WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

HOUSE BILL No. 1743

(By Mr. Speaker, Mr. Albright, and Delegate Swann
[By request of the Executive])

Passed March 8, 1986

In Effect from Passage
ENROLLED

H. B. 1743

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An Act to amend and reenact sections three, four, five and six, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article thirteen-c by adding thereto two new sections, designated sections four-a and four-b; to amend and reenact sections one, two, three and six, article thirteen-d of said chapter eleven; and to further amend article thirteen-d by adding thereto a new section, designated section five-a, all relating to credits against certain state taxes; amending the business investment and jobs expansion tax credit by amending and adding definitions; allowing credit for qualified investment and leased tangible personal property having a useful life and primary lease term of four or more years, and for reasonable and necessary costs of relocating out-of-state corporate headquarters in this state, and for the remaining useful life of four or more years of tangible personal property of the taxpayer used out-of-state and permanently moved to this state for use in a new or expanded business facility or corporate headquarters located in this state; providing for computation and allowance of credit; allowing credit for qualified investment in a project and new jobs created by a project; defining the term project; amending the business and occupation tax credit for industrial expansion and revitalization and for research and
development projects by allowing credit for eligible investment and qualified housing development projects; defining terms; providing rules for determining eligible investment in a qualified housing development project; providing for forfeiture of unused tax credits and redetermination of credit in certain instances; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.


1 (a) General.—When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.

7 (b) Terms defined.

8 (1) Business.—The term “business” means any activity taxable under article twelve-a or thirteen (or both) of this chapter, which is engaged in by any person in this state: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen, (or both) of this chapter” shall mean “taxes imposed by article thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

18 (2) Business expansion.—The term “business expansion” means capital investment in a new or expanded
business facility in this state.

(3) Business facility.—The term “business facility” means any factory, mining operation, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and personal property located at or within such facility, used in connection with the operation of such facility, in a business that is taxable in this state.

(A) “Mining operation” means the place at which a person extracts ores or minerals from the ground. It includes both surface and underground mining operations.

(B) “Surface mine” means the surface of land upon which activities are conducted which disturb the natural surface of the land and result in the production of ores or minerals.

(C) “Underground mine” means the surface effects associated with the shafts, slopes, lifts or inclines connected with excavations penetrating seams or strata of minerals, and the equipment connected therewith which contribute to the mining, preparation or handling of ores or minerals.

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

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

(6) Controlled group.—The term “controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the
(7) Corporation.—The term “corporation” means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

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

(9) Eligible taxpayer.—The term “eligible taxpayer” means any person subject to the taxes imposed by article twelve-a or thirteen (or both) of this chapter who makes qualified investment in a new or expanded business facility located in this state that results in the creation of at least fifty new jobs: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter” “Eligible taxpayer” shall also include an affiliated group of taxpayers if such group elects to file a consolidated corporation net income tax return under article twenty-four of this chapter.

(10) Expanded facility.—The term “expanded facility” means any business facility (other than a new or replacement business facility) resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property if such improvements or additions are purchased on or after the first day of March, one thousand nine hundred eighty-five, but only to the extent of the taxpayer’s qualified investment in such improvements or additions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) Person.—The term "person" includes any natural person, corporation or partnership.
(19) Property purchased for business expansion.

(A) Included property.—Except as provided in subparagraph (B), the term “property purchased or leased for business expansion” means real property and improvements thereto, and tangible personal property, but only if such real or personal property was constructed, purchased, or leased, by the taxpayer, for use as a component part of a new or expanded business facility, as defined in this section, which is located within West Virginia. This term includes only:

1. Real property and improvements thereto having a useful life of four or more years, that was purchased or constructed on or after the first day of March, one thousand nine hundred eighty-five, by the taxpayer.

2. Real property and improvements thereto, or tangible personal property acquired by written lease having a primary term of ten or more years that commenced and was executed by the parties thereto on or after the first day of March, one thousand nine hundred eighty-five.

