No: 1236

APPROVED AND SIGNED BY THE GOVERNOR

Date April 11, 1981

Time 5:20 pm

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OFFICE SECY. OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

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ENROLLED

HOUSE BILL No. 1236

(By Mr. Speaker, Mr. See)

— ● —

Passed March 31, 1981

In Effect July 1, 1981 ~~Passage~~

C-641

ENROLLED

H. B. 1236

(By Mr. Speaker, Mr. See)

[Passed March 31, 1981; in effect July 1, 1981.]

AN ACT to amend article thirteen, chapter eleven of the code West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-d; to amend said chapter eleven by adding thereto a new article, designated article thirteen-d; and to amend and reenact section eight, article twenty-one and section nine, article twenty-four of said chapter eleven, all relating generally to the credit against business and occupation taxes for eligible investment in existing industrial facilities for the purpose of their revitalization; providing for regulations; stating legislative findings and purpose; defining terms; allowing credit to eligible industrial taxpayers for revitalization of existing industrial facilities; defining eligible investment for industrial revitalization; providing for forfeiture and recapture of credit; and providing that the business and occupation tax credit allowed under the personal income tax and the corporation net income tax shall not be reduced by the tax credit for industrial revitalization.

Be it enacted by the Legislature of West Virginia:

That article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-d; that said chapter eleven be amended by adding thereto a new article, designated article thirteen-d; and that section eight, article twenty-one and section nine, article twenty-four of said chapter eleven be amended and reenacted, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3d. Tax credit for industrial revitalization; regulations.

(1) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-d of this chapter, relating to tax credit for industrial revitalization.

(2) The tax commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section and article thirteen-d of this chapter.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL REVITALIZATION.

§11-13D-1. Legislative finding and purpose.

The Legislature finds that the encouragement of growth and revitalization of existing industrial facilities in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in this state and thereby increase employment and economic development, there is hereby provided a business and occupation tax credit for industrial revitalization.

§11-13D-2. Definitions.

(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) "Eligible industrial taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial revitalization of an industrial facility located in this state on the first day of July, one thousand nine hundred eighty-one.

(2) "Industrial business" means any privilege taxable under section two-b, article thirteen of this chapter and includes a manufacturing service taxable under section two-h of said article.

(3) "Industrial facility" means any factory, mill, plant, refinery, warehouse, buildings or complex of buildings located within this state on the first day of July, one thousand nine hundred eighty-one, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility in an industrial business.

(4) "Industrial revitalization" means capital investment in an industrial facility located in this state on the first day of July, one thousand nine hundred eighty-one, to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of such facility in an industrial business of the taxpayer, including the acquisition of any real property necessary to the industrial revitalization.

(5) "Industrial taxpayer" means any person liable for business and occupation tax under article thirteen of this chapter, exercising any privilege taxable under section two-b of said article thirteen or providing a manufacturing service taxable under section two-h of said article thirteen.

(6) "Manufacturing service" means a privilege that would be taxable under section two-b, article thirteen of this chapter, if title to the raw materials used in the manufacturing process was vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(7) "Property purchased for industrial revitalization" means real property and improvements thereto and new tangible personal property, but only if such property is constructed or purchased for use as a component part of an ongoing industrial facility located within this state on the first day of July, one thousand nine hundred eighty-one. This term includes only tangible personal property with respect to which depreciation or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax due under article twenty-one or twenty-four of this chapter, and has a useful life at the time the property is placed in service or use in this state of four years or more. Property

acquired by lease for a term of ten years or longer if used as a component part of an industrial revitalization, shall be included within this definition. "Property purchased for industrial revitalization" shall not include:

(A) Property which qualifies or was qualified for credit under article thirteen-c of this chapter;

(B) Repair costs including materials used in making the repair;

(C) Motor vehicles licensed by the department of motor vehicles;

(D) Airplanes;

(E) Off premise transportation equipment;

(F) Property which is primarily used outside this state;

(G) Property purchased prior to the first day of July, one thousand nine hundred eighty-one. Property shall be deemed to have been purchased prior to said date only if:

(i) The physical construction, reconstruction or erection of the property was begun prior to said first day of July, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract existing on or before the thirtieth day of June, one thousand nine hundred eighty-one, and limited to the provision of such contract as of such date, binding on the taxpayer;

(ii) The machinery or equipment was owned by the taxpayer on or before the thirtieth day of June, one thousand nine hundred eighty-one, or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect on such date;

(iii) In the case of leased property, there was a binding lease or contract to lease identifiable equipment in effect on or before the thirtieth day of June, one thousand nine hundred eighty-one;

(H) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer which property was or had been used by the seller in his industrial business in this state, or which property was previously designated "property purchased for industrial expansion" under article thirteen-c of this chapter and used to qualify for the tax credit provided by that article.

