

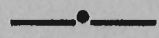
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1985



ENROLLED

*Finance Committee Substitute for
Select Committee on Economic Development Committee
Substitute for* **SENATE BILL NO. 198**

(By Mr. *Loeb, Mr. Burdette, et al.*)



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.

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

5 (b) The tax commissioner shall prescribe such
6 regulations as he deems necessary to carry out the purposes
7 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.

1 (a) There shall be allowed as a credit against the tax
2 imposed by this article, the amount determined under
3 article thirteen-d of this chapter, relating to tax credit for
4 industrial expansion and industrial revitalization, and
5 eligible research and development projects.

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

9 (c) Any tax credit to which an industrial taxpayer
10 became entitled under section three-c of this article, before
11 its repeal, shall be fully and completely preserved under the
12 provision of this section, as amended, as if this section were
13 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.

1 (a) There shall be allowed as a credit against the tax
2 imposed by this article for the taxable year, the amount

3 determined under articles thirteen-c, thirteen-d and
4 thirteen-e of this chapter relating respectively to:

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

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

10 (3) The tax credit for coal loading facilities.

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

15 (c) This provision shall take effect on the first day of
16 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.**

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

5 (1) Tax credit for business investment and jobs
6 expansion; and

7 (2) Tax credit for eligible research and development
8 projects; and

9 (3) Tax credit for coal loading facilities.

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

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

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX
CREDIT.**

§11-13C-1. Short title.

1 This article may be cited as the "West Virginia Business
2 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.

§11-13C-3. Definitions.

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

31 chapter” shall mean “taxes imposed by articles thirteen,
32 thirteen-a, thirteen-b and twenty-three of this chapter (or
33 any one or combination of such articles of this chapter).”

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

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

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

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

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

62 (9) *Eligible taxpayer.*—The term “eligible taxpayer”
63 means any person subject to the taxes imposed by article
64 twelve-a or thirteen (or both) of this chapter, who purchases
65 property that has the effect of business expansion and
66 creation of new jobs at a business facility located in this
67 state: *Provided*, That on and after the first day of July, one
68 thousand nine hundred eighty-seven, the phrase “taxes
69 imposed by article twelve-a or thirteen (or both) of this
70 chapter” shall mean “taxes imposed by articles thirteen,
71 thirteen-a, thirteen-b and twenty-three of this chapter (or
72 any one or combination of such articles of this chapter).”

73 (10) *Expanded facility*.—The term “expanded facility”
74 means any facility (other than a new or replacement
75 facility) resulting from the acquisition, construction,
76 reconstruction, installation or erection of improvements or
77 additions to existing property (not including any
78 improvement or addition resulting from a repair,
79 refurbishing, retooling, recycling or other similar process or
80 procedure that merely preserves or restores the value of an
81 existing facility, and not including any improvement or
82 addition that, in the determination of the tax commissioner,
83 does not constitute an integral part of a qualified activity),
84 if such improvements or additions are purchased on or after
85 March one, one thousand nine hundred eighty-five, but only
86 to the extent of the taxpayer’s qualified investment in such
87 improvements or additions.

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

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

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

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

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

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

114 (13) *New employee*.—The term “new employee” means

115 a person residing and domiciled in this state, hired by the
116 taxpayer to fill a position for a job in this state, which
117 previously did not exist in the business enterprise in this
118 state, prior to the date on which the taxpayer's qualified
119 investment is placed in service or use in this state. In no case
120 shall the new employees allowed for purposes of this credit
121 exceed the total increase in the taxpayer's employment in
122 this state. A person shall be deemed to be a "new employee"
123 if such person's duties in connection with the operation of
124 the business enterprise are on:

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

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

131 (2) "Permanent employment" does not include
132 employment that is temporary or seasonal.

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

136 (14) *New job*.—The term "new job" means a job which
137 did not exist in the business of the taxpayer in this state
138 prior to the taxpayer's qualified investment being made,
139 and which is filled by a new employee.

140 (15) *New property*.—The term "new property" means:

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

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

148 (16) *Original use*.—The term "original use" means the
149 first use to which the property is put, whether or not such
150 use corresponds to the use of the property by the taxpayer.

151 (17) *Partnership and partner*.—The term "partnership"
152 includes a syndicate, group, pool, joint venture or other
153 unincorporated organization through or by means of which
154 any business, financial operation or venture is carried on,
155 and which is not, a trust or estate, a corporation or a sole

156 proprietorship. The term "partner" includes a member in
157 such a syndicate, group, pool, joint venture or organization.

158 (18) *Person*.—The term "person" includes any natural
159 person, corporation or partnership.

160 (19) *Property purchased for business expansion*.

161 (A) *Included property*.—Except as provided in
162 subparagraph (B), the term "property purchased for
163 business expansion" means real property, and
164 improvements thereto, and tangible personal property, but
165 only if such property was constructed, or purchased, on or
166 after the first day of March, one thousand nine hundred
167 eighty-five, for use as a component part of a new or
168 expanded business, as defined in this section, which
169 business is located within West Virginia. This term includes
170 only tangible personal property with respect to which
171 depreciation, or amortization in lieu of depreciation, is
172 allowable in determining the personal income tax or
173 corporation net income tax liability of the business
174 taxpayer under articles twenty-one or twenty-four of this
175 chapter, and has a useful life, at the time such property is
176 placed in service or use in this state, of four years or more.
177 Property acquired by written lease, for a primary term of
178 ten years or longer, if used as a component part of a new or
179 expanded business facility, shall be included within this
180 definition.

181 (B) *Excluded property*.—The term "property purchased
182 for business expansion" shall not include:

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

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

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

191 (4) Airplanes;

192 (5) Off-premise transportation equipment;

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

195 (7) Property which is acquired incident to the purchase
196 of the stock or assets of a taxpayer, which property was or
197 had been used by the seller in a business taxable under

198 article twelve-a or thirteen (or both) of this chapter, or
199 which property was previously designated qualified or
200 eligible investment for purposes of the tax credits
201 authorized by article thirteen-c of this chapter (prior to its
202 repeal), article thirteen-d or article thirteen-e of said
203 chapter eleven: *Provided*, That on and after the first day of
204 July, one thousand nine hundred eighty-seven, the phrase
205 “taxes imposed by article twelve-a or thirteen (or both) of
206 this chapter” shall mean “taxes imposed by article thirteen,
207 thirteen-a, thirteen-b and twenty-three of this chapter (or
208 any one or combination of such articles of this chapter).”

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

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

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

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

224 (20) *Purchase*.—The term “purchase” means any
225 acquisition of property, but only if:

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

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

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

238 (1) In whole or in part by reference to the federal

239 adjusted basis of such property in the hands of the person
240 from whom it was acquired; or

241 (2) Under Section 1014 (e) of the United States Internal
242 Revenue Code of 1954, as amended and in effect on the first
243 day of January, one thousand nine hundred eighty-five.

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

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

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

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

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

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

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

278 (23) *Replacement facility*.—The term “replacement
279 facility” means any property (other than an expanded
280 facility) that replaces or supersedes any other property
281 located within this state that:

282 (A) The taxpayer or a related person used in or in
 283 connection with any activity for more than two years during
 284 the period of five consecutive years ending on the date the
 285 replacement or superseding property is placed in service by
 286 the taxpayer.

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

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

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

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

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

§11-13C-4. Amount of credit allowed.

