

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

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ENROLLED

HOUSE BILL No. 2274

(By Delegate *Mr. Speaker, Mr. Chambers,*
+ Del. Swanm
[By request of the Executive])

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Passed *March 14,* 1987

In Effect *Ninety Days From* Passage

ENROLLED
H. B. 2274

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE SWANN)
[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.

1 The corporation, being a political subdivision of this
2 state, is exempt from taxation; and the real and personal
3 property which the corporation may acquire to be
4 leased, sold or otherwise disposed of, according to the
5 provisions of this article, is exempt from taxation,
6 whether by the state, or any county, municipality, or
7 other levying body, as public property, so long as the
8 same is owned by corporation: *Provided*, That where
9 title to real property is transferred after the assessment
10 day, the amount of ad valorem property taxes that
11 become due and payable subsequent to the date title is
12 transferred shall be prorated between the transferee
13 and the transferor. Where the transferor is a taxable
14 person, the transferor's liability for such ad valorem
15 property taxes shall be limited to that portion apporti-
16 oned to the transferor based on the number of months
17 during the tax year to which the levy relates that the

18 transferor had legal title to the property; and the
 19 corporation being the transferee shall be exempt from
 20 payment of the ad valorem property taxes apportioned
 21 to the months of the tax year during which it had title
 22 to the property. Where the transferor is the corporation
 23 and the transferee is one not exempt from payment of
 24 ad valorem property taxes, the amount of such taxes
 25 would become due and payable subsequent to the date
 26 title is transferred to the transferee but for the owner
 27 of record on the assessment day being a tax exempt
 28 entity, shall nevertheless be determined by extension of
 29 the applicable levy rates and be extended prorated
 30 between the transferor and transferee based upon the
 31 number of months during the tax year for which the
 32 taxes are levied which each respectively have title to the
 33 property, and the transferee shall be liable for payment
 34 of ad valorem property taxes prorated to the period of
 35 time after it acquired title to the property, but the
 36 transferor shall not.

CHAPTER 11. TAXATION.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-3. Definitions.

1 (a) *General.* — When used in this article, or 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
 9 activity taxable under article twelve-a or thirteen (or
 10 both) of this chapter, which is engaged in by any person
 11 in this state: *Provided,* That on and after the first day
 12 of July, one thousand nine hundred eighty-seven, the
 13 phrase “taxes imposed by article twelve-a or thirteen,
 14 (or both) of this chapter” shall mean “taxes imposed by
 15 article thirteen, thirteen-a, thirteen-b, twenty-one,

16 twenty-three and twenty-four of this chapter (or any one
17 or combination of such articles of this chapter).”

18 (2) *Business expansion*. — The term “business expansion”
19 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, and all site
29 preparation and start-up costs of the taxpayer for the
30 business facility which it capitalizes for federal income
31 tax purposes.

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

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

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

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

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

53 (6) *Controlled group*. — The term “controlled groups”

54 means one or more chains of corporations connected
55 through stock ownership with a common parent corpo-
56 ration if stock possessing at least fifty percent of the
57 voting power of all classes of stock of each of the
58 corporations is owned directly or indirectly by one or
59 more of the corporations; and the common parent owns
60 directly stock possessing at least fifty percent of the
61 voting power of all classes of stock of at least one of the
62 other corporations.

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

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

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

91 (10) *Expanded facility.* — The term “expanded
92 facility” means any business facility (other than a new
93 or replacement business facility) resulting from the

94 acquisition, construction, reconstruction, installation or
95 erection of improvements or additions to existing
96 property if such improvements or additions are pur-
97 chased on or after the first day of March, one thousand
98 nine hundred eighty-five, but only to the extent of the
99 taxpayer's qualified investment in such improvements
100 or additions.

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

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

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

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

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

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

131 (13) *New employee.* — The term “new employee”
132 means a person residing and domiciled in this state,

133 hired by the taxpayer to fill a position for a job in this
134 state, which previously did not exist in the business
135 enterprise in this state, prior to the date on which the
136 taxpayer's qualified investment is placed in service or
137 use in this state. In no case shall the new employees
138 allowed for purposes of this credit exceed the total
139 increase in the taxpayer's employment in this state. A
140 person shall be deemed to be a "new employee" if such
141 person's duties in connection with the operation of the
142 business enterprise are on:

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

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

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

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

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

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

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

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

170 (16) *Original use.* — The term "original use" means

171 the first use to which the property is put, whether or
172 not such use corresponds to the use of the property by
173 the taxpayer.

