WEST VIRGINIA CODE: §11-13S-4

§11-13S-4. Amount of credit allowed for manufacturing investment.

(a) *Credit allowed*. — There is allowed to eligible taxpayers and to persons described in subdivision (4), subsection (b) of this section a credit against the taxes imposed by §11-13A-1 *et seq*., and §11-24-1-1 *et seq*. of this code: *Provided*, That a tax credit for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 211112 such eligible taxpayer must comply with the provisions of subsection (e) of this section for all construction related thereto in order to be eligible for any credit under this article. The amount of credit shall be determined as hereinafter provided in this section.

(b) *Amount of credit allowable*. — The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article): Provided, That the amount of allowable credit under this article is equal to 50 percent of the qualified manufacturing investment (as determined in §11-13S-5. of this code) for any eligible taxpayer operating a business that is or may be classified as having a sector identifier, consisting of the six-digit code number 332992 or 332994, as defined on January 1, 2021. This credit shall reduce the severance tax, imposed under §11-13A-1 *et seq*. of this code and the corporation net income tax imposed under §11-24-1 *et seq*. of this code, in that order, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a 10-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

(2) *Severance tax*. — The credit is applied to reduce the severance tax imposed under §11-13A-1 *et seq*. of this code (determined before application of the credit allowed by §11-12B-3 of this code and before any other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code). The amount of annual credit allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq*. of this code, below 50 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: Provided, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq*. of this code, below 40 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq*. of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under §11-13A-1 *et seq*. of this code, below 50 percent of the amount which would be imposed for such taxable year (determined before application of the credit allowed by §11-12B-3 of this code and before any other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code): *Provided, however*, That when in any taxable year beginning on and after January 1,

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2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq*. of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax imposed under §11-13A-1 *et seq*. of this code, below 40 percent of the amount which would be imposed for such taxable year as determined before application of the credit allowed by §11-12B-3 of this code and before any other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code;

(3) *Corporation net income tax*. —

After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under §11-24-1 *et seq*. of this code (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq*. of this code, below 50 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq*. of this code, below 40 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq*. of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under §11-24-1 *et seq*. of this code, below 50 percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax): *Provided, however*, That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq*. of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article §11-24-1 *et seq*. of this code, below 40 percent of the amount which would be imposed for the taxable year as determined before application of any other allowable credits against tax;

(4) *Pass-through entities*. —

(A) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subdivisions (2) and (3) of this subsection) is allowed as a credit against the taxes imposed by §11-24-1 *et seq*. of this code on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-24-1 *et seq*. of this code that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq*. of this code, below 50 percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of

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any other allowable credits against tax): *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq*. of this code, below 40 percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes as determined before application of any other allowable credits against tax.

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq*. of this code, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below 50 percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax): *Provided*, That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq*. of this code, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below 40 percent of the amount that would be imposed for such taxable year on the conduit income as determined before application of any other allowable credits against tax;

(5) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit after application of subdivisions (2) and (3) of this subsection among their members in the same manner as profits and losses are allocated for the taxable year; and

(6) No credit is allowed under this article against any tax imposed by §11-21-1 *et seq*. of this code.

(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

(d) *Application for credit required*. —

(1) *Application required*. — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the Tax Commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage rates and benefits paid to employees filling the new jobs and any other information the Tax Commissioner may require. This application shall be filed with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq*. or §11-24-1-1 *et seq*. of this code for the taxable year in which the property to which the credit relates is placed in service or use.

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(2) *Failure to file*. — The failure to timely apply the application for credit under this section results in forfeiture of 50 percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.

(e) (1) Any person or entity undertaking any construction related to any business activity included within North American Industrial Code six-digit code number 211112, the value of which is an amount equal to or greater than $500,000, shall hire at least 75 percent of employees for said construction from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project, "the local labor market" being defined as every county in West Virginia and any county outside of West Virginia if any portion of that county is within 50 miles of the border of West Virginia.

(2) Any person or entity unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the Bureau of Employment Programs' division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.

(3) If, within three business days following the placing of a job order, the division is unable to refer any qualified job applicants to the person or entity engaged in said construction or refers less qualified job applicants than the number requested, then the division shall issue a waiver to the person or entity engaged in said construction stating the unavailability of applicants and shall permit the person or entity engaged in said construction to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged in said construction for its permanent project records.

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