

No. 1743

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

HOUSE BILL No. ...1743..

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

— ● —

Passed March 8, 1986

In Effect from Passage

ENROLLED
H. B. 1743

(By MR. SPEAKER, MR. ALBRIGHT AND DELEGATE SWANN)
[By request of the Executive]

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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.

§11-13C-3. Definitions.

1 (a) *General.*—When used in this article, or in the
2 administration of this article, terms defined in subsec-
3 tion (b) shall have the meanings ascribed to them by this
4 section, unless a different meaning is clearly required
5 by either the context in which the term is used, or by
6 specific definition, 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
10 this chapter, which is engaged in by any person in this
11 state: *Provided*, That on and after the first day of July,
12 one thousand nine hundred eighty-seven, the phrase
13 “taxes imposed by article twelve-a or thirteen, (or both)
14 of this chapter” shall mean “taxes imposed by article
15 thirteen, thirteen-a, thirteen-b and twenty-three of this
16 chapter (or any one or combination of such articles of
17 this chapter).”

18 (2) *Business expansion.*—The term “business expan-
19 sion” means capital investment in a new or expanded

20 business facility in this state.

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

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

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

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

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

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

50 (6) *Controlled group*.—The term “controlled group”
51 means one or more chains of corporations connected
52 through stock ownership with a common parent corpo-
53 ration if stock possessing at least fifty percent of the
54 voting power of all classes of stock of each of the
55 corporations is owned directly or indirectly by one or
56 more of the corporations; and the common parent owns
57 directly stock possessing at least fifty percent of the
58 voting power of all classes of stock of at least one of the

59 other corporations.

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

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

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

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

96 (11) *Includes and including*.—The terms “includes”
97 and “including,” when used in a definition contained in
98 this article, shall not be deemed to exclude other things

99 otherwise within the meaning of the term defined.

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

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

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

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

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

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

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

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

142 (2) "Permanent employment" does not include employ-
143 ment that is temporary or seasonal.

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

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

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

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

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

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

164 (17) *Partnership and partner*.—The term "partner-
165 ship" includes a syndicate, group, pool, joint venture or
166 other unincorporated organization through or by means
167 of which any business, financial operation or venture is
168 carried on, and which is not a trust or estate, a
169 corporation or a sole proprietorship. The term "partner"
170 includes a member in such a syndicate, group, pool, joint
171 venture or organization.

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

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

175 (A) *Included property.*—Except as provided in subpa-
176 ragraph (B), the term “property purchased or leased for
177 business expansion” means real property and improve-
178 ments thereto, and tangible personal property, but only
179 if such real or personal property was constructed,
180 purchased, or leased, by the taxpayer, for use as a
181 component part of a new or expanded business facility,
182 as defined in this section, which is located within West
183 Virginia. This term includes only:

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

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

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

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

211 (5) Tangible personal property owned or leased, and
212 used by the taxpayer at a business location outside this

213 state which is moved into this state on or after the first
214 day of February, one thousand nine hundred eighty-six,
215 for use as a component part of a new or expanded
216 business facility located in this state: *Provided*, That if
217 the property is owned, it must be depreciable or
218 amortizable personal property for income tax purposes,
219 and have a useful life of four or more years remaining
220 at the time it is placed in service or use in this state,
221 and if the property is leased, the primary term of the
222 lease remaining at the time the leased property is placed
223 in service or use in this state, must be four or more
224 years: *Provided*, That where property was purchased for
225 business expansion by the taxpayer prior to the first day
226 of March, one thousand nine hundred eighty-five, but
227 placed in service or use in this state after such date by
228 the taxpayer, such property shall nevertheless be
229 treated as included property under this subparagraph
230 (A) if such property otherwise qualifies as such under
231 this subparagraph (A), if the tax commissioner, upon
232 application by the taxpayer, certifies that at least fifty
233 new jobs were created by the taxpayer prior to the first
234 day of January, one thousand nine hundred eighty-eight,
235 as a direct result of this capital investment of the
236 taxpayer, and such jobs did not previously exist in this
237 state, determined as of the thirty-first day of January,
238 one thousand nine hundred eighty-six: *Provided, how-*
239 *ever*, That the inclusion of such property shall not give
240 rise to a refund of any taxes administered under this
241 chapter, the liability for which arose prior to the first
242 day of February, one thousand nine hundred eighty-six.

