

# WEST VIRGINIA CODE: §11-13Q-7

## §11-13Q-7. Application of annual credit allowance.

(a) In general. -- The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of the following:

(1) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during a prior taxable year; plus

(2) The one-tenth part allowed under section four of this article for qualified investment placed into service or use during the current taxable year; plus

(3) The one-tenth part allowed under section five of this article for locating corporate headquarters in this state; or the amount allowed under section ten of this article of the taxable year.

(b) Application of current year annual credit allowance. -- The amount determined under subsection (a) of this section is allowed as a credit against eighty percent of that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and applied as provided in subsections (c) through (f), both inclusive, of this section, and in that order: Provided, That if the median salary of the new jobs is higher than the statewide average nonfarm payroll wage, as determined annually by the West Virginia Bureau of Employment Programs, the amount determined under subsection (a) of this section is allowed as a credit against one hundred percent of that portion of the taxpayers state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and shall be applied, as provided in subsections (c) through (f), both inclusive, of this section, and in that order.

(c) Business and occupation taxes. -- That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed under section two-o, article thirteen of this chapter must first be applied to reduce the taxes imposed or payable under section two-o, article thirteen of this chapter, for the taxable year (determined before application of allowable credits against tax and the annual exemption). In no case may the credit allowed under this article be applied to reduce any tax imposed or payable under section two-f, or under any other section of article thirteen of this chapter except section two-o.

(1) If the taxes due under section two-o, article thirteen of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under section two-o, article thirteen of this chapter, the amount of those taxes that are attributable is determined by multiplying the amount of taxes due under section two-o, article thirteen of this chapter, for the taxable year (determined before application of any allowable credits against tax and the annual exemption), by a fraction, the

numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under section two-o, article thirteen of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under article thirteen of this chapter.

(2) The annual exemption allowed by section three, article thirteen of this chapter, plus any credits allowable under articles thirteen-d, thirteen-e, thirteen-r and thirteen-s of this chapter, shall be applied against and reduce only the portion of article thirteen taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against the taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(d) Business franchise tax. --

(1) After application of subsection (c) of this section, any unused allowable credit is next applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of article twenty-three of this chapter, but before application of any other allowable credits against tax).

(2) If the taxes due under article twenty-three of this chapter are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article twenty-three of this chapter for the taxable year, the amount of the taxes which are so attributable are determined by multiplying the amount of taxes due (determined after application of the credits against tax as provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article twenty-three of this chapter. The denominator of the fraction is wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under article twenty-three of this chapter.

(3) Any credits allowable under articles thirteen-d, thirteen-e, thirteen-r and thirteen-s of this chapter are applied against and reduce only the portion of article twenty-three taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article twenty-three taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against those taxes allowed under this article for the taxable year, unless their

application is otherwise prohibited by this chapter.

(e) Corporation net income taxes. --

(1) After application of subsections (c) and (d) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).

(2) If the taxes due under article twenty-four of this chapter (determined before application of allowable credits against tax) are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of the taxes that is attributable are determined by multiplying the amount of taxes due under article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(3) Any credits allowable under article twenty-four of this chapter are applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(f) Personal income taxes. --

(1) If the person making the qualified investment is an electing small business corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended), 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 (after application of subsections (c), (d) and (e) of this section) is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article thirteen or twenty-three of this chapter or on income of a sole proprietor attributable to the business.

(2) Electing small business corporations, limited liability companies, 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.

(3) If the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax) that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, limited liability company, partnership, other unincorporated organization or

sole proprietorship, the amount of the taxes that are so attributable are determined by multiplying the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax), that is attributable to business by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the electing small business corporation, limited liability company, partnership, other unincorporated organization or sole proprietorship employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer.

(4) No credit is allowed under this section against any employer withholding taxes imposed by article twenty-one of this chapter.

(g) If the wages, salaries and other compensation fraction formula provisions of subsections (c) through (f) of this section, inclusive, do not fairly represent the taxes solely attributable to and the direct result of qualified investment of the taxpayer the commissioner may require, in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

(1) Separate accounting or identification;

(2) Adjustment to the wages, salaries and other compensation fraction formula to reflect all components of the tax liability;

(3) The inclusion of one or more additional factors that will fairly represent the taxes solely attributable to and the direct result of the qualified investment of the taxpayer and all other project participants in the businesses or other activities subject to tax; or

(4) The employment of any other method to effectuate an equitable attribution of the taxes.

In order to effectuate the purposes of this subsection, the commissioner may propose for promulgation rules, including emergency rules, in accordance with article three, chapter twenty-nine-a of this code.

(h) Unused credit. -- If any credit remains after application of subsection (b) of this section, the amount thereof is carried forward to each ensuing tax year until used or until the expiration of the third taxable year subsequent to the end of the initial ten-year credit application period. If any unused credit remains after the thirteenth year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.