WEST VIRGINIA CODE CHAPTER 11 ARTICLE 6F

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§11-6F-1. Legislative findings.

The Legislature finds that the encouragement of economic growth and development 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 ad valorem property tax valuation set forth in this article for certified capital addition property, as defined in section two of this article, will help preserve the tax base and preserve and create jobs attributable to manufacturing facilities existing in this state.

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§11-6F-2. Definitions.

As used in this article, the term:

"Certified capital addition property" means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the State Tax Commissioner in accordance with §11-6F-4 of this code: *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles are not certified capital addition property.

"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 activity 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.

"Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse, building or complex of buildings, including land on which it is located, and all machinery, equipment, improvements, and other real property and personal property located at or within the facility used in connection with the operation of the facility in a manufacturing business.

"Personal property" means all property specified in §2-2-10(q) of this code and includes, but is not limited to, furniture, fixtures, machinery, and equipment, pollution control equipment, computers, and related data processing equipment, spare parts, and supplies.

"Qualified capital addition to a manufacturing facility" means either:

(1) All real property and personal property, the combined original cost of which exceeds $50 million to be constructed, located, or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least $100 million. If the capital addition is made in a steel, chemical, or polymer alliance zone as designated from time-to-time by executive order of the Governor, then the person making the capital addition may, for purposes of satisfying the requirements of this subsection, join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least $100 million if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility, consists of a facility used to store, handle, process, or produce raw materials for the manufacturing facility, consists of a facility used to store, handle, or process natural gas to produce fuel for the generation of steam or electricity for the manufacturing facility or consists of a facility that generates steam or electricity for the manufacturing facility,

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including, but not limited to, a facility that converts coal to a gas or liquid for the manufacturing facility's use in heating, manufacturing or generation of electricity. When the new capital addition is a facility that is or will be processing raw natural gas or oil to recover or extract liquid hydrocarbons, or is a manufacturing facility that uses product produced at a facility engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons, then wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted and where the term "50 million" is used, the term "10 million" shall be substituted; and where the term "50 million" is used, the term "10 million" shall be substituted; and that beginning on and after July 1, 2021, when the new capital addition is a facility that is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994, as defined on January 1, 2021, then wherever the term "100 million" is used in this subsection, the term "2 million" shall be substituted and where the term "50 million" is used, the term "1 million" shall be substituted; or

(2)(A) All real property and personal property, the combined original cost of which exceeds $2 billion to be constructed, located, or installed at a facility, or a combination of facilities by a single entity or combination of entities engaged in a unitary business, that:

(i) Is or will be engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons; or

(ii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (i) above; or

(iii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (ii) of this subdivision.

(B) All real property and personal property, the combined original cost of which exceeds $2 million to be constructed, located, or installed at a facility, or a combination of facilities by a single entity or combination of entities engaged in a unitary business, that is or may be classified under North American Industry Classification System with a six-digit code number 332992 or 332994 as defined on January 1, 2021.

(C) No preexisting investment made, or in place before the capital addition is required for property specified in this subdivision. The requirements set forth in subdivision (1) of this subsection do not apply to property specified in this subdivision relating to:

(i) Location or installation of investment at or within two miles of a manufacturing facility owned or operated by the person making the capital addition;

(ii) Total original cost of preexisting investment before the capital addition of at least $100 million or $20 million; or

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(iii) Multiparty projects.

"Real property" means all property specified in §2-2-10(p) of this code and includes, but is not limited to, lands, buildings, and improvements on the land such as sewers, fences, roads, paving, and leasehold improvements: *Provided*, That for capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

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§11-6F-3. Tax treatment of certified capital addition property.

Notwithstanding any other provisions of law, the value of certified capital addition property, for purposes of ad valorem property taxation under this chapter, is its salvage value, which for purposes of this article is five percent of the certified capital addition property's original cost. For capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

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§11-6F-4. Application and certification.

Any person seeking designation of property as certified capital addition property shall first make a sworn application to the State Tax Commissioner on forms prescribed by the State Tax Commissioner on or before the date the property is first required to be reported on an annual return for ad valorem property tax purposes. The State Tax Commissioner shall within ninety days of the application determine in writing whether the property is or will be part of a qualified capital addition to a manufacturing facility as defined in section two of this article and shall provide a copy of the written determination to the applicant and the assessor or assessors in the county or counties in which the manufacturing facility is located. The applicant may file an appeal with the State Tax Commissioner to have a formal hearing for a review and redetermination on qualified capital additions to a manufacturing facility which have been disallowed by the State Tax Commissioner within thirty days of the official written notification from the State Tax Commissioner. After the State Tax Commissioner determines that property is or will be part of a qualified capital addition to a manufacturing facility, the property is and remains certified capital addition property for purposes of this article until the earlier of: (a) The disposition of the property to an unrelated third party other than a transferee who continues to operate the manufacturing facility; (b) the cessation of all business at the manufacturing facility; or (c) with regard to: (1) Property described in subdivision (1), subsection (e), section two of this article, the tenth year succeeding the year in which the qualified capital addition to a manufacturing facility to which the property relates is first placed in service; or (2) property described in subdivision (2), subsection (e), section two of this article, the twenty-fifth year succeeding the year in which the qualified capital addition to a manufacturing facility to which the property relates is first placed in service.

All applications and determinations under this section constitute return information and are subject to section twenty-three, article one-a of this chapter. The State Tax Commissioner shall report annually the number of applications filed, certified, denied and pending pursuant to this section for the preceding year along with recommendations regarding the structure, benefits and costs of the valuation method specified in this article to the Joint Committee on Government and Finance and to the Governor: Provided, That identifying characteristics and facts about applicants may not in any event be disclosed under this section.

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§11-6F-5. Authority to propose rules.

The State Tax Commissioner shall propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the administration of this article as may be necessary to implement the provisions of this article: Provided, That the State Tax Commissioner may promulgate emergency rules to implement the provisions of this article.

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§11-6F-6. Effective date, expiration of two-mile limitation.

(a) This article is effective for the tax years beginning on and after the first day of July, one 1997.

(b) Notwithstanding any other provision of this article to the contrary, the requirement that a qualified capital addition to a manufacturing facility be located or installed at or within two miles of a preexisting manufacturing facility owned or operated by the person making the capital addition, or by a multiple party project participant, is null, void and of no further force or effect for otherwise qualified capital addition to a manufacturing facility placed in service or use on and after the first day of January 2023.

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