

HB # 4023

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For
HOUSE BILL No. *4023*

(By Delegate *Mr. Spieker, Mr. Chambers*
and Delegate Burk)
[By Request of the Executive]

Passed *March 12,* 1994

In Effect *From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 4023

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE BURK)
[By Request of the Executive]

[Passed March 12, 1994; in effect from passage.]

AN ACT to amend and reenact section fifteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eight-a, generally relating to tax credits; relating to the continuation of the suspension of certification of business investment and jobs expansion credit; providing for recapture of credits.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eight-a, all to read as follows:

**ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION
CREDIT.**

§11-13C-8a. Recapture of credit; recapture tax imposed.

1 (a) *When recapture tax applies.—*

2 (1) Any person who places business investment and
3 jobs expansion tax credit property in service or use after
4 the twelfth day of March, one thousand nine hundred

5 ninety-four, and who fails to use such qualified invest-
6 ment property for at least the period of its useful life
7 (determined as of the time the property was placed in
8 service or use), or the period of time over which tax
9 credits allowed under this article with respect to such
10 property are applied under this article, which ever
11 period is less, and who reduces the number of its
12 employees filling new jobs in its business in this state,
13 which were created and are directly attributable to the
14 qualified investment property, after the third taxable
15 year in which the qualified investment property was
16 placed in service or use, or fails to continue to employ
17 individuals in all the new jobs created as a direct result
18 of the qualified investment property and used to qualify
19 for the credit allowed by this article, prior to the end
20 of the tenth taxable year after the qualified investment
21 property was placed in service or use, such person shall
22 pay the recapture tax imposed by subsection (b) of this
23 section.

24 (2) This section shall not apply when section nine of
25 this article applies. However, the successor, or the
26 successors, and the person, or persons, who previously
27 claimed credit under this article with respect to such
28 qualified investment property and the new jobs attrib-
29 utable thereto, shall be jointly and severally liable for
30 payment of any recapture tax subsequently imposed
31 under this section with respect to such qualified
32 investment property and new jobs.

33 (b) *Recapture tax imposed.* — The recapture tax
34 imposed by this subsection shall be the amount deter-
35 mined as follows:

36 (1) *Full Recapture* — If taxpayer prematurely re-
37 moves qualified investment property placed in service
38 after the twelfth day of March, one thousand nine
39 hundred ninety-four, (when considered as a class) from
40 economic service in such taxpayer's qualified investment
41 business activity in this state, and the number of
42 employees filling the new jobs created by such person
43 falls below fifty, taxpayer shall recapture the amount of
44 credit claimed under section five of this article for the
45 taxable year, and all preceding taxable years, on

46 qualified investment property which has been prema-
47 turely removed from service. The amount of tax due
48 under this subdivision of subsection (b) shall be an
49 amount equal to the amount of credit that is recaptured
50 under this subdivision (1).

51 (2) *Partial Recapture* — If taxpayer prematurely
52 removes qualified investment property placed in service
53 after the twelfth day of March, one thousand nine
54 hundred ninety-four, (when considered as a class) from
55 economic service in such taxpayer's qualified investment
56 business activity in this state, and the number of
57 employees filling the new jobs created by such person
58 remains fifty or more, but falls below the number
59 necessary to sustain continued application of credit
60 determined by use of the new job percentage upon which
61 such taxpayer's one-tenth annual credit allowance was
62 determined under section four, or seven-a of this article,
63 taxpayer shall recapture an amount of credit equal to
64 the difference between (A) the amount of credit claimed
65 under section five of this article for the taxable year,
66 and all preceding taxable years, and (B) the amount of
67 credit that would have been claimed in such years if the
68 amount of credit allowable under section four, or seven-
69 a of this article had been determined based on the
70 qualified investment property which remains in service
71 using the average number of new jobs filled by em-
72 ployees in the taxable year for which recapture occurs.
73 The amount of tax due under this subdivision of
74 subsection (b) shall be an amount equal to the amount
75 of credit that is recaptured under this subdivision (2).

76 (3) *Additional Recapture* — If after a partial recap-
77 ture under subdivision (2) of this subsection, such
78 taxpayer further reduces the number of employees
79 filling new jobs below fifty, taxpayer shall recapture an
80 additional amount determined as provided under
81 subdivision (1) of this subsection. The amount of tax due
82 under this subdivision of subsection (b) shall be an
83 amount equal to the amount of credit that is recaptured
84 under this subdivision (3).

85 (c) *Recapture of credit allowed for projects.* — The tax
86 commissioner shall file in the West Virginia register by

87 the first day of July, one thousand nine hundred ninety-
88 four, an emergency legislative regulation explaining
89 how the rules of this section shall be applied in the case
90 of projects certified under section four-b of this article.

91 (d) *Payment of recapture tax.* — The amount of tax
92 recaptured under this section shall be due and payable
93 on the day such person's annual return is due for the
94 taxable year in which this section applies, under article
95 twenty-one, or twenty-four, of this chapter. When the
96 employer is a partnership, or s corporation, for federal
97 income tax purposes, the recapture tax shall be paid by
98 those persons who are partners in such partnership, or
99 shareholders in such s corporation, in the taxable year
100 in which recapture occurs under this section.

101 (e) *Regulations.* — The tax commissioner shall promul-
102 gate such legislative regulations as may be necessary to
103 carry out the purpose of this section and to implement
104 the intent of the Legislature. Such regulations shall be
105 promulgated in accordance with the provisions of article
106 three, chapter twenty-nine-a of this code.

