WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985

ENROLLED

SENATE BILL NO. 198

PASSED April 13, 1985

In Effect from Passage
ENROLLED
FINANCE
COMMITTEE SUBSTITUTE
FOR
SELECT COMMITTEE ON ECONOMIC DEVELOPMENT
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 198
(MR. LOEHR, MR. BURDETTE, MR. KARRAS AND MR. TONKOVICH,
MR. PRESIDENT, original sponsors)
(Originating in the Committee on Finance.)
[Passed April 13, 1985; in effect from passage.]
AN ACT to repeal section three-c, article thirteen, chapter eleven
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; to repeal article thirteen-c of said
chapter; to amend and reenact section three-d, article
thirteen of said chapter; to further amend said article
thirteen by adding thereto a new section, designated section
three-c; to amend article thirteen-a of said chapter by
adding thereto a new section, designated section ten-a; to
amend article thirteen-b of said chapter by adding thereto a
new section, designated ten-b; to amend and reenact
sections one, two, three, four, five and six, article thirteen-d
of said chapter; to further amend said article thirteen-d by
adding thereto three new sections, designated sections seven, eight and nine; to amend and reenact sections two, three, five and six, article thirteen-e of said chapter; to further amend said article thirteen-e by adding thereto a new section, designated section seven; to amend article twenty-three of said chapter by adding thereto a new section, designated section seventeen-a; and to further amend chapter eleven by adding thereto a new article, designated article thirteen-c, all relating generally to providing tax credits for certain investment in new or expanded businesses, or eligible research and development projects, and for certain investment in coal loading facilities; providing the West Virginia business investment and jobs expansion tax credit act, and as to such act: providing a short title; stating legislative purpose and findings; defining terms; allowing credit for qualified investment for business expansion based on the useful life of property and number of new jobs created; limiting application of credit to taxes directly attributable to qualified investment for business expansion; permitting credit to offset business and occupation taxes, carrier income taxes, severance taxes, telecommunications taxes, business franchise taxes, corporation net income taxes, or personal income taxes in case of electing small business corporations, partnerships and sole proprietorships, unemployment taxes and workers' compensation premiums; providing for credit to result in rebate of ad valorem property taxes directly attributable to the qualified investment by means of additional credit against state taxes; providing for transfer, forfeiture and recapture of unused credit under certain circumstances; providing administrative procedures; and making credit available to qualified investment made on or after March one, one thousand nine hundred eighty-five; providing tax credits for industrial expansion and industrial revitalization and eligible research and development projects, and as to such credits: stating legislative purpose and findings; defining terms; allowing credit for eligible investment in industrial expansion and revitalization and in eligible research and development projects; permitting such credit to offset up to fifty percent of business and occupation taxes of eligible taxpayer for eligible investment made on or after the first
day of March, one thousand nine hundred eighty-five; permitting allowable credit to offset up to fifty percent of severance taxes and business franchise taxes imposed in lieu of business and occupation taxes after the thirtieth day of June, one thousand nine hundred eighty-seven, regardless of when eligible investment was made; providing for transfer, forfeiture and recapture of unused credit under certain circumstances, and preserving legal rights under existing law; providing credit against certain taxes for eligible investment in new or expanded or revitalized coal loading facilities and as to such credit: defining terms; allowing credit for qualified investment in coal loading facilities; permitting such credit to offset up to fifty percent of business and occupation taxes of eligible taxpayer for qualified investment made on or after the first day of March, one thousand nine hundred eighty-five; permitting allowable credit to offset up to fifty percent of severance taxes and business franchise taxes imposed in lieu of business and occupation taxes after the thirtieth day of June, one thousand nine hundred eighty-seven, regardless of when eligible investment was made; and providing for transfer, forfeiture and recapture of unused credit under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section three-c, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article thirteen-c of said chapter eleven be repealed; that section three-d, article thirteen of chapter eleven be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section three-c; that article thirteen-a of said chapter be amended by adding thereto a new section, designated section ten-a; that article thirteen-b of said chapter be amended by adding thereto a new section, designated section ten-a; that sections one, two, three, four, five and six, article thirteen-d of said chapter be amended and reenacted; that said article thirteen-d be further amended by adding thereto three new sections, designated sections seven, eight and nine; that sections two, three, five and six, article thirteen-e of said chapter be amended and reenacted; that said article thirteen-e be further amended by adding thereto a new section, designated section
seven; that article twenty-three of said chapter be amended by adding thereto a new section, designated section seventeen-a; and that chapter eleven be further amended by adding thereto a new article, designated article thirteen-c, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3c. Tax credit for business investment and jobs expansion.

(a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-c of this chapter, relating to tax credit for business investment and jobs expansion.

(b) The tax commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and article thirteen-c of this chapter.

§11-13-3d. Tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

(a) 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 expansion and industrial revitalization, and eligible research and development projects.

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

(c) Any tax credit to which an industrial taxpayer became entitled under section three-c of this article, before its repeal, shall be fully and completely preserved under the provision of this section, as amended, as if this section were in effect, at the time the qualifying investment was made.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-10a. Tax credit for business investment and jobs expansion; industrial expansion and revitalization; eligible research and development projects; coal loading facilities.

(a) There shall be allowed as a credit against the tax imposed by this article for the taxable year, the amount
determined under articles thirteen-c, thirteen-d and
thirteen-e of this chapter relating respectively to:
(1) The tax credit for business investment and jobs
expansion;
(2) The tax credit for industrial expansion and
revitalization and eligible research and development
projects; and
(3) The tax credit for coal loading facilities.
(b) The tax commissioner shall prescribe such
regulations as he deems necessary to carry out the purposes
of this section and article thirteen-c, thirteen-d and
thirteen-e of this chapter.
(c) This provision shall take effect on the first day of
July, one thousand nine hundred eighty-seven.

ARTICLE 13B. TELECOMMUNICATIONS TAX.
§11-13B-10a. Tax credit for business investment and jobs
expansion; and for eligible research and
development projects.
(a) There shall be allowed as a credit against the tax
imposed by this article for the taxable year, the amount
determined under articles thirteen-c and thirteen-d of this
chapter relating respectively to:
(1) Tax credit for business investment and jobs
expansion; and
(2) Tax credit for eligible research and development
projects; and
(3) Tax credit for coal loading facilities.
(b) The tax commissioner shall prescribe such
regulations as he deems necessary to carry out the purposes
of this section and articles thirteen-c and thirteen-d of this
chapter.
(c) This provision shall take effect on the first day of
July, one thousand nine hundred eighty-seven.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX
CREDIT.
§11-13C-1. Short title.
This article may be cited as the "West Virginia Business
Investment and Jobs Expansion Tax Credit Act."
§11-13C-2. Legislative finding and purpose.

1 The Legislature finds that the encouragement of
2 economic growth and development in this state is in the
3 public interest and promotes the general welfare of the
4 people of this state. In order to encourage capital
5 investment in businesses in this state and thereby increase
6 employment and economic development, there is hereby
7 provided a business investment and jobs expansion tax
8 credit.


