WEST VIRGINIA CODE: §5b-2L-11

§5B-2L-11. Application of annual credit allowance.

(a) *Application of annual property value adjustment tax credit against personal income tax or corporate net income tax*. — The amount of the property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 *et seq*. or §11-24-1 *et seq*. of this code, as applicable, to offset tax liabilities imposed on net income for each taxable year, beginning in the eligible taxpayer's tax year in which construction of project property is completed, as certified by the Department of Economic Development, and ending at the end of the eligible taxpayer's 10th taxable year subsequent to the tax year in which construction of project property is completed, as certified by the Department of Economic Development.

(1) *Personal income tax*. – The amount of the annual property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 *et seq*. of this code.

(2) *Corporation net income tax*. – The amount of the annual property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-24-1 *et seq*. of this code. Application of the property value adjustment tax credit against the tax imposed under §11-24-1 *et seq*. of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group.

(3) *Refundable portion of annual property value adjustment tax credit*. —

(A) If annual property value adjustment tax credit allowed under this article exceeds the amount of personal income tax or corporation net income tax, as applicable, subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the excess amount as a refundable tax credit, not to exceed $100,000 per project.

(B) The $100,000 property value adjustment tax credit refundable credit limitation applies on a per project basis, so that:

(i) If there is a single eligible taxpayer that has developed property comprising a certified BUILD WV project that is entitled to a refundable portion of the tax credit, then the $100,000 refundable credit limitation applies to that single taxpayer; or

(ii) If there are multiple eligible taxpayers that have developed of property comprising a certified BUILD WV project that are entitled to a refundable portion of the tax credit, then

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the $100,000 refundable credit limitation applies to, and is shared among, those multiple eligible taxpayers in such proportion as the Department of Economic Development may approve, and in no case shall the aggregate amount of refundable tax credit taken by all such multiple eligible taxpayers in total exceed $100,000 for the tax year.

(C) Application of the property value adjustment tax credit, as a refundable credit against the tax imposed under §11-24-1 *et seq*. of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Only that single entity shall be entitled to claim excess credit for the taxable year, if applicable, as refundable credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group. Any property value adjustment tax credit remaining after application of this subdivision for the taxable year is forfeited.

(b) *Pass-through entities*. –

(1) The annual property value adjustment tax credit allowed under this article for the year shall flow through to the equity owners of the pass-through entity in the same manner as distributive share of income flows through to the equity owners.

(2) *Personal income tax — application of annual property value adjustment tax credit against personal income tax on income from pass-through entities*. – The property value adjustment tax credit authorized by this article may be applied against the tax imposed under §11-21-1 *et seq*. of this code, on flow-through income of an individual partner, owner, interest holder or S Corporation shareholder, which is directly and solely derived from and limited to the net income of the flow-through entity that is an eligible taxpayer that has developed certified project property. If annual property value adjustment tax credit allowed under this article exceeds the amount of personal income tax of a particular owner, interest holder, partner or S Corporation shareholder or other owner of a flow-through entity that is an approved company, subject to offset by the property value adjustment tax credit under this article in any taxable year, the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit. The $100,000 limitation is determined at the flow-through entity level and applies as the total aggregate limit on all refundable credit available to all partners, owners, interest holders, or S Corporation shareholders that receive a distributive share of flow through income from the flow-through entity. The refundable credit amount shall be divided and distributed among the individual partners, owners, interest holders, or S Corporation shareholders, in the same manner and in the same proportions as the distributive share of income flows through to the equity owners: *Provided*, That in the case of multiple approved companies that have developed project property, the $100,000 limitation applies on a per project basis, as specified herein.

(3) *Corporation net income tax — application of annual property value adjustment tax credit against corporation net income tax on income from pass-through entities*. – The property

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value adjustment tax credit authorized by this article may be applied against the tax imposed under §11-24-1 *et seq*. of this code, on flow-through income of a C corporation that is a partner, owner, interest holder, or S Corporation shareholder, which is directly and solely derived from and limited to the net income of the flow-through entity that is the eligible taxpayer that developed certified project property. If annual property value adjustment tax credit allowed under this article exceeds the amount of corporation net income tax of a particular owner, interest holder, partner, S Corporation shareholder, or other owner of a flow-through entity that is an approved company, subject to offset by the property value adjustment tax credit under this article in any taxable year, the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit. The $100,000 limitation is determined at the flow-through entity level and applies as the total aggregate limit on all refundable credit available to all partners, owners, interest holders or S Corporation shareholders that receive a distributive share of flow-through income from the flow-through entity. The refundable credit amount shall be divided and distributed among the partners, owners, interest holders or S Corporation shareholders, in the same manner and in the same proportions as the distributive share of income flows through to the equity owners: *Provided*, That in the case of multiple eligible taxpayers that have developed project property, the $100,000 limitation applies on a per project basis, as specified herein.

(c) The property value adjustment tax credit shall not apply against the ad valorem property tax. The property value adjustment tax credit shall not apply against any withholding tax or payroll tax of any taxpayer or employer.

(d) *Annual schedule*. – For purposes of asserting the property value adjustment tax credit allowed under this article against tax, the taxpayer must prepare and file an annual schedule showing the amount of tax paid for the taxable year and the amount of credit allowed under this article, and such other information as the Tax Commissioner may require. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

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