as applicable. For purposes of this definition, ownership of a motor vehicle includes ownership and possession of a motor vehicle for which a title has been issued by the Division of Motor Vehicles to the eligible taxpayer. For purposes of this definition, ownership of a motor vehicle also includes ownership and possession of a motor vehicle, subject to a purchase financing arrangement whereby a financial institution holds a lien on the motor vehicle, or for which ultimate issuance of title by the Division of Motor Vehicles to the taxpayer, as owner of the motor vehicle, is contingent upon payment in full of the purchase price of the motor vehicle pursuant to an installment payment financing arrangement.

(2) "Eligible taxpayer" – Leased motor vehicles — "Eligible taxpayer" also means and includes any lessor of a motor vehicle, as herein defined, who owns a motor vehicle for which the ad valorem property tax has been paid during the corporation net income tax taxable year or the personal income tax taxable year, as applicable: *Provided*, That, the lessor shall pass on to the lessee the value of the tax credit asserted by the lessor by causing a decreasing in the amount of rent or lease payment payable by the lessee on the leased motor vehicle.

(3) "Eligible taxpayer" – Pass through entities — "Eligible taxpayer" also means and includes any owner, interest holder, partner or S corporation shareholder that derives conduit income from a pass-through entity.

(4) "Eligible taxpayer" – Prohibition for motor vehicle dealers — "Eligible taxpayer" does not mean or include any motor vehicle dealer, motor vehicle dealership, retailer or any business that sells new or used motor vehicles at the retail level, other than a lessor of motor vehicles. In circumstances where any such motor vehicle dealer, motor vehicle dealership, retailer or business that sells new or used motor vehicles at the retail level is engaged in both retail sales of motor vehicles, and leasing of motor vehicles as lessor, the tax credit authorized by this article may only be asserted by such business based upon the ad valorem property tax paid on leased motor vehicles, and only to the extent that the lessor has passed on, to the lessee, the value of the tax credit asserted by the lessor by causing a decreasing in the amount of rent or lease payment payable by the lessee on the leased motor vehicle. No credit may be asserted or applied by the business based upon ad valorem property tax paid on motor vehicle retail inventories, not actively leased to lessees. To the extent that motor vehicle retail inventories may be held as both motor vehicle retail inventories, and as motor

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vehicles potentially subject to lease during the taxable year, ad valorem property tax paid on such motor vehicles is excluded from eligibility for the tax credit authorized by this article.

(c) Amount of credit. – The amount of credit allowed under this article to the eligible taxpayer is the amount of West Virginia ad valorem property tax timely paid during the personal income taxable year or the corporation net income tax taxable year, as applicable, to a county sheriff on the value of a motor vehicle owned by the eligible taxpayer: *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. –

(1) Personal income tax – If the eligible taxpayer is subject to the personal income tax imposed by §11-21-1 *et seq*. of this code, the amount of credit allowed shall be taken against the personal income tax liability of the eligible taxpayer for the current personal income tax taxable year.

(2) Corporation net income tax — 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.

(e) Refundable portion of annual credit allowance. — If 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) Transfer or sale of the motor vehicle. —

(1) Where there is a sale or transfer of the motor vehicle from an eligible taxpayer to any other person or entity, the transferor retains entitlement to the tax credit authorized under this article for the timely paid ad valorem property tax paid by the transferor in the transferor's personal income tax taxable year or corporation net income tax taxable year, as applicable, on the transferred motor vehicle.

(2) If the transferee meets all requirements for qualification as an eligible taxpayer under this article and meets all requirements for entitlement to the tax credit authorized under this article, then the transferee shall be entitled to the tax credit authorized under this article for the timely paid ad valorem property tax paid by the transferee in the transferee's personal income tax taxable year or corporation net income tax taxable year, as applicable on the eligible motor vehicle.

(3) In no case shall the transferor and the transferee take the tax credit authorized under this article for the same taxable year.

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(g) 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 motor vehicle 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.

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§11-13MM-4. Disabled veteran and eligible widowed spouse of a disabled veteran real property tax credit.

