WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13T

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§11-13T-1. Legislative finding and purpose.

The Legislature finds that the retention of physicians practicing in this state is in the public interest and promotes the general welfare of the people of this state. The Legislature further finds that the promotion of stable and affordable medical malpractice liability insurance premium rates and medical malpractice liability tail insurance premium rates will induce retention of physicians practicing in this state.

In order to effectively decrease the cost of medical malpractice liability insurance premiums and medical malpractice liability tail insurance premiums paid in this state on physicians' services, there is hereby provided a tax credit for certain medical malpractice liability insurance premiums and medical malpractice liability tail insurance premiums paid.

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§11-13T-2. Definitions.

(a) General. -- When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

(b) Terms defined. –-

(1) "Claims made malpractice insurance policy" means a medical malpractice liability insurance policy that covers claims which:

(A) Are reported during the policy period,

(B) Meet the provisions specified by the policy, and

(C) Are for an incident which occurred during the policy period, or occurred prior to the policy period, as is specified by the policy.

(2) "Combined annual medical liability insurance premiums" means the sum of the actual amount of insurance premiums paid by or on behalf of the taxpayer during the taxable year for medical malpractice insurance coverage under a claims made malpractice insurance policy, plus the actual amount of insurance premiums paid by or on behalf of the taxpayer during the taxable year for tail insurance.

(3) "Eligible taxpayer" means any person subject to tax under section sixteen, article twenty-seven of this chapter or a physician who is a partner, member, shareholder or employee of an eligible taxpayer.

(4) "Eligible taxpayer organization" means a partnership, limited liability company, or corporation that is an eligible taxpayer.

(5) "Payor" means a natural person who is a partner, member, shareholder or owner, in whole or in part, of an eligible taxpayer organization and who pays medical malpractice insurance premiums or tail insurance premiums or both for or on behalf of the eligible taxpayer organization.

(6) "Person" means and includes any natural person, corporation, limited liability company, trust or partnership.

(7) "Physicians' services" means health care provider services taxable under section sixteen, article twenty-seven of this chapter, performed in this state by physicians licensed by the state Board of Medicine or the state board of osteopathic medicine.

(8) "Tail insurance" means insurance which covers an eligible taxpayer insured once a claims made malpractice insurance policy is canceled, not renewed or terminated and which covers claims made or asserted after such cancellation or termination for acts relating to the

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provision of physicians' services by the eligible taxpayer occurring during the period the prior malpractice insurance was in effect.

(9) "Tail insurance premium" means insurance coverage premiums paid by an eligible taxpayer or payor during the taxable year for tail insurance.

(10) "Tail liability" means the medical malpractice liability of an eligible taxpayer insured that results from a claim asserted subsequent to cancellation, nonrenewal or termination of a claims made malpractice insurance policy for acts relating to the provision of physicians' services by the eligible taxpayer occurring during the period when the prior malpractice insurance was in effect.

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§11-13T-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the tax payable under section sixteen, article twenty-seven of this chapter. The amount of this credit shall be determined and applied as provided in this article.

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§11-13T-4. Amount of credit allowed.

(a) Allowance. –-

(1) The amount of annual credit allowable under this article to an eligible taxpayer shall be:

(A) Ten percent of the combined annual medical liability insurance premiums paid in excess of $30,000, or

(B) Twenty percent of combined annual medical liability insurance premiums paid in excess of $70,000.

(2) This credit may be taken for combined annual medical liability insurance premiums paid during any taxable year beginning on or after January 1, 2002, and ending on or before December 31, 2003.

(b) Exclusions. -– No credit shall be allowed for any combined annual medical liability insurance premiums, or part or component thereof, paid by or on behalf of an eligible taxpayer employed by this state, its agencies or subdivisions. No credit shall be allowed for any combined annual medical liability insurance premiums, or part or component thereof, paid by or on behalf of an eligible taxpayer or an eligible taxpayer organization or a payor pursuant to insurance coverage provided under article twelve, chapter twenty-nine of this code. No credit shall be allowed for any combined annual medical liability insurance premiums, or part or component thereof, paid before January 1, 2002, or paid after December 31, 2003.

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§11-13T-5. Unused credit; carryforward; credit forfeiture.

If any credit remains after application of the credit against tax for any taxable year under this article, the amount thereof shall be carried forward to each ensuing tax year until used or until July 1, 2010, whichever occurs first. If any unused credit remains after July 1, 2010, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of this credit.

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§11-13T-6. Application of credit against health care provider tax; schedules; estimated taxes.

