WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

ENROLLED

HOUSE BILL No. 2274

(By Delegate Mr. Speaker, Mr. Chambers,
By request of the Executive.)

Passed ............................. March 14, 1987

In Effect ............................ Ninety Days From Passage
AN ACT to amend article two, chapter five-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; by adding a new section, designated section twenty-two; to amend and reenact sections three, four, four-b, five, and seven, article thirteen-c, chapter eleven of said code; to further amend said article thirteen-c by adding thereto a new section, designated section seven-a; to amend and reenact section eight, article thirteen-d of said chapter eleven; to further amend said article thirteen-d by adding thereto a new section, designated section three-a; and to amend article thirteen-e of said chapter eleven by adding thereto a new section, designated section three-a, all relating generally to exemptions from and credits against taxes assessed or collected pursuant to the provisions of chapter eleven of the code of West Virginia, which exemptions and credits are provided for purposes of and to stimulate economic development in this state; exempting the West Virginia Industrial Trade Jobs and Development Corporation from payment of ad valorem property taxes on its real and personal property; providing for prorated of such taxes and exemption when property is purchased or sold by the corporation; amending the business investment and jobs expansion tax credit by amending the definition of certain terms used therein, including: “business,” “business facility,” “eligible taxpayer,” “new business
facility," "new property," "property purchased or leased for business expansion," "purchase," "qualified activity" and "taxpayer"; providing for election to delay start of ten-year credit period to be made in the annual income tax return filed for the taxable year in which the business investment and jobs expansion tax credit is first taken for the qualified investment; requiring that an application for project certification be filed with and approved by the tax commissioner prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the investment; specifying that for purposes of determining the amount of taxes against which the business investment and jobs expansion tax credit may be taken by a participant in a project, project participants must apportion their liability for such taxes by a payroll factor, the numerator of which is total compensation paid in this state during the taxable year by all project participants to all new employees filling the new jobs created, and the denominator of which is the total compensation paid in this state during the taxable year by all project participants to their employees in this state; authorizing certification of a project having qualified investment of at least fifty million dollars placed in service or use between the first day of March, one thousand nine hundred eighty-five and the first day of February, one thousand nine hundred eighty-six, where the application for certification of such project was filed with the tax commissioner prior to the thirty-first day of December, one thousand nine hundred eighty-six; allowing the business investment and jobs expansion tax credit to be applied against sales and use taxes paid on purchases of tangible personal property and taxable services made on or after the first day of July, one thousand nine hundred eighty-seven, when such property or services will be directly used or consumed in the qualified investment activity; providing for the rebate amount of credit allowed for payment of unemployment taxes and workers' compensation premiums with respect to the new employees filling the new jobs directly attributable to the qualified investment to be determined based on the actual expenditure for such
purposes rather than applying the payroll factor to total unemployment taxes and workers’ compensation premiums paid; providing for redetermination of the new jobs percentage to be made with the annual income tax return instead of the business and occupation tax or carrier income tax return filed for the third taxable year for which the qualified investment is in service or use; creating a business investment and jobs expansion tax credit for small businesses whose qualified investment directly results in the creation of at least ten new jobs and as to such credit; defining the term “small business” and other terms; providing for computation and allowance of small business tax credits; providing for annual adjustment of the new jobs percentage; allowing certain small business projects to qualify for credit; authorizing tax commissioner to prescribe such regulations as he deems necessary to administer the small business tax credit; providing for the small business tax credit to be allowed for qualified investment property purchased or leased by a small business after the thirtieth day of June, one thousand nine hundred eighty-seven that creates at least ten new jobs; providing for the business and occupation tax credit for industrial expansion and revitalization for research and development projects to also apply against sales and use taxes paid on purchases directly used or consumed in taxpayer’s qualified investment activity when the property or service is purchased after the thirtieth day of June, one thousand nine hundred eighty-seven; clarifying that the industrial expansion credit which was repealed, effective the first day of March, one thousand nine hundred eighty-five, and recodified as of such date as part of the industrial revitalization credit is fully and completely preserved under provisions of the recodified law for the remainder of ten-year credit period that was in existence for any particular taxpayer under the business and occupation tax credit for industrial expansion law prior to its repeal; and providing for the business and occupation tax credit for coal loading facilities to be applied against sales and use taxes paid on purchases of tangible personal property and taxable services that are directly used or consumed
in taxpayer's qualified investment activity when such purchases are made after the thirtieth day of June, one thousand nine hundred eighty-seven; and generally specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND TRADE.