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

8 (b) *Amount of credit*.—The amount of credit allowable
 9 is determined by multiplying the amount of the taxpayer’s
 10 “qualified investment” (determined under section six) in
 11 property purchased for business expansion on or after
 12 March one, one thousand nine hundred eighty-five, by the

13 taxpayer's new jobs percentage (determined under section
14 seven). The product of this calculation establishes the
15 maximum amount of credit allowable under this article,
16 due to the qualified investment.

17 (c) *Application of credit over ten years.*—The amount of
18 credit allowable must be taken over a ten-year period, at the
19 rate of one-tenth of the amount thereof per taxable year,
20 beginning with the taxable year in which the taxpayer
21 places the qualified investment in service or use in this
22 state. The annual credit allowance shall be taken in the
23 manner prescribed in section four of this article.

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

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

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

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

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

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

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

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

17 (c) *Business and occupation taxes.*

18 (1) That portion of the allowable credit attributable to
19 qualified investment in a business or other activity subject
20 to the taxes imposed by article thirteen of this chapter, shall

21 first be applied to reduce up to eighty percent of the taxes
22 imposed by article thirteen of this chapter for the taxable
23 year (determined before application of allowable credits
24 against tax and the annual exemption).

25 (2) If the taxes due under said article thirteen, are not
26 solely attributable to and the direct result of the taxpayer's
27 qualified investment in a business or other activity taxable
28 under article thirteen of this chapter, the amount of such
29 taxes, which are so attributable, shall be determined by
30 multiplying the amount of taxes due under said article
31 thirteen, for the taxable year (determined before
32 application of any allowable credits against tax and the
33 annual exemption), by a fraction, the numerator of which is
34 all wages, salaries and other compensation paid during the
35 taxable year to all employees of the taxpayer employed in
36 this state, whose positions are directly attributable to the
37 qualified investment in a business or other activity taxable
38 under article thirteen of this chapter. The denominator of
39 the fraction shall be the wages, salaries and other
40 compensation paid during the taxable year to all employees
41 of the taxpayer, employed in this state, whose positions are
42 directly attributable to the business or other activity of the
43 taxpayer, that is taxable under article thirteen of this
44 chapter.

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

57 (d) *Carrier income taxes.*

58 (1) That portion of the allowable credit attributable to
59 qualified investment in a business or other activity subject
60 to the taxes imposed by article twelve-a of this chapter,
61 shall first be applied to reduce up to eighty percent of the
62 taxes imposed by article twelve-a of this chapter, for the
63 taxable year.

64 (2) If the taxes due under said article twelve-a are not
65 solely attributable to and the direct result of the taxpayer's
66 qualified investment in a business or other activity taxable
67 under article twelve-a of this chapter, the amount of such
68 taxes, which are so attributable, shall be determined by
69 multiplying the amount of taxes due under said article
70 twelve-a, for the taxable year, by a fraction, the numerator
71 of which is all wages, salaries and other compensation paid
72 during the taxable year to all employees of the taxpayer
73 employed in this state, whose positions are directly
74 attributable to the qualified investment in a business or
75 other activity taxable under article twelve-a of this chapter.
76 The denominator of the fraction shall be the wages, salaries
77 and other compensation paid during the taxable year to all
78 employees of the taxpayer, employed in this state, whose
79 positions are directly attributable to the business or other
80 activity of the taxpayer, that is taxable under article
81 twelve-a of this chapter.

82 (e) *Severance taxes.*

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

95 (2) If the taxes due under said article thirteen-a are not
96 solely attributable to and the direct result of the taxpayer's
97 qualified investment in a business or other activity taxable
98 under article thirteen-a of this chapter, the amount of such
99 taxes, which are so attributable, shall be determined by
100 multiplying the amount of taxes due under said article
101 thirteen-a, for the taxable year (determined before
102 application of any allowable credits against tax), by a
103 fraction, the numerator of which is all wages, salaries and
104 other compensation paid during the taxable year to all
105 employees of the taxpayer employed in this state, whose

106 positions are directly attributable to the qualified
107 investment in a business or other activity taxable under
108 article thirteen-a of this chapter. The denominator of the
109 fraction shall be the wages, salaries and other
110 compensation paid during the taxable year to all employees
111 of the taxpayer, employed in this state, whose positions are
112 directly attributable to the business or other activity of the
113 taxpayer, that is taxable under article thirteen-a of this
114 chapter.

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

125 (f) *Telecommunications taxes.*

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

138 (2) If the taxes due under said article thirteen-b are not
139 solely attributable to and the direct result of the taxpayer's
140 qualified investment in a business or other activity taxable
141 under article thirteen-b of this chapter, the amount of such
142 taxes, which are so attributable, shall be determined by
143 multiplying the amount of taxes due under said article
144 thirteen-b, for the taxable year (determined before
145 application of any allowable credits against tax), by a
146 fraction, the numerator of which is all wages, salaries and

147 other compensation paid during the taxable year to all
148 employees of the taxpayer employed in this state, whose
149 positions are directly attributable to the qualified
150 investment in a business or other activity taxable under
151 article thirteen-b of this chapter. The denominator of the
152 fraction shall be the wages, salaries and other
153 compensation paid during the taxable year to all employees
154 of the taxpayer, employed in this state, whose positions are
155 directly attributable to the business or other activity of the
156 taxpayer, that is taxable under article thirteen-b of this
157 chapter.

158 (g) *Business franchise tax.*

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

174 (2) If the taxes due under said article twenty-three are
175 not solely attributable to and the direct result of the
176 taxpayer's qualified investment in a business or other
177 activity taxable under article twenty-three of this chapter,
178 the amount of such taxes, which are so attributable, shall be
179 determined by multiplying the amount of taxes due under
180 said article twenty-three, for the taxable year (determined
181 after application of the credits against tax provided in
182 section seventeen of said article twenty-three, but before
183 application of any other allowable credits), by a fraction,
184 the numerator of which is all wages, salaries and other
185 compensation paid during the taxable year to all employees
186 of the taxpayer employed in this state, whose positions are
187 directly attributable to the qualified investment in a
188 business or other activity taxable under article twenty-

189 three of this chapter. The denominator of the fraction shall
190 be the wages, salaries and other compensation paid during
191 the taxable year to all employees of the taxpayer, employed
192 in this state, whose positions are directly attributable to the
193 business or other activity of the taxpayer, that is taxable
194 under article twenty-three of this chapter.

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

206 (h) *Corporation net income taxes.*

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

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

228 (3) Any credits allowable under article twenty-four of
229 this chapter shall be applied against and reduce only the
230 amount of article twenty-four taxes not apportioned to the
231 qualified investment under this article: *Provided*, That any

232 excess credits may be applied against the amount of article
233 twenty-four taxes apportioned to the qualified investment
234 under this article, that is not offset by the amount of annual
235 credit against such taxes allowed under this article for the
236 taxable year, unless their application is otherwise
237 prohibited by this chapter.

238 (i) *Personal income taxes.*

239 (1) If the person making the qualified investment is an
240 electing small business corporation (as defined in Section
241 1361 of the United States Internal Revenue Code of 1954, as
242 amended), a partnership or a sole proprietorship, then any
243 unused credit (after application of subsections (c), (d), (e), (f)
244 and (g)) shall be allowed as a credit against up to eighty
245 percent of the taxes imposed by article twenty-one of this
246 chapter on net income from business or other activity
247 subject to tax under article twelve-a or thirteen (or both) of
248 this chapter.

