

WEST VIRGINIA LEGISLATURE

EXTRAORDINARY SESSION, 1996



ENROLLED

Com. Sub. For

HOUSE BILL No. 101

(By Delegate

*Mr. Speaker, Mr. Chambers,
and Delegate Ashley)*
[By Request of the Executive]

Passed

July 16, 1996

In Effect

From

Passage

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COMMITTEE SUBSTITUTE
FOR

H. B. 101

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

[Passed July 16, 1996; in effect from passage.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine-hundred thirty-one, as amended, by adding thereto two new articles, designated articles six-e and thirteen-l, generally relating to taxation and economic development; setting forth short titles; defining terms, specifying the valuation of specialized manufacturing production property for purposes of the ad valorem property tax; specifying initial determination of whether a given item of property is specialized manufacturing production property to be made by county assessor of the county; setting forth methods and procedures for protest and appeal and time limitations therefor; setting forth effective date; establishing the natural gas industry jobs retention tax credit; specifying the amount of credit allowed; application of annual tax credit; annual computation of the number of jobs held by qualified employees; methods for determining jobs in place during the tax year; treatment of any decreases in the number of West Virginia employees during the taxable year; the tax commissioner's authority to prescribe alternative methods for determining the number of jobs held by qualified employees during the taxable year; availability of tax credit to successors of eligible taxpayers; allocation of credit between predecessor eligible taxpayers and successor taxpayers in the year of transfer or succession; methods for computation of jobs held by qualified employees of successors to qualified taxpayers; requirements for recapture of credit; interest penalties and additions to tax; specifying the statute of limitations; and setting forth effective date.

Be it enacted by the Legislature of West Virginia;

That chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new articles, designated articles six-e and thirteen-l, all to read as follows:

ARTICLE 6E. SPECIAL METHOD FOR VALUATION OF CERTAIN MANUFACTURING PRODUCTION PROPERTY.

§11-6E-1. Short title.

- 1 This article shall be known and cited as the "Special-
- 2 ized Manufacturing Production Property Valuation Act".

§11-6E-2. Definitions.

- 1 (a) When used in this article, or in the administration
- 2 of this article, terms defined in subsection (b) of this sec-
- 3 tion have the meanings ascribed to them by this section,
- 4 unless a different meaning is clearly required by the con-
- 5 text in which the term is used.

6 (b) Terms Defined.

- 7 (1) "*Die*" means a device for shaping, forming or
- 8 stamping material by pressure or by a blow, or for im-
- 9 pressing a figure or design on material by pressure or by a
- 10 blow, and other devices as set forth in this subdivision.

11 (A) The term "die" means and includes:

- 12 (i) Dies used in compression molding, transfer mold-
- 13 ing, injection molding, blow molding or blowing, vacuum
- 14 forming and extrusion molding;

- 15 (ii) Extrusion dies and drawing dies consisting of a
- 16 block made of metal or other material which is perforated
- 17 by a hole having a particular cross section which imparts a
- 18 shape to plastic, thermoplastic, hot or ductile metal or
- 19 other material that is extruded through the hole by ram-
- 20 ming or pressure, or drawn through the hole;

- 21 (iii) A block made of metal or other material which is
- 22 pressed into a blank of material, often sheet metal, posi-
- 23 tioned between the die and a mold, so that the material is

24 pressed into the mold by the die and caused to assume a
25 desired shape in manufacturing; and

26 (iv) A block or blocks of metal or other material con-
27 structed in halves, which operate in such a way that, when a
28 blank of sheet metal is positioned between the halves of
29 the die and pressed between the halves of the die, a desired
30 shape is imparted to the sheet metal.

31 (B) The term "die" does not include threading dies,
32 screwing dies, chasers, or any die holder or die stock for
33 threading dies, screwing dies or chasers. For purposes of
34 this section, the terms "threading die", "screwing die" or
35 "chaser" mean one or more blocks made of steel, or other
36 material, threaded internally with cutting points, or surfac-
37 es for producing screw threads. Threading dies, screwing
38 dies or chasers can be made in a single block or in seg-
39 ments.

