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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

— ● —

# ENROLLED

HOUSE BILL No. 4692

(By Delegates Klamigan and Bailey)

— ● —

Passed March 7, 1992

In Effect From Passage

**ENROLLED**  
**H. B. 4692**

(By DELEGATES FLANIGAN AND BAILEY)

[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

2 taxpayers which have made qualified investment of at  
3 least ten million dollars in a new industrial facility for  
4 producing coal-based liquids used to produce synthetic  
5 motor fuel or synthetic special fuel a credit against the  
6 taxes imposed by articles twenty-three and twenty-four  
7 of this chapter for qualified investment in a new  
8 industrial facility for producing coal-based liquids used  
9 to produce synthetic motor fuel or synthetic special fuel.  
10 The amount of credit shall be determined as hereinafter  
11 provided in this section. Taxpayers who have not placed  
12 at least ten million dollars of qualified investment in  
13 service or use over a period of one year or less in a new  
14 industrial facility used to produce synthetic motor fuel  
15 or synthetic special fuel shall not be entitled to credit  
16 under this section.

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

38 (1) The total amount of credit allowable to all persons  
39 claiming credit under this section shall not exceed ten  
40 million dollars during any fiscal year of this state. If and  
41 to the extent credit is claimed under this section in  
42 excess of ten million dollars in any fiscal year of this

43 state the amount in excess of ten million dollars is lost.  
44 In determining which taxpayer or taxpayers loses credit  
45 under this subdivision (1), the loss of credit shall apply  
46 first to qualified investment property most recently  
47 placed in service or use, going backwards in time, until  
48 the tax commissioner determines that the total amount  
49 of credit allowed under this section is not in excess of  
50 ten million dollars.

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

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

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

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

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

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

80 (D) Any amount of this credit remaining after  
81 application of this credit against tax as specified in

82 subdivision (5) of this subsection (b) shall be forfeited  
83 and shall not carry forward to any subsequent tax year.

84 (E) No carryback of credit to a prior tax year shall  
85 be allowed.

86 (5) Tax liability percentage offset limitations.

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

104 (B) After application of this credit against business  
105 franchise tax as provided in paragraph (A) of this  
106 subdivision (5), the remaining credit for qualified  
107 investment in a new industrial facility for producing  
108 coal-based liquids used to produce synthetic motor fuel  
109 or synthetic special fuel (if any) shall then be applied  
110 to reduce the annual West Virginia corporation net  
111 income tax liability imposed under article twenty-four  
112 of this chapter for the tax year by an amount such that  
113 this credit in combined application with all other  
114 applicable credits allowable under articles thirteen-c,  
115 thirteen-d, thirteen-f and thirteen-g of this chapter and  
116 under sections ten, eleven, eleven-a, twelve, twenty-two  
117 and twenty-three-a, article twenty-four of this chapter  
118 and under chapters five-e and eighteen-b of this code  
119 and all other tax credits as provided in this code, shall  
120 not reduce the annual corporation net income tax  
121 liability for such tax year below fifty percent of the

122 amount of the annual tax liability which would other-  
123 wise be imposed for such tax year in the absence of this  
124 credit and all other credits against tax, except the  
125 credits set forth in sections nine and nine-a, article  
126 twenty-four of this chapter.

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

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

162 (c) *Application for credit required.*

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

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

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

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

189 (2) “Synthetic special fuel” means special fuel contain-  
190 ing at least ten percent coal-based liquids blended to  
191 meet specifications.

192 (e) *Report by the governor’s office of community and*  
193 *industrial development.* — The governor’s office of  
194 community and industrial development shall produce a  
195 report to the Legislature to be presented during the  
196 regular legislative session of one thousand nine hundred  
197 ninety-three and annually thereafter. Such report shall  
198 state the identity of taxpayers who have received this  
199 credit and shall contain an analysis of the expansion and  
200 growth of facilities in this state producing coal-based  
201 liquids used to produce synthetic fuels, the expansion of  
202 commerce resulting from the creation of this credit, and

203 the number of jobs created as a result of this credit. The  
204 report of the governor's office of community and  
205 industrial development shall not directly or indirectly  
206 reveal the amount of credit available to any particular  
207 taxpayer or taxpayer return information other than the  
208 names and addresses of taxpayers.



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

*Samuel Secc*  
-----  
Chairman Senate Committee

*Ernest C. More*  
-----  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Samuel E. Adams*  
-----  
Clerk of the Senate

*Donald G. Kopp*  
-----  
Clerk of the House of Delegates

*Just Brudette*  
-----  
President of the Senate

*Robert Cole*  
-----  
Speaker of the House of Delegates

The within is approved \_\_\_\_\_ this the 31<sup>st</sup> day of March, 1992.

*Yaston Caperton*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/92

Time 3:45pm