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

254 (3) If the amount of taxes due under article twenty-one
255 of this chapter (determined before application of allowable
256 credits against tax), that is attributable to business, is not
257 solely attributable to and the direct result of the qualified
258 investment of the electing small business corporation,
259 partnership, other unincorporated organization or sole
260 proprietorship, the amount of such taxes which are so
261 attributable shall be determined by multiplying the amount
262 of taxes due under said article twenty-one (determined
263 before application of allowable credits against tax), that is
264 attributable to business by a fraction, the numerator of
265 which is all wages, salaries and other compensation paid
266 during the taxable year to all employees of the electing
267 small business corporation, partnership, other
268 unincorporated organization or sole proprietorship,
269 employed in this state, whose positions are directly
270 attributable to the qualified investment. The denominator
271 of the fraction shall be the wages, salaries and other
272 compensation paid during the taxable year to all employees
273 of the taxpayer.

274 (4) No credit shall be allowed under this section against
275 employer withholding taxes imposed by article twenty-one
276 of this chapter.

277 (j) *Ad valorem property taxes.*

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

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

293 (k) *Unemployment taxes.*

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

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

311 (l) *Workers' compensation premium.*

312 (1) After application of subsections (c) through (k), both
313 inclusive, of this section, any unused credit shall next be
314 applied to reduce up to twenty percent of the workers'
315 compensation premiums imposed by article two, chapter
316 twenty-three of this code, for the taxable year.

317 (2) If the premiums due under article two of said chapter
318 twenty-three, for the taxable year, are not solely
319 attributable to and the direct result of the taxpayer's
320 qualified investment, the amount of such premiums which
321 are so attributable shall be determined by multiplying the
322 amount of premiums due under article two, chapter twenty-
323 three of this code for the taxable year, by a fraction, the
324 numerator of which is all wages, salaries and compensation
325 paid during the taxable year to employees of the taxpayer
326 whose positions are directly attributable to the qualified
327 investment, and the denominator of which is the wages,
328 salaries and other compensation paid during the taxable
329 year to all employees of the taxpayer, in this state.

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

§11-13C-6. Qualified investment.

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

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

9	If useful life is:	The applicable percentage is:
10	4 years or more but less than 6 years	33 $\frac{1}{3}$
11	6 years or more but less than 8 years	66 $\frac{2}{3}$
12	8 years or more	100

13 The useful life of any property, for purposes of this
14 section, shall be determined as of the date such property is
15 first placed in service or use in this state by the taxpayer,
16 determined in accordance with federal income tax law.

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

20 (1) *Trade-ins.*—Cost shall not include the value of

21 property given in trade or exchange for the property
 22 purchased for business expansion.

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

28 (3) *Rental property.*—The cost of property acquired by
 29 written lease for a primary term of ten years, or longer, shall
 30 be one hundred percent of the rent reserved for the primary
 31 term of the lease, not to exceed twenty years.

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

42 (5) *Self-constructed property.*—In the case of self-
 43 constructed property, the cost thereof shall be the amount
 44 properly charged to the capital account for depreciation in
 45 accordance with federal income tax law.

§11-13C-7. New jobs percentage.

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

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

7	If number of	The applicable
8	new jobs is:	percentage is:
9	1,000	90%
10	760	80%
11	520	70%
12	280	60%
13	50	50%

14 (c) *When a job is attributable.*—An employee's position
 15 is directly attributable to the qualified investment if:

16 (1) The employee's service is performed or his base of
17 operations is at the new or expanded business facility;

18 (2) The position did not exist prior to the construction,
19 renovation, expansion or acquisition of the business facility
20 and the making of the qualified investment; and

21 (3) But for the qualified investment, the position would
22 not have existed.

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

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

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

53 (1) If the actual number of jobs created would result in a
54 higher new jobs percentage, the credit allowed under this
55 article shall be redetermined and amended returns filed for
56 the first and second taxable years that the qualified
57 investment was in service or use in this state.

58 (2) If the actual number of jobs created would result in a
 59 lower new jobs percentage, the credit previously allowed
 60 under this article shall be redetermined and amended
 61 returns filed for the first and second taxable years. In
 62 applying the amount of redetermined credit allowable for
 63 the two preceding taxable years, the redetermined credit
 64 shall first be applied to the extent it was originally applied
 65 in such prior two years to workers' compensation
 66 premiums, then to unemployment taxes, then to ad valorem
 67 property tax rebates, then to personal income taxes, then to
 68 corporation net income taxes, then to business franchise
 69 taxes, then to telecommunications taxes, then to severance
 70 taxes, then to carrier income taxes and lastly to business
 71 and occupation taxes. Any additional taxes due under this
 72 chapter shall be remitted with the amended returns filed
 73 with the tax commissioner, along with interest, as provided
 74 in section seventeen, article ten of this chapter, and a ten
 75 percent penalty, which may be waived by the tax
 76 commissioner if the taxpayer shows that the overclaimed
 77 amount of the new jobs percentage was due to reasonable
 78 cause and not due to willful neglect.

**§11-13C-8. Forfeiture of unused tax credits; redetermination
 of credit allowed.**

1 (a) *Disposition of property or cessation of use.*—If
 2 during any taxable year, property with respect to which a
 3 tax credit has been allowed under this article:
 4 (1) Is disposed of prior to the end of its useful life, as
 5 determined under section six of this article; or
 6 (2) Ceases to be used in an eligible business of the
 7 taxpayer in this state prior to the end of its useful life, as
 8 determined under said section six, then the unused portion
 9 of the credit allowed for such property shall be forfeited for
 10 the taxable year and all ensuing years. Additionally, except
 11 when the property is damaged or destroyed by fire, flood,
 12 storm or other casualty, or is stolen, the taxpayer shall
 13 redetermine the amount of credit allowed in all earlier years
 14 by reducing the applicable percentage of cost of such
 15 property allowed under said section six, to correspond with
 16 the percentage of cost allowable for the period of time that
 17 the property was actually used in this state in the new or
 18 expanded business of the taxpayer. Taxpayer shall then file

19 a reconciliation statement with its annual business and
20 occupation tax return or carrier income tax return, for the
21 year in which the forfeiture occurs and pay any additional
22 taxes owed due to reduction of the amount of credit
23 allowable for such earlier years, plus interest and any
24 applicable penalties: *Provided*, That for taxable periods
25 beginning on or after the first day of July, one thousand nine
26 hundred eighty-seven, such reconciliation statement shall
27 be filed with the annual return for the primary tax for
28 which the taxpayer is liable under articles thirteen,
29 thirteen-a, thirteen-b and twenty-three of this chapter.

30 (b) *Cessation of operation of business facility.*—If
31 during any taxable year the taxpayer ceases operation of a
32 business facility in this state for which credit was allowed
33 under this article, before expiration of the useful life of
34 property with respect to which tax credit has been allowed
35 under this article, then the unused portion of the allowed
36 credit shall be forfeited for the taxable year and all ensuing
37 years. Additionally, except when the cessation is due to fire,
38 flood, storm or other casualty, the taxpayer shall
39 redetermine the amount of credit allowed in earlier years by
40 reducing the applicable percentage of cost of such property
41 allowed under section six, to correspond with the
42 percentage of cost allowable for the period of time that the
43 property was actually used in this state in a business of the
44 taxpayer that is taxable under article twelve-a or thirteen
45 of this chapter. Taxpayer shall then file a reconciliation
46 statement with its annual business and occupation tax
47 return or carrier income tax return for the year in which the
48 forfeiture occurs, and pay any additional taxes owed due to
49 reduction of the amount of credit allowable for such earlier
50 years, plus interest and any applicable penalties: *Provided*,
51 That for taxable periods beginning on or after the first day
52 of July, one thousand nine hundred eighty-seven, such
53 reconciliation statement shall be filed with the annual
54 return for the primary tax for which the taxpayer is liable
55 under articles thirteen, thirteen-a, thirteen-b and twenty-
56 three of this chapter.