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

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

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

254 (3) Motor vehicles licensed by the department of motor
255 vehicles: *Provided*, That such property, if purchased or
256 leased on or after the first day of February, one
257 thousand nine hundred eighty-six, shall not be excluded
258 by virtue of this clause (3);

259 (4) Airplanes;

260 (5) Off-premise transportation equipment: *Provided*,
261 That such property, if purchased or leased on or after
262 the first day of February, one thousand nine hundred
263 eighty-six, shall not be excluded by virtue of this clause
264 (5);

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

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

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

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

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

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

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

288 (A) The property is not acquired from a person whose
289 relationship to the person acquiring it would result in
290 the disallowance of deductions under Section 267 or 707

291 (b) of the United States Internal Revenue Code of 1954,
292 as amended, and in effect on the first day of January,
293 one thousand nine hundred eighty-five:

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

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

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

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

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

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

319 (A) A corporation, partnership association or trust
320 controlled by the taxpayer:

321 (B) An individual corporation, partnership, associa-
322 tion or trust that is in control of the taxpayer;

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

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

328 For purposes of subdivisions (20) and (22) of this
329 section, "control," with respect to a corporation means
330 ownership, directly or indirectly, of stock possessing
331 fifty percent or more of the total combined voting power
332 of all classes of the stock of such corporation entitled to
333 vote. "Control," with respect to a trust, means
334 ownership, directly or indirectly, of fifty percent or
335 more of the beneficial interest in the principal or income
336 of such trust. The ownership of stock in a corporation,
337 of a capital or profits interest in a partnership or
338 association or of a beneficial interest in a trust shall be
339 determined in accordance with the rules for constructive
340 ownership of stock provided in Section 267 (c) of the
341 United States Internal Revenue Code of 1954, as
342 amended, other than paragraph (3) of such section.

343 (23) *Replacement facility*.—The term "replacement
344 facility" means any property (other than an expanded
345 facility) that replaces or supersedes any other property
346 located within this state that:

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

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

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

366 (25) *This code*.—The term "this code" means the code
367 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

32 credit allowed by this section, property shall be
 33 considered placed in service or use in the earlier of the
 34 following taxable years:

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

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

87.
 E.V.
 D.L.X.

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

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

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

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

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

17 (c) *Application of credit.*—The credit allowed by this
 18 section shall be applied in the manner prescribed in
 19 section five of this article: *Provided*, That the amount
 20 of corporation net income taxes against which the credit
 21 allowed by this section may be applied, shall be the sum
 22 of the corporation net income tax due on adjusted
 23 federal taxable income allocated to this state under
 24 section seven, article twenty-four of this chapter, plus
 25 that portion of the corporation net income tax due on
 26 adjusted federal taxable income apportioned to this state
 27 under section seven, article twenty-four of this chapter,

28 that is further apportioned to the qualified investment
29 using the payroll factor provided in paragraph (1),
30 subsection (h) of said section five. For all other purposes,
31 the credit allowed by this section shall be treated as
32 credit allowed by section four of this article.