1 (a) General.—When used in this article, or in the
2 administration of this article, terms defined in subsection (b)
3 shall have the meanings ascribed to them by this section,
4 unless a different meaning is clearly required by either the
5 context in which the term is used, or by specific definition,
6 in this article.
7 (b) Terms defined.
8 (1) Business.—The term “business” means any activity
9 taxable under article twelve-a or thirteen (or both) of this
10 chapter, which is engaged in by any person in this state:
11 Provided, That on and after the first day of July, one
12 thousand nine hundred eighty-seven, the phrase “taxes
13 imposed by article twelve-a or thirteen, or both, of this
14 chapter” shall mean “taxes imposed by article thirteen,
15 thirteen-a, thirteen-b and twenty-three of this chapter (or
16 any one or combination of such articles of this chapter).”
17 (2) Business expansion.—The term “business
18 expansion” means capital investment in a new or expanded
19 business facility in this state.
20 (3) Business facility.—The term “business facility”
21 means any factory, mill, plant, refinery, warehouse,
22 building or complex of buildings located within this state,
23 including the land on which it is located, and all machinery,
24 equipment and other real and tangible personal property
25 located at or within such facility, used in connection with
26 the operation of such facility, in a business taxable under
27 article twelve-a or thirteen (or both) of this chapter:
28 Provided, That on and after the first day of July, one
29 thousand nine hundred eighty-seven, the phrase “taxes
30 imposed by article twelve-a or thirteen (or both) of this
chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(4) Commissioner or tax commissioner.—The terms “commissioner” and “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his delegate.

(5) Compensation.—The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Controlled group.—The term controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations.

(7) Corporation.—The term “corporation” means any corporation, joint-stock company, or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(8) Delegate.—The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(9) Eligible taxpayer.—The term “eligible taxpayer” means any person subject to the taxes imposed by article twelve-a or thirteen (or both) of this chapter, who purchases property that has the effect of business expansion and creation of new jobs at a business facility located in this state: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”
(10) **Expanded facility.**—The term "expanded facility" means any facility (other than a new or replacement facility) resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property (not including any improvement or addition resulting from a repair, refurbishing, retooling, recycling or other similar process or procedure that merely preserves or restores the value of an existing facility, and not including any improvement or addition that, in the determination of the tax commissioner, does not constitute an integral part of a qualified activity), if such improvements or additions are purchased on or after March one, one thousand nine hundred eighty-five, but only to the extent of the taxpayer's qualified investment in such improvements or additions.

(11) **Includes and including.**—The terms "includes" and "including," when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(12) **New business facility.**—The term "new business facility" means a facility which satisfies all the requirements of subparagraphs (A), (B), (C) and (D) of this paragraph.

(A) The facility is employed by the taxpayer in the conduct of a business taxable under article twelve-a or thirteen (or both) of this chapter. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons.

(B) Such facility is acquired by, or leased to, the taxpayer on or after March one, one thousand nine hundred eighty-five.

(C) The facility was not acquired by the taxpayer from a related person.

(D) If such facility was acquired by the taxpayer from an unrelated person (or persons), such facility was not in service or use during the ninety days immediately prior to transfer of the title to such facility, or to the commencement of the term of the lease of such facility, unless upon application of the taxpayer, the tax commissioner consents to waiving this ninety day period.

(13) **New employee.**—The term "new employee" means
a person residing and domiciled in this state, hired by the
taxpayer to fill a position for a job in this state, which
previously did not exist in the business enterprise in this
state, prior to the date on which the taxpayer’s qualified
investment is placed in service or use in this state. In no case
shall the new employees allowed for purposes of this credit
exceed the total increase in the taxpayer’s employment in
this state. A person shall be deemed to be a “new employee”
if such person’s duties in connection with the operation of
the business enterprise are on:

(A) A regular, full-time and permanent basis.

(1) “Full-time employment” means employment for at
least one hundred twenty hours per month at a wage not less
than the prevailing state or federal minimum wage,
depending on which minimum wage provision is applicable
to the business.

(2) “Permanent employment” does not include
employment that is temporary or seasonal.

(B) A part-time basis, provided such person is
customarily performing such duties at least twenty hours
per week for at least six months during the taxable year.

(14) *New job.* The term “new job” means a job which
did not exist in the business of the taxpayer in this state
prior to the taxpayer’s qualified investment being made,
and which is filled by a new employee.

(15) *New property.* The term “new property” means:

(A) Property the construction, reconstruction or
errection of which is begun on or after March one, one
thousand nine hundred eighty-five; and

(B) Property acquired by the taxpayer on or after March
one, one thousand nine hundred eighty-five, if the original
use of such property commences with the taxpayer and
commences after such date.

(16) *Original use.* The term “original use” means the
first use to which the property is put, whether or not such
use corresponds to the use of the property by the taxpayer.

(17) *Partnership and partner.* The term “partnership”
includes a syndicate, group, pool, joint venture or other
unincorporated organization through or by means of which
any business, financial operation or venture is carried on,
and which is not, a trust or estate, a corporation or a sole
The term “partner” includes a member in such a syndicate, group, pool, joint venture or organization.

(18) Person.—The term “person” includes any natural person, corporation or partnership.

(19) Property purchased for business expansion.

(A) Included property.—Except as provided in subparagraph (B), the term “property purchased for business expansion” means real property, and improvements thereto, and tangible personal property, but only if such property was constructed, or purchased, on or after the first day of March, one thousand nine hundred eighty-five, for use as a component part of a new or expanded business, as defined in this section, which business is located within West Virginia. 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 liability of the business taxpayer under articles twenty-one or twenty-four of this chapter, and has a useful life, at the time such property is placed in service or use in this state, of four years or more.

Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of a new or expanded business facility, shall be included within this definition.

(B) Excluded property.—The term “property purchased for business expansion” shall not include:

(1) Property which qualifies or was qualified for credit under article thirteen-c of this chapter prior to its repeal, or under article thirteen-d or thirteen-e of this chapter;

(2) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

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

(4) Airplanes;

(5) Off-premise transportation equipment;

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

and

(7) 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 a business taxable under
article twelve-a or thirteen (or both) of this chapter, or which property was previously designated qualified or eligible investment for purposes of the tax credits authorized by article thirteen-c of this chapter (prior to its repeal), article thirteen-d or article thirteen-e of said chapter eleven: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by article thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter)."

(c) Purchase date.—Property shall be deemed to have been purchased prior to a specified date only if:

(1) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchaser prior to the specified date;

(2) The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date; or

(3) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

(20) Purchase.—The term "purchase" means any acquisition of property, but only if:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of the United States Internal Revenue Code of 1954, as amended and in effect on the first day of January, one thousand nine hundred eighty-five;

(B) The property is not acquired by one component member of a controlled group from another component member of the same controlled group; and

(C) The basis of the property for federal income tax purposes, in the hands of the person acquiring it is not determined:

(1) In whole or in part by reference to the federal
(2) Under Section 1014(e) of the United States Internal Revenue Code of 1954, as amended and in effect on the first day of January, one thousand nine hundred eighty-five.

(21) Qualified activity.—The term “qualified activity” means any business or other activity subject to the tax imposed by article twelve-a or thirteen (or both) of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(22) Related person.—The term “related person” means:

(A) A corporation, partnership, association or trust controlled by the taxpayer;

(B) An individual, corporation, partnership, association or trust that is in control of the taxpayer;

(C) A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or

(D) A member of the same controlled group as the taxpayer.

For purposes of paragraphs (20) and (22) of this section, “control,” with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. “Control,” with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the United States Internal Revenue Code of 1954, as amended, other than paragraph (3) of such section.

(23) Replacement facility.—The term “replacement facility” means any property (other than an expanded facility) that replaces or supersedes any other property located within this state that:
(A) The taxpayer or a related person used in or in connection with any activity for more than two years during the period of five consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer.

(B) Is not used by the taxpayer or a related person in or in connection with any qualified activity for a continuous period of one year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(24) **Taxpayer.**—The term “taxpayer” means any person subject to the tax imposed by article twelve-a or thirteen (or both) of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(25) **This code.**—The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(26) **This state.**—The term “this state” means the state of West Virginia.