**§11-13C-15. Continuing suspension of new credit entitle-
ments, exceptions, effective date.**

1 (a) Notwithstanding any other provision of this article
2 to the contrary, no entitlement to the business invest-
3 ment and jobs expansion tax credit under this article
4 shall result from, and no credit shall be available to any
5 taxpayer for, investment placed in service or use after
6 the tenth day of April, one thousand nine hundred
7 ninety-three.

8 (b) The suspension of new entitlements to credits set
9 forth in subsection (a) of this section shall not apply to
10 companies, entities or taxpayers engaged in the follow-
11 ing industries or business activities:

12 (1) Manufacturing, including, but not limited to,
13 chemical processing and chemical manufacturing,
14 manufacture of wood products and forestry products,
15 manufacture of aluminum, manufacture of paper, paper
16 processing, recyclable paper processing, food process-
17 ing, manufacture of aircraft or aircraft parts, manufac-

18 ture of automobiles or automobile parts, and all other
19 manufacturing activities, but not timbering or timber
20 severance or timber hauling, or mineral severance,
21 hauling, processing or preparation, or coal severance,
22 hauling, processing or preparation;

23 (2) Information processing, including, but not limited
24 to, telemarketing, information processing, systems
25 engineering, backoffice operations and software
26 development;

27 (3) The activity of warehousing, including, but not
28 limited to, commercial warehousing and the operation
29 of regional distribution centers by manufacturers,
30 wholesalers or retailers;

31 (4) The activity of goods distribution;

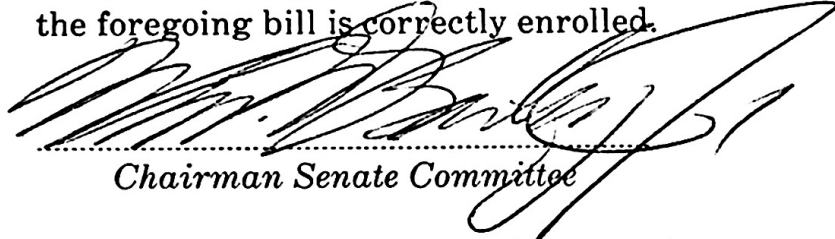
32 (5) Destination-oriented recreation and tourism.

33 (c) Notwithstanding the fact that a company, entity or
34 taxpayer is engaged in an industry or business activity
35 enumerated in subsection (b) of this section, such
36 company, entity or taxpayer must qualify for the
37 business investment and jobs expansion tax credit by
38 fulfilling the qualified investment, jobs creation and
39 other credit entitlement requirements of the business
40 investment and jobs expansion tax credit act in order
41 to obtain entitlement to any credit under this article.
42 Failure to fulfill the statutory requirements of the
43 business investment and jobs expansion tax credit act
44 will result in a partial or complete loss of the tax credit.

45 (d) *Transition rule.* — Notwithstanding any provision
46 herein contained to the contrary, this section shall not
47 apply to investments for which applications for credit
48 or applications for projected certification were filed
49 prior to the tenth day of April, one thousand nine
50 hundred ninety-three.

Enr. Com. Sub. for H. B. 4023] 6

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



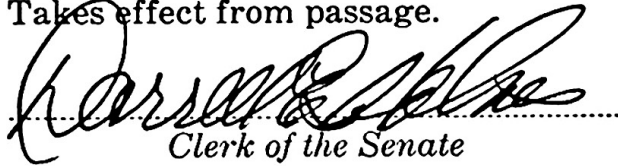
Chairman Senate Committee



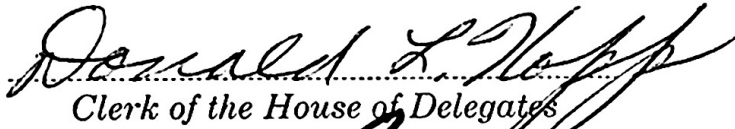
Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect from passage.



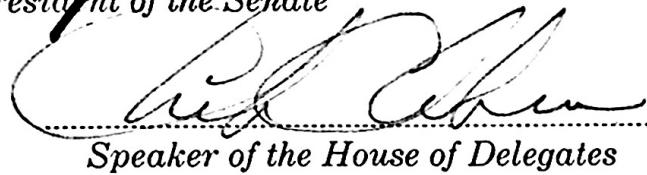
Clerk of the Senate



Donald L. Kopp
Clerk of the House of Delegates

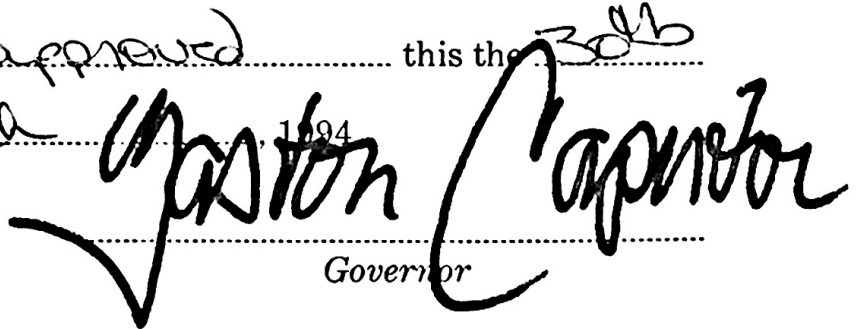


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th day of March 1994



Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date

3/25/94

Time

9:55 am