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

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

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

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

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

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

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

5 (1) The qualified investment under this article creates
6 at least fifty new jobs but such qualified investment is

7 placed in service or use over a period of three successive
8 tax years: *Provided*, That such qualified investment is
9 made pursuant to a written business facility
10 development plan of the taxpayer providing for an
11 integrated project for investment at one or more new or
12 expanded business facilities, a copy of which must be
13 attached to the taxpayer's application for project
14 certification and approved by the tax commissioner, and
15 the qualified investment placed in service or use during
16 the first tax year would not have been made without the
17 expectation of making the qualified investment placed
18 in service or use during the next two succeeding tax
19 years;

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

36 (3) The qualified investment is made by one or more
37 persons but some or all of the new jobs created as a
38 direct result of the qualified investment are created by
39 one or more other persons: *Provided*, That at least fifty
40 new jobs are created within a seventy-five mile radius
41 of each new or expanded business facility in which the
42 qualified investment is made, and such jobs are, upon
43 application, certified by the tax commissioner as being
44 new jobs created as a direct result of the qualified
45 investment, and that such qualified investment is made
46 pursuant to a written business facility development plan
47 of the taxpayer providing for an integrated project for

48 investment at one or more new or expanded business
49 facilities, a copy of which must be attached to the
50 taxpayer's application for project certification and
51 approved by the tax commissioner.

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

62 (c) *Taking of credit.*

63 (1) If the certified project for which qualified invest-
64 ment is made involves one or more persons making the
65 capital investment and one or more persons, or a
66 combination thereof, creating at least fifty new jobs at
67 the site of the new or expanded business facility or
68 facilities, then credit shall be allowed under this article
69 for the certified project based upon the qualified
70 investment in the certified project (as determined under
71 section six) multiplied by the project's new-jobs percent-
72 age (determined under section seven).

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

83 (3) The amount of allowable credit as determined
84 under paragraph (1) and (2) above, shall be applied as
85 provided in section five and may be claimed by one
86 participant in the project, or divided among the several
87 participants in the project, in the manner provided in

88 the project's application to the tax commissioner for
89 certification under this section. Such allocation, if
90 approved by the tax commissioner, shall constitute a
91 binding election by the participants in the project for
92 the entire term during which the credit attributable to
93 the qualified investment in the certified project may be
94 applied to reduce tax liabilities. The participant or
95 participants claiming the credit for qualified invest-
96 ments in a certified project shall annually file with their
97 income tax returns filed under this chapter:

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

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

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

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

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

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

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

127 applicable to the business.

128 (2) "Permanent employment" does not include employ-
129 ment that is temporary or seasonal.

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

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

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

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

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

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

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

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

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

12 (b) *Application of current year annual credit allo-*
13 *wance*. — The amount determined under subsection (a)
14 shall be allowed as a credit against that portion of the
15 taxpayer's state tax liability which is attributable to and
16 the direct result of the taxpayer's qualified investment,

17 and shall be applied as provided in subsections (c)
18 through (j) both inclusive.

19 (c) *Business and occupation taxes.*

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

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

49 (3) The annual exemption allowed by section three of
50 said article thirteen, plus any credits allowable under
51 articles thirteen-d and thirteen-e of this chapter, shall
52 be applied against and reduce only the portion of article
53 thirteen taxes not apportioned to the qualified
54 investment under this article: *Provided*, That any excess
55 exemption or credits may be applied against the amount
56 of article thirteen taxes apportioned to the qualified

57 investment under this article, that is not offset by the
58 amount of annual credit against such taxes allowed
59 under this article for the taxable year, unless their
60 application is otherwise prohibited by this chapter.

61 (d) *Carrier income taxes.*

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

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

87 (e) *Severance taxes.*

88 (1) On and after the first day of July, one thousand
89 nine hundred eighty-seven, that portion of the allowable
90 credit attributable to qualified investment in a business
91 or other activity subject to the tax imposed by article
92 thirteen-a of this chapter, and qualified investment in
93 a business or activity that was subject to the tax imposed
94 by article thirteen of this chapter prior to said first day
95 of July, but on and after said first day of July, is subject
96 to the tax imposed by article thirteen-a of this chapter,

97 shall first be applied to reduce up to eighty percent of
98 the taxes imposed by article thirteen-a of this chapter
99 for the taxable year (determined before application of
100 any allowable credits against tax).