174 (17) *Partnership and partner.* — The term “partner-
175 ship” includes a syndicate, group, pool, joint venture or
176 other unincorporated organization through or by means
177 of which any business, financial operation or venture is
178 carried on, and which is not a trust or estate, a
179 corporation or a sole proprietorship. The term “partner”
180 includes a member in such a syndicate, group, pool, joint
181 venture or organization.

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

184 (19) *Property purchased or leased for business expan-*
185 *sion.*

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

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

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

205 (3) Tangible personal property placed in service or
206 use by the taxpayer on or after the first day of March,
207 one thousand nine hundred eighty-five, with respect to
208 which depreciation, or amortization in lieu of depreci-
209 ation, is allowable in determining the personal or

210 corporation net income tax liability of the business
211 taxpayer under article twenty-one or twenty-four of this
212 chapter, and which has a useful life at the time such
213 property is placed in service or use in this state, of four
214 or more years.

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

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

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

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

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

247 (3) Motor vehicles licensed by the department of
248 motor vehicles: *Provided*, That such property, if pur-

249 chased or leased on or after the first day of February,
250 one thousand nine hundred eighty-six, shall not be
251 excluded by virtue of this clause (3);

252 (4) Airplanes;

253 (5) Off-premise transportation equipment: *Provided,*
254 That such property, if purchased or leased on or after
255 the first day of February, one thousand nine hundred
256 eighty-six, shall not be excluded by virtue of this clause
257 (5);

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

260 (7) Property which is acquired incident to the pur-
261 chase of the stock or assets of the seller, unless for good
262 cause shown, the tax commissioner consents to waiving
263 this requirement.

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

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

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

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

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

281 (A) The property is not acquired from a person whose
282 relationship to the person acquiring it would result in
283 the disallowance of deductions under Section 267 or 707
284 (b) of the United States Internal Revenue Code of 1954,
285 as amended, and in effect on the first day of January,

286 one thousand nine hundred eighty-five;

287 (B) The property is not acquired by one component
288 member of a controlled group from another component
289 member of the same controlled group. The tax commis-
290 sioner can waive this requirement if the property was
291 acquired from a related party for its then fair market
292 value; and

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

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

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

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

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

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

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

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

322 (D) A member of the same controlled group as the

323 taxpayer.

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

339 (23) *Replacement facility.* — The term "replacement
340 facility" means any property (other than an expanded
341 facility) that replaces or supersedes any other property
342 located within this state that:

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

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

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

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

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

368 (27) *Used property.* — The term “used property”
369 means property acquired after the twenty-eighth day of
370 February, one thousand nine hundred eighty-five, that
371 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 allow-
10 able is determined by multiplying the amount of the
11 taxpayer’s “qualified investment” (determined under
12 section 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 taxable
21 year, beginning with the taxable year in which the
22 taxpayer places the qualified investment in service or
23 use in this state, unless the taxpayer elected to delay the
24 beginning of the ten-year period until the next succeed-
25 ing taxable year. This election shall be made in the
26 annual income tax return filed for the taxable year in
27 which credit is first taken on the qualified investment
28 placed into service or use by the taxpayer. Once made,
29 the election cannot be revoked. The annual credit

30 allowance shall be taken in the manner prescribed in
31 section four of this article.

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

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

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

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

1 (a) *In general.* — A project certified by the tax
2 commissioner shall be eligible for the credit allowable
3 by this article. A project eligible for certification under
4 this 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 develop-
10 ment plan of the taxpayer providing for an integrated
11 project for investment at one or more new or expanded
12 business facilities, a copy of which must be attached to
13 the taxpayer's application for project certification and
14 approved by the tax commissioner, and the qualified
15 investment placed in service or use during the first tax
16 year would not have been made without the expectation
17 of making the qualified investment placed in service or
18 use during the next two succeeding tax years;

19 (2) The qualified investment is made by one or more
20 persons, but some or all of the new jobs created at each
21 new or expanded business facility as a result of the
22 qualified investment are created by one or more other
23 persons: *Provided,* That at least fifty new jobs are
24 created at the new or expanded business facility or
25 facilities in which the qualified investment is made, and
26 such jobs are, upon application, certified by the tax

27 commissioner as new jobs created as a direct result of
28 the qualified investment, and that such qualified
29 investment is made pursuant to a written business
30 facility development plan of the taxpayer providing for
31 an integrated project for investment at one or more new
32 or expanded business facilities, a copy of which must be
33 attached to the taxpayer's application for project
34 certification and approved by the tax commissioner;