(a) The credit allowed under this article shall be applied against the tax payable under section sixteen, article twenty-seven of this chapter, for the taxable year in which the combined annual medical liability insurance premiums are paid. To assert credit against the tax payable under section sixteen, article twenty-seven of this chapter, the eligible taxpayer shall prepare and file with the annual tax return filed under article twenty-seven of this chapter, a schedule showing the combined annual medical liability insurance premiums paid for the taxable year, the amount of credit allowed under this article, the tax against which the credit is being applied and other information that the Tax Commissioner may require. This annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

(b) An eligible taxpayer may consider the amount of credit allowed under this article when determining the eligible taxpayer's liability for periodic payments of estimated tax for the taxable year for the tax payable under section sixteen, article twenty-seven of this chapter, in accordance with the procedures and requirements prescribed by the Tax Commissioner. The annual total tax liability and total tax credit allowed under this article are subject to adjustment and reconciliation pursuant to the filing of the annual schedule required by this section.

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§11-13T-7. Computation and application of credit.

(a) Credit resulting from premiums directly paid by persons who pay the tax imposed by section sixteen, article twenty-seven of this chapter. -- The annual credit allowable under this article for eligible taxpayers other than payors described in subsection (b) of this section, shall be applied as a credit to reduce the eligible taxpayer's annual tax liability imposed under section sixteen, article twenty-seven of this chapter, determined after application of the credit allowed under article thirteen-p of this chapter, if any, and after application of all other allowable credits, deductions and exemptions.

(b) Computation of credit for premiums directly paid by partners, members or shareholders of partnerships, limited liability companies, or corporations for or on behalf of such organizations; application of credit.

(1) Qualification for credit. -- Combined annual medical liability insurance premiums paid by a payor (as defined in this article) qualify for tax credit under this article, provided that such payments are made to insure against medical malpractice liabilities arising out of or resulting from physicians' services provided by a physician while practicing in service to or under the organizational identity of an eligible taxpayer organization or as an employee of such eligible taxpayer organization, and where such insurance covers the medical malpractice liabilities or tail liabilities of:

(A) The eligible taxpayer organization; or

(B) One or more physicians practicing in service to or under the organizational identity of the eligible taxpayer organization or as an employee of the eligible taxpayer organization; or

(C) Any combination thereof.

(2) Application of credit by the payor against health care provider tax on physician's services. -- The annual credit allowable under this article shall be applied to reduce the tax liability directly payable by the payor under section sixteen, article twenty-seven of this chapter, determined after application of the credit allowed under article thirteen-p of this chapter, if any, and after application of all other allowable credits, deductions and exemptions.

(3) Application of credit by the eligible taxpayer organization against health care provider tax on physician's services. -- After application of this credit as provided in subdivision (2) of this subsection, remaining annual credit shall then be applied to reduce the tax liability directly payable by the eligible taxpayer organization under section sixteen, article twenty-seven of this chapter, determined after application of the credit allowed under article thirteen-p of this chapter, if any, and after application of all other allowable credits, deductions and exemptions.

(4) Apportionment among multiple eligible taxpayer organizations. -- Where a payor

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described in subdivision (1) of this subsection pays combined annual medical liability insurance premiums for and provides services to or under the organizational identity of two or more eligible taxpayer organizations described in this section or as an employee of two or more such eligible taxpayer organizations, the tax credit shall, for purposes of subdivision (3) of this subsection, be allocated among such eligible taxpayer organizations in proportion to the combined annual medical liability insurance premiums paid directly by the payor during the taxable year to cover physicians' services during such year for, or on behalf of, each eligible taxpayer organization. In no event may the total credit claimed by all payors, eligible taxpayers and eligible taxpayer organizations exceed the credit which would be allowable if the payor had paid all such combined annual medical liability insurance premiums for or on behalf of one eligible taxpayer organization, and if all physician's services had been performed for, or under the organizational identity of, or by employees of, one eligible taxpayer organization.

(c) Application of the credit allowed under this article in combination with all other applicable tax credits, exemptions and deductions shall in no event reduce the tax liability below zero, and shall in no circumstances be applied as a refundable tax credit, or result in a refundable tax credit.

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§11-13T-8. Legislative rules.

The Tax Commissioner shall propose for promulgation rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, as may be necessary to carry out the purposes of this article.

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§11-13T-9. Burden of proof.

The burden of proof is on the person claiming the credit allowed by this article to establish by clear and convincing evidence that the person is entitled to the amount of credit asserted for the taxable year.

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