101 (2) If the taxes due under said article thirteen-a are
102 not solely attributable to and the direct result of the
103 taxpayer's qualified investment in a business or other
104 activity taxable under article thirteen-a of this chapter,
105 the amount of such taxes which are so attributable, shall
106 be determined by multiplying the amount of taxes due
107 under said article thirteen-a for the taxable year
108 (determined before application of any allowable credits
109 against tax), by a fraction, the numerator of which is
110 all wages, salaries and other compensation paid during
111 the taxable year to all employees of the taxpayer
112 employed in this state, whose positions are directly
113 attributable to the qualified investment in a business or
114 other activity taxable under article thirteen-a of this
115 chapter. The denominator of the fraction shall be the
116 wages, salaries and other compensation paid during the
117 taxable year to all employees of the taxpayer employed
118 in this state, whose positions are directly attributable to
119 the business or other activity of the taxpayer that is
120 taxable under article thirteen-a of this chapter.

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

132 (f) *Telecommunications taxes.*

133 (1) On and after the first day of July, one thousand
134 nine hundred eighty-seven, that portion of the allowable
135 credit attributable to qualified investment in a business
136 or other activity subject to the taxes imposed by article

137 thirteen-b of this chapter, shall first be applied to reduce
138 up to eighty percent of the taxes imposed by article
139 thirteen-b of this chapter for the taxable year (deter-
140 mined before application of allowable credits against
141 tax) and qualified investment in a business or activity
142 that was subject to the taxes imposed by article twelve-
143 a of this chapter prior to said first day of July, but on
144 and after said first day of July is subject to the tax
145 imposed by article thirteen-b of this chapter.

146 (2) If the taxes due under said article thirteen-b are
147 not solely attributable to and the direct result of the
148 taxpayer's qualified investment in a business or other
149 activity taxable under article thirteen-b of this chapter,
150 the amount of such taxes, which are so attributable,
151 shall be determined by multiplying the amount of taxes
152 due under said article thirteen-b for the taxable year
153 (determined before application of any allowable credits
154 against tax), by a fraction, the numerator of which is
155 all wages, salaries and other compensation paid during
156 the taxable year to all employees of the taxpayer
157 employed in this state whose positions are directly
158 attributable to the qualified investment in a business or
159 other activity taxable under article thirteen-b of this
160 chapter. The denominator of the fraction shall be the
161 wages, salaries and other compensation paid during the
162 taxable year to all employees of the taxpayer employed
163 in this state whose positions are directly attributable to
164 the business or other activity of the taxpayer that is
165 taxable under article thirteen-b of this chapter.

166 (g) *Business franchise tax.*

167 (1) On and after the first day of July, one thousand
168 nine hundred eighty-seven, that portion of the allowable
169 credit attributable to qualified investment in a business
170 or activity subject to the taxes imposed by article
171 twenty-three of this chapter, and qualified investment
172 in a business or activity that was subject to the taxes
173 imposed by article thirteen of this chapter prior to said
174 first day of July, but on and after said first day of July,
175 is subject to the tax imposed by article twenty-three of
176 this chapter, shall first be applied to reduce up to eighty
177 percent of the taxes imposed by article twenty-three of

178 this chapter for the taxable year (determined after
179 application of the credits against tax provided in section
180 seventeen of said article twenty-three, but before
181 application of any other allowable credits against tax).

182 (2) If the taxes due under said article twenty-three are
183 not solely attributable to and the direct result of the
184 taxpayer's qualified investment in a business or other
185 activity taxable under article twenty-three, for the
186 taxable year (determined after application of the credits
187 against tax provided in section seventeen of said article
188 twenty-three, but before application of any other
189 allowable credits), by a fraction, the numerator of which
190 is all wages, salaries and other compensation paid
191 during the taxable year to all employees of the taxpayer
192 employed in this state, whose positions are directly
193 attributable to the qualified investment in a business or
194 other activity taxable under article twenty-three of this
195 chapter. The denominator of the fraction shall be wages,
196 salaries and other compensation paid during the taxable
197 year to all employees of the taxpayer employed in this
198 state, whose positions are directly attributable to the
199 business or other activity of the taxpayer that is taxable
200 under article twenty-three of this chapter.