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

51 (b) *Application for certification.* — The application for
52 certification of a project under this section shall be filed
53 with and approved by the tax commissioner prior to any
54 credit being claimed or allowed for the project's
55 qualified investment and new jobs created as a direct
56 result of the qualified investment. This application shall
57 be approved in writing by all the participants in the
58 project and shall contain such information as the tax
59 commissioner may require to determine whether the
60 project should be certified as eligible for credit under
61 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
72 percentage (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 fifty 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 credit allowable, as determined
84 under paragraph (1) or (2), above, shall be applied as
85 provided in section five, and shall be claimed in the
86 manner specified in the project's application to the tax
87 commissioner for certification under this section, by one
88 participant in the project or divided among the several
89 participants in the project, and for this purpose the
90 numerator of the payroll factor shall be the total
91 compensation paid in this state during the taxable year
92 by all project participants to all new employees filling
93 the new jobs created and the denominator shall be the
94 total compensation paid in this state during the taxable
95 year by all project participants to their employees. Such
96 allocation, if approved by the tax commissioner, shall
97 constitute a binding election by the participants in the
98 project for the entire term during which the credit
99 attributable to the qualified investment in the certified
100 project may be applied to reduce tax liabilities. The
101 participant or participants claiming the credit for
102 qualified investments in a certified project shall
103 annually file with their income tax returns filed under
104 this chapter:

105 (A) Certification that the participant's qualified
106 investment property continues to be used in the project
107 and if disposed of during the tax year, was not disposed

108 of prior to expiration of its useful life;

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

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

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

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

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

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

135 (2) “Permanent employment” does not include em-
136 ployment that is temporary or seasonal.

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

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

145 (3) *Participant*. — The term “participant” means any
146 person who directly makes a qualified investment in a
147 certified project, or who employs persons filling the jobs
148 certified by the tax commissioner as being new jobs
149 created as a direct result of the project’s qualified
150 investment.

151 (e) *Effective date*.

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

160 (2) The application for project certification for a
161 project having qualified investment of at least fifty
162 million dollars placed in service or use between the first
163 day of March, one thousand nine hundred eighty-five
164 and the first day of February, one thousand nine
165 hundred eighty-six, shall be deemed timely filed under
166 subsection (b) of this section only if such application is
167 filed with the tax commissioner prior to the thirty-first
168 day of December, one thousand nine hundred eighty-six:
169 *Provided*, That the tax commissioner shall not certify
170 such project until the project participants certify that
171 at least fifty new jobs were created by them prior to the
172 first day of January, one thousand nine hundred eighty-
173 eight, as a direct result of their qualified investment in
174 the project, and that such jobs did not previously exist
175 in this state, determined as of the thirty-first day of
176 January, one thousand nine hundred eighty-six; that the
177 inclusion of such property shall not give rise to a refund
178 or credit of any taxes administered under this chapter
179 for taxable years ending before the first day of January,
180 one thousand nine hundred eighty-seven; and that the
181 ten-year credit period for such certified project shall
182 begin with the current taxable year of the project
183 participant or participants who will be claiming the
184 allowable credit.

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

1 (a) *In general.* — The aggregate annual credit allo-
2 wance for the current taxable year is an amount equal
3 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
11 for locating corporate headquarters in this state; or the
12 amount allowed under section seven-a of this article of
13 the taxable year.

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

21 (c) *Business and occupation taxes.*

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

30 (2) If the taxes due under said article thirteen are not
31 solely attributable to and the direct result of the
32 taxpayer's qualified investment in a business or other
33 activity taxable under article thirteen of this chapter,
34 the amount of such taxes, which are so attributable,
35 shall be determined by multiplying the amount of taxes
36 due under said article thirteen, for the taxable year
37 (determined before application of any allowable credits

38 against tax and the annual exemption), by a fraction, the
39 numerator of which is all wages, salaries and other
40 compensation paid during the taxable year to all
41 employees of the taxpayer employed in this state, whose
42 positions are directly attributable to the qualified
43 investment in a business or other activity taxable under
44 article thirteen of this chapter. The denominator of the
45 fraction shall be the wages, salaries and other compen-
46 sation paid during the taxable year to all employees of
47 the taxpayer employed in this state, whose positions are
48 directly attributable to the business or other activity of
49 the taxpayer, that is taxable under article thirteen of
50 this chapter.