(27) **Used property.**—The term “used property” means property acquired after the twenty-eighth day of February, one thousand nine hundred eighty-five, that is not “new property.”

§11-13C-4. **Amount of credit allowed.**

1 (a) **Credit allowed.**—Eligible taxpayers shall be allowed a credit against the portion of taxes imposed by this state that are attributable to and the consequence of the taxpayer’s qualified investment in a new or expanded business in this state, which results in the creation of new jobs. The amount of this credit shall be determined and applied as hereinafter provided in this article.

8 (b) **Amount of credit.**—The amount of credit allowable is determined by multiplying the amount of the taxpayer’s “qualified investment” (determined under section six) in property purchased for business expansion on or after March one, one thousand nine hundred eighty-five, by the
taxpayer's new jobs percentage (determined under section seven). The product of this calculation establishes the maximum amount of credit allowable under this article, due to the qualified investment.

(c) Application of credit over ten years.—The amount of credit allowable must be taken 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 taxpayer places the qualified investment in service or use in this state. The annual credit allowance shall be taken in the manner prescribed in section four of this article.

d) Placed in service or use.—For purposes of the credit allowed by this section, property shall be considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13C-5. Application of annual credit allowance.

(a) In general.—The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of:

(1) The one-tenth part allowed under section three, for qualified investment placed into service or use during a prior taxable year, plus

(2) The one-tenth part allowed under section three, for qualified investment placed into service or use during the current taxable year.

(b) Application of current year annual credit allowance.—The amount determined under subsection (a) shall be allowed as a credit against that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and shall be applied as provided in subsections (c) through (j), both inclusive.

(c) Business and occupation taxes.

(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen of this chapter, shall
first be applied to reduce up to eighty percent of the taxes
imposed by article thirteen of this chapter for the taxable
year (determined before application of allowable credits
against tax and the annual exemption).

(2) If the taxes due under said article thirteen, are not
solely attributable to and the direct result of the taxpayer's
qualified investment in a business or other activity taxable
under article thirteen of this chapter, the amount of such
taxes, which are so attributable, shall be determined by
multiplying the amount of taxes due under said article
thirteen, for the taxable year (determined before
application of any allowable credits against tax and the
annual exemption), by a fraction, the numerator of which is
all wages, salaries and other compensation paid during the
taxable year to all employees of the taxpayer employed in
this state, whose positions are directly attributable to the
qualified investment in a business or other activity taxable
under article thirteen of this chapter. The denominator of
the fraction shall be the wages, salaries and other
compensation paid during the taxable year to all employees
of the taxpayer, employed in this state, whose positions are
directly attributable to the business or other activity of the
taxpayer, that is taxable under article thirteen of this
chapter.

(3) The annual exemption allowed by section three of
said article thirteen, plus any credits allowable under
articles thirteen-d and thirteen-e of this chapter, shall be
applied against and reduce only the portion of article
thirteen taxes not apportioned to the qualified investment
under this article: Provided, That any excess exemption or
credits may be applied against the amount of article
thirteen taxes apportioned to the qualified investment
under this article, that is not offset by the amount of annual
credit against such taxes allowed under this article for the
taxable year, unless their application is otherwise
prohibited by this chapter.

(d) Carrier income taxes.

(1) That portion of the allowable credit attributable to
qualified investment in a business or other activity subject
to the taxes imposed by article twelve-a of this chapter,
shall first be applied to reduce up to eighty percent of the
taxes imposed by article twelve-a of this chapter, for the
taxable year.
(2) If the taxes due under said article twelve-a are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article twelve-a of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article twelve-a, for the taxable year, by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity of the taxpayer, that is taxable under article twelve-a of this chapter.

(e) Severance taxes.

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the tax imposed by article thirteen-a of this chapter, and qualified investment in a business or activity that was subject to the tax imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article thirteen-a of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by article thirteen-a of this chapter for the taxable year (determined before application of any allowable credits against tax).

(2) If the taxes due under said article thirteen-a are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article thirteen-a of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article thirteen-a, for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose
positions are directly attributable to the qualified investment in a business or other activity taxable under article thirteen-a of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer, that is taxable under article thirteen-a of this chapter.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter, shall be applied against and reduce only the portion of article thirteen-a taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(f) Telecommunications taxes.

(1) On and after the first day of July, one thousand eight hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen-b of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by article thirteen-b of this chapter, for the taxable year (determined before application of allowable credits against tax) and qualified investment in a business or activity that was subject to the taxes imposed by article twelve-a of this chapter prior to said first day of July, but on and after said first day of July is subject to the tax imposed by article thirteen-b of this chapter.

(2) If the taxes due under said article thirteen-b are not solely attributable to and the direct result of the taxpayer’s qualified investment in a business or other activity taxable under article thirteen-b of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article thirteen-b, for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and
other compensation paid during the taxable year to all
employees of the taxpayer employed in this state, whose
positions are directly attributable to the qualified
investment in a business or other activity taxable under
article thirteen-b of this chapter. The denominator of the
denominator shall be the wages, salaries and other
compensation paid during the taxable year to all employees
of the taxpayer, employed in this state, whose positions are
directly attributable to the business or other activity of the
taxpayer, that is taxable under article thirteen-b of this
chapter.

(g) Business franchise tax.

(1) On and after the first day of July, one thousand nine
hundred eighty-seven, that portion of the allowable credit
attributable to qualified investment in a business or
activity subject to the taxes imposed by article twenty-
three of this chapter, and qualified investment in a business
or activity that was subject to the taxes imposed by article
thirteen of this chapter prior to said first day of July, but on
and after said first day of July, is subject to the tax imposed
by article twenty-three of this chapter, shall first be applied
to reduce up to eighty percent of the taxes imposed by
article twenty-three of this chapter for the taxable year
determined after application of the credits against tax
provided in section seventeen of said article twenty-three,
but before application of any other allowable credits
against tax).

(2) If the taxes due under said article twenty-three are
not solely attributable to and the direct result of the
taxpayer's qualified investment in a business or other
activity taxable under article twenty-three of this chapter,
the amount of such taxes, which are so attributable, shall be
determined by multiplying the amount of taxes due under
said article twenty-three, for the taxable year (determined
after application of the credits against tax provided in
section seventeen of said article twenty-three, but before
application of any other allowable credits), by a fraction,
the numerator of which is all wages, salaries and other
compensation paid during the taxable year to all employees
of the taxpayer employed in this state, whose positions are
directly attributable to the qualified investment in a
business or other activity taxable under article twenty-
three of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer, that is taxable under article twenty-three of this chapter.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter, shall be applied against and reduce only the portion of article twenty-three taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article twenty-three taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(h) Corporation net income taxes.

(1) After application of subsections (c) through (g), both inclusive, of this section, any unused credit shall next be applied to reduce up to eighty percent of the taxes imposed by article twenty-four of this chapter, for the taxable year (determined before application of allowable credits against tax).

(2) If the taxes due under said article twenty-four (determined before application of allowable credits against tax) are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of such taxes which are so attributable, shall be determined by multiplying the amount of taxes due under said article twenty-four for the taxable year (determined before application of allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state.

(3) Any credits allowable under article twenty-four of this chapter shall be applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any
excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(i) Personal income taxes.

(1) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1954, as amended), a partnership or a sole proprietorship, then any unused credit (after application of subsections (c), (d), (e), (f) and (g)) shall be allowed as a credit against up to eighty percent of the taxes imposed by article twenty-one of this chapter on net income from business or other activity subject to tax under article twelve-a or thirteen (or both) of this chapter.

