WEST VIRGINIA CODE: §5b-2E-8

§5B-2E-8. Forfeiture of unused tax credits; credit recapture; recapture tax imposed; information required to be submitted annually to development office; transfer of tax credits to successors.

(a) The approved company or eligible company shall forfeit the tourism development project tax credit allowed by section seven of this article, or the tourism development expansion tax credit allowed by section seven-a of this article, or the tax credit allowed by section seven-b of this article, as applicable, with respect to any calendar year and shall pay the recapture tax imposed by subsection (b) of this section, if:

(1) In any year following the first calendar year the project is open to the public, the project fails to attract at least twenty-five percent of its visitors from among persons who are not residents of the state;

(2) In any year following the first year the project is open to the public, the project is not operating and open to the public for at least one hundred days; or

(3) The approved company or eligible company, as of the beginning of each calendar year, has an outstanding obligation under the West Virginia state tax and revenue laws; or

(4) Any company, approved company or eligible company, to which entitlement to the tax credit authorized under section seven-b of this article has been previously established, fails to meet the requirements specified in section seven-b for an eligible company and for a qualified professional services destination facility, including, but not limited to, jobs maintenance, employee wage and employee health benefits, aggregate gross receipts, and gross receipts subject to the tax imposed under article twenty-seven, chapter eleven of this code.

(5) Any company, approved company or eligible company, to which entitlement to the tax credit authorized under section seven-b of this article has been previously established:

(A) Is delinquent in payment of any assessment, fee, fine, civil penalty or monetary imposition imposed by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

(B) Is delinquent in compliance with any order, injunction, compliance agreement, agreed order, court order, mandamus or other enforcement or compliance instrumentality of the West Virginia Division of Environmental Protection or United States Environmental Protection Agency or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

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(C) Is out of compliance or not compliant with any citation or order issued by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations, requiring that a condition be abated or corrected.

(b) In addition to the loss of credit allowed under this article for the calendar year, a credit recapture tax is hereby imposed on any approved company or successor eligible company that forfeits the tourism development project tax credit or the tourism development expansion project credit or the credit authorized under section seven-b of this article, under the provisions of subsection (a) of this section. The credit recapture tax shall apply and the approved company, and successor eligible companies, and any other person or entity that has received the tax credit allowed under this article shall be liable for an amount of recapture tax equal to all previously claimed tourism development project tax credit or tourism development expansion project credit, or the tax credits authorized under section seven-b of this article, and allowed by this article, as applicable, plus interest and penalties applicable in accordance with the Tax Procedure and Administration Act. The recapture tax shall be calculated and paid pursuant to the filing, with the Tax Commissioner of an amended return, and such other forms, schedules and documents as the Tax Commissioner may require, for the prior calendar year, or calendar years, for which credit recapture is required, along with interest, as provided in section seventeen, article ten, chapter eleven of this code: Provided, That the approved company, eligible company, person or entity who previously claimed the tourism development project tax credit, or the tourism development expansion project credit, or the tax credits allowed by section seven-b of this article, as applicable, under this article and successor eligible companies, persons or entities are jointly and severally liable for payment of any recapture tax subsequently imposed under this section. For purposes of this recapture tax, the statute of limitations otherwise applicable under the Tax Procedure and Administration Act shall not begin to run until the eighteenth year subsequent to the earlier of: the year when qualified investment is first placed into service or use, or the year when the application for the tax credit authorized under this article was filed with the West Virginia Development Office.

(c) Within forty-five days after the end of each calendar year during the term of the agreement, the approved company shall supply the development office with all reports and certifications the development office requires demonstrating to the satisfaction of the development office that the approved company is in compliance with applicable provisions of law. Based upon a review of these materials and other documents that are available, the development office shall then certify to the Tax Commissioner that the approved company is in compliance with this section.

(d) The tax credit allowed in this article is transferable, subject to the written consent of the development office, to an eligible successor company that continues to operate the approved project.