WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13NN

WV Legislature

§11-13NN-1. Short title.

This article may be cited as the West Virginia Short Line Railroad Modernization Act.

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§11-13NN-2. Definitions.

"Eligible taxpayer" means:

(1) Any short line railroad company located wholly or partly in the State of West Virginia that is classified by the United States Surface Transportation Board as a Class II or Class III railroad; or

(2) Any owner or lessee of a rail siding, industrial spur, or industry track located on or adjacent to any Class II or Class III railroad in the State of West Virginia.

"Department" means the West Virginia Department of Revenue.

"Qualified new rail infrastructure expenditures" means expenditures for new rail infrastructure and improvements, which includes: The acquisition of rights-of-way; engineering; construction of new track such as industrial leads, switches, spurs, and sidings; rehabilitation of existing inactive track to reinstate operation; loading dock improvements; and transloading structures involved with servicing customer locations or expansions by any railroad located in West Virginia.

"Qualified short line railroad maintenance expenditures" means gross expenditures for railroad infrastructure maintenance and capital improvements, including, but not limited to, rail, tie plates, joint bars, fasteners, switches, ballast, subgrade, roadbed, bridges, industrial leads, sidings, signs, safety barriers, crossing signals and gates, and related track structures owned or leased by a Class II or Class III railroad. "Qualified short line railroad maintenance expenditures" does not include expenditures used to generate a federal tax credit or expenditures funded by a federal grant.

"Tax Commissioner" means the West Virginia State Tax Commissioner or his or her designee.

"Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 *et seq.*, §11-23-1 *et seq.*, and §11-24-1 *et seq.* of this code.

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§11-13NN-3. Amount of credit allowed.

An eligible taxpayer may apply for, and the Tax Commissioner shall allow, a nonrefundable tax credit as set out in this section:

(1) For qualified short line railroad maintenance expenditures, a tax credit is allowed in an amount equal to 50 percent of the qualified short line railroad maintenance expenditures.

(2) For qualified new rail infrastructure expenditures, a credit is allowed against the taxes due under this chapter in an amount equal to 50 percent of an eligible taxpayer's qualified new rail infrastructure expenditures.

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§11-13NN-4. Limitation of the credits.

The amount of tax credits authorized under the West Virginia Short Line Railroad Modernization Act shall be limited to the following:

(1) For qualified short line railroad maintenance expenditures, the amount of the credit may not exceed an amount equal to $5,000 multiplied by the number of miles of railroad track owned, leased, or operated in the state by the eligible taxpayer at the end of the calendar year.

(2) For qualified new rail infrastructure expenditures, tax credits shall not exceed $2 million for an individual project and the total amount of tax credits allowed in the aggregate for each taxable year may not exceed $5 million.

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§11-13NN-5. Requirements for credit.

(a) In order for an eligible taxpayer to claim a qualified short line railroad maintenance expenditure tax credit defined in this article, the eligible taxpayer shall submit a certificate of eligibility to the Tax Commissioner. If the eligible taxpayer is a disregarded entity, then the certificate should be submitted in the name of the owner of the disregarded entity. The certificate may be submitted during the calendar year in which the qualified expenditures were incurred but no later than May 1 of the calendar year following the year in which the qualified expenditures were incurred. The certificate shall include the number of miles of railroad track owned, leased, or operated in this state and a description of the amount of qualified railroad expenditures completed. The certificate shall be made on a form and in the manner prescribed by the Tax Commissioner and considered in the order received.

(b) Eligible taxpayers intending to earn a tax credit for any qualified new rail infrastructure expenditures as defined in this article shall submit an application to the Tax Commissioner. Applications will be processed in the order received, and approvals will be granted on a first-come, first-served basis.

(c) If the department determines that the eligible taxpayer meets the requirements to earn a tax credit under the West Virginia Short Line Railroad Modernization Act, the Tax Commissioner may issue a tax credit certificate to the eligible taxpayer. The certificate shall be numbered for identification and declare its date of issuance and the amount of the tax credit earned under this article.

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§11-13NN-6. Uses of credit; unused credit; carry forward; transferred credit.

(a)The tax credit allowed under this article may be used against the taxes imposed by §11-21-1 *et seq.*, §11-23-1 *et seq.*, and §11-24-1 *et seq.* of this code, in no particular order.

(b) To the extent not used, the tax credit authorized under this article may be carried over, in order, to each of the five subsequent taxable years.

(c) The tax credits authorized under this article may be transferred or sold to a taxpayer by written agreement at any time during the taxable year in which the credit is earned by the eligible taxpayer or in the subsequent years as allowed under this section. The transferor and transferee must jointly file a transfer form with the Tax Commissioner within 30 days of the transfer. The transfer form must contain the name, address, and taxpayer identification number of the parties to the assignment, the tax year the eligible taxpayer incurred the qualified expenditures, the amount of credit being transferred, the credit certificate number, and the tax year or years for which the credit may be claimed, and any other information required by the Tax Commissioner.

(d) The Tax Commissioner may not seek recourse against the transferee for any portion of the credit that may be subsequently disqualified.

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§11-13NN-7. Tax credit review and accountability.

Beginning on the first day of the third taxable year after the passage of this article and every two years thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the West Virginia Short Line Railroad Modernization Act during the most recent two-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the two-year period:

(1) The number of taxpayers claiming the credit;

(2) The dollar amount of tax credit certificates issued to eligible taxpayers;

(3) The dollar amount of qualified short line railroad maintenance expenditures made by eligible taxpayers;

(4) The dollar amount of qualified new rail infrastructure expenditures made by eligible taxpayers; and

(5) The cost of the credit.

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§11-13NN-8. Effective date and sunset date.

(a) The provisions of this article shall take effect on January 1, 2027.

(b) The provisions of this article shall have no further force or effect after July 1, 2031, unless reenacted by the Legislature. No entitlement to any tax credit authorized by this article may result from, and no credit is available to any person for expenditures incurred subsequent to July 1, 2031.

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