WEST VIRGINIA CODE CHAPTER 11 ARTICLE 28

WV Legislature

§11-28-1. Definitions.

For purposes of this article:

"Business entity" or "person" means an individual, firm, sole proprietorship, partnership, corporation, association, or other entity entitled to a post-coal mine site business credit.

"Coal mining operation" means the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite.

"Post-coal mine site" means property that has remained undeveloped for business purposes, subsequent to coal mining operations on the property within the bonded area of the last issued coal mine permit.

"Principal place of business" means the physical location from which the entity's direction, control, and coordination of the operations of the business are primarily exercised, with consideration given, but not limited to:

(1) The physical location at which the primary executive and administrative headquarters of the entity is located; and

(2) From which the management of overall operations of the entity is directed.

"Undeveloped for business purposes" means land has been previously used for coal mining operations and has not been built or developed for use for other activities in the commercial or manufacturing sectors of the economy.

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§11-28-2. Eligibility for credit.

For those tax years beginning on or after January 1, 2020, a business entity will be allowed a credit against certain taxes imposed by this chapter, as described in §11-28-3 of this code, if the business entity meets the following requirements:

(1) The entity is a corporation, small business corporation, limited liability company, partnership, or unincorporated business entity as defined in this code that also has a principal place of business in the state;

(2) The entity employs at the post-coal mine site a minimum of 10 full-time (32 hours a week or more) employees; and

(3) The entity’s principal place of business is located on a post-coal mine site within this state.

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§11-28-3. Application of credit.

(a) Amount of credit. — For those tax years beginning on or after January 1, 2020, an eligible business entity will be allowed a tax credit in the amount of 50 percent of that entity's capital expenditures (as defined in Section 263 of the United States Internal Revenue Code of 1986, as amended) at the post-coal mine site for the first five taxable years during which the entity's principal place of business is located on the post-coal mine site within this state. The dollar amount of the credit claimed by an eligible business entity may not exceed the amount of 50 percent of the entity's state income tax for a single year.

(b) Application of annual credit allowance. — The credit created by this article is allowed as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) and (2) of this subsection, and in that order.

(1) Corporation net income taxes. — Any credit is first applied to reduce the taxes imposed by §11-24-1 et seq. of this code for the taxable year.

(2) Personal income taxes. — After application of §11-28-3(b)(1) of this code, any unused credit is next applied as follows:

(A) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership or a limited liability company that is treated as a partnership for federal income tax purposes, then any unused credit (after application of §11-28-3(b)(1) of this code) is allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code on the income from business or other activity subject to tax under §11-23-1 et seq. of this code.

(B) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) A credit is not allowed under this section against any employer withholding taxes imposed by §11-21-1 et seq. of this code.

(c) Unused credit. — A carryback to a prior taxable year is not allowed for the amount of any unused portion of any annual credit allowance. If the amount of the allowable credit exceeds the taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1 et seq. or §11-24-1 et seq. of this code for each of the next 10 taxable years following the year of creation of the tax credit unless sooner used.

(d) Eligibility requirements. — Those businesses that benefit from other state economic development programs or incentives that result in a reduction of their income tax liability due shall not be eligible for this tax credit.

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(e) Rule-making authority. — The State Tax Division shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code. These rules shall include, at a minimum, forms for use in claiming the credit authorized in this article, administration of the credit authorized in this article, and any other matter seen necessary by the State Tax Division for the administration of this article.

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