WEST VIRGINIA CODE: §11-13Q-9

§11-13Q-9. New jobs percentage.

(a) In general. — The new jobs percentage is based on the number of new jobs created in this state directly attributable to the qualified investment of the taxpayer.

(b) When a job is attributable. -– An employee's position is directly attributable to the qualified investment if:

(1) The employee's service is performed or his or her base of operations is at the new or expanded business facility;

(2) The position did not exist prior to the construction, renovation, expansion, or acquisition of the business facility and the making of the qualified investment; and

(3) But for the qualified investment, the position would not have existed.

(c) Applicable percentage. –

(1) For the purpose of subsection (a) of this section, the applicable new jobs percentage is determined under the following table:

If number of The applicable

new jobs is at least: percentage is:

20 20%

280 25%

520 30%

(2) Provided, That for credit applications filed for taxable years beginning on and after January 1, 2022, for the purpose of subsection (a) of this section, the applicable new jobs percentage is determined under the following table:

If number of The applicable

new jobs is at least: percentage is:

10 10%

20 20%

280 25%

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520 30%

(d) Certification of new jobs. — With the annual return for the applicable taxes filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f) of this section that are, or will be, directly attributable to the qualified investment of the taxpayer. For purposes of this section, "applicable taxes" means the taxes imposed by §11-13-1, *et seq.*, §11-21-1, *et seq.*, and §11-24-1, *et seq*. of this code against which this credit is applied.

(e) Equivalency of permanent employees. — The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of this section.

(f) Redetermination of new jobs percentage. — With the annual return for the applicable taxes imposed, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended returns filed for the first and second taxable years that the qualified investment was in service or use in this state.

(2) If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in the prior two years to personal income taxes, then to corporation net income taxes, and, lastly, to business and occupation taxes. Any additional taxes due under this chapter shall be remitted with the amended returns filed with the commissioner, along with interest, as provided in §11-10-17 of this code, and a 10-percent penalty determined on the amount of taxes due with the amended return, which may be waived by the commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was due to reasonable cause and not due to willful neglect.

(g) Additional new jobs percentage. -- When the qualified investment is $20 million or more and, if the number of full-time construction laborers and mechanics working at the job site of the new or expanded business facility is 75 or more, or if the number of hours of all construction laborers and mechanics working at the job site is equal to or greater than the number of hours 75 full-time construction laborers and mechanics would have worked at the job site during a 12 consecutive month period, a taxpayer that is allowed a new jobs percentage determined under subsection (a) of this section shall be allowed a new jobs percentage that is five percentage points higher than the new jobs percentage allowed under subsection (a) of this section. In no event may construction laborers and mechanics be used

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to attain or retain a subsection (a) new jobs percentage. The number of full-time construction laborers and mechanics working at the job site shall be determined by dividing the total number of hours worked by all construction laborers and mechanics on a new or expanded business facility during a 12 consecutive month period by 2,080 hours per year. A taxpayer may not claim the additional new jobs percentage allowed by this section unless the taxpayer includes with the certification filed under subsection (d) of this section a certification signed by the general contractor or the construction manager certifying that construction laborers employed at the job site during a consecutive 12 month period aggregated the equivalent of at least 75 full-time employees and the taxpayer has received from the general contractor or construction manager records substantiating the certification, which records shall be retained by the taxpayer for 13 years after the day the expansion to an existing business facility, or the new business facility, is first placed in service or use by the taxpayer. For purposes of this subsection:

(1) The term "construction laborers and mechanics" means those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature, including those workers who use tools or are performing the work of a trade, as distinguished from mental or managerial and working foremen who devote more than 20 percent of their time during a workweek performing the duties of a laborer or mechanic; and

(2) The term "job site" is limited to the physical place or places where the construction called for in the contract will remain when the work on it is completed and nearby property, as described in subdivision (3) of this subsection, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the "site".

(3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters and tool yards are part of the "job site" provided they are dedicated exclusively, or nearly so, to performance of the contract or project and are located in proximity to the actual construction location so that it would be reasonable to include them.

(4) The term "job site" does not include permanent home offices, branch offices, branch plant establishments, fabrication yards or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined without regard to the contract or subcontract for construction of a new or expanded business facility.

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