(2) Electing small business corporations, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under article twenty-one of this chapter (determined before application of allowable credits against tax), that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, partnership, other unincorporated organization or sole proprietorship, the amount of such taxes which are so attributable shall be determined by multiplying the amount of taxes due under said article twenty-one (determined before application of allowable credits against tax), that is attributable to business by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the electing small business corporation, partnership, other unincorporated organization or sole proprietorship, employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer.
(4) No credit shall be allowed under this section against employer withholding taxes imposed by article twenty-one of this chapter.

(j) *Ad valorem property taxes.*

(1) After application of subsections (a) through (i), both inclusive, of this section, any unused credit shall next be applied as a rebate of up to eighty percent of the ad valorem property taxes imposed pursuant to article eight of this chapter for the taxable year, on property of the taxpayer that is directly attributable to the qualified investment (including property having a useful life of less than four years) of the taxpayer, in the new or expanded business of the taxpayer resulting in new jobs.

(2) A taxpayer eligible to claim this rebate for ad valorem property taxes shall apply the rebate against the remaining twenty percent of the taxes imposed by article twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter, attributable to the qualified investment under this article.

(k) *Unemployment taxes.*

(1) After application of subsections (c) through (j), both inclusive, of this section, any unused credit shall next be applied to reduce up to eighty percent of the taxes imposed by article five, chapter twenty-one-a of this code, for the taxable year.

(2) If the taxes due under said article five are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of such taxes which are so attributable shall be determined by multiplying the amount of taxes due under article five, chapter twenty-one-a of this code, by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to employees of the taxpayer whose positions are directly attributable to the qualified investment, and the denominator of which is the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer in this state.

(l) *Workers' compensation premium.*

(1) After application of subsections (c) through (k), both inclusive, of this section, any unused credit shall next be applied to reduce up to twenty percent of the workers' compensation premiums imposed by article two, chapter twenty-three of this code, for the taxable year.
If the premiums due under article two of said chapter twenty-three, for the taxable year, are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of such premiums which are so attributable shall be determined by multiplying the amount of premiums due under article two, chapter twenty-three of this code for the taxable year, by a fraction, the numerator of which is all wages, salaries and compensation paid during the taxable year to employees of the taxpayer whose positions are directly attributable to the qualified investment, and the denominator of which is the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, in this state.

Unused credit forfeited.—If any credit remains after application of subsection (b), the amount thereof shall be forfeited. No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance.

§11-13C-6. Qualified investment.

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

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

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33⅓%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66⅔%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

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

(1) Trade-ins.—Cost shall not include the value of
property given in trade or exchange for the property purchased for business expansion.

(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 written lease for a primary 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.

(4) **Property purchased for multiple use.**—In the case of property purchased for use as a component part of a new or expanded business taxable under article twelve-a of this chapter, and use as a component part of a new or expanded business taxable under article thirteen of this chapter, the cost thereof shall be apportioned between such businesses. The amount apportioned to each such new or expanded business for which credit is allowed under this article shall be considered as a qualified investment subject to the conditions and limitations of this article.

(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 depreciation in accordance with federal income tax law.

**§11-13C-7. New jobs percentage.**

(a) **In general.**—The new jobs percentage is based on the number of new jobs created in this state that are directly attributable to the qualified investment of the taxpayer.

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

<table>
<thead>
<tr>
<th>If number of new jobs is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000</td>
<td>90%</td>
</tr>
<tr>
<td>760</td>
<td>80%</td>
</tr>
<tr>
<td>520</td>
<td>70%</td>
</tr>
<tr>
<td>280</td>
<td>60%</td>
</tr>
<tr>
<td>50</td>
<td>50%</td>
</tr>
</tbody>
</table>

(c) **When a job is attributable.**—An employee's position is directly attributable to the qualified investment if:
(1) The employee's service is performed or his base of operations is at the new or expanded business facility;
(2) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and
(3) But for the qualified investment, the position would not have existed.

(d) Certification of new jobs.—With the annual return for the taxes imposed by article twelve-a or thirteen of this chapter, filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in paragraph (f), that are, or will be, directly attributable to the qualified investment of the taxpayer: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(e) Equivalency of permanent employees.—The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees.

(f) Redetermination of new jobs percentage.—With the annual return for the taxes imposed by article twelve-a or thirteen of this chapter, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state, that are directly attributable to the qualified investment of the taxpayer: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended returns filed for the first and second taxable years that the qualified investment was in service or use in this state.
(2) If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in such prior two years to workers' compensation premiums, then to unemployment taxes, then to ad valorem property tax rebates, then to personal income taxes, then to corporation net income taxes, then to business franchise taxes, then to telecommunications taxes, then to severance taxes, then to carrier income taxes and lastly to business and occupation taxes. Any additional taxes due under this chapter shall be remitted with the amended returns filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty, which may be waived by the tax commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was due to reasonable cause and not due to willful neglect.

§11-13C-8. 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 six of this article; or

(2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end of its useful life, as determined under said section six, 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 six, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the new or expanded business of the taxpayer. Taxpayer shall then file
a reconciliation statement with its annual business and
occupation tax return or carrier income tax return, for the
year in which the forfeiture occurs and pay any additional
taxes owed due to reduction of the amount of credit
allowable for such earlier years, plus interest and any
applicable penalties: Provided, That for taxable periods
beginning on or after the first day of July, one thousand nine
hundred eighty-seven, such reconciliation statement shall
be filed with the annual return for the primary tax for
which the taxpayer is liable under articles thirteen,
thirteen-a, thirteen-b and twenty-three of this chapter.

(b) Cessation of operation of business facility.—If
during any taxable year the taxpayer ceases operation of a
business 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 six, to correspond with the
percentage of cost allowable for the period of time that the
property was actually used in this state in a business of the
taxpayer that is taxable under article twelve-a or thirteen
of this chapter. Taxpayer shall then file a reconciliation
statement with its annual business and occupation tax
return or carrier income tax return for the year in which the
forfeiture occurs, and pay any additional taxes owed due to
reduction of the amount of credit allowable for such earlier
years, plus interest and any applicable penalties: Provided,
That for taxable periods beginning on or after the first day
of July, one thousand nine hundred eighty-seven, such
reconciliation statement shall be filed with the annual
return for the primary tax for which the taxpayer is liable
under articles thirteen, thirteen-a, thirteen-b and twenty-
three of this chapter.

(c) Reduction in number of employees.—If during any
taxable year subsequent to the taxable year in which the
new jobs percentage is redetermined as provided in section
seven of this article, the average number of employees of the
taxpayer, for the then current taxable year, employed in
positions created because of and directly attributable to the
qualified investment falls below the minimum number of
new jobs created upon which the taxpayer’s annual credit
allowance is based, the taxpayer shall calculate what his
annual credit allowance would have been had his new jobs
percentage been determined based upon the average
number of employees, for the then current taxable year,
employed in positions created because of and directly
attributable to the qualified investment. The difference
between the result of this calculation and the taxpayer’s
annual credit allowance for the qualified investment as
determined under section four of this article, shall be
forfeited for the then current taxable year, and for each
succeeding taxable year unless for such succeeding taxable
year the taxpayer’s average employment in positions
directly attributable to the qualified investment once again
meets the level required to enable the taxpayer to utilize its
full annual credit allowance for that taxable year.


(a) Mere change in form of business.—Property shall not
be treated as disposed of under section eight of this article,
by reason of a mere change in the form of conducting the
business as long as the property is retained in a business in
this state, and the taxpayer retains a controlling 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 business facility or facilities transferred,
and the taxpayer (transferor) shall not be required to
redetermine the amount of credit allowed in earlier years.

(b) Transfer or sale to successor.—Property shall not be
treated as disposed of under section eight by reason of any
transfer or sale to a successor business which continues to
operate the business facility in this state. Upon transfer or
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.

