WEST VIRGINIA CODE: §11-13Q-12

§11-13Q-12. Recapture of credit; recapture tax imposed.

(a) When recapture tax applies. --

(1) Any person who places qualified investment property in service or use and who fails to use the qualified investment property for at least the period of its useful life (determined as of the time the property was placed in service or use), or the period of time over which tax credits allowed under this article with respect to the property are applied under this article, whichever period is less, and who reduces the number of its employees filling new jobs in its business in this state, which were created and are directly attributable to the qualified investment property, after the third taxable year in which the qualified investment property was placed in service or use, or fails to continue to employ individuals in all the new jobs created as a direct result of the qualified investment property and used to qualify for the credit allowed by this article, prior to the end of the tenth taxable year after the qualified investment property was placed in service or use, the person shall pay the recapture tax imposed by subsection (b) of this section.

(2) This section does not apply when section thirteen of this article applies. However, the successor, or the successors, and the person, or persons, who previously claimed credit under this article with respect to the qualified investment property and the new jobs attributable thereto, are jointly and severally liable for payment of any recapture tax subsequently imposed under this section with respect to the qualified investment property and new jobs.

(b) Recapture tax imposed. --

The recapture tax imposed by this subsection is the amount determined as follows:

(1) Full recapture. -- If the taxpayer prematurely removes qualified investment property placed in service (when considered as a class) from economic service in the taxpayer's qualified investment business activity in this state, and the number of employees filling the new jobs created by the person falls below the number of new jobs required to be created in order to qualify for the amount of credit being claimed, the taxpayer shall recapture the amount of credit claimed under section seven of this article for the taxable year, and all preceding taxable years, on qualified investment property which has been prematurely removed from service. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

(2) Partial recapture. -- If the taxpayer prematurely removes qualified investment property from economic service in the taxpayer's qualified investment business activity in this state, and the number of employees filling the new jobs created by the person remains twenty or more, but falls below the number necessary to sustain continued application of credit

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determined by use of the new job percentage upon which the taxpayer's one-tenth annual credit allowance was determined under section four or section ten of this article, taxpayer shall recapture an amount of credit equal to the difference between:

(A) The amount of credit claimed under section seven of this article for the taxable year, and all preceding taxable years; and

(B) The amount of credit that would have been claimed in those years if the amount of credit allowable under section four or ten of this article had been determined based on the qualified investment property which remains in service using the average number of new jobs filled by employees in the taxable year for which recapture occurs. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

(3) Additional recapture. -- If after a partial recapture under subdivision (2) of this subsection, the taxpayer further reduces the number of employees filling new jobs, the taxpayer shall recapture an additional amount determined as provided under subdivision (1) of this subsection. The amount of tax due under this subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

(c) Recapture of credit allowed for projects. -- The commissioner may file in the West Virginia register an emergency legislative rule explaining how the provisions of this section are applied in the case of projects certified under section six of this article.

(d) Payment of recapture tax. -- The amount of tax recaptured under this section is due and payable on the day the person's annual return is due for the taxable year in which this section applies, under article twenty-one or twenty-four of this chapter. When the employer is a partnership, limited liability company or S corporation for federal income tax purposes, the recapture tax shall be paid by those persons who are partners in the partnership, members in the company, or shareholders in the S corporation, in the taxable year in which recapture occurs under this section.

(e) Rules. -- The commissioner may promulgate such rules as may be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. Rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

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