§11-13D-3. Amount of credit allowed for industrial revitalization.

There shall be allowed to eligible industrial taxpayers a credit against the business and occupation taxes imposed by article thirteen of this chapter, for industrial revitalization. The amount of this credit shall be equal to ten percent of the cost of eligible investment made for industrial revitalization and shall reduce the business and occupation tax imposed under sections two-b and two-h, article thirteen of this chapter, subject to the following conditions and limitations.

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed on the business of manufacturing, compounding or preparing for sale under section two-b, article thirteen of this chapter, and on the providing of a manufacturing service under section two-h, article thirteen of this chapter, below fifty percent of the amount which would be imposed for the taxable year in the absence of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible industrial taxpayer is entitled to claim credit under both this article and article thirteen-c of this chapter, the total amount of credits allowed shall not exceed the fifty percent rule outlined in subdivision (2) of this section.

(4) No carryover to a subsequent tax year or carryback to a prior tax year shall be allowed for the amount of any unused portion of the credit allowed under this article for the taxable year. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this article for any property purchased for industrial revitalization prior to the first day of July, one thousand nine hundred eighty-one.

§11-13D-4. Eligible investment.

(a) *General.*—The eligible investment in property purchased for industrial revitalization shall be the applicable percentage of the cost of each property purchased for the purpose of industrial revitalization which is placed in service or use in this state by the industrial taxpayer during the taxable year.

(b) *Applicable percentage.*—For the purpose of subsection (a), the applicable percentage for any property shall be determined under the following table:

If useful life is—	The applicable percentage is—
4 years or more but less than 6 years	33 1/3
6 years or more but less than 8 years	66 2/3
8 years or more	100

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer.

(c) *Cost.*—For purposes of subsection (a), the cost of each property purchased for industrial revitalization shall be determined under the following rules:

(1) *Trade-ins.*—Cost shall not include the value of any property given in trade or exchange for the property purchased for industrial revitalization.

(2) *Damaged, destroyed or stolen property.*—If property is damaged or destroyed by fire, flood, storm or other casualty or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

(3) *Rental property.*—The cost of property acquired by lease for a term of ten years or longer shall be one hundred

percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(3) *Property purchased for multiple use.*—The cost of property purchased for multiple business use including use as a component part of a revitalized industrial business together with some other business or activity not eligible for credit under this article, shall be apportioned between such businesses and occupations. The amount apportioned to the revitalized industrial business shall be considered as an eligible investment subject to the conditions and limitations of this section.

(4) *Self-constructed property.*—In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for purposes of depreciation.

§11-13D-5. Forfeiture of unused tax credits, redetermination of credit allowed.

(a) *Disposition of property or cessation of use.*—If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as determined under section three of this article; or

(2) Ceases to be used in the industrial business of the taxpayer in this state prior to the end of its useful life, as determined under said section three, then the unused portion of the credit allowed for such property shall be forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty or is stolen the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under said section three, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business and ocupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes, plus interest and any applicable penalties.

(b) *Cessation of operation of industrial facility.*—If during any taxable year the industrial taxpayer ceases operation of an industrial facility in this state for which revitalization credit was allowed under this article before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section three, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes, plus interest and any applicable penalties.

§11-13D-6. Transfer of eligible investment to successors.

(a) *Mere change in form of business.*—Property shall not be treated as disposed of under section five of this article by reason of a mere change in the form of conducting the industrial business as long as the property is retained in an industrial business in this state and the taxpayer retains a substantial interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the industrial facility or facilities transferred and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

(b) *Sale to successor.*—Property shall not be treated as disposed of under section five by reason of any sale to a successor business which continues to operate the industrial facility in this state. Upon sale the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

(a) *Business and occupation tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: *Provided,* That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) *Carrier income tax credit.*—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: *Provided,* That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect of which said income tax under article twelve-a was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article twelve-a shall be allowed to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9. Credits against tax.

(a) *Credit for taxes imposed under article thirteen, chapter eleven of this code.*—A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: *Provided,* That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: *Provided, however,* That no such credit shall be allowed for any tax imposed under article thirteen with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) *Credit for taxes imposed under article twelve-a, chapter eleven of this code.*—A credit shall be allowed against the tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: *Provided,* That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed the tax imposed by this article for such taxable year: *Provided, however,* That no such credit shall be allowed for any tax imposed under article twelve-a with respect to any period prior to the first day of July, one thousand nine hundred sixty-seven.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Baylor
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the House.

Takes effect July 1, 1981.

Todd C. Willis
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Warren R. McGraw
President of the Senate

Clyde M. See, Jr.
Speaker House of Delegates

The within is approved this the 11 day of April, 1981.

John D. Rockefeller IV
Governor

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