§11-13C-10. Identification of investment credit property.

Every taxpayer who claims credit under this article shall
maintain sufficient records to establish the following facts for each item of qualified property:

1. Its identity;
2. Its actual or reasonably determined cost;
3. Its straight-line depreciation life;
4. The month and taxable year in which it was placed in service;
5. The amount of credit taken; and
6. The date it was disposed of or otherwise ceased to be qualified property.

§11-13C-11. Failure to keep records of investment credit property.

A taxpayer who does not keep the records required for identification of investment credit property, is subject to the following rules:

1. A taxpayer shall be treated as having disposed of, during the taxable year, any investment credit property which the taxpayer cannot establish was still on hand, in this state, at the end of that year.
2. If a taxpayer cannot establish when investment credit property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer shall be treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

§11-13C-12. Interpretation and construction.

(a) No inference, implication or presumption of legislative construction or intent shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect shall be given to any descriptive matter or heading relating to any section, subsection or paragraph of this article.

(b) The provisions of this article shall be liberally construed in order to effectuate the legislative intent recited in section two of this article.

(a) If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(b) If any provision of this article or the application thereof shall be made invalid or inapplicable by reason of the failure of the Legislature to enact any statute therein addressed or referred to, or by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such failure to reenact on such repeal or invalidation of any such statute shall not affect, impair or invalidate the remainder of the said article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the said statute, and the application of such provision with regard to other statutes or in other instances not affected by any such invalid or repealed statute shall not be abrogated or diminished in any way.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION AND FOR RESEARCH AND DEVELOPMENT PROJECTS.

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

The Legislature finds that the encouragement of the location of new industry in this state; the expansion, growth and revitalization of existing industrial facilities in this state; and the conduct of research and development in this state, for purposes of expanding markets for sales and uses of this state's natural resources and industrial products, are all in the public interest and promote 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 expansion

(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 investment" means that amount determined under either section four of this article, for investment in a new or expanded or revitalized industrial facility, or under section five of this article, in the case of an eligible research and development project.

(2) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion, or for the purpose of revitalizing an existing industrial facility in this state; or a taxpayer who purchases property or services (or both) for the purpose of conducting an eligible research and development project in this state.

(3) "Eligible research and development project" means a research and development project engaged in or conducted within this state, by a person who is engaged in this state in the business of producing natural resources or in an industrial business when such research and development project is conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for, and increasing sales of, this state's natural resource products, or industrial products (or both).

(4) "Industrial business" means any privilege taxable under section two-b or two-m, article thirteen of this chapter, and includes a manufacturing service taxable under section two-h of said article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the term "industrial business" shall mean the business of manufacturing, compounding or preparing tangible personal property for sale, profit or commercial use, the business of generating electric power, and the business of providing a manufacturing service, which were taxable, respectively, under sections two-b, two-m and
two-h, article thirteen of this chapter on the first day of January, one thousand nine hundred eighty-five.

(5) "Industrial facility" means any factory, mill, plant, refinery, warehouse, buildings or complex of buildings located within this state, 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.

(6) "Industrial revitalization" means capital investment in an industrial facility located in this state 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.

(7) "Industrial expansion" means capital investment in a new or expanded industrial facility in this state.

(8) "Industrial taxpayer" means any person subject to business and occupation taxes under article thirteen of this chapter, exercising any privilege taxable under section two-b or two-m of said article thirteen, or providing a manufacturing service taxable under section two-h of said article thirteen: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, "industrial taxpayer" shall mean any person subject to tax under section two-n, article thirteen of this chapter; or any person subject to tax under article thirteen-a or twenty-three of this chapter engaging in any activity that was taxable under section two-b, article thirteen of this chapter, on the first day of January, one thousand nine hundred eighty-five; or any person taxable under article twenty-three of this chapter providing a manufacturing service that was taxable under section two-h, article thirteen of this chapter on the first day of January, one thousand nine hundred eighty-five.

(9) "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.
(10) Subject to paragraph (12) below, "property purchased for an eligible research and development project" means real property, and improvements thereto, and tangible personal property, but only if such real or personal property is constructed or purchased on or after the first day of July, one thousand nine hundred eighty-five, for use as a component part of an eligible research and development project which is located within this state on or after the first day of July, one thousand nine hundred eighty-five. 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 liability of the purchaser under article twenty-one or twenty-four of this chapter. Property acquired by written lease for a term of ten years or longer, if used as a component part of an eligible research and development project, shall be included within this definition.

(11) Subject to paragraph (13) below, "property purchased for industrial expansion" means real property, and improvements thereto, and tangible personal property, but only if such property was constructed, or purchased, on or after the first day of July, one thousand nine hundred sixty-nine, for use as a component part of a new or expanded industrial facility (as defined in paragraph five of this subsection) located within this state. 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 liability of the industrial taxpayer under articles twenty-one or twenty-four of this chapter, and has a useful life, at the time such property is placed in service or use in this state, of four years or more. Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, shall be included within this definition.

(12) Subject to paragraph (13) below, "property purchased for industrial revitalization" means real property, and improvements thereto, and new tangible personal property, but only if such property was constructed, or purchased, on or after the first day of July,
one thousand nine hundred eighty-one, for use as a component part of an ongoing industrial facility (as defined in paragraph five of this subsection) located within this state. This term includes only tangible personal property with respect to which depreciation is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer 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 written lease for a primary term of ten years or longer, if used as a component part of an industrial revitalization, shall be included within this definition.

(13) "Property purchased for industrial expansion," "property purchased for industrial revitalization" and "property purchased for an eligible research and development project" shall not include:

(A) Repair costs including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed;

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

(C) Airplanes;

(D) Off-premise transportation equipment;

(E) Property which is primarily used outside this state; and

(F) 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" or "property purchased for industrial revitalization," or "property purchased for eligible research and development project," and used to qualify for business and occupation tax credit for industrial expansion or revitalization, or for an eligible research and development project.

(14) Property shall be deemed to have been purchased prior to a specified date only if:

(A) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as
existing and binding on the taxpayer prior to the specified date;
(B) The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to such date; or
(C) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.
(15) "Taxpayer" means any person taxable under article thirteen of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, "taxpayer" shall mean any person taxable under article thirteen, thirteen-a or twenty-three of this chapter.

§11-13D-3. Amount of credit allowed for industrial expansion or revitalization and for eligible research and development projects.

(a) Credit allowed.—There shall be allowed to eligible taxpayers a credit against the taxes imposed by article thirteen, thirteen-a or twenty-three of this chapter, for industrial expansion or revitalization, and for eligible research and development projects. The amount of credit shall be determined as hereinafter provided in this section.

(b) Qualified investment for industrial expansion; July 1, 1969 — March 31, 1978.—For property purchased for industrial expansion during the period beginning the first day of July, one thousand nine hundred sixty-nine, and ending the thirty-first day of March, one thousand nine hundred seventy-eight, the amount of allowable credit shall be equal to ten percent of the qualified investment (as determined in section four) made for industrial expansion, and shall reduce the business and occupation tax liability of the industrial taxpayer under article thirteen of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable shall be applied over a ten year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the qualified 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 tax under article 
thirteen of this chapter, below fifty percent of the amount 
which would be imposed for such taxable year in the 
absence of this credit against tax, computed before 
application of the annual exemption allowed by section 
three, article thirteen of this chapter.

(3) No carryover to a subsequent taxable year or 
carryback to a prior taxable year shall be allowed for the 
amount of any unused portion of any annual credit 
allowance. Such unused credit shall be forfeited.