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

212 (h) *Corporation net income taxes.*

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

218 allowable credits against tax).

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

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

245 (i) *Personal income taxes.*

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

257 (2) Electing small business corporations, partnerships

258 and other unincorporated organizations shall allocate
259 the credit allowed by this article among its members in
260 the same manner as profits and losses are allocated for
261 the taxable year.

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

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

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

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

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

298 facility of the taxpayer resulting in new jobs; plus

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

314 (C) Twenty percent of the workers' compensation
315 premiums imposed by article two, chapter twenty-three
316 of this code, for the taxable year. If the premiums due
317 under article two of said chapter twenty-three, for the
318 taxable year, are not solely attributable to and the direct
319 result of the taxpayer's qualified investment, the amount
320 of such premiums which are so attributable shall be
321 determined by multiplying the amount of premiums due
322 under article two, chapter twenty-three of this code for
323 the taxable year, by a fraction, the numerator of which
324 is all wages, salaries and compensation paid during the
325 taxable year to employees of the taxpayer whose
326 positions are directly attributable to the qualified
327 investment, and the numerator or 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 (2) A taxpayer eligible to claim this rebate shall apply
331 either the amount of the unused credit or the sum
332 determined under paragraph (1), whichever is less,
333 against the remaining twenty percent of the taxes
334 imposed by articles twelve-a, thirteen, thirteen-a,
335 thirteen-b, twenty-one, twenty-three and twenty-four of
336 this chapter, attributable to the qualified investment
337 under this article. If any amount of rebate remains after
338 its application against the remaining twenty percent of

339 taxes as aforesaid, the amount remaining shall be
 340 carried forward to each ensuing tax year until used or
 341 the expiration of the twelfth subsequent ~~tax~~ tax year ^{OK}
 342 in which the qualified investment was placed in service ^{BY}
 343 or use in this state by the taxpayer. ^{DOX.}

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

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

§11-13C-6. Qualified investment.

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

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

10 If useful life is:	The applicable percentage is:
11 4 years or more but less than 6 years.....	33 1/3%
12 6 years or more but less than 8 years.....	66 2/3%
13 8 years or more	100%

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

19 (c) *Cost.*—For purposes of subsection (a), the cost of

20 each property purchased for business expansion shall be
21 determined under the following rules:

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

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

30 (3) *Rental property.*

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

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

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

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

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

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

58 conditions and limitations of this article.

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

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

80 (7) *Natural resources in place*.—In the case of natural
81 resources in place, the property must be capable of
82 sustained production for a period of at least ten years.
83 If this qualification is met, then the qualified investment
84 is one hundred percent of the purchase price of the
85 natural resource in place that is attributable to ten years
86 of production, but not more than twenty years of
87 production. If such price is not quantifiable at the time
88 the mining operation is placed into production, cost shall
89 be determined annually and shall be the amount of
90 royalties actually paid to the owner of the natural
91 resource in place during each year for a total period of
92 ten years. The amount of such royalties multiplied by
93 the taxpayer's new jobs percentage (determined at the
94 time the mining operation is placed in service or use)
95 divided by ten establishes the credit allowable each year
96 for ten successive years beginning with the year in
97 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.