40 (2) "*Directly used in manufacturing*", in relation to
41 specialized manufacturing production property directly
42 used in manufacturing, means directly used in those activi-
43 ties or operations which constitute an integral and essential
44 part of the manufacturing activity, as contrasted with and
45 distinguished from those activities or operations which are
46 simply incidental, convenient or remote to the manufac-
47 turing activity.

48 Those uses of specialized manufacturing production
49 property which constitute direct use in the activity of man-
50 ufacturing include only:

51 (A) Use of the property to cause a direct physical
52 change upon property undergoing manufacturing;

53 (B) In the case of jigs, use of the property to physical-
54 ly control or direct the physical movement or operation of
55 property undergoing manufacturing in conjunction with
56 and during the making of a direct physical change upon
57 that property, or use of a jig in direct physical contact with
58 the property undergoing manufacturing as a checking
59 fixture, to test the property undergoing manufacturing or
60 part for conformity to specifications;

61 (C) In the case of patterns, use of a pattern in each
62 production cycle to make a new mold in the ongoing
63 manufacturing process, where the mold made from the
64 pattern is directly used to cause a direct physical change
65 upon property undergoing manufacturing; and

66 (D) In the case of templates, use of templates by plac-
67 ing them in physical contact with property undergoing
68 manufacturing for the direct marking of, or direct location
69 of, holes, contours, cuts, cutout sections or shapes to be
70 incorporated into the manufactured property.

71 (3) "*Form*" means a mold, as defined in this section,
72 or a frame, shape, body or implement around which or on
73 which a manufactured product is shaped or made, and
74 which is designed to cause the manufactured product to
75 take on a specific particular shape.

76 (4) "*Jig*" means and includes a mechanical device
77 used to accurately guide or locate a tool or other imple-
78 ment that causes a direct physical change in property
79 undergoing manufacturing or used to maintain the correct
80 position between property undergoing manufacturing and
81 a tool or implement. The jig is mainly used for producing
82 interchangeable parts or exact reproductions of the same
83 manufactured item or product. The term "jig" shall not
84 include any conveyor belt, roller conveyor, track convey-
85 or, crane, chain line, chain conveyor or other apparatus
86 which serves merely to move property from one operation
87 or place in the manufacturing process to another opera-
88 tion or place. The term "jig" includes a checking fixture,
89 which is a jig built to test manufactured parts produced
90 from a set of dies or other manufactured parts, for confor-
91 mity to specifications.

92 (5) "*Manufacturer*" means a person engaged in the
93 activity of manufacturing in this state.

94 (6) "*Manufacturing*" means a systematic operation or
95 integrated series of systematic operations engaged in as a
96 business or segment of a business which transforms or
97 converts tangible personal property by physical, chemical
98 or other means into a different form, composition or char-
99 acter from that in which it originally existed. In no case

100 shall the term "manufacturing" include the activities of
101 building construction, construction of other structures or
102 facilities affixed to or on realty, retailing or agriculture,
103 food processing or food manufacturing, the operation of
104 any restaurant or retail food preparation or sales opera-
105 tion, the production of any natural resource, contract min-
106 ing or any other activity of severing, producing, process-
107 ing or extracting any natural resource. Manufacturing
108 production begins with the arrival of raw materials and
109 ends when the property has reached that point where no
110 further chemical, physical or other changes are to be made
111 to the resultant property in the production process.

112 (7) "*Manufacturing service provider*" means a person
113 engaged in a manufacturing activity who does not have
114 legal title to or any economic interest in the tangible per-
115 sonal property transformed or converted by the manufac-
116 turing process, and who engages in the manufacturing
117 activity as a service to another person.

118 (8) "*Mold*" means a form, block, vessel or matrix
119 containing a cavity or cavities into which fluid, molten
120 material, plastic material or malleable material is poured,
121 pressed, rammed or injected to form a manufactured ob-
122 ject conforming to the contours of the mold and having
123 the desired shape, pattern or relief. The term "mold"
124 includes molds and mold cavities used in compression
125 molding, transfer molding, injection molding, blow mold-
126 ing or blowing, and vacuum forming.