3. Tangible personal property purchased by the taxpayer on or after the first day of March, one thousand nine hundred eighty-five, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business taxpayer under article twenty-one or twenty-four of this chapter, and which has a useful life at the time such property is placed in service or use in this state, of four or more years.

4. Tangible personal property acquired by written lease having a primary term of four years or longer, that commenced and was executed by the parties thereto on or after the first day of February, one thousand nine hundred eighty-six, if used as a component part of a new or expanded business facility, shall be included within this definition.

5. Tangible personal property owned or leased, and used by the taxpayer at a business location outside this
state which is moved into this state on or after the first
day of February, one thousand nine hundred eighty-six,
for use as a component part of a new or expanded
business facility located in this state: Provided, That if
the property is owned, it must be depreciable or
amortizable personal property for income tax purposes,
and have a useful life of four or more years remaining
at the time it is placed in service or use in this state,
and if the property is leased, the primary term of the
lease remaining at the time the leased property is placed
in service or use in this state, must be four or more
years: Provided, That where property was purchased for
business expansion by the taxpayer prior to the first day
of March, one thousand nine hundred eighty-five, but
placed in service or use in this state after such date by
the taxpayer, such property shall nevertheless be
treated as included property under this subparagraph
(A) if such property otherwise qualifies as such under
this subparagraph (A), if the tax commissioner, upon
application by the taxpayer, certifies that at least fifty
new jobs were created by the taxpayer prior to the first
day of January, one thousand nine hundred eighty-eight,
as a direct result of this capital investment of the
taxpayer, and such jobs did not previously exist in this
state, determined as of the thirty-first day of January,
one thousand nine hundred eighty-six: Provided, how-
ever, That the inclusion of such property shall not give
rise to a refund of any taxes administered under this
chapter, the liability for which arose prior to the first
day of February, one thousand nine hundred eighty-six.

(B) Excluded property.—The term “property pur-
chased or leased for business expansion” shall not
include:

(1) Property owned or leased by the taxpayer and for
which credit was taken under article thirteen-c of this
chapter prior to its repeal, on the thirteenth day of
April, one thousand nine hundred eighty-five, or under
article thirteen-d or thirteen-e of this chapter;

(2) Repair costs, including materials used in the
repair, unless for federal income tax purposes, the cost
of the repair must be capitalized and not expensed;
(3) Motor vehicles licensed by the department of motor vehicles: Provided, That such property, if purchased or leased on or after the first day of February, one thousand nine hundred eighty-six, shall not be excluded by virtue of this clause (3);

(4) Airplanes;

(5) Off-premise transportation equipment: Provided, That such property, if purchased or leased on or after the first day of February, one thousand nine hundred eighty-six, shall not be excluded by virtue of this clause (5);

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

(7) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the tax commissioner consents to waiving this requirement.

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

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

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

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

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

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

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

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

(1) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or

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

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

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

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

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

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

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

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

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

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

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

(25) **This code.**—The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one,
368 as amended.
369
(26) This state.—The term “this state” means the state
370 of West Virginia.
371
(27) Used property.—The term “used property” means
372 property acquired after the twenty-eighth day of
373 February, one thousand nine hundred eighty-five, that
374 is not “new property.”

