WEST VIRGINIA CODE CHAPTER 11 ARTICLE 6D

WV Legislature

§11-6D-1. Legislative findings and purpose.

Consistent with the public policy as stated in section one, article two-d, chapter twenty-four of this code, the Legislature hereby finds that the use of natural gas-based alternative fuels is in the public interest and promotes the general welfare of the people of this state insofar as it addresses serious concerns for our environment and our state's and nation's dependence on foreign oil as a source of energy. The Legislature further finds that by encouraging the use of natural gas-fueled and liquefied petroleum gas-fueled motor vehicles, the state will be reducing its dependence on foreign oil and attempting to improve its air quality. The Legislature further finds that the wholesale cost of fuel for certain natural gas-fueled and liquefied petroleum gas-fueled motor vehicles is significantly lower than the cost of fuel for traditional motor vehicles.

However, because the cost of motor vehicles which utilize natural gas-fueled or liquefied petroleum gas- fueled technologies remains high in relation to motor vehicles that employ more traditional technologies, citizens of this state who might otherwise choose a natural gas- fueled or liquefied petroleum gas-fueled motor vehicle are forced by economic necessity to continue using motor vehicles that are fueled by more conventional means. Additionally, the availability of commercial infrastructure to support natural gas-fueled and liquefied petroleum gas-fueled vehicles available to the public is inadequate to encourage the use of natural gas-fueled and liquefied petroleum gas-fueled motor vehicles. It is the intent of the Legislature that the alternative-fuel motor vehicle tax credit previously expired in 2006 be hereby reinstated with changes and amendments as set forth herein. Therefore, in order to encourage the use of natural gas-fueled and liquefied petroleum gas-fueled motor vehicles and possibly reduce unnecessary pollution of our environment and reduce our dependence on foreign sources of energy, there is hereby created an alternative-fuel motor vehicle tax credit and an alternative-fuel vehicle refueling infrastructure tax credit.

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§11-6D-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section.

(a) "Alternative fuel". –

(1) For purchase or installations occurring on and after January 1, 2011, but prior to April 15, 2013, the term "alternative fuel" means and includes:

(A) Compressed natural gas;

(B) Liquefied natural gas;

(C) Liquefied petroleum gas;

(D) Ethanol;

(E) Fuel mixtures that contain eighty-five percent or more by volume, when combined with gasoline or other fuels, of the following:

(i) Methanol;

(ii) Ethanol; or

(iii) Other alcohols;

(F) Natural gas hydrocarbons and derivatives;

(G) Hydrogen;

(H) Coal-derived liquid fuels; and

(I) Electricity, including electricity from solar energy.

(2) For purchases or installations occurring on or after April 15, 2013, the term "alternative fuel" means and is limited to:

(A) Compressed natural gas;

(B) Liquefied natural gas; or

(C) Liquefied petroleum gas.

(b) "Alternative-fuel motor vehicle" or "qualified motor vehicle" means a motor vehicle that as a new or retrofitted or converted fuel vehicle:

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(1) Operates solely on one alternative fuel;

(2) Is capable of operating on one or more alternative fuels, singly or in combination; or

(3) Is capable of operating on an alternative fuel and is also capable of operating on gasoline or diesel fuel.

(c) "Bi-fueled motor vehicle" means a motor vehicle fueled from two or more tanks, each of which stores a separate type of fuel, which has the ability to operate on an alternative fuel and another form of fuel. "Bi-fueled motor vehicles" as here defined are alternative-fuel motor vehicles.

(d) "Liquefied petroleum gas" means fuel commonly known and designated as "liquefied petroleum gas" or "LP gas". The term "liquefied petroleum gas" also means and includes:

(1) Propane;

(2) Butane; or

(3) A mix of gases used as motor fuel which is predominantly propane or butane, or predominantly a mixture of propane and butane.

(e) "Plug-in hybrid electric vehicle" means:

(1) A plug-in hybrid electric vehicle manufactured by an established motor vehicle manufacturer of plug-in hybrid electric vehicles that can operate solely on electric power and that is capable of recharging its battery from an on-board generation source and an off-board electricity source; and

(2) A plug-in hybrid electric vehicle conversion that provides an increase in city fuel economy of seventy-five percent or more as compared to a comparable nonhybrid version vehicle for a minimum of twenty miles and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A vehicle is comparable if it is the same model year and the same vehicle class as established by the United States Environmental Protection Agency and is comparable in weight, size and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city fuel economy is measured in accordance with procedures set forth in 40 C. F. R. 600 as in effect on January 1, 2011.

(f) "Qualified alternative-fuel vehicle refueling infrastructure" means property owned by the applicant for the tax credit and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including, but not limited to, natural gas supply lines, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered into a motor vehicle for consumption: Provided, That the property is installed and located in this state and is not located in or on a private residence or private home.