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

63 (d) *Carrier income taxes.*

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

70 (2) If the taxes due under said article twelve-a are not
71 solely attributable to and the direct result of the
72 taxpayer's qualified investment in a business or other
73 activity taxable under article twelve-a of this chapter,
74 the amount of such taxes, which are so attributable,
75 shall be determined by multiplying the amount of taxes
76 due under said article twelve-a for the taxable year, by
77 a fraction, the numerator of which is all wages, salaries

78 and other compensation paid during the taxable year to
79 all employees of the taxpayer employed in this state,
80 whose positions are directly attributable to the qualified
81 investment in a business or other activity taxable under
82 article twelve-a of this chapter. The denominator of the
83 fraction shall be the wages, salaries and other compen-
84 sation paid during the taxable year to all employees of
85 the taxpayer, employed in this state, whose positions are
86 directly attributable to the business or other activity of
87 the taxpayer that is taxable under article twelve-a of
88 this chapter.

89 (e) *Severance taxes.*

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

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

119 taxable year to all employees of the taxpayer employed
120 in this state, whose positions are directly attributable to
121 the business or other activity of the taxpayer that is
122 taxable under article thirteen-a of this chapter.

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

134 (f) *Telecommunications taxes.*

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

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

159 employed in this state whose positions are directly
160 attributable to the qualified investment in a business or
161 other activity taxable under article thirteen-b of this
162 chapter. The denominator of the fraction shall be the
163 wages, salaries and other compensation paid during the
164 taxable year to all employees of the taxpayer employed
165 in this state whose positions are directly attributable to
166 the business or other activity of the taxpayer that is
167 taxable under article thirteen-b of this chapter.

168 (g) *Business franchise tax.*

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

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

200 state, whose positions are directly attributable to the
201 business or other activity of the taxpayer that is taxable
202 under article twenty-three of this chapter.

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

214 (h) *Corporation net income taxes.*

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

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

237 (3) Any credits allowable under article twenty-four of
238 this chapter shall be applied against and reduce only the
239 amount of article twenty-four taxes not apportioned to

240 the qualified investment under this article: *Provided,*
241 That any excess credits may be applied against the
242 amount of article twenty-four taxes apportioned to the
243 qualified investment under this article that is not offset
244 by the amount of annual credit against such taxes
245 allowed under this article for the taxable year, unless
246 their application is otherwise prohibited by this chapter.

247 (i) *Personal income taxes.*

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

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

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

280 are directly attributable to the qualified investment.
281 The denominator of the fraction shall be the wages,
282 salaries and other compensation paid during the taxable
283 year to all employees of the taxpayer.

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

287 (j) *Sales and use taxes.*

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

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

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

313 (A) Eighty percent of the ad valorem property taxes
314 imposed by levying bodies pursuant to article eight, of
315 this chapter, for the taxable year (including payments
316 in lieu of such taxes), on property of the taxpayer that
317 is directly attributable to the qualified investment
318 (including property having a useful life of less than four

319 years) of the taxpayer, in the new or expanded business
320 facility of the taxpayer resulting in new jobs; plus

321 (B) Eighty percent of the taxes imposed by article
322 five, chapter twenty-one-a of this code for the taxable
323 year attributable to the compensation of new employees
324 filling the new jobs that are directly attributable to the
325 qualified investment; plus.

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

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

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

353 (m) *Effective date.*

354 (1) This section, as amended, (in the year one thou-
355 sand nine hundred eighty-six) shall be effective upon
356 passage. It shall be retroactive, and shall be in lieu of
357 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 (b) *Applicable percentage.* — For the purpose of
 6 subsection (a), the applicable new jobs percentage shall
 7 be determined under the following table:

8	If number of	The applicable
9	new jobs is:	percentage is:
10	1,000	90%
11	760	80%
12	520	70%
13	280	60%
14	50	50%

15 (c) *When a job is attributable.* — An employee's
 16 position is directly attributable to the qualified invest-
 17 ment if:

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

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

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

25 (d) *Certification of new jobs.* — With the annual
 26 return for the taxes imposed by article twelve-a or
 27 thirteen of this chapter, filed for the taxable year in
 28 which the qualified investment is first placed in service
 29 or use in this state, the taxpayer shall estimate and

30 certify the number of new jobs reasonably projected to
31 be created by it in this state within the period pres-
32 cribed in subsection (f), that are, or will be, directly
33 attributable to the qualified investment of the taxpayer:
34 *Provided*, That on and after the first day of July, one
35 thousand nine hundred eighty-seven, the phrase “taxes
36 imposed by article twelve-a or thirteen (or both) of this
37 chapter” shall mean “taxes imposed by articles thirteen,
38 thirteen-a, thirteen-b twenty-one, twenty-three and
39 twenty-four of this chapter (or any one or combination
40 of such articles of this chapter).”