57 (c) *Reduction in number of employees.*—If during any
58 taxable year subsequent to the taxable year in which the
59 new jobs percentage is redetermined as provided in section
60 seven of this article, the average number of employees of the

61 taxpayer, for the then current taxable year, employed in
 62 positions created because of and directly attributable to the
 63 qualified investment falls below the minimum number of
 64 new jobs created upon which the taxpayer's annual credit
 65 allowance is based, the taxpayer shall calculate what his
 66 annual credit allowance would have been had his new jobs
 67 percentage been determined based upon the average
 68 number of employees, for the then current taxable year,
 69 employed in positions created because of and directly
 70 attributable to the qualified investment. The difference
 71 between the result of this calculation and the taxpayer's
 72 annual credit allowance for the qualified investment as
 73 determined under section four of this article, shall be
 74 forfeited for the then current taxable year, and for each
 75 succeeding taxable year unless for such succeeding taxable
 76 year the taxpayer's average employment in positions
 77 directly attributable to the qualified investment once again
 78 meets the level required to enable the taxpayer to utilize its
 79 full annual credit allowance for that taxable year.

§11-13C-9. Transfer of qualified investment to successors.

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

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

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

1 Every taxpayer who claims credit under this article shall

- 2 maintain sufficient records to establish the following facts
- 3 for each item of qualified property:
- 4 (1) Its identity;
- 5 (2) Its actual or reasonably determined cost;
- 6 (3) Its straight-line depreciation life;
- 7 (4) The month and taxable year in which it was placed in
- 8 service;
- 9 (5) The amount of credit taken; and
- 10 (6) The date it was disposed of or otherwise ceased to be
- 11 qualified property.

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

- 1 A taxpayer who does not keep the records required for
- 2 identification of investment credit property, is subject to
- 3 the following rules:
- 4 (1) A taxpayer shall be treated as having disposed of,
- 5 during the taxable year, any investment credit property
- 6 which the taxpayer cannot establish was still on hand, in
- 7 this state, at the end of that year.
- 8 (2) If a taxpayer cannot establish when investment
- 9 credit property reported for purposes of claiming this credit
- 10 returned during the taxable year was placed in service, the
- 11 taxpayer shall be treated as having placed it in service in the
- 12 most recent prior year in which similar property was placed
- 13 in service, unless the taxpayer can establish that the
- 14 property placed in service in the most recent year is still on
- 15 hand. In that event, the taxpayer will be treated as having
- 16 placed the returned property in service in the next most
- 17 recent year.

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

- 1 (a) No inference, implication or presumption of
- 2 legislative construction or intent shall be drawn or made by
- 3 reason of the location or grouping of any particular section,
- 4 provision or portion of this article; and no legal effect shall
- 5 be given to any descriptive matter or heading relating to any
- 6 section, subsection or paragraph of this article.
- 7 (b) The provisions of this article shall be liberally
- 8 construed in order to effectuate the legislative intent
- 9 recited in section two of this article.

§11-13C-13. Severability.

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

10 (b) If any provision of this article or the application
11 thereof shall be made invalid or inapplicable by reason of
12 the failure of the Legislature to enact any statute therein
13 addressed or referred to, or by reason of the repeal or any
14 other invalidation of any statute therein addressed or
15 referred to, such failure to reenact on such repeal or
16 invalidation of any such statute shall not affect, impair or
17 invalidate the remainder of the said article, but shall be
18 confined in its operation to the provision thereof directly
19 involved with, pertaining to, addressing or referring to the
20 said statute, and the application of such provision with
21 regard to other statutes or in other instances not affected by
22 any such invalid or repealed statute shall not be abrogated
23 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.

1 The Legislature finds that the encouragement of the
2 location of new industry in this state; the expansion, growth
3 and revitalization of existing industrial facilities in this
4 state; and the conduct of research and development in this
5 state, for purposes of expanding markets for sales and uses
6 of this state's natural resources and industrial products, are
7 all in the public interest and promote the general welfare of
8 the people of this state. In order to encourage capital
9 investment in this state and thereby increase employment
10 and economic development, there is hereby provided a
11 business and occupation tax credit for industrial expansion

12 and revitalization in this state, and for certain research and
13 development related expenditures in this state.

§11-13D-2. Definitions.

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

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

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

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

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

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

39 two-h, article thirteen of this chapter on the first day of
40 January, one thousand nine hundred eighty-five.

41 (5) "Industrial facility" means any factory, mill, plant,
42 refinery, warehouse, buildings or complex of buildings
43 located within this state, including the land on which it is
44 located, and all machinery, equipment and other real and
45 tangible personal property located at or within such facility
46 used in connection with the operation of such facility in an
47 industrial business.

48 (6) "Industrial revitalization" means capital
49 investment in an industrial facility located in this state to
50 replace or modernize buildings, equipment, machinery and
51 other tangible personal property used in connection with
52 the operation of such facility in an industrial business of the
53 taxpayer, including the acquisition of any real property
54 necessary to the industrial revitalization.

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

57 (8) "Industrial taxpayer" means any person subject to
58 business and occupation taxes under article thirteen of this
59 chapter, exercising any privilege taxable under section
60 two-b or two-m of said article thirteen, or providing a
61 manufacturing service taxable under section two-h of said
62 article thirteen: *Provided*, That on and after the first day of
63 July, one thousand nine hundred eighty-seven, "industrial
64 taxpayer" shall mean any person subject to tax under
65 section two-n, article thirteen of this chapter; or any person
66 subject to tax under article thirteen-a or twenty-three of
67 this chapter engaging in any activity that was taxable under
68 section two-b, article thirteen of this chapter, on the first
69 day of January, one thousand nine hundred eighty-five; or
70 any person taxable under article twenty-three of this
71 chapter providing a manufacturing service that was
72 taxable under section two-h, article thirteen of this chapter
73 on the first day of January, one thousand nine hundred
74 eighty-five.

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

81 (10) Subject to paragraph (12) below, "property
82 purchased for an eligible research and development
83 project" means real property, and improvements thereto,
84 and tangible personal property, but only if such real or
85 personal property is constructed or purchased on or after
86 the first day of July, one thousand nine hundred eighty-five,
87 for use as a component part of an eligible research and
88 development project which is located within this state on or
89 after the first day of July, one thousand nine hundred
90 eighty-five. This term includes only tangible personal
91 property with respect to which depreciation or
92 amortization, in lieu of depreciation, is allowable in
93 determining the personal income tax or corporation net
94 income tax liability of the purchaser under article twenty-
95 one or twenty-four of this chapter. Property acquired by
96 written lease for a term of ten years or longer, if used as a
97 component part of an eligible research and development
98 project, shall be included within this definition.

99 (11) Subject to paragraph (13) below, "property
100 purchased for industrial expansion" means real property,
101 and improvements thereto, and tangible personal property,
102 but only if such property was constructed, or purchased, on
103 or after the first day of July, one thousand nine hundred
104 sixty-nine, for use as a component part of a new or
105 expanded industrial facility (as defined in paragraph five of
106 this subsection) located within this state. This term includes
107 only tangible personal property with respect to which
108 depreciation, or amortization in lieu of depreciation, is
109 allowable in determining the personal income tax or
110 corporation net income tax liability of the industrial
111 taxpayer under articles twenty-one or twenty-four of this
112 chapter, and has a useful life, at the time such property is
113 placed in service or use in this state, of four years or more.
114 Property acquired by written lease, for a primary term of
115 ten years or longer, if used as a component part of a new or
116 expanded industrial facility, shall be included within this
117 definition.

