
WEST VIRGINIA CODE CHAPTER 11
ARTICLE 13S

WV Legislature

§11-13S-1. Short title.

This article may be cited as the "West Virginia Manufacturing Investment Tax Credit Act".

WV Legislature

§11-13S-2. Legislative findings and purpose.

The Legislature finds that the encouragement of the location of new industry in this state, and the expansion, growth and revitalization of existing industrial facilities in this state is in the public interest and promotes the general welfare of the people of this state.

WV Legislature

§11-13S-3. Definitions.

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion or for the purpose of industrial revitalization of an existing industrial facility in this state.

(2) "Industrial expansion" means capital investment in a new or expanded industrial facility in this state.

(3) "Industrial facility" means any factory, mill, plant, refinery, warehouse, building, or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment, and other real and tangible personal property located at or within the facility primarily used in connection with the operation of the manufacturing business.

(4) "Industrial revitalization" or "revitalization" means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery, and other tangible personal property used in connection with the operation of the facility in an industrial business of the taxpayer including the acquisition of any real property necessary to the industrial revitalization.

(5) "Industrial taxpayer" means any taxpayer who is primarily engaged in a manufacturing business.

(6) "Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of 31, 32, or 33. For purposes of this article, manufacturing also includes the processing of raw natural gas or oil to recover or extract liquid hydrocarbons, which is classified under North American Industry Classification System code number 211130. This definition does not mean or include any other processes or activities classified, categorized, grouped, or identified under North American Industry Classification System code number 211130.

(7) "Property purchased for manufacturing investment" means real property, and improvements thereto, and tangible personal property but only if the property was constructed or purchased on or after January 1, 2003, for use as a component part of a new, expanded, or revitalized industrial facility. This term includes only that tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property is placed in service or use in this state, of four years or more. Property acquired by written lease for a primary term of 10 years or longer, if used as

a component part of a new or expanded industrial facility, is included within this definition.

(A) "Property purchased for manufacturing investment" does not include:

(i) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(ii) Motor vehicles licensed by the Division of Motor Vehicles;

(iii) Airplanes;

(iv) Off-premises transportation equipment;

(v) Property which is primarily used outside this state; and

(vi) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer which property was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(B) Purchases or acquisitions of land or depreciable property qualify as purchases of property purchased for manufacturing investment for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as defined in §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under section 1014(e) of the United States Internal Revenue Code of 1986.

(8) "Qualified manufacturing investment" means that amount determined under §11-13S-5 of this code as qualified manufacturing investment.

(9) "Taxpayer" means any person subject to any of the taxes imposed by §11-13A-1 *et seq.*, §11-21-1 *et seq.*, or §11-24-1 *et seq.* of this code, or any combination of those articles of this chapter.

§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, 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 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.

(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.

§11-13S-5. Qualified manufacturing investment.

(a) General. -- The qualified manufacturing investment is the applicable percentage of the cost of property purchased for manufacturing investment, which is placed in service or use in this state, by the eligible taxpayer during the taxable year.

(b) Applicable percentage. -- For the purposes of subsection (a) of this section, the applicable percentage for any property is determined under the following table:

If useful life is: The applicable percentage is:

4 years or more but less than 6 years 33 1/3

6 years or more but less than 8 years 66 2/3

8 years or more 100

The useful life of any property for purposes of this section is determined pursuant to the methods as the Tax Commissioner may require as of the date the property is first placed in service or use in this state by the taxpayer, determined as the Tax Commissioner may require.

(c) Placed in service or use. -- For purposes of the credit allowed by this article, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(d) Cost. -- For purposes of this section, the cost of property purchased for manufacturing investment, is determined under the following rules:

(1) Trade-ins. -- Cost will not include the value of property given in trade or exchange for property purchased for manufacturing investment;

(2) Damaged, destroyed or stolen property. -- If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property will not include any insurance proceeds received in compensation for the loss;

(3) Rental property. -- The cost of property acquired by lease for a term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years;

(4) Property purchased for multiple use. -- The cost of property purchased for multiple

business use including use as a component part of a new or expanded or revitalized industrial facility, together with some other business or activity not eligible for credit under this article, is apportioned between the businesses and occupations. The amount apportioned to the new or expanded or revitalized industrial facility is considered as a qualified investment, subject to the conditions and limitations of this section; and

(5) Self-constructed property. -- In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for purposes of depreciation.

§11-13S-6. 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 five of this article; or

(2) Ceases to be used in an industrial facility of the taxpayer in this state prior to the end of its useful life, as determined under section five of this article, then the unused portion of the credit allowed for such property is forfeited for the taxable year and all ensuing years.

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 five of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in manufacturing activity as part of an industrial facility of the taxpayer. The taxpayer must then file a reconciliation statement with its annual return filed under article twenty-three of this chapter, 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.

§11-13S-7. Transfer of property purchased for manufacturing investment to successors.

(a) Mere change in form of business. -- Property may not be treated as disposed of under section six of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in a business in this state for use in the activity of manufacturing in an industrial facility in West Virginia, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the property or industrial facility transferred, and the taxpayer (transferor) may not be required to redetermine the amount of credit allowed in earlier years.

(b) Transfer or sale to successor. -- Property will not be treated as disposed of under section six of this article by reason of any transfer or sale to a successor business which continues to use the property in manufacturing in an industrial facility in West Virginia. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

§11-13S-8. Identification of investment credit property.

(a) Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of property purchased for manufacturing investment:

- (1) Its identity;
- (2) Its actual or reasonably determined cost;
- (3) Its straight-line depreciation life;
- (4) The month and taxable year in which it was placed in service;
- (5) The amount of credit taken; and
- (6) The date it was disposed of or otherwise ceased to be property purchased for manufacturing investment.

(b) Every taxpayer who claims credit under this article shall also maintain sufficient records to establish the number and types of new jobs, if any, created, the wages and benefits paid to employees filling the new jobs and the duration of each job.

§11-13S-9. Failure to keep records of property purchased for manufacturing investment.

A taxpayer who does not keep the records required for property purchased for manufacturing investment, is subject to the following rules:

- (1) A taxpayer is treated as having disposed of, during the taxable year, any property purchased for manufacturing investment which the taxpayer cannot establish was still on hand and used in manufacturing activity in this state at the end of that year; and
- (2) If a taxpayer cannot establish when property purchased for manufacturing investment reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand and used in manufacturing activity at the end of that year. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

§11-13S-10. Tax credit review and accountability.

(a) Beginning on February 1, 2006, and on February 1 every third year thereafter, the commissioner shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the credit allowed under this article during the most recent three-year period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

- (1) The numbers of taxpayers claiming the credit;
 - (2) The net number, type and duration of new jobs created by all taxpayers claiming the credit and the wages and benefits paid;
 - (3) The cost of the credit;
 - (4) The cost of the credit per new job created; and
 - (5) Comparison of employment trends for the industry and for taxpayers within the industry that claim the credit.
- (b) Taxpayers claiming the credit shall provide the information as the Tax Commissioner may require to prepare the report: Provided, That the information is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.