§11-13C-4. Amount of credit allowed.
1 (a) Credit allowed.—Eligible taxpayers shall be
2 allowed a credit against the portion of taxes imposed by
3 this state that are attributable to and the consequence
4 of the taxpayer's qualified investment in a new or
5 expanded business in this state, which results in the
6 creation of new jobs. The amount of this credit shall be
7 determined and applied as hereinafter provided in this
8 article.
9
(b) Amount of credit.—The amount of credit allowable
10 is determined by multiplying the amount of the taxpay-
11 er’s “qualified investment” (determined under section
12 four-a or six, or both) in “property purchased for
13 business expansion” (as defined in section three) by the
14 taxpayer's new jobs percentage (determined under
15 section seven). The product of this calculation estab-
16 lishes the maximum amount of credit allowable under
17 this article, due to the qualified investment.
18
(c) Application of credit over ten years.—The amount
19 of credit allowable must be taken over a ten-year period,
20 at the rate of one-tenth of the amount thereof per
21 taxable year, beginning with the taxable year in which
22 the taxpayer places the qualified investment in service
23 or use in this state, unless the taxpayer elected to delay
24 the beginning of the ten-year period until the next
25 succeeding taxable year. This election shall be in the
26 annual return filed for the taxable year in which the
27 qualified investment is placed into service or use by the
28 taxpayer. Once made, the election cannot be revoked.
29 The annual credit allowance shall be taken in the
30 manner prescribed in section four of this article.
31
(d) Placed in service or use.—For purposes of the
credit allowed by this section, property shall be considered placed in service or use in the earlier of the following taxable years:

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

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

§11-13C-4a. Credit allowed for locating corporate headquarters in this state.

(a) Credit allowed.—A corporation that presently has its corporate headquarters located outside this state that relocates its corporate headquarters in this state and employs, on a full-time basis, at its new corporate headquarters location, at least fifteen people, who are domiciled in this state, shall be allowed credit under this article, the amount of which shall be determined as provided in subsection (b).

(b) Determination of credit.—The amount of credit allowed by subsection (a) shall be determined at the election of the taxpayer:

(1) By multiplying its adjusted qualified investment by its new jobs percentage (as determined under section seven of this article); or

(2) By multiplying its adjusted qualified investment by ten percent.

(c) Application of credit.—The credit allowed by this section shall be applied in the manner prescribed in section five of this article: Provided, That the amount of corporation net income taxes against which the credit allowed by this section may be applied, shall be the sum of the corporation net income tax due on adjusted federal taxable income allocated to this state under section seven, article twenty-four of this chapter, plus that portion of the corporation net income tax due on adjusted federal taxable income apportioned to this state under section seven, article twenty-four of this chapter,
that is further apportioned to the qualified investment
using the payroll factor provided in paragraph (1),
subsection (h) of said section five. For all other purposes,
the credit allowed by this section shall be treated as
credit allowed by section four of this article.

(d) Definitions.—For purposes of this section:

(1) Adjusted qualified investment.—The term “adjusted
qualified investment” means the taxpayer's qualified
investment as determined under section six of this
article, plus the cost of the reasonable and necessary
expenses it incurred to relocate its corporate headquar-
ters at a location in this state from its present location
outside this state.

(2) Corporate headquarters.—The term “corporate
headquarters” means the place at which the corporation
has its commercial domicile and from which the
business of the corporation is primarily conducted.

(3) Reasonable and necessary expenses incurred to
relocate corporate headquarters.—The phrase “reasona-
ble and necessary expenses incurred to relocate corpo-
rate headquarters” means only those expenses incurred
and paid by the corporation, to unrelated third parties,
to move its corporate headquarters and its corporate
headquarters employees to this state that are, upon
application by the corporation, determined by the tax
commissioner to have been both reasonable and neces-
sary to effectuate the move.

(e) Effective date.—The credit allowed by this section
shall be allowable for corporate headquarters placed in
service or use on or after the first day of February, one
thousand nine hundred eighty-six.

§11-13C-4b. Credit allowable for certified projects.

(a) In general.—A project certified by the tax commis-
sioner shall be eligible for the credit allowable by this
article. A project eligible for certification under this
section is one where:

(1) The qualified investment under this article creates
at least fifty new jobs but such qualified investment is
placed in service or use over a period of three successive
tax years: Provided, That such qualified investment is
made pursuant to a written business facility
development plan of the taxpayer providing for an
integrated project for investment at one or more new or
expanded business facilities, a copy of which must be
attached to the taxpayer's application for project
certification and approved by the tax commissioner, and
the qualified investment placed in service or use during
the first tax year would not have been made without the
expectation of making the qualified investment placed
in service or use during the next two succeeding tax
years;

(2) The qualified investment is made by one or more
persons, but some or all of the new jobs created at each
new or expanded business facility as a result of the
qualified investment are created by one or more other
persons: Provided, That at least fifty new jobs are
created at the new or expanded business facility or
facilities in which the qualified investment is made, and
such jobs are, upon application, certified by the tax
commissioner as new jobs created as a direct result of
the qualified investment, and that such qualified
investment is made pursuant to a written business
facility development plan of the taxpayer providing for
an integrated project for investment at one or more new
or expanded business facilities, a copy of which must be
attached to the taxpayer's application for project
certification and approved by the tax commissioner.