118 (12) Subject to paragraph (13) below, "property
119 purchased for industrial revitalization" means real
120 property, and improvements thereto, and new tangible
121 personal property, but only if such property was
122 constructed, or purchased, on or after the first day of July,

123 one thousand nine hundred eighty-one, for use as a
124 component part of an ongoing industrial facility (as defined
125 in paragraph five of this subsection) located within this
126 state. This term includes only tangible personal property
127 with respect to which depreciation is allowable in
128 determining the personal income tax or corporation net
129 income tax liability of the industrial taxpayer under article
130 twenty-one or twenty-four of this chapter, and has a useful
131 life at the time the property is placed in service or use in this
132 state of four years or more. Property acquired by written
133 lease for a primary term of ten years or longer, if used as a
134 component part of an industrial revitalization, shall be
135 included within this definition.

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

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

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

145 (C) Airplanes;

146 (D) Off-premise transportation equipment;

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

149 (F) Property which is acquired incident to the purchase
150 of the stock or assets of an industrial taxpayer, which
151 property was or had been used by the seller in his industrial
152 business in this state, or which property was previously
153 designated "property purchased for industrial expansion"
154 or "property purchased for industrial revitalization," or
155 "property purchased for eligible research and development
156 project," and used to qualify for business and occupation
157 tax credit for industrial expansion or revitalization, or for
158 an eligible research and development project.

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

161 (A) The physical construction, reconstruction or
162 erection of the property was begun prior to the specified
163 date, or such property was constructed, reconstructed,
164 erected or acquired pursuant to a written contract as

165 existing and binding on the taxpayer prior to the specified
166 date;

167 (B) The machinery or equipment was owned by the
168 taxpayer prior to the specified date or was acquired by the
169 taxpayer pursuant to a binding purchase contract which
170 was in effect prior to such date; or

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

174 (15) "Taxpayer" means any person taxable under
175 article thirteen of this chapter: *Provided*, That on and after
176 the first day of July, one thousand nine hundred eighty-
177 seven, "taxpayer" shall mean any person taxable under
178 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.**

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

7 (b) *Qualified investment for industrial expansion; July*
8 *1, 1969 — March 31, 1978.*—For property purchased for
9 industrial expansion during the period beginning the first
10 day of July, one thousand nine hundred sixty-nine, and
11 ending the thirty-first day of March, one thousand nine
12 hundred seventy-eight, the amount of allowable credit shall
13 be equal to ten percent of the qualified investment (as
14 determined in section four) made for industrial expansion,
15 and shall reduce the business and occupation tax liability of
16 the industrial taxpayer under article thirteen of this
17 chapter, subject to the following conditions and
18 limitations:

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

24 (2) The amount of annual credit allowed shall not

25 reduce the business and occupation tax under article
26 thirteen of this chapter, below fifty percent of the amount
27 which would be imposed for such taxable year in the
28 absence of this credit against tax, computed before
29 application of the annual exemption allowed by section
30 three, article thirteen of this chapter.

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

35 (c) *Qualified investment for industrial expansion; April*
36 *1, 1978—February 28, 1985.*—For property purchased for
37 industrial expansion during the period beginning the first
38 day of March, one thousand nine hundred seventy-eight,
39 and ending the twenty-eighth day of February, one
40 thousand nine hundred eighty-five, the amount of
41 allowable credit shall be equal to ten percent of the
42 qualified investment (as determined in section four) made
43 for industrial expansion, and shall reduce the business and
44 occupation tax liability of the industrial taxpayer under
45 sections two-b, two-h and two-m, article thirteen of this
46 chapter, subject to the following conditions and
47 limitations:

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

53 (2) The amount of annual credit allowed shall not
54 reduce the business and occupation taxes imposed by
55 section two, article thirteen of this chapter, under sections
56 two-b, two-h and two-m, article thirteen of this chapter,
57 below fifty percent of the amount which would be imposed
58 for such taxable year, in the absence of this credit against
59 tax, computed before application of the annual exemption
60 allowed by section three, article thirteen of this chapter:
61 *Provided*, That the tax under section two-h of said article
62 thirteen, shall not be reduced by more than fifty percent of
63 the tax attributable to the privilege of manufacturing for
64 another, which privilege would be taxable under section
65 two-b of said article thirteen, if title to the raw materials
66 involved in the manufacturing process were vested in the

67 taxpayer exercising the privilege taxable under section
68 two-h of said article thirteen.

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

73 (d) *Eligible investment for industrial revitalization;*
74 *July 1, 1981—February 28, 1985.*—For property purchased
75 for industrial revitalization during the period beginning the
76 first day of July, one thousand nine hundred eighty-one,
77 and ending the twenty-eighth day of February, one
78 thousand nine hundred eighty-five, the amount of
79 allowable credit shall be equal to ten percent of the eligible
80 investment (as determined under section four) made for
81 industrial revitalization, and shall reduce the business and
82 occupation tax under sections two-b and two-h, article
83 thirteen of this chapter, subject to the following conditions
84 and limitations:

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

90 (2) The amount of annual credit allowed shall not
91 reduce the business and occupation taxes imposed by
92 section two, article thirteen of this chapter, under sections
93 two-b and two-h of said article, below fifty percent of the
94 amount which would be imposed for the taxable year in the
95 absence of this credit against tax, computed before
96 application of the annual exemption allowed by section
97 three, article thirteen of this chapter: *Provided*, That the
98 tax under section two-h of said article thirteen, shall not be
99 reduced by more than fifty percent of the tax attributable to
100 the privilege of manufacturing for another, which privilege
101 would be taxable under section two-b of said article
102 thirteen, if title to the raw materials involved in the
103 manufacturing process were vested in the taxpayer
104 exercising the privilege taxable under section two-h of said
105 article thirteen.

106 (3) When in any taxable year the eligible industrial
107 taxpayer is entitled to claim credit under both this
108 subsection (d) and under subsection (b) or (c), or both, of this

109 section, the total amount of all credits allowed under this
110 section shall not exceed the fifty percent rule outlined in
111 paragraph (2) of this subsection (d).

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

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

119 (e) *Eligible investment for industrial expansion or*
120 *revitalization after February 28, 1985.*—For property
121 purchased for industrial expansion or industrial
122 revitalization on or after the first day of March, one
123 thousand nine hundred eighty-five, the amount of
124 allowable credit shall be equal to ten percent of the eligible
125 investment (as determined in section four) made for
126 industrial expansion or industrial revitalization, and shall
127 reduce the business and occupation tax imposed under
128 article thirteen of this chapter subject to the following
129 conditions and limitations:

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

135 (2) The amount of annual credit allowed shall not
136 reduce the business and occupation taxes imposed by
137 article thirteen of this chapter, below fifty percent of the
138 amount which would be imposed for such taxable year in
139 the absence of this credit against tax, computed before
140 application of the annual exemption allowed by section
141 three, article thirteen of this chapter.

142 (3) When in any taxable year the industrial taxpayer is
143 entitled to claim credit under this subsection (e) and under
144 subsection (b), (c) or (d) of this section (or any combinations
145 thereof), the total amount of all credits allowed under this
146 section shall not exceed the fifty percent rule outlined in
147 paragraph (2) of this subsection (e).