1 The Legislature finds that the encouragement of the
2 location of new industry in this state; the expansion,
3 growth and revitalization of existing industrial facilities
4 in this state; the conduct of research and development
5 in this state, for purposes of expanding markets for sales
6 and uses of this state's natural resources and industrial
7 products and the construction of residential housing are
8 all in the public interest and promote the general
9 welfare of the people of this state. In order to encourage
10 capital investment in this state and thereby increase
11 employment and economic development, there is hereby
12 provided a business and occupation tax credit for
13 industrial expansion and revitalization in this state, for
14 certain research and development related expenditures
15 in this state, and for certain housing development
16 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
3 article thirteen of this chapter, unless a different
4 meaning is clearly required by the context of its use or
5 by definition in this article.

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

7 (1) "Eligible investment" means that amount deter-
8 mined under either section four of this article, for
9 investment in a new or expanded or revitalized indus-
10 trial facility, or under section five of this article, in the
11 case of an eligible research and development project, or
12 under section five-a for a qualified housing development
13 project.

14 (2) "Eligible taxpayer" means an industrial taxpayer
15 who purchases new property for the purpose of indus-
16 trial expansion, or for the purpose of revitalizing an
17 existing industrial facility in this state; or a taxpayer

18 who purchases property or services (or both) for the
19 purpose of conducting an eligible research and
20 development project in this state or for the purpose of
21 constructing a qualified housing development project in
22 this state.

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

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

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

54 (6) "Industrial revitalization" means capital invest-
55 ment in an industrial facility located in this state to
56 replace or modernize buildings, equipment, machinery
57 and other tangible personal property used in connection

58 with the operation of such facility in an industrial
59 business of the taxpayer, including the acquisition of
60 any real property necessary to the industrial
61 revitalization.

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

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

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

89 (10) Subject to paragraph (13) below, "property
90 purchased for an eligible research and development
91 project" means real property, and improvements
92 thereto, and tangible personal property, but only if such
93 real or personal property is constructed or purchased on
94 or after the first day of July, one thousand nine hundred
95 eighty-five, for use as a component part of an eligible
96 research and development project which is located
97 within this state on or after the first day of July, one

98 thousand nine hundred eighty-five. This term includes
99 only tangible personal property with respect to which
100 depreciation or amortization, in lieu of depreciation, is
101 allowable in determining the personal income tax or
102 corporation net income tax liability of the purchaser
103 under article twenty-one or twenty-four of this chapter.
104 Property acquired by written lease for a term of ten
105 years or longer, if used as a component part of an
106 eligible research and development project, shall be
107 included within this definition.

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

128 (12) Subject to paragraph (13) below, "property
129 purchased for industrial revitalization" means real
130 property, and improvements thereto, and new tangible
131 personal property, but only if such property was
132 constructed, or purchased, on or after the first day of
133 July, one thousand nine hundred eighty-one, for use as
134 a component part of an ongoing industrial facility (as
135 defined in subdivision (5) of this subsection) located
136 within this state. This term includes only tangible
137 personal property with respect to which depreciation is
138 allowable in determining the personal income tax or

139 corporation net income tax liability of the industrial
140 taxpayer under article twenty-one or twenty-four of this
141 chapter, and has a useful life at the time the property
142 is placed in service or use in this state of four years or
143 more. Property acquired by written lease for a primary
144 term of ten years or longer, if used as a component part
145 of an industrial revitalization, shall be included within
146 this definition.

147 (13) "Property purchased for industrial expansion,"
148 "property purchased for industrial revitalization" and
149 "property purchased for an eligible research and
150 development project" and "property purchased for a
151 qualified housing development project" shall not
152 include:

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

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

158 (C) Airplanes;

159 (D) Off-premise transportation equipment;

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

162 (F) Property which is acquired incident to the
163 purchase of the stock or assets of an industrial taxpayer,
164 which property was or had been used by the seller in
165 his industrial business in this state, or which property
166 was previously designated "property purchased for
167 industrial expansion" or "property purchased for
168 industrial revitalization," or "property purchased for an
169 eligible research and development project," or "property
170 purchased for a qualified housing development project"
171 and used to qualify for business and occupation tax
172 credit for industrial expansion or revitalization, or for
173 an eligible research and development project, or for a
174 qualified housing development project.

