WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13OO

WV Legislature

§11-13OO-1. Short title.

This article may be cited as the West Virginia Disaster Repair and Recovery Tax Credit Act.

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§11-13OO-2. Legislative findings and purpose.

The Legislature finds that the private sector's assistance with prompt repair to public property and infrastructure following a disaster and the provision of equipment, materials, services, and labor to assist with such repair and recovery efforts by taxpayers subject to the tax imposed by §11-13A-1 *et seq.* of the code in communities across the state is in the public interest, reduces the amount of time it takes for communities to cleanup, repair, and recover from disasters in this state, increases economic opportunity in this state, and thereby promotes the general welfare of the people of this state. In order to promote the private sector's willingness to assist with disaster repair and recovery efforts in this state, and to provide the necessary equipment, materials, services, and labor to promptly complete such repair and recovery efforts, there is hereby enacted a disaster repair and recovery tax credit.

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§11-13OO-3. Definitions.

(a) When used in this article, or in the administration of this article, terms defined in this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

(b) Defined terms:

"Designee", when used in reference to the Secretary of the Department of Environmental Protection, shall mean any officer or employee of the Department of Environmental Protection duly authorized by the Secretary of the Department of Environmental Protection directly, or indirectly, by one or more delegations of authority, to perform the functions mentioned or described in this article.

"Disaster" shall mean any natural catastrophe, including, but not limited to, a hurricane, tornado, derecho, earthquake, landslide, mudslide, snowstorm, ice storm, fire, flood, or explosion.

"Eligible taxpayer" shall mean any person who makes a qualified expenditure for disaster repair and recovery efforts in this state and who is subject to the tax imposed by §11-13A-1 *et seq*. of this code. "Eligible taxpayer" shall include an affiliated group of taxpayers if the group elects to file a consolidated severance tax return under §11-13A-1 *et seq*. of this code.

"Expenditures for repair and recovery efforts" shall include payments made by an eligible taxpayer for labor done, tangible personal property, materials, services, or supplies furnished in furtherance of the removal of debris, damaged structures, earth and other disaster-related refuse, clearing, grubbing, grading, and excavation of the ground in preparation for construction, installation and repair of public property and infrastructure, and the construction, installation, and repair of public property and infrastructure following a disaster. In addition, the term "expenditures for repair and recovery efforts" includes the cost of machinery and equipment, including the cost of repairs, upgrades, or refurbishments of the machinery and equipment, purchased or leased by an eligible taxpayer and directly used as part of the repair and recovery efforts. The term "expenditures for repair and recovery efforts" excludes purchases of property and services that exceed the fair market value of the similar equipment, materials, services, or labor obtained in the open market in the area of the disaster at the time of the expenditure. The terms "includes" and "including", when used in a term or phrase defined in this article, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

"Secretary of the Department of Environmental Protection" shall mean the same as that term is defined in §22-1-2 of this code.

"Tax Commissioner" shall mean the Commissioner of the West Virginia State Tax Division.

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"Taxpayer" shall mean any person subject to the tax imposed by §11-13A-1 *et seq*. of this code.

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§11-13OO-4. Credit allowed; amount of credit; application of credit; carry forward of unused credit for 10 years.

(a) An eligible taxpayer shall be allowed a credit against a portion of its annual severance tax liability. The amount of this credit shall be determined and applied as provided in this article.

(b) The amount of credit allowable is $500,000 of the taxpayer's expenditures for repair and recovery efforts on each disaster as determined and certified by the Secretary of the Department of Environmental Protection.

(c) The amount of credit allowable may be taken against up to 20 percent of the taxpayer’s annual severance tax liability imposed by §11-13A-1 *et seq*. of this code, except any liability imposed under §11-13A-5a, §11-13A-6 and §11-13A-6a of this code. The repair and recovery efforts credit may be taken in the year the repair and recovery efforts are completed, as certified by the Secretary of the Department of Environmental Protection. The aggregate annual credit allowance may be claimed by taxpayer against its severance tax liability shown on its monthly tax returns at the rate of one twelfth of the annual credit allowance per month.

(d) If any credit remains after application of subsection (c) of this section, the amount thereof may be carried forward to each ensuing tax year until used or until the expiration of the ninth taxable year subsequent to the year in which the credit was first available. If any unused credit remains after the 10th year, the amount is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

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§11-13OO-5. Application for disaster repair and recovery efforts project; contents of application; review of credit application; limitation on total credits authorized; taking of credit.

(a) Notwithstanding any provision of this article to the contrary, no credit shall be allowed or applied under this article for any expenditure for repair and recovery efforts until the person asserting a claim for the allowance of credit receives certification of the repair and recovery effort project from the Secretary of the Department of Environmental Protection, as provided in this section. The Secretary of the Department of Environmental Protection may coordinate repair and recovery projects with other departments as necessary.

(b) Applications for certification of a repair and recovery effort project shall contain a description of the work to be performed, an estimate of the cost of the project, and any other information which the Secretary of the Department of Environmental Protection or his or her designee may require.

(c) Applications for certification of a repair and recovery effort project shall be filed with the Secretary of the Department of Environmental Protection within 72 hours of commencement of any project. Once a project application is filed, the Secretary of the Department of Environmental Protection shall work promptly with a taxpayer to ensure that the application contains all the information required by this article. Applications for credit may be supplemented or amended at any time after filing until all the information required by subsection (b) of this section has been provided. Once a complete application has been filed, the Secretary of the Department of Environmental Protection shall review it promptly to determine whether the project should be certified as eligible for credit under this article.

(d) The Secretary of the Department of Environmental Protection is authorized to certify no more than $5 million of expenditures annually for repair and recovery efforts as eligible for the credit provided in this article. The Secretary of the Department of Environmental Protection shall keep track of the total expenditures approved and will cease accepting applications once the expenditure limit has been reached.

(e) The eligible taxpayer claiming the credit for certified expenditures for repair and recovery efforts shall include information supporting the computation of the credit and any other information the Tax Commissioner requires with its severance tax returns filed under this chapter.

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§11-13OO-6. Transfer of tax credit to successors.

(a) The tax credit allowed in this article shall not be lost by reason of a mere change in the form of conducting the business in this state, if the transferor business retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the project.

(b) The tax credit allowed pursuant to this article shall not be lost by reason of any transfer or sale of the stock or assets of the eligible taxpayer to a successor business which continues to operate in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year.

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§11-13OO-7. Identification of repair and recovery efforts.

Every taxpayer who claims a credit under this article shall maintain sufficient records to reasonably establish the value of the claimed expenditures for repair and recovery efforts giving rise to the tax credit authorized by this article.

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§11-13OO-8. Rulemaking.

The Secretary of the Department of Environmental Protection and the Tax Commissioner shall propose legislative rules including emergency legislative rules for promulgation to implement the provisions of this article in accordance with §29A-3-1 *et seq.* of this code.

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§11-13OO-9. Effective date.

The credit allowed by this article shall be allowed for tax years beginning on or after the first day of January 2026.

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