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APPROVED AND SIGNED BY THE GOVERNOR

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OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

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ENROLLED

SENATE BILL NO. 536

(By Mr. McGraw, Jr. President)

—•—

PASSED March 11, 1983

In Effect April 1, 1983 ~~Page~~



ENROLLED
Senate Bill No. 536
(By MR. MCGRAW, MR. PRESIDENT)

[Passed March 11, 1983; in effect April 1, 1983.]

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
- 2 imposed by this article, the amount determined under

3 article thirteen-e of this chapter, relating to tax credit for
4 new or expanded or revitalized coal loading facilities.

5 (b) The tax commissioner may prescribe such
6 regulations as may be necessary to carry out the purposes of
7 this section and article thirteen-e of this chapter.

**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
2 important to the economy of this state, and that a sound
3 economy is in the public interest, and promotes the general
4 welfare of the people of this state. In order to encourage
5 capital investment in this state, through the construction of
6 new or the expansion or revitalization of existing coal
7 loading facilities, and thereby increase employment and
8 economic development, there is hereby provided a business
9 and occupation tax credit for investment in coal loading
10 facilities.

§11-13E-2. Definitions.

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

6 (b) For purposes of this article, the term:

7 (1) "Coal loading facility" means any building or
8 structure specifically designed and solely used to transfer
9 coal from a coal processing or preparation facility, or from a
10 coal storage facility, or both, or from any means of
11 transportation, to any means of rail or barge transportation
12 used to move coal, including such land as is directly
13 associated with and solely used for the coal loading facility,
14 and including any device or combination of machinery and
15 equipment, that is directly associated with and solely used
16 for the loading of coal. This definition applies only when the
17 transfer is to any means of rail or barge transportation and
18 specifically excludes the transfer to any other form of
19 transportation. This may include but is not limited to the
20 coal loading tipple, conveyors, coal storage facilities,
21 weighing equipment and rail trackage, if they are directly
22 associated with and solely used for the loading of coal. In no

23 event may the eligible investment in a coal loading facility,
24 for purposes of this credit, include the cost of any coal
25 processing, preparation, blending or sizing facility or
26 equipment, or any combination thereof, even though
27 physically a part of the coal loading facility, and even
28 though such coal processing, preparation, blending or
29 sizing facility or equipment, or any combination thereof, is
30 necessary or essential to the loading of commercially usable
31 or marketable coal.

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

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

50 (4) "Property purchased for a coal loading facility"
51 means real property and improvements thereto, and
52 tangible personal property, but only if such real or personal
53 property is constructed or purchased for use as a component
54 part of a new or expanded coal loading facility, or the
55 revitalization of an existing coal loading facility which was
56 located within this state on the first day of April, one
57 thousand nine hundred eighty-three. This term includes
58 only tangible personal property with respect to which
59 depreciation or amortization, in lieu of depreciation, is
60 allowable in determining the personal income tax or
61 corporation net income tax due under articles twenty-one
62 or twenty-four of this chapter, and has a useful life at the
63 time the property is placed in service or use in this state of
64 four years or more. Property acquired by lease for a term of

65 ten years or longer, if used as a component part of a coal
66 loading facility, shall be included within this definition.
67 "Property purchased for a coal loading facility" shall not
68 include:

69 (A) Property which qualifies or was qualified for credit
70 under articles thirteen-c or thirteen-d of this chapter.

71 (B) Repair costs, including materials used in making the
72 repair, unless under generally accepted accounting
73 principles the cost of the repair must be capitalized and not
74 expensed.

75 (C) Motor vehicles licensed by the department of motor
76 vehicles.

77 (D) Airplanes.

78 (E) Off-premise transportation equipment.

79 (F) Property which is primarily used outside this state.

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

83 (i) The physical construction, reconstruction or erection
84 of the property was begun prior to said first day of April or
85 such property was constructed, reconstructed, erected or
86 acquired pursuant to a written contract existing on or
87 before the thirty-first day of March, one thousand nine
88 hundred eighty-three, and limited to the provision of such
89 contract as of such date, binding on the taxpayer.

90 (ii) The machinery or equipment was owned by the
91 taxpayer on or before the thirty-first day of March, one
92 thousand nine hundred eighty-three or was acquired by the
93 taxpayer pursuant to a binding purchase contract which
94 was in effect on such date.

95 (iii) In the case of leased property, there was a binding
96 lease or contract to lease identifiable equipment in effect on
97 or before the thirty-first day of March, one thousand nine
98 hundred eighty-three.

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

107 article thirteen-d of this chapter and used to qualify for the
108 tax credit provided by that article.

