WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

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ENROLLED

HOUSE BILL No. 4492

(By Delegates Sloanigan and Bailey)

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Passed March 7, 1992

In Effect From Passage
AN ACT to amend and reenact section three-d, article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, reducing to ten million dollars the amount of qualified investment in a new industrial facility producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel to be eligible for credits against business franchise and corporation net income taxes.

Be it enacted by the Legislature of West Virginia:

That section three-d, article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, FOR RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION SERVICES FACILITIES, AND INDUSTRIAL FACILITIES PRODUCING COAL-BASED LIQUIDS USED TO PRODUCE SYNTHETIC FUELS.

§11-13D-3d. Amount of credit allowed and application of credit for qualified investment in a new industrial facility producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel.

1 (a) Credit allowed. — There shall be allowed to eligible
taxpayers which have made qualified investment of at
least ten million dollars in a new industrial facility for
producing coal-based liquids used to produce synthetic
motor fuel or synthetic special fuel a credit against the
taxes imposed by articles twenty-three and twenty-four
of this chapter for qualified investment in a new
industrial facility for producing coal-based liquids used
to produce synthetic motor fuel or synthetic special fuel.
The amount of credit shall be determined as hereinafter
provided in this section. Taxpayers who have not placed
at least ten million dollars of qualified investment in
service or use over a period of one year or less in a new
industrial facility used to produce synthetic motor fuel
or synthetic special fuel shall not be entitled to credit
under this section.

(b) Credit amount for qualified investment purchased
and placed in service or use in a new industrial facility
for producing coal-based liquids used to produce synthetic
motor fuel or synthetic special fuel, after the thirtieth day
of June, one thousand nine hundred ninety-one. — For
property purchased or leased by an eligible taxpayer
and placed in service or use after the thirtieth day of
June, one thousand nine hundred ninety-one, as part of
a new industrial facility for producing coal-based
liquids used to produce synthetic motor fuel or synthetic
special fuel the amount of allowable credit shall be equal
to one hundred percent of the qualified investment (as
determined under section four of this article), and shall
reduce that portion of the taxpayer's business franchise
tax under article twenty-three of this chapter, which is
attributable to and the direct result of the taxpayer's
qualified investment, and that portion of the taxpayer's
corporation net income tax under article twenty-four of
this chapter, which is attributable to and the direct
result of the taxpayer's qualified investment; subject to
the following conditions and limitations:

(1) The total amount of credit allowable to all persons
claiming credit under this section shall not exceed ten
million dollars during any fiscal year of this state. If and
to the extent credit is claimed under this section in
excess of ten million dollars in any fiscal year of this
state the amount in excess of ten million dollars is lost.
In determining which taxpayer or taxpayers loses credit
under this subdivision (1), the loss of credit shall apply
first to qualified investment property most recently
placed in service or use, going backwards in time, until
the tax commissioner determines that the total amount
of credit allowed under this section is not in excess of
ten million dollars.

(2) The qualified investment must result in the
creation of at least ten new jobs.

(3) If, during any taxable year of the ten year tax
credit allowance period, the average number of em-
ployees of the taxpayer, for the then current taxable
year, employed in positions created because of and
directly attributable to the qualified investment prop-
erty is less than ten, the credit allowance for that
taxable year is forfeited.

(4) Tax year time limitations for application of credit;
credit forfeiture.

(A) The amount of this credit allowable shall be
applied over a time period of up to ten tax years.

(B) This credit shall first be applied against tax
liabilities in the manner specified in subdivision (5) of
this subsection (b), beginning with the tax year during
which the qualified investment was first placed in
service or use in this state by the eligible taxpayer.

(C) Any amount of this credit remaining after
application of this credit against tax as specified in
paragraph (A) of subdivision (5) shall then be applied
against the tax liabilities in the manner specified in
paragraph (B), subdivision (5) of this subsection (b) for
the tax year immediately succeeding the tax year
during which the qualified investment was first placed
in service or use in this state and for each succeeding
tax year thereafter up through the ninth tax year
subsequent to the first tax year in which the qualified
investment property was first placed in service or use.