ARTICLE 2. WEST VIRGINIA INDUSTRIAL AND TRADE JOBS DEVELOPMENT CORPORATION.

§5C-2-22. Exemption from taxation.

The corporation, being a political subdivision of this state, is exempt from taxation; and the real and personal property which the corporation may acquire to be leased, sold or otherwise disposed of, according to the provisions of this article, is exempt from taxation, whether by the state, or any county, municipality, or other levying body, as public property, so long as the same is owned by corporation: Provided, That where title to real property is transferred after the assessment day, the amount of ad valorem property taxes that become due and payable subsequent to the date title is transferred shall be prorated between the transferee and the transferor. Where the transferor is a taxable person, the transferor's liability for such ad valorem property taxes shall be limited to that portion apportioned to the transferor based on the number of months during the tax year to which the levy relates that the
transferor had legal title to the property; and the corporation being the transferee shall be exempt from payment of the ad valorem property taxes apportioned to the months of the tax year during which it had title to the property. Where the transferor is the corporation and the transferee is one not exempt from payment of ad valorem property taxes, the amount of such taxes would become due and payable subsequent to the date title is transferred to the transferee but for the owner of record on the assessment day being a tax exempt entity, shall nevertheless be determined by extension of the applicable levy rates and be extended prorated between the transferor and transferee based upon the number of months during the tax year for which the taxes are levied which each respectively have title to the property, and the transferee shall be liable for payment of ad valorem property taxes prorated to the period of time after it acquired title to the property, but the transferor shall not.

CHAPTER 11. TAXATION.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.


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

(b) Terms defined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Such facility is purchased by, or leased to, the
taxpayer and is placed in service or use on or after the
first day of March, one thousand nine hundred eighty-
five.

(C) The facility was not acquired by the taxpayer
from a related person. The tax commissioner can waive
this requirement if the facility was acquired from a
related party for its fair market value.

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

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

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

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

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

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

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

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

(A) Property the construction, reconstruction or
errection of which is completed on or after March one,
one thousand nine hundred eighty-five and placed in
service or use after such date; and

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

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

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

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

(19) Property purchased or leased for business expansion.

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

(1) Real property and improvements thereto having a
useful life of four or more years, placed in service or use
on or after the first day of March, one thousand nine
hundred eighty-five, by the taxpayer.

(2) Real property and improvements thereto, or
tangible personal property acquired by written lease
having a primary term of ten or more years and placed
in service or use by the taxpayer on or after the first
day of March, one thousand nine hundred eighty-five.

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

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

(5) Tangible personal property owned or leased, and used by the taxpayer at a business location outside this state which is moved into this state on or after the first day of February, one thousand nine hundred eighty-six, for use as a component part of a new or expanded business facility located in this state: Provided, That if the property is owned, it must be depreciable or amortizable personal property for income tax purposes, and have a useful life of four or more years remaining at the time it is placed in service or use in this state, and if the property is leased, the primary term of the lease remaining at the time the leased property is placed in service or use in this state, must be four or more years:

(B) Excluded property. — The term "property purchased or leased for business expansion" shall not include:

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

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

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

(4) Airplanes;

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

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

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

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

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

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

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

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

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

(B) The property is not acquired by one component member of a controlled group from another component member of the same controlled group. The tax commissioner can waive this requirement if the property was acquired from a related party for its then fair market value; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **Amount of credit.** — The amount of credit allowable is determined by multiplying the amount of the taxpayer’s “qualified investment” (determined under section four-a or six, or both) in “property purchased for business expansion” (as defined in section three) by the taxpayer’s new jobs percentage (determined under section seven). The product of this calculation establishes the maximum amount of credit allowable under this article, due to the qualified investment.

(c) **Application of credit over ten years.** — The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the taxpayer places the qualified investment in service or use in this state, unless the taxpayer elected to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be made in the annual income tax return filed for the taxable year in which credit is first taken on the qualified investment placed into service or use by the taxpayer. Once made, the election cannot be revoked. The annual credit
allowance shall be taken in the manner prescribed in section four of this article.