(3) The qualified investment is made by one or more
persons but some or all of the new jobs created as a
direct result of the qualified investment are created by
one or more other persons: Provided, That at least fifty
new jobs are created within a seventy-five mile radius
of each new or expanded business facility in which the
qualified investment is made, and such jobs are, upon
application, certified by the tax commissioner as being
new jobs created as a direct result of the qualified
investment, and that such qualified investment is made
pursuant to a written business facility development plan
of the taxpayer providing for an integrated project for
investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the tax commissioner.

(b) Application for certification.—The application for certification of a project under this section shall be filed with the tax commissioner prior to the date on which the capital investment for which project certification is sought is first placed in service or use in this state. This application shall be approved in writing by all the participants in the project and shall contain such information as the tax commissioner may require to determine whether the project should be certified as eligible for credit under this article.

(c) Taking of credit.

(1) If the certified project for which qualified investment is made involves one or more persons making the capital investment and one or more persons, or a combination thereof, creating at least fifty new jobs at the site of the new or expanded business facility or facilities, then credit shall be allowed under this article for the certified project based upon the qualified investment in the certified project (as determined under section six) multiplied by the project's new-jobs percentage (determined under section seven).

(2) If the certified project for which qualified investment is made involves one or more persons making the capital investment and one or more persons, or a combination thereof, creating at least fifty new jobs located within a seventy-five mile radius of each new or expanded business facility in which the qualified investment is made, then credit shall be allowed under this article for the certified project based upon the qualified investment in the certified project (as determined under section six) multiplied by fifty percent.

(3) The amount of allowable credit as determined under paragraph (1) and (2) above, shall be applied as provided in section five and may be claimed by one participant in the project, or divided among the several participants in the project, in the manner provided in
the project's application to the tax commissioner for certification under this section. Such allocation, if approved by the tax commissioner, shall constitute a binding election by the participants in the project for the entire term during which the credit attributable to the qualified investment in the certified project may be applied to reduce tax liabilities. The participant or participants claiming the credit for qualified investments in a certified project shall annually file with their income tax returns filed under this chapter:

(A) Certification that the participant's qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(B) Certification that the new jobs created by the project's qualified investment continue to exist and are filled by persons who are residents of this state; and

(C) Such other information as the tax commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project's qualified investment.

(d) Terms defined.—For purposes of this section:

(1) New employee.—The term “new employee” means a person residing and domiciled in this state, hired by a participant to fill a position for a job which previously did not exist in this state prior to the date on which the project's qualified investment is placed in service or use in this state. In no case shall the new employees allowed for purposes of this credit exceed the total increases in the number of persons employed by the project's participants (considered as a group) in this state. A person shall be deemed to be a “new employee” if such person's duties in connection with the operation of the certified project are on:

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

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

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

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

(2) New job.—The term "new job" means a job which did not exist in this state prior to the project's qualified investment being made, and which is filled by a new employee.

(3) Participant.—The term "participant" means any person who directly makes a capital investment in a certified project, or who employs persons filling the jobs certified by the tax commissioner as being new jobs created as a direct result of the project's qualified investment.

(e) Effective date.—This section shall apply to capital investment made on or after the first day of February, one thousand nine hundred eighty-six.

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

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

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

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

(3) The one-tenth part allowed under section four-a for locating corporate headquarters in this state.

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

(c) Business and occupation taxes.

