WEST VIRGINIA CODE: §11-13Q-11

§11-13Q-11. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) Disposition of property or cessation of use. -- If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as determined under section eight of this article; or

(2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end of its useful life, as determined under section eight of this article, then the unused portion of the credit allowed for the property is forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of the property allowed under section eight of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the new or expanded business of the taxpayer. The taxpayer shall then file a reconciliation statement for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties. The reconciliation statement shall be filed with the annual return for the primary tax for which the taxpayer is liable under articles thirteen and twenty-three of this chapter.

(b) Cessation of operation of business facility. -- If during any taxable year the taxpayer ceases operation of a business facility in this state for which credit was allowed under this article, before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit is forfeited for the taxable year and for all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of the property allowed under section eight of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a business of the taxpayer that is taxable under article thirteen, twenty-three or twenty-four of this chapter, or in the case of a sole proprietorship, article twenty-one of this chapter. The taxpayer shall then file a reconciliation statement with the annual return for the primary tax for which the taxpayer is liable under articles thirteen, twenty-one or twenty-three of this chapter, for the year in which the forfeiture occurs, and pay any additional taxes owed due to the reduction of the amount of credit allowable for the earlier years, plus interest and any applicable penalties.

(c) Reduction in number of employees. -- If during any taxable year subsequent to the taxable year in which the new jobs percentage is redetermined as provided in section nine of this article, the average number of employees of the taxpayer, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit allowance is based, the taxpayer shall calculate what his or her annual credit allowance would have been had his or her new jobs percentage been determined based upon the average number of employees, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment. The difference between the result of this calculation and the taxpayer's annual credit allowance for the qualified investment as determined under section four of this article, is forfeited for the then current taxable year, and for each succeeding taxable year unless for a succeeding taxable year the taxpayer's average employment in positions directly attributable to the qualified investment once again meets the level required to enable the taxpayer to utilize its full annual credit allowance for that taxable year.