(c) Qualified investment for industrial expansion; April 
1, 1978—February 28, 1985.—For property purchased for 
industrial expansion during the period beginning the first 
day of March, one thousand nine hundred seventy-eight, 
and ending the twenty-eighth day of February, one 
thousand nine hundred eighty-five, the amount of 
allowable credit shall be equal to ten percent of the 
qualified investment (as determined in section four) made 
for industrial expansion, and shall reduce the business and 
occupation tax liability of the industrial taxpayer under 
sections two-b, two-h and two-m, article thirteen of this 
chapter, subject to the following conditions and 
limitations:

(1) The amount of credit allowable shall be applied over 
a ten-year period, at the rate of one-tenth thereof per 
taxable year, beginning with the taxable year in which the 
qualified 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 by 
section two, article thirteen of this chapter, under sections 
two-b, two-h and two-m, article thirteen of this chapter, 
below fifty percent of the amount which would be imposed 
for such taxable year, in the absence of this credit against 
tax, computed before application of the annual exemption 
allowed by section three, article thirteen of this chapter: 
Provided, That the tax under section two-h of said article 
thirteen, shall not be reduced by more than fifty percent of 
the tax attributable to the privilege of manufacturing for 
another, which privilege would be taxable under section 
two-b of said article thirteen, if title to the raw materials 
involved in the manufacturing process were vested in the
taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(3) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(d) Eligible investment for industrial revitalization; July 1, 1981—February 28, 1985.—For property purchased for industrial revitalization during the period beginning the first day of July, one thousand nine hundred eighty-one, and ending the twenty-eighth day of February, one thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined under section four) made for industrial revitalization, and shall reduce the business and occupation tax 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 by section two, article thirteen of this chapter, under sections two-b and two-h of said article, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter: Provided, That the tax under section two-h of said article thirteen, shall not be reduced by more than fifty percent of the tax attributable to the privilege of manufacturing for another, which privilege would be taxable under section two-b of said article thirteen, if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(3) When in any taxable year the eligible industrial taxpayer is entitled to claim credit under both this subsection (d) and under subsection (b) or (c), or both, of this...
section, the total amount of all credits allowed under this
section shall not exceed the fifty percent rule outlined in
paragraph (2) of this subsection (d).
(4) No carryover to a subsequent taxable year or
carryback to a prior taxable year shall be allowed for the
amount of any unused portion of any annual credit
allowance. Any unused credit shall be forfeited.
(5) No credit shall be allowed under this section for any
property purchased for industrial revitalization prior to the
first day of July, one thousand nine hundred eighty-one.
(e) Eligible investment for industrial expansion or
revitalization after February 28, 1985.—For property
purchased for industrial expansion or industrial
revitalization on or after the first day of March, one
thousand nine hundred eighty-five, the amount of
allowable credit shall be equal to ten percent of the eligible
investment (as determined in section four) made for
industrial expansion or industrial revitalization, and shall
reduce the business and occupation tax imposed under
article thirteen of this chapter subject to the following
conditions and limitations:
(1) The amount of credit allowable shall be applied over
a ten-year period, at the rate of one-tenth 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 by
article thirteen of this chapter, below fifty percent of the
amount which would be imposed for such taxable year in
the absence of this credit against tax, computed before
application of the annual exemption allowed by section
three, article thirteen of this chapter.
(3) When in any taxable year the industrial taxpayer is
entitled to claim credit under this subsection (e) and under
subsection (b), (c) or (d) of this section (or any combinations
thereof), the total amount of all credits allowed under this
section shall not exceed the fifty percent rule outlined in
paragraph (2) of this subsection (e).
(4) No carryover to a subsequent taxable year or
carryback to a prior taxable year shall be allowed for the
amount of any unused portion of any annual credit
allowance. Such unused credit shall be forfeited.
(5) When in any taxable year the industrial taxpayer is entitled to claim credit under this article and article thirteen-e of this chapter, the total amount of all such credits allowable for the taxable year shall not reduce the amount of business and occupation taxes imposed by article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year, computed before allowance of the annual exemption allowed by section three, article thirteen of this chapter.

(6) No credit shall be allowed under this subsection (e) for any property purchased on or after the first day of March, one thousand nine hundred eighty-five, for which credit is allowed under article thirteen-c of this chapter.

(7) No credit shall be allowed under this subsection (e) for any property purchased for industrial expansion or industrial revitalization prior to the first day of March, one thousand nine hundred eighty-five.

(f) Eligible investment for research and development project after June 30, 1985.—For property and services purchased for an eligible research and development project on or after the first day of July, one thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section five) made for an eligible research and development project, and shall reduce the business and occupation taxes under sections two-a, two-b, two-h and two-m, 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, or is expensed for federal income tax purposes.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under section two-a of said article, on the business of producing natural resources; under section two-b of said article thirteen, on the business of manufacturing, compounding or preparing tangible personal property for sale; under section two-h of said article thirteen on the providing of a manufacturing service; and under section two-m of said article thirteen, on
the business of generating electric power, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible taxpayer is entitled to claim credit under both this subsection (f) and subsections (b), (c), or (d) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in paragraph (2) of this subsection (f).

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

(5) No credit shall be allowed under this subsection (f) for any property purchased for an eligible research and development project, when such property is used to determine the eligible investment under section four of this article, or determine the amount of credit allowable under article thirteen-c of this chapter.

(6) No credit shall be allowed under this subsection (f) for any property purchased for research and development prior to the first day of July, one thousand nine hundred eighty-five.

(g) Credit limitation.—The aggregate amount of credit allowable under this article and article thirteen-e of this chapter, against the taxes imposed by article thirteen of this chapter for the taxable year, shall in no event exceed fifty percent of the tax due for the taxable year, computed prior to application of the tax credits provided by this article and articles thirteen-c and thirteen-e of this chapter, and the annual exemption allowed provided by section three, article thirteen of this chapter.

(h) Application of credit after June 30, 1987.—On and after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under subsections (b), (c), (e) and (f) of this section shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this
chapter, for taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and article thirteen-c or thirteen-e, or both, of this chapter.

§11-13D-4. Eligible investment for industrial expansion or revitalization.

(a) General.—The eligible or qualified investment in property purchased for industrial expansion or revitalization shall be the applicable percentage of the cost of each property purchased for the purpose of industrial expansion or revitalization, which is placed in service or use in this state, by the eligible 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:

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Percentage</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 or more but less than 8 years</td>
<td>66 2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

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, determined in accordance with federal income tax law.

(c) Cost.—For purposes of subsection (a), the cost of each property purchased for industrial expansion or revitalization, or for conduct of an eligible research and development project, shall be determined under the following rules:

(1) Trade-ins.—Cost shall not include the value of property given in trade or exchange for the property purchased for industrial expansion or 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.
(4) *Property purchased for multiple use.*—The cost of property purchased for multiple business use including use as a component part of a new or expanded or 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 new or expanded or revitalized industrial business, shall be considered to be 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.

§11-13D-5. **Eligible investment for research and development.**

(a) *General.*—The eligible investment in a research and development project shall be the sum of the applicable percentage of the cost of land and depreciable property purchased for the conduct of an eligible research and development project, which is placed in service or use in this state during the taxable year, plus the amount of qualified research expenses (as defined in this section) deducted by the eligible taxpayer, for federal income tax purposes.

(b) *Applicable percentage of property.*—For the purpose of subsection (a), the applicable percentage for land and depreciable 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>Less than 6 years</td>
<td>33 1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100</td>
</tr>
</tbody>
</table>

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, determined in accordance with federal income tax law.