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

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

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

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

169 (f) *Eligible investment for research and development*
170 *project after June 30, 1985.*—For property and services
171 purchased for an eligible research and development project
172 on or after the first day of July, one thousand nine hundred
173 eighty-five, the amount of allowable credit shall be equal to
174 ten percent of the eligible investment (as determined in
175 section five) made for an eligible research and development
176 project, and shall reduce the business and occupation taxes
177 under sections two-a, two-b, two-h and two-m, article
178 thirteen of this chapter, subject to the following conditions
179 and limitations:

180 (1) The allowable credit shall be applied over a ten-year
181 period at the rate of one tenth of the amount thereof per
182 taxable year, beginning with the taxable year in which the
183 eligible investment is first placed in service or use in this
184 state, or is expensed for federal income tax purposes.

185 (2) The amount of annual credit allowed shall not
186 reduce the business and occupation taxes imposed by
187 section two, article thirteen of this chapter, under section
188 two-a of said article, on the business of producing natural
189 resources; under section two-b of said article thirteen, on
190 the business of manufacturing, compounding or preparing
191 tangible personal property for sale; under section two-h of
192 said article thirteen on the providing of a manufacturing
193 service; and under section two-m of said article thirteen, on

194 the business of generating electric power, below fifty
195 percent of the amount which would be imposed for the
196 taxable year in the absence of this credit against tax,
197 computed before application of the annual exemption
198 allowed by section three, article thirteen of this chapter.

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

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

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

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

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

228 (h) *Application of credit after June 30, 1987.*—On and
229 after the first day of July, one thousand nine hundred
230 eighty-seven, the credits allowed under subsections (b), (c),
231 (e) and (f) of this section shall be applied to and reduce the
232 taxes imposed by articles thirteen, thirteen-a and twenty-
233 three of this chapter: *Provided*, That this credit shall not
234 reduce the sum of the net tax liability of the taxpayer under
235 articles thirteen, thirteen-a and twenty-three of this

236 chapter, for taxable year below fifty percent of the amount
237 thereof, determined before application of the credits
238 allowed by this article and article thirteen-c or thirteen-e,
239 or both, of this chapter.

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

1 (a) *General.*—The eligible or qualified investment in
2 property purchased for industrial expansion or
3 revitalization shall be the applicable percentage of the cost
4 of each property purchased for the purpose of industrial
5 expansion or revitalization, which is placed in service or use
6 in this state, by the eligible taxpayer during the taxable
7 year.

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

11 If useful life is:	The applicable percentage is:
12 4 years or more but less than 6 years	33⅓
13 6 years or more but less than 8 years	66⅔
14 8 years or more.	100

15 The useful life of any property for purposes of this section
16 shall be determined as of the date such property is first
17 placed in service or use in this state by the taxpayer,
18 determined in accordance with federal income tax law.

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

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

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

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

36 (4) *Property purchased for multiple use.*—The cost of
 37 property purchased for multiple business use including use
 38 as a component part of a new or expanded or revitalized
 39 industrial business, together with some other business or
 40 activity not eligible for credit under this article, shall be
 41 apportioned between such businesses and occupations. The
 42 amount apportioned to the new or expanded or revitalized
 43 industrial business, shall be considered to be as an eligible
 44 investment, subject to the conditions and limitations of this
 45 section.

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

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

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

10 (b) *Applicable percentage of property.*—For the
 11 purpose of subsection (a), the applicable percentage for
 12 land and depreciable property shall be determined under
 13 the following table:

14	If useful life is:	The applicable percentage is:
15	Less than 6 years.....	33⅓%
16	6 years or more but less than 8 years	66⅔%
17	8 years or more.....	100

18 The useful life of any property for purposes of this section
 19 shall be determined as of the date such property is first
 20 placed in service or use in this state by the taxpayer,
 21 determined in accordance with federal income tax law.

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

26 (1) *Trade-ins.*—Cost shall not include the value of

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

69 been taxable under section two-a, two-b, two-m or two-h
70 (in the case of manufacturing services only) of said article
71 thirteen, as in effect on the first day of January, one
72 thousand nine hundred eighty-five.

73 In no event shall "qualified research expenses" include
74 any expense that must be capitalized and depreciated for
75 federal income tax purposes, or any expenditure paid or
76 incurred for the purpose of ascertaining the existence,
77 location, extent or quality of any deposit of coal, limestone
78 or other natural resource, including oil and natural gas.

79 (2) "In-house research expenses" means:

80 (A) Wages paid or incurred to an employee for qualified
81 services performed in this state by such employee;

82 (B) Amounts paid or incurred for supplies used in the
83 conduct of qualified research in this state; and

84 (C) Amounts paid or incurred to another person for the
85 right to use personal property in the conduct of qualified
86 research in this state.

87 (3) "Qualified services" means services consisting of:

88 (A) Engaging in qualified research in this state; or

89 (B) Engaging in the direct supervision or direct support
90 of research activities in this state, which constitute
91 qualified research.

92 If substantially all of the services performed by an
93 individual for the taxpayer during the taxable year consist
94 of services meeting the requirements of subparagraph (A) or
95 (B), the term "qualified services" means all services
96 performed by such individual for the taxable year.

97 (4) "Supplies" means any tangible property other than:

98 (A) Land or improvements to land; and

99 (B) Property of a character subject to depreciation for
100 federal income tax purposes.

101 (5) "Wages" has the meaning given to such term by
102 Section 3401(a) of the Internal Revenue Code of 1954, as
103 amended. In the case of self-employed individuals and
104 owner-employees (within the meaning of Section 401(c)(1)
105 of said Internal Revenue Code), the term "wages" includes
106 the earned income (as defined in Section 401(c)(2) of said
107 Internal Revenue Code) of such employee. The term
108 "wages" shall not include any amount taken into account in
109 determining the federal targeted jobs credit under Section
110 51(a) of said Internal Revenue Code.

111 (6) "Contract research expenses" means:

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

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

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

127 (A) Research or development conducted outside this
128 state;

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

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

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

136 (e) *Research by colleges, universities and certain*
137 *research organizations.*—In general, sixty-five percent of
138 the amount paid or incurred by a corporation to any
139 nonprofit educational organization which is an institution
140 of higher education (as defined in Section 3304 (f) of the
141 Internal Revenue Code of 1954, as amended), an institution
142 of higher education subject to the jurisdiction of the West
143 Virginia board of regents, or any other nonprofit
144 organization exempt from federal income taxes which is
145 organized and operated primarily to conduct scientific
146 research and is not a private foundation for federal income
147 tax purposes for research to be performed by such
148 organization shall be treated as contract research expenses.
149 The preceding sentence shall apply only if the amount is
150 paid or incurred pursuant to a written research agreement
151 between the corporation and the qualified organization.