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

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

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

(d) Carrier income taxes.

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

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

(e) Severance taxes.

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

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

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

(f) Telecommunications taxes.

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

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

(g) Business franchise tax.

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or activity subject to the taxes imposed by article twenty-three of this chapter, and qualified investment in a business or activity that was subject to the taxes imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article twenty-three of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by article twenty-three of
(2) If the taxes due under said article twenty-three are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article twenty-three, for the taxable year (determined after application of the credits against tax provided in section seventeen of said article twenty-three, but before application of any other allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article twenty-three of this chapter. The denominator of the fraction shall be wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer that is taxable under article twenty-three of this chapter.

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

(h) Corporation net income taxes.

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

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

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

(i) Personal income taxes.

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

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

(3) If the amount of taxes due under article twenty-
one of this chapter (determined before application of
allowable credits against tax) that is attributable to
business, is not solely attributable to and the direct
result of the qualified investment of the electing small
business corporation, partnership, other unincorporated
organization or sole proprietorship, the amount of such
taxes which are so attributable shall be determined by
multiplying the amount of taxes due under said article
twenty-one (determined before application of allowable
credits against tax), that is attributable to business by
a fraction, the numerator of which is all wages, salaries
and other compensation paid during the taxable year to
taxable to the qualified investment.
all employees of the electing small business corporation,
partnership, other unincorporated organization or sole
proprietorship employed in this state, whose positions
are directly attributable to the qualified investment.
The denominator of the fraction shall be the wages,
salaries and other compensation paid during the taxable
year to all employees of the taxpayer.

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

(j) Ad valorem property taxes; unemployment taxes and
workers' compensation premiums.

(1) After application of subsections (a) through (i),
both inclusive, of this section, any unused credit shall
be applied as a rebate for payment of the sum of the
following amounts:

(A) Eighty percent of the ad valorem property taxes
imposed by levying bodies pursuant to article eight, of
this chapter, for the taxable year (including payments
in lieu of such taxes), on property of the taxpayer that
is directly attributable to the qualified investment
(including property having a useful life of less than four
years) of the taxpayer, in the new or expanded business
facility of the taxpayer resulting in new jobs; plus

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

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

(2) A taxpayer eligible to claim this rebate shall apply either the amount of the unused credit or the sum determined under paragraph (1), whichever is less, against the remaining twenty percent of the taxes imposed by articles twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one, twenty-three and twenty-four of this chapter, attributable to the qualified investment under this article. If any amount of rebate remains after its application against the remaining twenty percent of
taxes as aforesaid, the amount remaining shall be carried forward to each ensuing tax year until used or the expiration of the twelfth subsequent tax year in which the qualified investment was placed in service or use in this state by the taxpayer.

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

(l) Effective date.—This section, as amended, shall be effective upon passage. It shall be retroactive, and shall be in lieu of the method provided by this section for application of this credit prior to this amendment, for qualified investment made on or after the first day of March, one thousand nine hundred eighty-five.

§11-13C-6. Qualified investment.

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

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

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

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

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

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

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

(3) Rental property.

(A) The cost of real property acquired by written lease
for a primary term of ten years or longer shall be one
hundred percent of the rent reserved for the primary
term of the lease, not to exceed twenty years.

(B) The cost of tangible personal property acquired by
written lease for a primary term of:

(i) Four years, or longer, shall be one third of the rent
reserved for the primary term of the lease;

(ii) Six years, or longer, shall be two thirds of the rent
reserved for the primary term of the lease; or

(iii) Eight years, or longer, shall be one hundred
percent of the rent reserved for the primary term of the
lease, not to exceed twenty years: Provided, That in no
event shall rent reserved include rent for any year
subsequent to expiration of the book life of the
equipment, determined using the straight-line method
of depreciation.