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

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

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

15 (b) The amount of annual credit allowed shall not
16 reduce the business and occupation taxes imposed on the
17 business of producing coal under section two-a, article
18 thirteen of this chapter, the business of manufacturing,
19 compounding or preparing coal for sale under section two-
20 b, article thirteen of this chapter and on the activity of
21 loading coal under section two-h, article thirteen of this
22 chapter, below fifty percent of the amount which would be
23 imposed for the taxable year in the absence of the annual
24 exemption allowed by section three, article thirteen of this
25 chapter.

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

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

37 (e) No credit shall be allowed under this article for any
38 property purchased for a coal loading facility prior to the
39 first day of April, one thousand nine hundred eighty-three.

§11-13E-4. Eligible investment.

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

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

10 If useful life is - The applicable percentage is -

11 4 years or more but less than

12 6 years 33 1/3%

13 6 years or more but less than

14 8 years 66 2/3%

15 8 years or more 100%

16 The useful life of any property for purposes of this section
17 shall be determined as of the date such property is first
18 placed in service or use in this state by the taxpayer, and is
19 the period during which the property may reasonably be
20 expected to be useful to the taxpayer as part of a coal
21 loading facility.

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

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

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

33 (3) *Rental property*.—The cost of property acquired by
34 lease for a term of ten years or longer shall be one hundred
35 percent of the rent reserved for the primary term of the
36 lease, not to exceed twenty years. Lease renewals, subleases
37 or assignments shall not be considered.

38 (4) *Property purchased for multiple use*.—The cost of
39 property purchased for multiple business use including use
40 as a component part of a coal loading facility business
41 together with some other business or activity not eligible for

42 credit under this article shall be apportioned between such
43 businesses or activities. The amount apportioned to the
44 activity of loading coal shall be considered as an eligible
45 investment subject to the conditions and limitations of this
46 section.

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

**§11-13E-5. Forfeiture of unused tax credits; redetermination
of credit allowed.**

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

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

6 (2) Ceases to be used in a coal loading facility by the
7 eligible taxpayer, in this state, prior to the end of its useful
8 life, as determined under section three of this article, then
9 the unused portion of the credit allowed for such property
10 shall be forfeited for the taxable year and all ensuing years.
11 Additionally, except when the property is damaged or
12 destroyed by fire, flood, storm or other casualty or is stolen,
13 the taxpayer shall redetermine the amount of credit
14 allowed in all earlier years by reducing the applicable
15 percentage of cost of such property allowed under section
16 three of this article, to correspond with the percentage of
17 cost allowable for the period of time that the property was
18 actually used in this state as a coal loading facility of the
19 eligible taxpayer. The taxpayer shall then file a
20 reconciliation statement with its annual business and
21 occupation tax return for the year in which the forfeiture
22 occurs, and pay any additional business and occupation
23 taxes, plus interest and any applicable penalties.

24 (b) *Cessation of operation of coal loading facility.*—If
25 during any taxable year the eligible taxpayer ceases
26 operation of a coal loading facility in this state, for which
27 credit was allowed under this article, before expiration of
28 the useful life of property with respect to which tax credit
29 has been allowed under this article, then the unused portion
30 of the allowed credit shall be forfeited for the taxable year
31 and all ensuing years. Additionally, except when the

32 cessation is due to fire, flood, storm or other casualty, the
33 taxpayer shall redetermine the amount of credit allowed in
34 earlier years by reducing the applicable percentage of cost
35 of such property allowed under section three of this article,
36 to correspond with the percentage of cost allowable for the
37 period of time that the property was actually used in this
38 state in a coal loading facility of the eligible taxpayer. The
39 taxpayer shall then file a reconciliation statement with its
40 annual business and occupation tax return for the year in
41 which the forfeiture occurs and pay any additional business
42 and occupation taxes, plus interest and any applicable
43 penalties.

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

1 (a) *Mere change in form of business.*—Property shall not
2 be treated as disposed of under section five of this article by
3 reason of a mere change in the form of conducting the
4 business as long as the property is used as or in a coal
5 loading facility in this state and the taxpayer retains a
6 substantial interest in the successor business. In this event,
7 the successor business shall be allowed to claim the amount
8 of credit still available with respect to the coal loading
9 facility or facilities transferred and the taxpayer
10 (transferor) shall not be required to redetermine the amount
11 of credit allowed in earlier years.

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

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

[Signature]

 Chairman Senate Committee

[Signature]

 Chairman House Committee

Originated in the Senate.

April 1, sh saw
 In effect ~~July 1~~, 1983.

[Signature]

 Clerk of the Senate

[Signature]

 Clerk of the House of Delegates

[Signature]

 President of the Senate

[Signature]

 Speaker House of Delegates

The within..... *is approved* this the..... *27*.....
 day of..... *March*, 1983.

[Signature]

 Governor

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