152 (f) *Standards for determining qualified research*

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

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

1 (a) *Disposition of property or cessation of use.*—If
2 during any taxable year, property with respect to which a
3 tax credit has been allowed under this article:
4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section four or five of this article; or
6 (2) Ceases to be used in the new or expanded or
7 revitalized industrial business, or in the eligible research
8 and development project, of the taxpayer in this state prior
9 to the end of its useful life, as determined under said section
10 four or five, then the unused portion of the credit allowed
11 for such property shall be forfeited for the taxable year and
12 all ensuing years. Additionally, except when the property is
13 damaged or destroyed by fire, flood, storm or other
14 casualty, or is stolen, the taxpayer shall redetermine the
15 amount of credit allowed in all earlier years by reducing the
16 applicable percentage of cost of such property allowed
17 under said section three, to correspond with the percentage
18 of cost allowable for the period of time that the property
19 was actually used in this state in the industrial business of
20 the taxpayer. Taxpayer shall then file a reconciliation
21 statement with its annual business and occupation tax
22 return for the year in which the forfeiture occurs and pay
23 any additional business and occupation taxes owed due to
24 reduction of the amount of credit allowable for such earlier
25 years, plus interest and any applicable penalties: *Provided,*
26 That on and after the first day of July, one thousand nine
27 hundred eighty-seven, the phrase “taxes imposed by article

28 twelve-a or thirteen (or both) of this chapter” shall mean
29 “taxes imposed by articles thirteen, thirteen-a and twenty-
30 three of this chapter (or any one or combination of such
31 articles of this chapter).”

32 (b) *Cessation of operation of industrial facility or*
33 *eligible research and development project.*—If during any
34 taxable year, the industrial taxpayer ceases operation of an
35 industrial facility in this state, or of an eligible research and
36 development project, for which credit was allowed under
37 this article, or article thirteen-c of this chapter prior to its
38 repeal, before expiration of the useful life of the property
39 with respect to which tax credit has been allowed under this
40 article or article thirteen-c of this chapter prior to its repeal,
41 then the unused portion of the allowed credit shall be
42 forfeited for the taxable year and all ensuing years.
43 Additionally, except when the cessation is due to fire, flood,
44 storm or other casualty, the taxpayer shall redetermine the
45 amount of credit allowed in earlier years by reducing the
46 applicable percentage of cost of such property allowed
47 under section three, to correspond with the percentage of
48 cost allowable for the period of time that the property was
49 actually used in this state in the industrial business of the
50 taxpayer. Taxpayer shall then file a reconciliation
51 statement with its annual business and occupation tax
52 return for the year in which the forfeiture occurs and pay
53 any additional business and occupation taxes owed due to
54 reduction of the amount of credit allowable for such earlier
55 years, plus interest and any applicable penalties: *Provided,*
56 *That on and after the first day of July, one thousand nine*
57 *hundred eighty-seven, the phrase “taxes imposed by article*
58 *twelve-a or thirteen (or both) of this chapter” shall mean*
59 *“taxes imposed by articles thirteen, thirteen-a, and twenty-*
60 *three of this chapter (or any one or combination of such*
61 *articles of this chapter).”*

§11-13D-7. Transfer of eligible investment to successors.

1 (a) *Mere change in form of business.*—Property shall not
2 be treated as disposed of under section six of this article, by
3 reason of a mere change in the form of conducting the
4 business as long as the property is retained in a similar
5 industrial business activity in this state and the taxpayer
6 retains a controlling interest in the successor business. In

7 this event, the successor business shall be allowed to claim
8 the amount of credit still available with respect to the
9 industrial facility or facilities transferred (or to the eligible
10 research and development project); and the taxpayer
11 (transferor) shall not be required to redetermine the amount
12 of credit allowed in earlier years.

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

§11-13D-8. Prior industrial expansion credit preserved.

1 Any tax credit to which an industrial taxpayer became
2 entitled under article thirteen-c of this chapter, before the
3 repeal of said article thirteen-c, shall be fully and
4 completely preserved under the provisions of this article, as
5 if the provisions of this article were in effect at the time the
6 qualifying investment was made.

§11-13D-9. Severability.

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

10 (b) If any provision of this article or the application
11 thereof shall be made invalid or inapplicable by reason of
12 the failure of the Legislature to enact any statute therein
13 addressed or referred to, or by reason of the repeal or any
14 other invalidation of any statute therein addressed or
15 referred to, such failure to reenact on such repeal or
16 invalidation of any such statute shall not affect, impair or
17 invalidate the remainder of the said article, but shall be

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

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

§11-13E-2. Definitions.

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

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

7 (1) "Coal loading facility" means any building or
8 structure specifically designed and solely used to transfer
9 coal from a coal processing or preparation facility, or from a
10 coal storage facility, or both, or from any means of
11 transportation, to any means of rail or barge transportation
12 used to move coal, including such land as is directly
13 associated with and solely used for the coal loading facility,
14 and including any device or combination of machinery and
15 equipment that is directly associated with and solely used
16 for the loading of coal. This definition applies only when the
17 transfer is to any means of rail or barge transportation and
18 specifically excludes the transfer to any other form of
19 transportation. This may include, but is not limited to, the
20 coal loading tipple, conveyors, coal storage facilities,
21 weighing equipment and rail trackage, if they are directly
22 associated with and solely used for the loading of coal. In no
23 event may the eligible investment in a coal loading facility,
24 for purposes of this credit, include the cost of any coal
25 processing, preparation, blending or sizing facility or
26 equipment, or any combination thereof, even though
27 physically a part of the coal loading facility, and even
28 though such coal processing, preparation, blending or
29 sizing facility or equipment, or any combination thereof, is
30 necessary or essential to the loading of commercially usable
31 or marketable coal.

32 (2) "Eligible taxpayer" means any person subject to tax

33 under article thirteen, thirteen-a or twenty-three of this
34 chapter who purchases real or personal property, or a
35 combination thereof, for the purpose of building or
36 constructing a new or expanded coal loading facility in this
37 state, or who revitalizes an existing coal loading facility
38 located in this state, and upon completion, operates the new
39 or expanded or revitalized coal loading facility: *Provided*,
40 That on and after the first day of July, one thousand nine
41 hundred eighty-seven, the phrase "subject to tax under
42 article thirteen of this chapter" shall mean "subject to tax
43 under article thirteen-a or twenty-three of this chapter."

44 (3) "Revitalization" means capital investment in a coal
45 loading facility located in this state to replace or modernize
46 buildings, structures, equipment, machinery and other
47 tangible personal property directly associated with and
48 solely used in the operation of a coal loading facility,
49 including the acquisition of any real property directly
50 associated with and solely used in the operation of a
51 revitalized coal loading facility.

52 (4) Subject to subsection (5) below, "property
53 purchased for a coal loading facility" means real property
54 and improvements thereto and tangible personal property,
55 but only if such real or person property is constructed or
56 purchased for use as a component part of a new or expanded
57 coal loading facility, or the revitalization of an existing coal
58 loading facility located within this state. This term includes
59 only tangible personal property with respect to which
60 depreciation, or amortization in lieu of depreciation, is
61 allowable in determining the personal income tax or
62 corporation net income tax due under articles twenty-one
63 or twenty-four of this chapter, and has a useful life at the
64 time such property is placed in service or use in this state of
65 four years or more. Property acquired by written lease for a
66 term of ten years or longer, if used as a component part of a
67 coal loading facility, shall be included within this
68 definition.

69 (5) "Property purchased for a coal loading facility"
70 shall not include:

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

73 (B) Repair costs, including materials used in making the

74 repair, unless for federal income tax purposes the cost of the
75 repair must be capitalized and not expensed;

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

78 (D) Airplanes;

79 (E) Off-premise transportation equipment;

80 (F) Property which is primarily used outside the state;

81 (G) Property purchased prior to the first day of April,
82 one thousand nine hundred eighty-three; and

83 (H) Property which is acquired incident to the purchase
84 of the stock or assets of a taxpayer which property was or
85 had been used by the seller in his business in this state, or
86 which property was previously designated "property
87 purchased for industrial expansion" or "property
88 purchased for industrial revitalization" under article
89 thirteen-d of this chapter and used to qualify for the tax
90 credit provided by either of said articles.