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

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

(6) Transferred property.—The cost of property used by the taxpayer out-of-state and then brought into this state, shall be determined based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost shall be the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof taxpayer used the property outside this state. In the case of leased tangible personal property, cost shall be based on the period remaining in the primary term of the lease after the property is brought into this state for use in a new or expanded business facility of the taxpayer, and shall be the rent reserved for the remaining period of the primary term of the lease, not to exceed twenty years, or the remaining useful life of the property (determined as aforesaid), whichever is less.

(7) Natural resources in place.—In the case of natural resources in place, the property must be capable of sustained production for a period of at least ten years. If this qualification is met, then the qualified investment is one hundred percent of the purchase price of the natural resource in place that is attributable to ten years of production, but not more than twenty years of production. If such price is not quantifiable at the time the mining operation is placed into production, cost shall be determined annually and shall be the amount of royalties actually paid to the owner of the natural resource in place during each year for a total period of ten years. The amount of such royalties multiplied by the taxpayer's new jobs percentage (determined at the time the mining operation is placed in service or use) divided by ten establishes the credit allowable each year for ten successive years beginning with the year in which the royalties were paid.
ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION, FOR RESEARCH AND DEVELOPMENT PROJECTS AND FOR HOUSING DEVELOPMENT PROJECTS.

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

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

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

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

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

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

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

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

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

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

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

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

(10) Subject to paragraph (13) below, "property
purchased for an eligible research and development
project" means real property, and improvements
thereto, and tangible personal property, but only if such
real or personal property is constructed or purchased on
or after the first day of July, one thousand nine hundred
eighty-five, for use as a component part of an eligible
research and development project which is located
within this state on or after the first day of July, one
thousand nine hundred eighty-five. This term includes
only tangible personal property with respect to which
depreciation or amortization, in lieu of depreciation, is
allowable in determining the personal income tax or
corporation net income tax liability of the purchaser
under article twenty-one or twenty-four of this chapter.
Property acquired by written lease for a term of ten
years or longer, if used as a component part of an
eligible research and development project, shall be
included within this definition.

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

(12) Subject to paragraph (13) below, “property
purchased for industrial revitalization” means real
property, and improvements thereto, and new tangible
personal property, but only if such property was
constructed, or purchased, on or after the first day of
July, one thousand nine hundred eighty-one, for use as
a component part of an ongoing industrial facility (as
defined in subdivision (5) of this subsection) located
within this state. This term includes only tangible
personal property with respect to which depreciation is
allowable in determining the personal income tax or
corporation net income tax liability of the industrial
taxpayer under article twenty-one or twenty-four of this
chapter, and has a useful life at the time the property
is placed in service or use in this state of four years or
more. Property acquired by written lease for a primary
term of ten years or longer, if used as a component part
of an industrial revitalization, shall be included within
this definition.

(13) “Property purchased for industrial expansion,”
“property purchased for industrial revitalization” and
“property purchased for an eligible research and
development project” and “property purchased for a
qualified housing development project” shall not
include:

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

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

(C) Airplanes;

(D) Off-premise transportation equipment;

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

(F) Property which is acquired incident to the
purchase of the stock or assets of an industrial taxpayer,
which property was or had been used by the seller in
his industrial business in this state, or which property
was previously designated “property purchased for
industrial expansion” or “property purchased for
industrial revitalization,” or “property purchased for an
eligible research and development project,” or “property
purchased for a qualified housing development project”
and used to qualify for business and occupation tax
credit for industrial expansion or revitalization, or for
an eligible research and development project, or for a
qualified housing development project.

(14) Subject to paragraph (13) above, property
purchased for a qualified housing development project
means real property, and improvements thereto, and tangible personal property incorporated into real property (whether or not attached thereto), but only if such real or tangible personal property was constructed, or purchased, on or after the first day of July, one thousand nine hundred eighty-six, for use as a component part of a housing development project (as defined in subdivision five-a of this subsection) located within this state.

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

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

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

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

(16) "Taxpayer" means any person taxable under article thirteen of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, "taxpayer" shall means any person taxable under article thirteen, thirteen-a or twenty-three of this chapter.