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

- The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or
- The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

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

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

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

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

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

(b) Application for certification. — The application for certification of a project under this section shall be filed with and approved by the tax commissioner prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the qualified investment. This application shall be approved in writing by all the participants in the project and shall contain such information as the tax commissioner may require to determine whether the project should be certified as eligible for credit under this article.

(c) Taking of credit.

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

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

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

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

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

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

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

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

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

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

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

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

(2) New job. — The term “new job” means a job which did not exist in this state prior to the project's qualified investment being made, and which is filled by a new employee.
(3) **Participant.** — The term "participant" means any person who directly makes a qualified investment in a certified project, or who employs persons filling the jobs certified by the tax commissioner as being new jobs created as a direct result of the project's qualified investment.

(5) **Effective date.**

(1) This section shall apply to a project having qualified investment of at least fifty million dollars placed in service or use between the first day of March, one thousand nine hundred eighty-five and the first day of February, one thousand nine hundred eighty-six, and shall also apply to qualified investment made on or after the first day of February, one thousand nine hundred eighty-six.

(2) The application for project certification for a project having qualified investment of at least fifty million dollars placed in service or use between the first day of March, one thousand nine hundred eighty-five and the first day of February, one thousand nine hundred eighty-six, shall be deemed timely filed under subsection (b) of this section only if such application is filed with the tax commissioner prior to the thirty-first day of December, one thousand nine hundred eighty-six: Provided, That the tax commissioner shall not certify such project until the project participants certify that at least fifty new jobs were created by them prior to the first day of January, one thousand nine hundred eighty-eight, as a direct result of their qualified investment in the project, and that such jobs did not previously exist in this state, determined as of the thirty-first day of January, one thousand nine hundred eighty-six; that the inclusion of such property shall not give rise to a refund or credit of any taxes administered under this chapter for taxable years ending before the first day of January, one thousand nine hundred eighty-seven; and that the ten-year credit period for such certified project shall begin with the current taxable year of the project participant or participants who will be claiming the allowable credit.
§11-13C-5. Application of annual credit allowance.

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

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

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

(3) The one-tenth part allowed under section four-a for locating corporate headquarters in this state; or the amount allowed under section seven-a of this article of the taxable year.

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

(c) Business and occupation taxes.

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

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

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

(d) Carrier income taxes.

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

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

(e) Severance taxes.

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

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

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

(f) Telecommunications taxes.

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

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

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

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

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

(h) Corporation net income taxes.

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

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

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

(i) Personal income taxes.

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

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

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

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

(j) Sales and use taxes.

On and after the first day of July, one thousand nine hundred eighty-seven, for purchases of tangible personal property and taxable services made on or after that date, that portion of the allowable credit, which is attributable to qualified investment in a business or activity subject to the taxes imposed by articles fifteen and fifteen-a of this chapter on purchases for use or consumption in the conduct of such business or activity, shall be applied to reduce up to eighty percent of the taxes imposed by articles fifteen and fifteen-a of this chapter on purchases that are directly used or consumed in the qualified investment activity. When property and services purchased for use or consumption are not solely used or consumed in the qualified investment activity, the cost thereof shall be apportioned between such activities. Only that amount apportioned to purchases directly used or consumed in the qualified investment activity shall be included when applying the credit allowable under this subsection.

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

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

(A) Eighty percent of the ad valorem property taxes imposed by levying bodies pursuant to article eight, of this chapter, for the taxable year (including payments in lieu of such taxes), on property of the taxpayer that is directly attributable to the qualified investment (including property having a useful life of less than four
(B) Eighty percent of the taxes imposed by article five, chapter twenty-one-a of this code for the taxable year attributable to the compensation of new employees filling the new jobs that are directly attributable to the qualified investment; plus.

(C) Twenty percent of the workers’ compensation premiums imposed by article two, chapter twenty-three of this code, for the taxable year attributable to the compensation paid new employees filling the new job, that are directly attributable to the qualified investment.

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

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

(m) Effective date.