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

93 (A) The physical construction, reconstruction or
94 erection of the property was begun prior to the specified
95 date, or such property was constructed, reconstructed,
96 erected or acquired pursuant to a written contract as
97 existing and binding on the taxpayer prior to the specified
98 date;

99 (B) The machinery or equipment was owned by the
100 taxpayer prior to the specified date or was acquired by the
101 taxpayer pursuant to a binding purchase contract which
102 was in effect prior to such date; or

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

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

1 (a) There shall be allowed to eligible taxpayers a credit
2 against the business and occupation taxes imposed by
3 article thirteen, thirteen-a or twenty-three of this chapter,
4 for investment in a new or expanded or revitalized coal
5 loading facility. The amount of this credit shall be
6 determined as hereinafter provided in this section.

7 (b) *Pre March 1, 1985 investment.*—For investment in a
8 new or expanded or revitalized coal loading facility made

9 on or after the first day of April, one thousand nine hundred
10 eighty-three, and prior to the first day of March, one
11 thousand nine hundred eighty-five, the amount of this
12 credit shall be equal to ten percent of the cost of the eligible
13 investment (as determined in section four) made in a coal
14 loading facility and shall reduce the business and
15 occupation taxes imposed by section two, article thirteen of
16 this chapter, under sections two-a, two-b and two-h of said
17 article thirteen of this chapter, subject to the following
18 conditions and limitations:

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

24 (2) The amount of annual credit allowed shall not
25 reduce the business and occupation taxes imposed by
26 section two, article thirteen of this chapter, under section
27 two-a of said article thirteen, on the business of producing
28 coal; under section two-b, of said article thirteen, on the
29 business of manufacturing, compounding or preparing coal
30 for sale; and under section two-h, of said article thirteen, on
31 the activity of loading coal, below fifty percent of the
32 amount which would be imposed for the taxable year in the
33 absence of the annual exemption allowed by section three,
34 article thirteen of this chapter.

35 (3) When in any taxable year the eligible taxpayer is
36 entitled to claim credit under this article and article
37 thirteen-d of this chapter, the total amount of credits
38 allowed under sections two-b and two-h, article thirteen of
39 this chapter, shall not exceed fifty percent of the tax
40 liability under said sections, on manufacturing or
41 manufacturing-service activity.

42 (4) No carryover to a subsequent tax year or carryback
43 to a prior tax year shall be allowed for the amount of any
44 unused portion of the credit allowed under this subsection
45 (b) for the taxable year. Any unused credit shall be
46 forfeited.

47 (5) No credit shall be allowed under this subsection (b)
48 for any property purchased for a coal loading facility prior
49 to the first day of April, one thousand nine hundred eighty-
50 three.

51 (c) *Post February 28, 1985 investment.*—For investment
52 in a new or expanded or revitalized coal loading facility
53 made on or after the first day of March, one thousand nine
54 hundred eighty-five, the amount of the credit shall be equal
55 to ten percent of the cost of eligible investment (as
56 determined in section four) made in a coal loading facility
57 and shall reduce the business and occupation tax imposed
58 under article thirteen of this chapter, subject to the
59 following conditions and limitations:

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

65 (2) The amount of annual credit allowed shall not
66 reduce the business and occupation taxes under article
67 thirteen of this chapter, below fifty percent of the amount
68 which would be imposed for such taxable year in the
69 absence of this credit against tax, computed before
70 application of the annual exemption allowed by section
71 three, article thirteen of this chapter.

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

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

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

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

94 (7) No credit shall be allowed under this subsection (c)
 95 for any property purchased for a coal loading facility prior
 96 to the first day of March, one thousand nine hundred
 97 eighty-five.

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

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

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

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

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

6 (2) Ceases to be used in a coal loading facility by the
 7 eligible taxpayer, in this state, prior to the end of its useful
 8 life, as determined under said section three of this article,
 9 then the unused portion of the credit allowed for such
 10 property shall be forfeited for the taxable year and all
 11 ensuing years. Additionally, except when the property is
 12 damaged or destroyed by fire, flood, storm or other
 13 casualty, or is stolen, the taxpayer shall redetermine the
 14 amount of credit allowed in all earlier years by reducing the
 15 applicable percentage of cost of such property allowed

16 under said section three of this article, to correspond with
17 the percentage of cost allowable for the period of time that
18 the property was actually used in this state as a coal loading
19 facility of the eligible taxpayer. The taxpayer shall then file
20 a reconciliation statement with its annual business and
21 occupation tax return for the year in which the forfeiture
22 occurs and pay any additional business and occupation
23 taxes, plus interest and any applicable penalties: *Provided*,
24 That on and after the first day of July, one thousand nine
25 hundred eighty-seven, the phrase "taxes imposed by article
26 twelve-a or thirteen (or both) of this chapter" shall mean
27 "taxes imposed by articles thirteen, thirteen-a and twenty-
28 three of this chapter (or any one or combination of such
29 articles of this chapter)."

30 (b) *Cessation of operation of coal loading facility.*—If
31 during any taxable year the eligible taxpayer ceases
32 operation of a coal loading facility in this state, for which
33 credit was allowed under this article, before expiration of
34 the useful life of the property with respect to which tax
35 credit has been allowed under this article, then the unused
36 portion of the allowed credit shall be forfeited for the
37 taxable year and all ensuing years. Additionally, except
38 when the cessation is due to fire, flood, storm or other
39 casualty, the taxpayer shall redetermine the amount of
40 credit allowed in earlier years by reducing the applicable
41 percentage of cost of such property allowed under section
42 three of this article, to correspond with the percentage of
43 cost allowable for the period of time that the property was
44 actually used in this state in a coal loading facility of the
45 eligible taxpayer. The taxpayer shall then file a
46 reconciliation statement with its annual business and
47 occupation tax return for the year in which the forfeiture
48 occurs and pay any additional business and occupation
49 taxes, plus interest and any applicable penalties: *Provided*,
50 That on and after the first day of July, one thousand nine
51 hundred eighty-seven, the phrase "taxes imposed by article
52 twelve-a or thirteen (or both) of this chapter" shall mean
53 "taxes imposed by articles thirteen, thirteen-a and twenty-
54 three of this chapter (or any one or combination of such
55 articles of this chapter)."

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

1 (a) *Mere change in form of business.*—Property shall not

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

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

§11-13E-7. Severability.

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

10 (b) If any provision of this article or the application
11 thereof shall be made invalid or inapplicable by reason of
12 the failure of the Legislature to enact any statute therein
13 addressed or referred to, or by reason of the repeal or any
14 other invalidation of any statute therein addressed or
15 referred to, such failure to reenact on such repeal or
16 invalidation of any such statute shall not affect, impair or
17 invalidate the remainder of the said article, but shall be
18 confined in its operation to the provision thereof directly
19 involved with, pertaining to, addressing or referring to the
20 said statute, and the application of such provision with
21 regard to other statutes or in other instances not affected by

22 any such invalid or repealed statute shall not be abrogated
23 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.**

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

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

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

10 (3) The tax credit for coal loading facilities.

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

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

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

Samuel E. Ashmead
.....
Chairman Senate Committee

Floyd Fulburn
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Judd C. Willis
.....
Clerk of the Senate

Donald J. Kopp
.....
Clerk of the House of Delegates

Dan Tomkowiak
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *upper* this the *2nd*
day
day of 1985.

Arch A. Pearce Jr.
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

4/19/55

Time

8:42 p.m.