WEST VIRGINIA CODE: §5B-2E-7A

§5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by article fifteen, chapter eleven of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development expansion project: *Provided*, That the tourism development expansion project tax credit allowed under this section is separate and distinct from any credit allowed for a tourism development project in accordance with the provisions of section seven of this article: *Provided*, however, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the tourism development expansion project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company's approved costs as provided in the agreement: *Provided*, That, if the tourism development expansion project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in section three, article three, chapter twenty-two of this code, from which all coal has been or will be extracted prior to the commencement of the tourism development project; or the tourism development expansion project site is a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district; or the tourism development project site is located on or with 5 miles of a recreational property owned or leased by the state or federal government and when the project is located on property owned or leased by the state or federal government, the project has received prior approval from the appropriate state or federal agency, the maximum amount of credit allowable is equal to thirty-five percent of the approved company's approved costs as provided in the agreement.

(c) The amount of credit allowable may be taken over a 10-year period, at the rate of one 10th of the amount thereof per taxable year, beginning with the taxable year in which the project is opened to the public, unless the approved company elects to delay the beginning of the 10-year period until the next succeeding taxable year. This election may be made in the first consumers sales and service tax return filed by the approved company following the date the project is opened to the public. Once made, the election cannot be revoked. If any credit remains after application of this initial 10-year period, the approved company may request an additional 15 year credit application period from the Department. If any unused credit remains after the 25th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

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(d) The amount determined under subsection (b) of this section is allowed as a credit against the consumers sales and service tax collected by the approved company on sales from the operation of the tourism development expansion project. The amount determined under said subsection may be used as a credit against taxes required to be remitted on the approved company's monthly consumers sales and service tax returns that are filed pursuant to section sixteen, article fifteen, chapter eleven of this code. The approved company shall claim the credit by reducing the amount of consumers sales and service tax required to be remitted with its monthly consumers sales and service tax returns by the amount of its aggregate annual credit allowance until such time as the full current year annual credit allowance has been claimed. Once the total credit claimed for the tax year equals the approved company's aggregate annual credit allowance no further reductions to its monthly consumers sales and service tax returns will be permitted.

(e) Notwithstanding any other provision of this code, an approved company may elect not to utilize the tax credit awarded in this article for any reason whatsoever, including, but not limited to, utilizing other tax credits permitted in this code, after the project is completed and placed in use but prior to making an election pursuant to subsection (c) of this section. Any decision not to utilize the tax credit for an approved company in this article may not impact the approved company's eligibility under this article or affect its designation as a Tourism Development District.

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