(1) This section, as amended, (in the year one thousand nine hundred eighty-six) shall be effective upon passage. It shall be retroactive, and shall be in lieu of the method provided by this section for application of
358 this credit prior to this amendment, for qualified
359 investment made on or after the first day of March, one
360 thousand nine hundred eighty-five.
361 (2) This section as amended (in the year one thousand
362 nine hundred eighty-seven) shall be effective for taxable
363 years ending after the thirtieth day of June, one
364 thousand nine hundred eighty-seven.

§11-13C-7. New jobs percentage.

1 (a) In general. — The new jobs percentage is based on
2 the number of new jobs created in this state that are
3 directly attributable to the qualified investment of the
4 taxpayer.
5
6 (b) Applicable percentage. — For the purpose of
7 subsection (a), the applicable new jobs percentage shall
8 be determined under the following table:

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

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

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

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

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

(d) Certification of new jobs. — With the annual return for the taxes imposed by article twelve-a or thirteen of this chapter, filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and
certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f), that are, or will be, directly attributable to the qualified investment of the taxpayer:

Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b twenty-one, twenty-three and twenty-four of this chapter (or any one or combination of such articles of this chapter).”

(e) **Equivalency of permanent employees.** — The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of subsection (b) hereof but not for the purposes of subsection (c) hereof.

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

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

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

§11-13C-7a. Small business credit.

(a) "Small business" defined. — For purposes of this section, the term "small business" means a business which has an annual payroll of one million, five hundred thousand dollars or less, or annual gross sales of not more than five million dollars, whichever is the higher: Provided, That beginning the first day of January, one thousand nine hundred eighty-nine and each first day of January thereafter, the tax commissioner shall prescribe amounts which shall apply in lieu of the above amounts during that calendar year. These amounts shall be prescribed by increasing the amount of each by the cost-of-living adjustment for such calendar year.

(1) Cost-of-living adjustment. — For purposes of subsection (a), the cost of living adjustment for any calendar year is the percentage (if any) by which:

(A) The consumer price index for the preceding calendar year exceeds

(B) The consumer price index for the calendar year one thousand nine hundred eighty-seven.

(2) Consumer price index for any calendar year. — For purposes of paragraph (1), the consumer price index for any calendar year is the average of the Federal
Consumer Price Index as of the close of the twelve
month period ending on the thirty-first day of August
of such calendar year.

(3) Consumer price index. — For purposes of para-
graph (2), the term “Federal Consumer Price Index”
means the last consumer price index for all urban
consumers published by the United States department
of labor.

(4) Rounding. — If any increase under paragraph (1)
is not a multiple of fifty dollars, such increase shall be
rounded to the next lowest multiple of fifty dollars.

(b) Amount of credit allowed.

(1) Credit allowed. An eligible small business tax-
payer shall be allowed a credit against the portion of
taxes imposed by this state that are attributable to and
the direct consequence of the eligible small business
taxpayer's qualified investment in a new or expanded
business in this state which results in the creation of at
least ten new jobs. The amount of this credit shall be
determined as provided in this section.

(2) Amount of credit. — The amount of credit allow-
able under this section is determined by dividing the
amount of the eligible small business taxpayer's
“qualified investment” (determined under section six) in
“property purchased for business expansion” (as defined
in section three) by ten. The amount of qualified
investment so apportioned to each year of the ten year
credit period, shall be the annual measure against which
taxpayer's annual new jobs percentage (determined
under subsection (d)) is applied. The product of this
calculation establishes the maximum amount of credit
allowable each year for ten consecutive years under this
section due to the qualified investment.

(3) Application of credit. — The annual credit allow-
ance must be taken beginning with the taxable year in
which the taxpayer places the qualified investment into
service or use in this state, unless the taxpayer elects
to delay the beginning of the ten year credit period until
the next succeeding taxable year. This election shall be
made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is placed in service or use. Once made, this election cannot be revoked. The annual credit allowance shall be taken and applied in the manner prescribed in section five.

(c) New jobs. — The term "new jobs" has the meaning ascribed to it in paragraph fourteen, subsection (b), section three of this article: Provided, That the median compensation of such new jobs shall not be less than eleven thousand dollars per year and that beginning the first day of January, one thousand nine hundred eighty-nine, and each first day of January thereafter, the tax commissioner shall adjust the median annual compensation specified in this subsection by increasing the amount thereof by the annual cost of living adjustment determined under subsection (a).