(D) Any amount of this credit remaining after
application of this credit against tax as specified in
(5) Tax liability percentage offset limitations.

(A) This credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel shall first be applied to reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year by an amount such that this credit, in combined application with all other applicable credits allowable under articles thirteen-c, thirteen-d and thirteen-e of this chapter and under chapter five-e of this code and all other tax credits provided in this code, shall not reduce the annual business franchise tax liability for such tax year below fifty percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(B) After application of this credit against business franchise tax as provided in paragraph (A) of this subdivision (5), the remaining credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (if any) shall then be applied to reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit in combined application with all other applicable credits allowable under articles thirteen-c, thirteen-d, thirteen-f and thirteen-g of this chapter and under sections ten, eleven, eleven-a, twelve, twenty-two and twenty-three-a, article twenty-four of this chapter and under chapters five-e and eighteen-b of this code and all other tax credits as provided in this code, shall not reduce the annual corporation net income tax liability for such tax year below fifty percent of the
amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(C) After application of this credit against business franchise tax under paragraph (A) of this subdivision (5), and then against corporation net income tax under paragraph (B) of this subdivision (5), the remaining credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (if any) shall then be applied to further reduce the annual West Virginia business franchise tax liability imposed under article twenty-three of this chapter for the tax year by an amount such that this credit shall not reduce the annual business franchise tax liability for such tax year below ten percent of the amount of the annual tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in section seventeen, article twenty-three of this chapter.

(D) After application of this credit against business franchise tax under paragraph (A) of this subdivision (5) and then against corporation net income tax under paragraph (B) of this subdivision (5), and then against business franchise tax under paragraph (C) of this subdivision (5), the remaining credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel (if any) shall then be applied to further reduce the annual West Virginia corporation net income tax liability imposed under article twenty-four of this chapter for the tax year by an amount such that this credit shall not reduce the annual corporation net income tax liability which would otherwise be imposed for such tax year in the absence of this credit and all other credits against such tax, except the credits set forth in sections nine and nine-a, article twenty-four of this chapter.

(c) Application for credit required.
(1) **Application required.** — No credit shall be allowed or applied under this section for any investment in any new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel until the person asserting a claim for the allowance of credit under this article makes written application to the tax commissioner for allowance of credit as provided in this section and receives written certification of its claim from the tax commissioner. An application for credit shall be filed, in such form as the tax commissioner shall prescribe, prior to the date when qualified investment property is first placed in service or use, and all information required by such form shall be provided. No credit shall be taken by a taxpayer applicant or prospective applicant pursuant to this section until certification has been issued by the tax commissioner.

(2) **Failure to file.** — The failure to timely apply for certification under this subsection (c) shall result in forfeiture of the credit otherwise allowable under this section.

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

(1) “Synthetic motor fuel” means any product suitable for use in an internal combustion engine except special fuel as defined in this section, containing at least ten percent coal-based liquids blended to meet specifications.

(2) “Synthetic special fuel” means special fuel containing at least ten percent coal-based liquids blended to meet specifications.

(e) **Report by the governor’s office of community and industrial development.** — The governor’s office of community and industrial development shall produce a report to the Legislature to be presented during the regular legislative session of one thousand nine hundred ninety-three and annually thereafter. Such report shall state the identity of taxpayers who have received this credit and shall contain an analysis of the expansion and growth of facilities in this state producing coal-based liquids used to produce synthetic fuels, the expansion of commerce resulting from the creation of this credit, and
the number of jobs created as a result of this credit. The report of the governor’s office of community and industrial development shall not directly or indirectly reveal the amount of credit available to any particular taxpayer or taxpayer return information other than the names and addresses of taxpayers.
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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 31st day of March, 1992.

Governor