175 (14) Subject to paragraph (13) above, property
176 purchased for a qualified housing development project

177 means real property, and improvements thereto, and
178 tangible personal property incorporated into real
179 property (whether or not attached thereto), but only if
180 such real or tangible personal property was constructed,
181 or purchased, on or after the first day of July, one
182 thousand nine hundred eighty-six, for use as a compo-
183 nent part of a housing development project (as defined
184 in subdivision five-a of this subsection) located within
185 this state.

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

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

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

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

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

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

6 housing development projects. The amount of credit
7 shall be determined as hereinafter provided in this
8 section.

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

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

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

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

37 (c) *Qualified investment for industrial expansion;*
38 *April 1, 1978-February 28, 1985.*—For property pur-
39 chased for industrial expansion during the period
40 beginning the first day of March, one thousand nine
41 hundred seventy-eight, and ending the twenty-eighth
42 day of February, one thousand nine hundred eighty-five,
43 the amount of allowable credit shall be equal to ten
44 percent of the qualified investment (as determined in
45 section four) made for industrial expansion, and shall

46 reduce the business and occupation tax liability of the
47 industrial taxpayer under section two-b, two-h and two-
48 m, article thirteen of this chapter, subject to the
49 following conditions and limitations:

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

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

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

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

86 and two-h, article thirteen of this chapter, subject to the
87 following conditions and limitations:

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

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

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

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

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

124 (e) *Eligible investment for industrial expansion or*

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

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

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

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

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

158 (5) When in any taxable year the industrial taxpayer
159 is entitled to claim credit under this article and article
160 thirteen-e of this chapter, the total amount of all such
161 credits allowable for the taxable year shall not reduce
162 the amount of business and occupation taxes imposed by
163 article thirteen of this chapter, below fifty percent of the
164 amount which would be imposed for such taxable year,

165 computed before allowance of the annual exemption
166 allowed by section three, article thirteen of this chapter.

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

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

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

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

193 (2) The amount of annual credit allowed shall not
194 reduce the business and occupation taxes imposed by
195 section two, article thirteen of this chapter, under
196 section two-a of said article, on the business of producing
197 natural resources; under section two-b of said article
198 thirteen, on the business of manufacturing, compound-
199 ing or preparing tangible personal property for sale;
200 under section two-h of said article thirteen on the
201 providing of a manufacturing service; and under section
202 two-m of said article thirteen, on the business of
203 generating electric power, below fifty percent of the
204 amount which would be imposed for the taxable year in

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205 the absence of this credit against tax, computed before
206 application of the annual exemption allowed by section
207 three, article thirteen of this chapter.

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

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

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

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

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

240 (1) The allowable credit shall be applied over a ten-
241 year period at the rate of one tenth of the amount thereof
242 per taxable year, beginning with the taxable year in
243 which any combination of residential housing units (as

244 defined in section five-a of this article) available for
245 occupancy or occupied in the qualified housing
246 development project is five or more residential housing
247 units.

248 (2) The amount of annual credit allowed shall not
249 reduce the business and occupation taxes imposed by
250 section two, article thirteen of this chapter, under
251 section two-c of said article on the business of selling
252 tangible property and under section two-e on the
253 business of contracting below fifty percent of the
254 amount which would be imposed for the taxable year in
255 the absence of this credit against tax, computed before
256 application of the annual exemption allowed by section
257 three, article thirteen of this chapter.

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

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

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

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

281 (h) *Credit limitation.*—The aggregate amount of
282 credit allowable under this article and article thirteen-

283 e of this chapter, against the taxes imposed by article
 284 thirteen of this chapter for the taxable year, shall in no
 285 event exceed fifty percent of the tax due for the taxable
 286 year, computed prior to application of the tax credits
 287 provided by this article and articles thirteen-c and
 288 thirteen-e of this chapter, and the annual exemption
 289 allowed provided by section three, article thirteen of this
 290 chapter.