(c) *Cost of property.*—For purposes of subsection (a), the cost of each property purchased for the conduct of an eligible research and development project shall be determined under the following rules:

(1) *Trade-ins.*—Cost shall not include the value of
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27 property given in trade or exchange for the property
28 purchased for conduct of the research and development
29 project.
30 (2) **Damaged, destroyed or stolen property.**—If property
31 is damaged or destroyed by fire, flood, storm or other
32 casualty, or is stolen, then the cost of replacement property
33 shall not include any insurance proceeds received in
34 compensation for the loss.
35 (3) **Rental property.**—The cost of property acquired by
36 lease for a term of ten years or longer shall be one hundred
37 percent of the rent reserved for the primary term of the
38 lease, not to exceed twenty years.
39 (4) **Property purchased for multiple use.**—The cost of
40 property purchased for multiple business use including
41 direct use in the conduct of an eligible research and
42 development project, together with some other business or
43 activity not eligible under this section, shall be apportioned
44 between such activities. The amount apportioned to the
45 conduct of the eligible research and development project
46 shall be considered to be eligible investment subject to the
47 conditions and limitations of this section.
48 (5) **Self-constructed property.**—In the case of self-
49 constructed property, the cost thereof shall be the amount
50 properly charged to the capital account for depreciation in
51 accordance with federal income tax law.
52 (d) **Qualified research expenses.**—For purposes of this
53 section:
54 (1) “Qualified research expenses” means the sum of
55 in-house and contract research expenses for qualified
56 research allocated to this state, which are paid or incurred
57 by the eligible taxpayer during the taxable year in carrying
58 on any trade or business taxable under sections two-a,
59 two-b and two-m, article thirteen of this chapter, or under
60 section two-h of said article thirteen (in the case of
61 manufacturing services only): *Provided,* That on and after
62 the first day of July, one thousand nine hundred eighty-
63 seven, “qualified research expenses” shall mean the sum of
64 in-house and contract research expenses for qualified
65 research, allocated to this state, which are paid or incurred
66 by the eligible taxpayer during the taxable year in carrying
67 on any trade or business taxable under article thirteen,
68 thirteen-a or twenty-three of this chapter, that would have
been taxable under section two-a, two-b, two-m or two-h
(in the case of manufacturing services only) of said article
thirteen, as in effect on the first day of January, one
thousand nine hundred eighty-five.
In no event shall “qualified research expenses” include
any expense that must be capitalized and depreciated for
federal income tax purposes, or any expenditure paid or
incurred for the purpose of ascertaining the existence,
location, extent or quality of any deposit of coal, limestone
or other natural resource, including oil and natural gas.
(2) “In-house research expenses” means:
(A) Wages paid or incurred to an employee for qualified
services performed in this state by such employee;
(B) Amounts paid or incurred for supplies used in the
conduct of qualified research in this state; and
(C) Amounts paid or incurred to another person for the
right to use personal property in the conduct of qualified
research in this state.
(3) “Qualified services” means services consisting of:
(A) Engaging in qualified research in this state; or
(B) Engaging in the direct supervision or direct support
of research activities in this state, which constitute
qualified research.
If substantially all of the services performed by an
individual for the taxpayer during the taxable year consist
of services meeting the requirements of subparagraph (A) or
(B), the term “qualified services” means all services
performed by such individual for the taxable year.
(4) “Supplies” means any tangible property other than:
(A) Land or improvements to land; and
(B) Property of a character subject to depreciation for
federal income tax purposes.
(5) “Wages” has the meaning given to such term by
Section 3401(a) of the Internal Revenue Code of 1954, as
amended. In the case of self-employed individuals and
owner-employees (within the meaning of Section 401(c)(1)
of said Internal Revenue Code), the term “wages” includes
the earned income (as defined in Section 401(c)(2) of said
Internal Revenue Code) of such employee. The term
“wages” shall not include any amount taken into account in
determining the federal targeted jobs credit under Section
51(a) of said Internal Revenue Code.
(6) "Contract research expenses" means:

(A) In general, sixty-five percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

(B) If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of the taxable year, such amount shall be treated as paid or incurred during the taxable year during which the qualified research is conducted.

(7) "Qualified research" means research and development conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for and increasing sales of this state's natural resource products or manufactured products, or both: Provided, That it shall not include:

(A) Research or development conducted outside this state;

(B) Research or development not directly related to increasing the uses for and sales of this state's natural resource products and industrial products;

(C) Research in the social sciences or humanities; or

(D) Research and development to the extent funded by any grant, contract, or otherwise by another person (or any governmental entity).

(e) Research by colleges, universities and certain research organizations.—In general, sixty-five percent of the amount paid or incurred by a corporation to any nonprofit educational organization which is an institution of higher education (as defined in Section 3304 (f) of the Internal Revenue Code of 1954, as amended), an institution of higher education subject to the jurisdiction of the West Virginia board of regents, or any other nonprofit organization exempt from federal income taxes which is organized and operated primarily to conduct scientific research and is not a private foundation for federal income tax purposes for research to be performed by such organization shall be treated as contract research expenses.

The preceding sentence shall apply only if the amount is paid or incurred pursuant to a written research agreement between the corporation and the qualified organization.

(f) Standards for determining qualified research
expenses.—In prescribing standards for determining which
research and development expenses are considered to be
West Virginia qualified research expenses for purposes of
this section, the tax commissioner may consider: (1) The
place where the services are performed; (2) the residence or
business location of the person or persons performing the
services; (3) the place where qualified research supplies are
consumed; and (4) other factors that the tax commissioner
believes relevant in determining whether or not the
research and development expenses, land and depreciable
property were purchased and used for qualified research, as
defined in this article, during the taxable year.

§11-13D-6. Forfeiture of unused tax credits; redetermination
of credit required.

(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 four or five of this article; or
(2) Ceases to be used in the new or expanded or
revitalized industrial business, or in the eligible research
and development project, of the taxpayer in this state prior
to the end of its useful life, as determined under said section
four or five, 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 occupation tax
return for the year in which the forfeiture occurs and pay
any additional business and occupation taxes owed due to
reduction of the amount of credit allowable for such earlier
years, plus interest and any applicable penalties: Provided,
That on and after the first day of July, one thousand nine
hundred eighty-seven, the phrase “taxes imposed by article
“taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(b) Cessation of operation of industrial facility or eligible research and development project.—If during any taxable year, the industrial taxpayer ceases operation of an industrial facility in this state, or of an eligible research and development project, for which credit was allowed under this article, or article thirteen-c of this chapter prior to its repeal, before expiration of the useful life of the property with respect to which tax credit has been allowed under this article or article thirteen-c of this chapter prior to its repeal, 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 owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, and twenty-three of this chapter (or any one or combination of such articles of this chapter).”


(a) Mere change in form of business.—Property shall not be treated as disposed of under section six of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in a similar industrial business activity in this state and the taxpayer retains a controlling 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 (or to the eligible
research and development project); and the taxpayer
(transferor) shall not be required to redetermine the amount
of credit allowed in earlier years.
(b) Transfer or sale to successor.—Property shall not be
treated as disposed of under section six by reason of any
transfer or sale to a successor business which continues to
operate the industrial facility in this state. Upon transfer or
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.
Any tax credit to which an industrial taxpayer became
entitled under article thirteen-c of this chapter, before the
repeal of said article thirteen-c, shall be fully and
completely preserved under the provisions of this article, as
if the provisions of this article were in effect at the time the
qualifying investment was made.
(a) If any provision of this article or the application
thereof shall for any reason be adjudged by any court of
competent jurisdiction to be invalid, such judgment shall
not affect, impair or invalidate the remainder of said
article, but shall be confined in its operation to the
provision thereof directly involved in the controversy in
which such judgment shall have been rendered, and the
applicability of such provision to other persons or
circumstances shall not be affected thereby.
(b) If any provision of this article or the application
thereof shall be made invalid or inapplicable by reason of
the failure of the Legislature to enact any statute therein
addressed or referred to, or by reason of the repeal or any
other invalidation of any statute therein addressed or
referred to, such failure to reenact on such repeal or
invalidation of any such statute shall not affect, impair or
invalidate the remainder of the said article, but shall be

confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the said statute, and the application of such provision with regard to other statutes or in other instances not affected by any such invalid or repealed statute shall not be abrogated or diminished in any way.

ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL LOADING FACILITIES.


(a) Any term used in this article shall have the same meaning as when used in a comparable context in article thirteen or thirteen-a 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) “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, thirteen-a or twenty-three 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 located in this state, and upon completion, operates the new or expanded or revitalized coal loading facility: Provided, That on and after the first day of July, one thousand eight hundred eighty-seven, the phrase “subject to tax under article thirteen of this chapter” shall mean “subject to tax under article thirteen-a or twenty-three of this chapter.”

“Revitalization” means capital investment in a coal loading facility located in this state 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.

Subject to subsection (5) below, “property purchased for a coal loading facility” means real property and improvements thereto and tangible personal property, but only if such real or person 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 located within this state. 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 such property is placed in service or use in this state of four years or more. Property acquired by written 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 article thirteen-c or thirteen-d of this chapter;

(B) Repair costs, including materials used in making the
repair, unless for federal income tax purposes 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 the state;
(G) Property purchased prior to the first day of April,
one thousand nine hundred eighty-three; and
(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” or “property
purchased for industrial revitalization” under article
thirteen-d of this chapter and used to qualify for the tax
credit provided by either of said articles.
(6) Property shall be deemed to have been purchased
prior to a specified date only if:
(A) The physical construction, reconstruction or
errection of the property was begun prior to the specified
date, or such property was constructed, reconstructed,
erected or acquired pursuant to a written contract as
existing and binding on the taxpayer prior to the specified
date;
(B) The machinery or equipment was owned by the
taxpayer prior to the specified date or was acquired by the
taxpayer pursuant to a binding purchase contract which
was in effect prior to such date; or
(C) In the case of leased property, there was a binding
written lease or contract to lease identifiable property in
effect prior to the specified date.
§11-13E-3. Amount of credit allowed for coal loading facilities.
(a) There shall be allowed to eligible taxpayers a credit
gainst the business and occupation taxes imposed by
article thirteen, thirteen-a or twenty-three of this chapter,
for investment in a new or expanded or revitalized coal
loading facility. The amount of this credit shall be
determined as hereinafter provided in this section.
(b) Pre March 1, 1985 investment.—For investment in a
new or expanded or revitalized coal loading facility made
on or after the first day of April, one thousand nine hundred eighty-three, and prior to the first day of March, one thousand nine hundred eighty-five, the amount of this credit shall be equal to ten percent of the cost of the eligible investment (as determined in section four) made in a coal loading facility and shall reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-a, two-b and two-h of said 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 by section two, article thirteen of this chapter, under section two-a of said article thirteen, on the business of producing coal; under section two-b, of said article thirteen, on the business of manufacturing, compounding or preparing coal for sale; and under section two-h, of said article thirteen, on the activity of loading coal, 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 taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of credits allowed under sections two-b and two-h, article thirteen of this chapter, shall not exceed fifty percent of the tax liability under said sections, on manufacturing or manufacturing-service activity.

(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 subsection (b) for the taxable year. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this subsection (b) for any property purchased for a coal loading facility prior to the first day of April, one thousand nine hundred eighty-three.
Post February 28, 1985 investment.—For investment in a new or expanded or revitalized coal loading facility made on or after the first day of March, one thousand nine hundred eighty-five, the amount of the credit shall be equal to ten percent of the cost of eligible investment (as determined in section four) made in a coal loading facility and shall reduce the business and occupation tax imposed under article thirteen of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable shall be applied over a ten-year period, at the rate of one-tenth 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 under article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible taxpayer is entitled to claim credit computed under two or more subsections of this section, the total amount of all credits allowable under this section shall not exceed the fifty percent rule outlined in paragraph (2) of this subsection (c).

(4) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(5) When in any taxable year the eligible taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all such credits allowable for the taxable year shall not reduce the amount of business and occupation taxes under article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year computed before allowance of the annual exemption allowed by section three, article thirteen of this chapter.

(6) No credit shall be allowed under this subsection (c) for any property purchased on or after the first day of March, one thousand nine hundred eighty-five, for which credit is allowed under article thirteen-c of this chapter.
(7) No credit shall be allowed under this subsection (c) for any property purchased for a coal loading facility prior to the first day of March, one thousand nine hundred eighty-five.

(d) Credit limitation.—The aggregate amount of credit allowable under this article and article thirteen-e of this chapter, against the taxes imposed by article thirteen of this chapter, for the taxable year, shall in no event exceed fifty percent of the tax due for the taxable year computed prior to application of the tax credits provided by this article and article thirteen-e of this chapter, and the annual exemption provided by section three, article thirteen of this chapter.

(e) Application of credit after June 30, 1987.—On and after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under subsections (b), (c), (e) and (f) of this section, shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this chapter for the taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and articles thirteen-c or thirteen-e, or both, of this chapter.

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

(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 a coal loading facility by the eligible taxpayer, in this state, prior to the end of its useful life, as determined under said 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 applicable percentage of cost of such property allowed
under said 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: Provided,
That on and after the first day of July, one thousand nine
hundred eighty-seven, the phrase “taxes imposed by article
twelve-a or thirteen (or both) of this chapter” shall mean
“taxes imposed by articles thirteen, thirteen-a and twenty-
three of this chapter (or any one or combination of such
articles of this chapter).”
(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 the 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: Provided,
That on and after the first day of July, one thousand nine
hundred eighty-seven, the phrase “taxes imposed by article
twelve-a or thirteen (or both) of this chapter” shall mean
“taxes imposed by articles thirteen, thirteen-a and twenty-
three of this chapter (or any one or combination of such
articles of this chapter).”
§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 controlling 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) Transfer or sale to successor.—Property shall not be treated as disposed of under section five by reason of any transfer or sale to a successor business which continues to operate the coal loading facility in this state. Upon transfer or 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.

§11-13E-7. Severability.

(a) If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(b) If any provision of this article or the application thereof shall be made invalid or inapplicable by reason of the failure of the Legislature to enact any statute therein addressed or referred to, or by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such failure to reenact on such repeal or invalidation of any such statute shall not affect, impair or invalidate the remainder of the said article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the said statute, and the application of such provision with regard to other statutes or in other instances not affected by
any such invalid or repealed statute shall not be abrogated or diminished in any way.

§11-23-17a. Tax credit for business investment and jobs expansion; industrial expansion and revitalization; eligible research and development projects; coal loading facilities.

(a) There shall be allowed as a credit against the tax imposed by this article for the taxable year the amount determined under articles thirteen-c, thirteen-d and thirteen-e of this chapter relating respectively to:

(1) The tax credit for business investment and jobs expansion;

(2) The tax credit for industrial expansion and revitalization and eligible research and development projects; and

(3) The tax credit for coal loading facilities.

(b) The tax commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and articles thirteen-c, thirteen-d and thirteen-e of this chapter.

(c) This provision shall take effect on the first day of July, one thousand nine hundred eighty-seven.
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.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within..............this the..............

day of ................1985.

Governor
PRESENTED TO THE

GOVERNOR

Date 4/14/85

Time 5:43 pm