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

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

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

66 (2) If the actual number of jobs created would result
67 in a lower new jobs percentage, the credit previously
68 allowed under this article shall be redetermined and
69 amended returns filed for the first and second taxable

70 years. In applying the amount of redetermined credit
71 allowable for the two preceding taxable years, the
72 redetermined credit shall first be applied to the extent
73 it was originally applied in such prior two years to
74 personal income taxes, then to corporation net income
75 taxes, then to business franchise taxes, then to telecom-
76 munications taxes, then to severance taxes, then to
77 carrier income taxes and lastly to business and occupa-
78 tion taxes. Any additional taxes due under this chapter
79 shall be remitted with the amended returns filed with
80 the tax commissioner, along with interest, as provided
81 in section seventeen, article ten of this chapter, and a
82 ten percent penalty, which may be waived by the tax
83 commissioner if the taxpayer shows that the over-
84 claimed amount of the new jobs percentage was due to
85 reasonable cause and not due to willful neglect.

§11-13C-7a. Small business credit.

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

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

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

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

20 (2) *Consumer price index for any calendar year*. —
21 For purposes of paragraph (1), the consumer price index
22 for any calendar year is the average of the Federal

23 Consumer Price Index as of the close of the twelve
24 month period ending on the thirty-first day of August
25 of such calendar year.

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

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

34 (b) *Amount of credit allowed.*

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

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

56 (3) *Application of credit.* — The annual credit allow-
57 ance must be taken beginning with the taxable year in
58 which the taxpayer places the qualified investment into
59 service or use in this state, unless the taxpayer elects
60 to delay the beginning of the ten year credit period until
61 the next succeeding taxable year. This election shall be

62 made in the annual income tax return filed under this
63 chapter by the taxpayer for the taxable year in which
64 the qualified investment is placed in service or use. Once
65 made, this election cannot be revoked. The annual credit
66 allowance shall be taken and applied in the manner
67 prescribed in section five.

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

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

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

89 (B) Worked for the taxpayer during the six month
90 period ending on the date taxpayer’s qualified invest-
91 ment is placed in service or use and is rehired by the
92 taxpayer during the six month period beginning on the
93 date taxpayer’s qualified investment is placed in service
94 or use.

95 (2) *When a job is attributable.*— An employee’s
96 position is directly attributable to the qualified invest-
97 ment if:

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

100 (B) The position did not exist prior to the construc-

101 tion, renovation, expansion or acquisition of the business
102 facility and the making of the qualified investment; and

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

105 ^{de}(D) *New jobs percentage*.—The annual new jobs
106 percentage is based on the number of new jobs created
107 in this state by the taxpayer that is directly attributable
108 to taxpayer's qualified investment.

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

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

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

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

138 (2) the amount of the credit allowance for that year;

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Honorable J. Hogg
3/27/5.

139 (3) if the business is a partnership or electing small
140 business corporation, the amount of credit allocated to
141 the partners or shareholders, as the case may be;

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

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

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

159 (g) *Regulations.* — The tax commissioner shall pres-
160 scribe such regulations as he may deem necessary in
161 order to determine the amount of credit allowed under
162 this section to a taxpayer; to verify taxpayer's continued
163 entitlement to claim such credit; and to verify proper
164 application of the credit allowed. The tax commissioner
165 may, by regulation, require a taxpayer intending to
166 claim credit under this section to file with the tax
167 commissioner a notice of intent to claim this credit,
168 before the taxpayer begins reducing his monthly or
169 quarterly installment payments of estimate tax for the
170 credit provided in this section.

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

**ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZA-
TION AND FOR RESEARCH AND DEVELOP-
MENT PROJECTS.**

§11-13D-3a. Application of credit after June 30, 1987.

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

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

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

ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL LOADING FACILITIES.**§11-13E-3A. Application of credit after June 30, 1987.**

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

14 d, or both, of this chapter.

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

Gene O. Sullivan
.....
Chairman Senate Committee

Lyle Satter
.....
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Sodd C. Willis
.....
Clerk of the Senate

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

Sam Tomblin
.....
President of the Senate

John P. ...
.....
Speaker of the House of Delegates

The within *appeared* this the *1st*
day of *April* 1987.

Archa Hancock Jr.
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/87

Time 2:33 p.m.

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