WEST VIRGINIA CODE CHAPTER 11 ARTICLE 13Y

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§11-13Y-1. Short title.

This article shall be known and cited as the West Virginia Manufacturing Property Tax Adjustment Act.

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§11-13Y-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) "Affiliate" means and includes all persons, as defined in this section, which are affiliates of each other when either directly or indirectly:

(A) One person controls or has the power to control the other, or

(B) A third party or third parties control or have the power to control two persons, the two thus being affiliates. In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(2) "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the Tax Commissioner's delegate.

(3) "Corporation" means any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(4) "Delegate", when used in reference to the Tax Commissioner, means any officer or employee of the Tax Division of the Department of Revenue duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(5) "Eligible taxpayer" means any manufacturing business that is subject to the tax imposed under article twenty-three or twenty-four of this chapter, or both: Provided, That taxpayers owning property assessed by the board of Public Works are not eligible taxpayers for purposes of this article. "Eligible taxpayer" also means and includes those members of an affiliated group of taxpayers engaged in a unitary business, in which one or more members of the affiliated group is a person subject to the tax imposed under article twenty-three or article twenty-four of this chapter, or both. Affiliates not engaged in the unitary business do not qualify as eligible taxpayers.

(6) "Manufacturing business" means any business primarily engaged in 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 thirty-one, thirty-two or thirty-three that also paid ad valorem property tax on manufacturing inventory to one or more West Virginia counties during the taxable year.

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(7) "Manufacturing inventory" means and is limited to raw materials, goods in process and finished goods of a business primarily engaged in 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 thirty-one, thirty-two or thirty-three.

(8) "Natural person" or "individual" means a human being.

(9) "Partnership" and "partner" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in a syndicate, group, pool, joint venture or organization.

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

(11) "Related entity", "related person", "entity related to" or "person related to" means:

(A) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by the taxpayer;

(B) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer;

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of this article, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the United States Internal Revenue Code, as amended: Provided, That paragraph (3), Section 267(c) of the United States Internal Revenue Code shall not apply.

(12) "Tax year" or "taxable year" means the tax year of the taxpayer for federal income tax purposes.

(13) "Taxpayer" means any person subject to the tax imposed under article twenty-three or twenty-four of this chapter, or both.

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(14) "Unitary business" means a unitary business as defined in section three-a, article twenty-four of this chapter.

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

There shall be allowed to every eligible taxpayer a credit against the taxes imposed under articles twenty-three and twenty-four of this chapter, as determined under this article.

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§11-13Y-4. Amount of credit allowed.

(a) Credit allowed. -- Eligible taxpayers shall be allowed a credit against the tax imposed under article twenty-three or twenty-four of this chapter, the application of which and the amount of which shall be determined as provided in this article.

(b) Amount of credit. -- The amount of credit allowed to the eligible taxpayer is the amount of West Virginia ad valorem property tax paid on the value of manufacturing inventory of the eligible taxpayer during the corporate net income tax year and business franchise tax year.

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§11-13Y-5. Application of annual credit allowance.

(a) Application of credit against business franchise tax. -- The amount of credit allowed shall first be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by article twenty-three of this chapter.

(b) Application of credit against corporate net income tax. --Any credit remaining after application of the credit against the tax liabilities of the eligible taxpayer for the current taxable year imposed by article twenty-three of this chapter shall next be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by article twenty-four of this chapter.

(c) Carryover credit disallowed. -- Any credit remaining after application of the credit against the tax liabilities specified in subsections (a) and (b) of this section for the current taxable year is forfeited and shall not carry back to any prior taxable year and shall not carry forward to any subsequent taxable year. The credit allowed under this article shall be applied after application of all other applicable tax credits allowed for the taxable year against the taxes imposed by article twenty-three of this chapter and after application of all other applicable tax credits allowed for the taxable year against the taxes imposed by article twenty-four of this chapter.

(d) Annual schedule. -- For purposes of asserting the credit against tax, the taxpayer shall prepare and file an annual schedule showing the amount of tax paid for the taxable year and the amount of credit allowed under this article. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

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§11-13Y-6. Availability of credit to successors.

(a) Transfer or sale of assets. --

(1) Where there has been a transfer or sale of the business assets of an eligible taxpayer to a successor which subsequent to the transfer constitutes an eligible taxpayer as defined in this article, which continues to operate the manufacturing business in this state, and which remains subject to the taxes prescribed under article twenty-three or twenty-four of this chapter, or both, the successor eligible taxpayer is entitled to the credit allowed under this article: Provided, That the successor taxpayer otherwise remains in compliance with the requirements of this article for entitlement to the credit.

(2) For any taxable year during which a transfer, or sale of the business assets of an eligible taxpayer to a successor eligible taxpayer under this section occurs, or a merger occurs pursuant to which credit is allowed under this article, the credit allowed under this article shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each taxpayer based and the number of days during the taxable year that each taxpayer owned the business assets transferred.

(b) Stock purchases. -- Where a corporation which is an eligible taxpayer entitled to the credit allowed under this article is purchased through a stock purchase by a new owner and remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to the credit allowed under this article will not be affected by the ownership change: Provided, That the corporation otherwise remains in compliance with the requirements of this article for entitlement to the credit.

(c) Mergers. --

(1) Where a corporation or other entity which is an eligible taxpayer entitled to the credit allowed under this article is merged with another corporation or entity, the surviving corporation or entity shall be entitled to the credit to which the predecessor eligible taxpayer was originally entitled: Provided, That the surviving corporation or entity otherwise complies with the provisions of this article.

(2) The amount of credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each owned the transferred business assets.

(d) No provision of this section or of this article shall be construed to allow sales or other transfers of the tax credit allowed under this article. The credit allowed under this article can be transferred only in circumstances where there is a valid successorship as described under this section.

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§11-13Y-7. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person or entity has taken the credit against tax allowed under this article and was not entitled to take the credit, then the credit improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in section seventeen, article ten of this chapter and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(b) Notwithstanding the provisions of article ten of this chapter, penalties and additions to tax imposed under article ten of this chapter may be waived at the discretion of the Tax Commissioner: Provided, That interest is not subject to waiver.

(c) Notwithstanding the provisions of article ten of this chapter, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner shall be five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.

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§11-13Y-8. Report on credit.

(a) The Tax Commissioner shall provide to the Joint Committee on Government and Finance by July 1, 2011, and on July 1, of each year thereafter, a report detailing the amount of credit claimed pursuant to this article. The report is to include the amount of credit claimed against the business franchise tax and the amount of credit claimed against the corporate net income tax.

(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.

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§11-13Y-9. Effective date.

This article shall be effective for corporate net income tax years and business franchise tax years beginning on or after January 1, 2009.

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