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(g) "Qualified alternative-fuel vehicle home refueling infrastructure" means property owned by the applicant for the tax credit located on a private residence or private home and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including, but not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered or for providing electricity to plug-in hybrid electric vehicles or electric vehicles: Provided, That the property is installed and located in this state.

(h) "Taxpayer" means any natural person, corporation, limited liability company or partnership subject to the tax imposed under article twenty-one, article twenty-three or article twenty-four of this chapter or any combination thereof.

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§11-6D-3. Credit allowed for alternative-fuel motor vehicles and qualified alternative-fuel vehicle refueling infrastructure; application against personal income tax, business franchise tax or corporate net income tax; effective date.

The tax credits for the purchase of alternative-fuel motor vehicles or conversion to alternative-fuel motor vehicles, qualified alternative-fuel vehicle refueling infrastructure and qualified alternative-fuel vehicle home refueling infrastructure provided in this article may be applied against the tax liability of a taxpayer imposed by the provisions of either article twenty-one, article twenty-three or article twenty-four of this chapter, but in no case may more than one tax credit be granted under this article or any combination of articles set forth in this chapter for purchase of an alternative-fuel motor vehicle or for costs relating to conversion to an alternative-fuel motor vehicle, or for costs associated with alternative-fuel vehicle refueling infrastructure or for costs associated with alternative-fuel home refueling infrastructure as defined in this article. This credit shall be available for those tax years beginning on or after January 1, 2011, but shall not be available for, or with relation to, any purchase, expenditure, investment, installation, construction or conversion made in any tax year beginning after the termination dates specified in this article, as applicable to specified purchases, expenditures, investments, installations, construction or conversions.

WV Legislature

§11-6D-4. Eligibility for credit.

A taxpayer is eligible to claim the credit against tax provided in this article if the taxpayer:

(a) Converts a motor vehicle that is presently registered in West Virginia to operate exclusively on an alternative fuel as defined in this article or to operate as a bi-fueled alternative-fuel motor vehicle; or

(b) Purchases from an original equipment manufacturer or an after-market conversion facility or any other automobile retailer, a new dedicated alternative-fuel motor vehicle or bi-fueled alternative-fuel motor vehicle for which the taxpayer then obtains a valid West Virginia registration; or

(c) Constructs or purchases and installs qualified alternative-fuel vehicle refueling infrastructure that is capable of dispensing alternative fuel for alternative-fuel motor vehicles.

(d) (1) The credit provided in this article is not available to and may not be claimed by any taxpayer under any obligation pursuant to any federal or state law, policy or regulation to convert to the use of alternative fuels for any motor vehicle.

(2) The credit provided in this article is not available to and may not be claimed by any taxpayer for construction or purchase and installation of alternative-fuel vehicle home refueling infrastructure on or after April 15, 2013.

(e) The credit provided in this article for purchase of an alternative-fuel motor vehicle or conversion of a motor vehicle to an alternative-fuel motor vehicle, is not available to and may not be claimed by any taxpayer in, or for, any tax year in which the taxpayer did not own the alternative-fuel motor vehicle for which the claim is filed on the last day of the taxpayer's tax year for which the credit is claimed.

(f) Effective date. –

The amendments to this article enacted in the 2013 Regular Legislative Session shall be effective upon passage.

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§11-6D-5. Amount of credit for alternative-fuel motor vehicles.

(a) For taxable years beginning on and after January 1, 2011, but prior to termination or cessation of this credit as specified in this article, the amount of the credit allowed under this article for an alternative-fuel motor vehicle that weighs less than twenty-six thousand pounds is thirty-five percent of the purchase price of the alternative-fuel motor vehicle up to a maximum amount of $7,500 or fifty percent of the actual cost of converting from a traditionally fueled motor vehicle to an alternative-fuel motor vehicle up to a maximum amount of $7,500.

(b) For taxable years beginning on and after January 1, 2011, but prior to termination or cessation of this credit as specified in this article, the amount of the credit allowed under this article for an alternative-fuel motor vehicle that weighs more than twenty-six thousand pounds is thirty-five percent of the purchase price of the alternative-fuel motor vehicle up to a maximum amount of $25,000 or fifty percent of the actual cost of converting from a traditionally fueled motor vehicle to an alternative-fuel motor vehicle up to a maximum amount of $25,000.

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§11-6D-6. Amount of credit for qualified alternative-fuel vehicle refueling infrastructure.

(a) For taxable years beginning on and after January 1, 2011, but prior to January 1, 2014, the amount of the credit allowed under this article for qualified alternative-fuel vehicle refueling infrastructure is equal to fifty percent of the total costs directly associated with the construction or purchase and installation of the alternative-fuel vehicle refueling infrastructure up to a maximum of $250,000: Provided, That if the qualified alternative-fuel vehicle refueling infrastructure is generally accessible for public use, the amount of the credit allowed will be multiplied by 1.25 and the maximum amount allowable will be $312,500. The amount of credit allowed may not exceed the cost of construction of the alternative-fuel vehicle refueling infrastructure.