(1) The term "new employee" shall have the meaning ascribed to it in paragraph (13), subsection (b), section three of this article: Provided, That such term shall not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns ten percent or more of the business with such ownership interest to be determined under rules set forth in subsection (b), section 267 of said Internal Revenue Code; or

(B) Worked for the taxpayer during the six month period ending on the date taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six month period beginning on the date taxpayer's qualified investment is placed in service or use.

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

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

(B) The position did not exist prior to the construc-
tion, renovation, expansion or acquisition of the business
facilities and the making of the qualified investment; and

(C) But for the qualified investment, the position
would not have existed.

(D) New jobs percentage.—The annual new jobs
percentage is based on the number of new jobs created
in this state by the taxpayer that is directly attributable
to taxpayer’s qualified investment.

(1) If at least ten new jobs are created and filled
during the taxable year in which the qualified invest-
ment is placed in service or use, the applicable new jobs
percentage shall be thirty percent: Provided, That for
each new job over ten, up to forty such additional new
jobs, the applicable new jobs percentage shall be
increased by adding thereto one-half of one percent,
with the maximum new jobs percentage not to exceed
fifty percent.

(2) During each of the remaining nine years of the
ten-year credit period, the annual new jobs percentage
shall be based on the average number of new jobs that
were filled during that taxable year: Provided, That for
purposes of estimating the new jobs percentage that will
be applicable for each subsequent credit year, the
taxpayer shall use the new jobs percentage allowable for
the taxable year immediately prior thereto, and in the
annual income tax return filed under this chapter for
the then current tax year, taxpayer shall redetermine
his allowable new jobs percentage for that year based
on the average number of new employees employed in
new jobs during that year (determined on a monthly
basis) created as the direct result of taxpayer’s qualified
investment.

(e) Certification of new jobs.—With the annual income
tax return filed under this chapter for each taxable year
during the ten year credit period, the taxpayer shall
certify:

(1) the new jobs percentage for that taxable year;

(2) the amount of the credit allowance for that year;
(3) if the business is a partnership or electing small business corporation, the amount of credit allocated to the partners or shareholders, as the case may be;

(4) that qualified investment property continue to be used in the business, or if any of it was disposed of during the year the date of disposition and that such property was not disposed of prior to expiration of its useful life, as determined under section six;

(5) that the new jobs created by the qualified investment continue to exist and are filled by persons who meet the definition of new employee (as defined in paragraph one, subsection-c, of this section) and are paid an average annual compensation equal to or greater than the minimum average annual compensation required by this section.

(f) Small business project.—A small business may apply to the tax commissioner under section four-b for certification of paragraph one, subsection (a), section four-b project if that project will create at least ten new jobs.

(g) Regulations. — The tax commissioner shall prescribe such regulations as he may deem necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify taxpayer's continued entitlement to claim such credit; and to verify proper application of the credit allowed. The tax commissioner may, by regulation, require a taxpayer intending to claim credit under this section to file with the tax commissioner a notice of intent to claim this credit, before the taxpayer begins reducing his monthly or quarterly installment payments of estimate tax for the credit provided in this section.

(h) Effective date.—The credit provided in this section shall be allowed for qualified investment property purchased or leased after the thirtieth day of June, one thousand nine-hundred eighty-seven.

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

On and after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under section three shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a, fifteen, fifteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this chapter, or under articles fifteen and fifteen-a of this chapter on purchases directly used or consumed in taxpayer's qualified investment activity, for the taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and article thirteen-c or thirteen-e or both, of this chapter.


Any tax credit which an industrial taxpayer was legally entitled to claim under article thirteen-c of this chapter prior to its repeal effective the first day of March, one thousand nine hundred eighty-five, shall be fully and completely preserved under the provisions of this article for the remainder of the ten year credit period that was then in existence under said article thirteen-c.

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


On and after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under section three shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a, fifteen, fifteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this chapter, or under articles fifteen and fifteen-a of this chapter on purchases directly used or consumed in taxpayer's qualified investment activity, for the taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and article thirteen-c or thirteen-
d, or both, of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 1st
day of April, 1987.

Governor