291 (i) *Application of credit after June 30, 1987.* — On and
 292 after the first day of July, one thousand nine hundred
 293 eighty-seven, the credits allowed under subsections (b),
 294 (c), (d), (e), (f) and (g) of this section shall be applied to
 295 and reduce the taxes imposed by articles thirteen,
 296 thirteen-a and twenty-three of this chapter: *Provided,*
 297 That this credit shall not reduce the sum of the net tax
 298 liability of the taxpayer under articles thirteen, thir-
 299 teen-a and twenty-three of this chapter, for the taxable
 300 year below fifty percent of the amount thereof, deter-
 301 mined before application of the credits allowed by this
 302 article and article thirteen-c or thirteen-e, or both, of
 303 this chapter.

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

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

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

11	If useful life is:	The applicable percentage is:
12	Less than 4 years.....	0
13	4 years or more but less than 6 years	33-1/3%
14	6 years or more but less than 8 years	66-2/3%
15	8 years or more	100%

16 The useful life of any property for purposes of this

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

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

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

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

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

38 (d) “Qualified housing development” or “qualified
39 housing development project” means a residential
40 housing development located in this state that contains
41 five or more single-family contiguous residential
42 housing units or multi-family residential buildings
43 containing five or more residential housing units, which
44 are contiguously located.

45 (e) “Residential housing unit” means any single-family
46 dwelling or a single-family unit in a multi-family
47 dwelling that is constructed for sale or lease to nontran-
48 sients for use and occupancy as their primary perman-
49 ent residence.

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

1 (a) *Disposition of property or cessation of use.*—If
2 during any taxable year, property with respect to which
3 a 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, five or five-a of this
6 article; or

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

36 (b) *Cessation of operation of industrial facility or*
37 *eligible research and development project or qualified*
38 *housing development project.*—If during any taxable
39 year, the taxpayer ceases operation of an industrial
40 facility in this state, or of an eligible research and
41 development project, or a qualified housing development
42 project, for which credit was allowed under this article,
43 or article thirteen-c of this chapter prior to its repeal,
44 before expiration of the useful life of the property with

45 respect to which tax credit has been allowed under this
46 article or article thirteen-c of this chapter prior to its
47 repeal, then the unused portion of the allowed credit
48 shall be forfeited for the taxable year and all ensuing
49 years. Additionally, except when the cessation is due to
50 fire, flood, storm or other casualty, the taxpayer shall
51 redetermine the amount of credit allowed in earlier
52 years by reducing the applicable percentage of cost of
53 such property allowed under section three, to correspond
54 with the percentage of cost allowable for the period of
55 time that the property was actually used in this state
56 in the industrial business of the taxpayer. Taxpayer
57 shall then file a reconciliation statement with its annual
58 business and occupation tax return for the year in which
59 the forfeiture occurs and pay any additional business
60 and occupation taxes owed due to reduction of the
61 amount of credit allowable for such earlier years, plus
62 interest and any applicable penalties: *Provided*, That on
63 and after the first day of July, one thousand nine
64 hundred eighty-seven, the phrase "taxes imposed by
65 article twelve-a or thirteen (or both) of this chapter"
66 shall mean "taxes imposed by articles thirteen, thirteen-
67 a, and twenty-three of this chapter (or any one or
68 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

Floyd Fulbright
.....
Chairman House Committee

Originating in the House.

Takes effect from passage.

Todd C. Wilkins
.....
Clerk of the Senate

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

Don Tomberlin
.....
President of the Senate

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

The within *approved* this the *26th*
March
day of, 1986.

Arch A. Moore Jr.
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/20/86

Time 4:40 p.m.

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86 *ec.*

RECEIVED

1986 MAR 26 PM 9:03

OFFICE OF THE SECRETARY OF STATE