<table>
<thead>
<tr>
<th>§11-13D-3. Amount of credit allowed for industrial expansion or revitalization, for eligible research and development projects, and for qualified housing development projects.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Credit allowed.—There shall be allowed to eligible taxpayers a credit against the taxes imposed by article thirteen, thirteen-a or twenty-three of this chapter, for industrial expansion or revitalization, and for eligible research and development projects and for qualified</td>
</tr>
</tbody>
</table>
housing development projects. The amount of credit shall be determined as hereinafter provided in this section.

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

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

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

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

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

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

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-b, two-h and two-m, article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year, in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter: Provided, That the tax under section two-h of said article thirteen, shall not be reduced by more than fifty percent of the tax attributable to the privilege of manufacturing for another, which privilege would be taxable under section two-b of said article thirteen, if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Eligible investment for qualified housing develop-
ment project after June 30, 1986. — For property and
services purchased for a qualified housing development
project on or after the first day of July, one thousand
nine hundred eighty-six, the amount of allowable credit
shall be equal to ten percent of the eligible investment
(as determined in section five-a) made for a qualified
housing development project, and shall reduce the
business and occupation taxes under sections two-c and
two-e, article thirteen of this chapter, subject to the
following conditions and limitations:

(1) The allowable credit shall be applied over a ten-
year period at the rate of one tenth of the amount thereof
per taxable year, beginning with the taxable year in
which any combination of residential housing units (as
(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under section two-c of said article on the business of selling tangible property and under section two-e on the business of contracting below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

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

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

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

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

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

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

§11-13D-5a. Eligible investment for qualified housing development project.

(a) General.—The eligible investment in a qualified housing development project shall be the sum of the applicable percentage of the cost of land and depreciable property purchased for the construction of a qualified housing development project, which is placed in service or use in this state during the taxable year.

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

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 4 years</td>
<td>0%</td>
</tr>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33-1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66-2/3%</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100%</td>
</tr>
</tbody>
</table>

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

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

(1) Trade-ins.—Cost shall not include the value of property given in trade or exchange for the property purchased for construction of a qualified housing development project.

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

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

(d) "Qualified housing development" or "qualified housing development project" means a residential housing development located in this state that contains five or more single-family contiguous residential housing units or multi-family residential buildings containing five or more residential housing units, which are contiguously located.

(e) "Residential housing unit" means any single-family dwelling or a single-family unit in a multi-family dwelling that is constructed for sale or lease to nontransients for use and occupancy as their primary permanent residence.

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

(a) Disposition of property or cessation of use.—If during any taxable year, property with respect to which a tax credit has been allowed under this article:
(1) Is disposed of prior to the end of its useful life, as determined under section four, five or five-a of this article; or

(2) Ceases to be used in the new or expanded or revitalized industrial business, or in the eligible research and development project, or in the qualified housing development project, of the taxpayer in this state prior to the end of its useful life, as determined under said section four, five or five-a, then the unused portion of the credit allowed for such property shall be forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under said section three, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(b) Cessation of operation of industrial facility or eligible research and development project or qualified housing development project.—If during any taxable year, the taxpayer ceases operation of an industrial facility in this state, or of an eligible research and development project, or a qualified housing development project, for which credit was allowed under this article, or article thirteen-c of this chapter prior to its repeal, before expiration of the useful life of the property with
respect to which tax credit has been allowed under this article or article thirteen-c of this chapter prior to its repeal, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section three, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the industrial business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, and twenty-three of this chapter (or any one or combination of such articles of this chapter).”
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Cloyd Fields
Chairman House Committee

Originating in the House.

Takes effect from passage.

Jeff O. Will
Clerk of the Senate

Donald J. King
Clerk of the House of Delegates

Don Tucker
President of the Senate

Joseph P. Allen
Speaker of the House of Delegates

The within...\underline{\text{Approved}}...this the 26th day of March, 1986.

Richard J. Thornburgh
Governor
PRESENTED TO THE
GOVERNOR
Date 3/20/86
Time 4:40 P.M.