(a) Credit allowed. — A disabled veteran taxpayer or eligible widowed spouse may receive a tax credit against the tax imposed under §11-21-1 *et seq*. of this code in the amount of West Virginia ad valorem property tax timely paid on his or her homestead during the personal income taxable year.

(b) Amount of credit. — Any taxpayer meeting the definition of a disabled veteran taxpayer or eligible widowed spouse under this article shall be allowed a refundable credit against the taxes imposed by §11-21-1 *et seq*. of this code equal to the amount of West Virginia ad valorem real property taxes timely paid a county sheriff on a homestead which is used or occupied exclusively for residential purposes, as those terms are defined in §11-6B-2, during the personal income taxable year: *Provided*, That in no case shall any credit be allowed under this article for any untimely real property tax paid, or any payment of delinquent real property tax, or payment of "back tax" real property taxes.

(c) Application of credit against personal income tax. — The amount of credit allowed under this section shall be taken against the personal income tax liability, imposed by article §11-21-1 *et seq*. of this code, of the disabled veteran taxpayer or eligible widowed spouse.

(d) Refundable portion of annual credit allowance. — If the annual tax credit allowed under this article exceeds the amount of personal income tax subject to offset under this article in any taxable year, the disabled veteran taxpayer or eligible widowed spouse may claim, for that taxable year, the excess amount as a refundable tax credit.

(e) Termination of tax credit. — Any tax credit approved in accordance with the provisions of this section shall terminate immediately when any of the following events occur:

(1) The death of the disabled veteran taxpayer for which the tax credit was authorized: *Provided*, That an eligible widowed spouse may continue to receive the tax credit until his or her death or remarriage;

(2) The sale of the property for which the tax credit was approved; or

(3) A determination by the assessor that the property for which the tax credit was approved no longer qualifies for the tax credit in accordance with the provisions of this section.

(f) Forms and instructions. — The Tax Commissioner shall prescribe and supply all necessary instructions and forms for administration of this section.

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§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.

(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,

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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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§11-13MM-6. Rulemaking.

The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13MM-1 *et seq*. of this code and to implement the intent of the Legislature. All rules shall be promulgated in accordance with the provisions of §29A-3-1 *et seq*. of this code.

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§11-13MM-7. Annual Reports.

The Tax Commissioner shall make an annual report, as soon as possible after the close of each tax year, of the actions taken by the West Virginia Tax Division with respect to the tax credits authorized pursuant to this article. This report shall be filed with the Joint Committee on Government and Finance. The report shall include at a minimum the amount of the credit claimed in the preceding tax year in each of the categories set forth in this article. Information set forth in the report shall be subject to the confidentiality restrictions of §11-10-1 *et seq*. of this code, and shall be redated and otherwise formatted and presented so as to preserve the confidentiality of taxpayers and tax information.

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§11-13MM-8. Tax administration and procedures.

(a) Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in §11-10-1 *et seq*. of this code applies to the tax credits allowed under §11-13MM-1 *et seq*. of this code, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the tax credit allowed by §11-13MM-1 *et seq*. of this code and were set forth in extenso in this article.

(b) Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in §11-9-1 *et seq*. of this code applies to the tax credit allowed by §11-13MM-1 *et seq*. of this code with like effect as if that act were applicable only to the tax credit §11-13MM-1 *et seq*. of this code and were set forth in extenso in this article.

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§11-13MM-9. Severability.

(a) If any provision of §11-13MM-1 *et seq*. of this code, or the application thereof, is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of §11-13MM-1 *et seq*. of this code, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of §11-13MM-1 *et seq*. of this code, or the application thereof, is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of §11-13MM-1 *et seq*. of this code, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

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§11-13MM-10. Effective Date.

This article shall be effective for personal income taxable years beginning on or after January 1, 2024, and for corporation net income tax taxable years beginning on or after January 1, 2024. Subject to the restrictions, limitations and requirements set forth in this article, *ad valorem* property tax timely paid in the personal income tax taxable year, or the corporation net income tax taxable year, as applicable, beginning on or after January 1, 2024, may qualify for the tax credits specified in this article, even where such tax, that is due and owed in calendar year 2024 only, is actually timely paid prior to January 1, 2024.

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