(b) For taxable years beginning on and after January 1, 2014, but prior to termination or cessation of this credit as specified in this article, the amount of the credit allowed under this article for qualified alternative-fuel vehicle refueling infrastructure is equal to twenty percent per facility of the total costs directly associated with the construction or purchase and installation of the alternative-fuel vehicle refueling infrastructure up to a maximum of $400,000 per facility.

(c) The cost of construction of the alternative-fuel vehicle refueling infrastructure or alternative-fuel vehicle home refueling infrastructure eligible for a tax credit under this article does not include costs associated with exploration, development or production activities necessary for severing natural resources from the soil or ground.

(d) When the taxpayer is a pass-through entity treated like a partnership for federal and state income tax purposes, the credit allowed under this article for the year shall flow through to the equity owners of the pass-through entity in any manner that such equity owners see fit and is not required to flow through such equity owners in the same manner as distributive share flows through to the equity owners and in accordance with any legislative rule the Tax Commissioner may propose for legislative approval in accordance with article three, chapter twenty-nine-a of this code to administer this section.

(e) No credit allowed by this article may be applied against employer withholding taxes imposed by article twenty-one of this chapter.

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§11-6D-7. Duration of availability of credit.

No person is eligible to receive a tax credit under this article for:

(1) An alternative-fuel motor vehicle purchased after December 31, 2017;

(2) A vehicle converted to an alternative-fuel motor vehicle after December 31, 2017;

(3) The construction or purchase and installation of qualified alternative-fuel vehicle refueling infrastructure occurring after December 31, 2017;

(4) The construction or purchase and installation of qualified alternative-fuel vehicle home refueling infrastructure occurring on or after April 15, 2013;

(5) Purchases of motor vehicles that operate on fuels other than compressed natural gas, liquefied natural gas or liquefied petroleum gas, occurring on or after April 15, 2013; or

(6) Conversions of motor vehicles to operate on fuels other than compressed natural gas, liquefied natural gas or liquefied petroleum gas, occurring on or after April 15, 2013.

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§11-6D-8. Commissioner to design forms and schedules; promulgation of rules.

(a) The Tax Commissioner shall design and provide to the public simplified forms and schedules to implement and effectuate the provisions of this article.

(b) The Tax Commissioner shall promulgate new rules for the administration of this article consistent with its provisions and in accordance with article three, chapter twenty-nine-a of this code as the Commissioner deems necessary after the effective date of the amendments to this article. Such rules shall include rules relating to the necessary documentation required to be filed in order to take the tax credits allowed in this article.

(c) Within one year prior to the expiration of the credit established in this article, the State Tax Commissioner shall provide a written report to the Legislature setting forth the utilization of the credit, the benefit of the credit and the overall cost of the credit.

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§11-6D-9. Carryover credit allowed; recapture of credit.

(a) If the alternative-fuel motor vehicle tax credit allowed under this article in the first taxable year in which the tax credit is allowable to offset tax exceeds the taxpayer's tax liability as determined in accordance with article twenty-one, article twenty-three and article twenty-four of this chapter for that taxable year, the excess may be applied for not more than the four next succeeding taxable years until the excess tax credit is used or the end of the fourth next succeeding taxable year, whichever occurs first. Any excess credit remaining at the end of the fourth next succeeding taxable year shall be forfeited.

(b) If the qualified alternative-fuel vehicle refueling infrastructure tax credit allowed under this article in any taxable year exceeds the taxpayer's tax liability as determined in accordance with article twenty-one, article twenty-three or article twenty-four of this chapter for that taxable year, the excess may be applied for succeeding taxable years until the full amount of the excess tax credit is used.

(c) No carryback to a prior taxable year is allowed for the amount of any unused credit in any taxable year.

(d) A tax credit is subject to recapture, elimination or reduction if it is determined by the State Tax Commissioner that a taxpayer was not entitled to the credit, in whole or in part, in the tax year in which it was claimed by the taxpayer. The amount of credit that flows through to equity owners of a pass-through entity may be recaptured or recovered from either the taxpayer or the equity owners in the discretion of the Tax Commissioner.

(e) The tax credit allowed under this article may not be sold, transferred or assigned to any person or entity. The tax credit allowed under this article does not attach to or follow the qualified motor vehicle or qualified infrastructure upon sale, resale, transfer, assignment or any other change of ownership of such vehicle or infrastructure. Credit shall not be available to any successor owner of any qualified motor vehicle or any qualified infrastructure property for which the credit was available to the original owner or predecessor owner.

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