WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED

SENATE BILL NO. 536

(Pass 536 No. 1

Passed March 11, 1983
In Effect April 1, 1983

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-27-83

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OFFICE OF THE GOVERNOR
AN ACT to amend article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-e; and to amend said chapter eleven by adding thereto a new article, designated article thirteen-e, all relating generally to the credit against business and occupation taxes for eligible investment in new or expanded or revitalized coal loading facilities; authorizing issuance of regulations; stating legislative findings and purpose; defining terms; allowing credit for eligible investment in coal loading facilities; defining eligible investment in coal loading facilities; and providing for forfeiture and recapture of credit.

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-e; and that said chapter eleven be amended by adding thereto a new article, designated article thirteen-e, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3e. Tax credit for coal loading facilities; regulations.
1 (a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under
ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL LOADING FACILITIES.

§11-13E-1. Legislative finding and purpose.
1 The Legislature finds that production of coal is very important to the economy of this state, and that a sound economy 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, through the construction of new or the expansion or revitalization of existing coal loading facilities, and thereby increase employment and economic development, there is hereby provided a business and occupation tax credit for investment in coal loading facilities.

1 (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.
2 (b) For purposes of this article, the term:
3 (1) "Coal loading facility" means any building or structure specifically designed and solely used to transfer coal from a coal processing or preparation facility, or from a coal storage facility, or both, or from any means of transportation, to any means of rail or barge transportation used to move coal, including such land as is directly associated with and solely used for the coal loading facility, and including any device or combination of machinery and equipment, that is directly associated with and solely used for the loading of coal. This definition applies only when the transfer is to any means of rail or barge transportation and specifically excludes the transfer to any other form of transportation. This may include but is not limited to the coal loading tipple, conveyors, coal storage facilities, weighing equipment and rail trackage, if they are directly associated with and solely used for the loading of coal. In no
event may the eligible investment in a coal loading facility, for purposes of this credit, include the cost of any coal processing, preparation, blending or sizing facility or equipment, or any combination thereof, even though physically a part of the coal loading facility, and even though such coal processing, preparation, blending or sizing facility or equipment, or any combination thereof, is necessary or essential to the loading of commercially usable or marketable coal.

(2) "Eligible taxpayer" means any person subject to tax under article thirteen of this chapter who purchases real or personal property, or a combination thereof, for the purpose of building or constructing a new or expanded coal loading facility in this state, or who revitalizes an existing coal loading facility which was located in this state on the first day of April, one thousand nine hundred eighty-three, and upon completion, operates the new or expanded or revitalized coal loading facility.

(3) "Revitalization" means capital investment in a coal loading facility located in this state on the first day of April, one thousand nine hundred eighty-three, to replace or modernize buildings, structures, equipment, machinery and other tangible personal property directly associated with and solely used in the operation of a coal loading facility, including the acquisition of any real property directly associated with and solely used in the operation of a revitalized coal loading facility.

(4) "Property purchased for a coal loading facility" means real property and improvements thereto, and tangible personal property, but only if such real or personal property is constructed or purchased for use as a component part of a new or expanded coal loading facility, or the revitalization of an existing coal loading facility which was located within this state on the first day of April, one thousand nine hundred eighty-three. 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 articles 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 a coal
loading facility, shall be included within this definition.
“Property purchased for a coal loading facility” shall not
include:
(A) Property which qualifies or was qualified for credit
under articles thirteen-c or thirteen-d of this chapter.
(B) Repair costs, including materials used in making the
repair, unless under generally accepted accounting
principles the cost of the repair must be capitalized and not
expensed.
(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 April,
one thousand nine hundred eighty-three. 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 April or
such property was constructed, reconstructed, erected or
acquired pursuant to a written contract existing on or
before the thirty-first day of March, one thousand nine
hundred eighty-three, 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 thirty-first day of March, one
thousand nine hundred eighty-three 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 thirty-first day of March, one thousand nine
hundred eighty-three.
(H) Property which is acquired incident to the purchase
of the stock or assets of a taxpayer, which property was or
had been used by the seller in his 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, or was previously designated
“property purchased for industrial revitalization” under
article thirteen-d of this chapter and used to qualify for the tax credit provided by that article.

§11-13E-3. Amount of credit allowed for coal loading facilities.

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

(a) 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.

(b) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed on the business of producing coal under section two-a, article thirteen of this chapter, the business of manufacturing, compounding or preparing coal for sale under section two-b, article thirteen of this chapter and on the activity of loading coal 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.

(c) When in any taxable year the eligible taxpayer is entitled to claim credit under this article and article thirteen-c or article thirteen-d of this chapter, the total amount of credits allowed shall not exceed fifty percent of the tax liability under section two-b or two-h, article thirteen of this chapter on manufacturing or manufacturing-service activity.

(d) 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.

(e) No credit shall be allowed under this article for any property purchased for a coal loading facility prior to the first day of April, one thousand nine hundred eighty-three.
§11-13E-4. Eligible investment.

1 (a) General.—The eligible investment in property purchased for a new or expanded or revitalized coal loading facility shall be the applicable percentage of the cost of each property purchased for the purpose of such coal loading facility, which is placed in service or use in this state by the eligible taxpayer during the taxable year.

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

<table>
<thead>
<tr>
<th>If useful life is</th>
<th>The applicable percentage is</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3%</td>
</tr>
<tr>
<td>6 years</td>
<td>66 2/3%</td>
</tr>
<tr>
<td>8 years</td>
<td>100%</td>
</tr>
</tbody>
</table>

3 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, and is the period during which the property may reasonably be expected to be useful to the taxpayer as part of a coal loading facility.

4 (c) Cost.—For purposes of subsection (a), the cost of each property purchased for a coal loading facility shall be determined under the following rules.

5 (1) Trade-ins.—Cost shall not include the value of any property given in trade or exchange for the property purchased for a coal loading facility.

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

7 (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. Lease renewals, subleases or assignments shall not be considered.

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

(5) *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.

§11-13E-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 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 a coal loading facility by the
eligible taxpayer, in this state, prior to the end of its useful
life, as determined under section three of this article, 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 section
three of this article, to correspond with the percentage of
cost allowable for the period of time that the property was
actually used in this state as a coal loading facility of the
eligible taxpayer. The 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.

(b) *Cessation of operation of coal loading facility.*—If
during any taxable year the eligible taxpayer ceases
operation of a coal loading facility in this state, for which
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 of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a coal loading facility of the eligible taxpayer. The 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.

§11-13E-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 business as long as the property is used as or in a coal loading facility 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 coal loading 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 of this article by reason of any sale to a successor business which continues to operate the coal loading 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

April 1, 1983.

In effect July 1, 1983.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 20th day of March, 1983.

Governor