127 For purposes of this article, the term "mold" does not
128 include any sand casting flask or other apparatus or
129 equipment used in conjunction with sand casting. Howev-
130 er, patterns used in sand casting may constitute specialized
131 manufacturing production property, as defined in this
132 section.

133 (9) "*Pattern*" means a model for making a mold, as
134 defined in this section, where production of the manufac-
135 tured product by use of the mold entails the destruction of
136 the mold with each production cycle, such as sand casting.
137 The term "pattern" includes a model for making a sand
138 casting mold into which molten metal is poured to form a
139 casting.

140 A pattern qualifies as specialized manufacturing pro-
141 duction property under this article only where the pattern
142 must be repeatedly used in each production cycle to make
143 a new mold in the ongoing manufacturing process, and
144 where the mold made from the pattern is directly used in
145 manufacturing to cause a direct physical change upon
146 property undergoing manufacturing.

147 For purposes of this subdivision, the term "model"
148 means a shape or figure made of wood, metal or other
149 material having the basic shape of the manufactured prod-
150 uct, with such appropriate sprues, runners and other neces-
151 sary additional features as may be needed for efficient
152 casting or production of the manufactured product.

153 (10) "*Person*" means and includes any state, or its
154 political subdivisions or an agency of the state of West
155 Virginia or its political subdivisions, or any individual,
156 firm, partnership, joint venture, joint stock company, the
157 government of the United States or its agencies, any public
158 or private corporation, municipal corporation, cooperative,
159 estate, trust, business trust, receiver, executor, administrator,
160 any other fiduciary, any representative appointed by order
161 of any court or otherwise acting on behalf of others, or
162 any other group or combination acting as a unit.

163 (11) "*Salvage value*" means the lower of fair market
164 salvage value or five percent of the original cost of the
165 property.

166 (12) "*Specialized manufacturing production proper-*
167 *ty*" means molds, jigs, dies, forms, patterns or templates, as
168 defined in this section, directly used in manufacturing.
169 Molds, jigs, dies, forms, patterns and templates directly
170 used in manufacturing may qualify as specialized manu-
171 facturing production property notwithstanding the fact
172 that the molds, jigs, dies, forms, patterns and templates
173 may be owned by a person other than the West Virginia
174 manufacturer or the West Virginia manufacturing service
175 provider. In no case shall specialized manufacturing pro-
176 duction property include any property not actively and
177 directly used by a West Virginia manufacturer or West
178 Virginia manufacturing service provider in the activity of
179 manufacturing.

180 For purposes of this article, specialized manufacturing
181 production property does not include:

182 (A) Research and development equipment used in
183 developing new products or improving present products;

184 (B) Computers and computer software;

185 (C) Layout and design equipment, including comput-
186 ers and computer software;

187 (D) Machinery, tools, parts and materials used to re-
188 pair equipment, including equipment directly used in the
189 manufacturing process;

190 (E) Drawings, blueprints or blueprinting equipment;

191 (F) Tangible personal property used in testing and
192 inspecting products on the production line or elsewhere
193 for quality control purposes: *Provided*, That this exclu-
194 sion shall not apply to tangible personal property which
195 would otherwise meet the definition of a jig;

196 (G) Equipment, and supplies used in packaging or
197 packing manufactured products for sale; and

198 (H) Any sand casting flask or sand casting equipment
199 or other apparatus used in conjunction with sand casting.
200 However, patterns used in sand casting may constitute
201 specialized manufacturing production property.

202 (I) Any equipment or property other than molds, jigs,
203 dies, forms, patterns or templates, as defined in this sec-
204 tion.

205 (13) "*Template*" means an instrument or implement,
206 often in the form of a flat or contoured sheet, plate, or
207 strip of metal, plastic, wood or other material, having
208 markings or lines, perforations, cuts, cutout sections, or
209 one or more edges shaped to conform to a desired shape
210 or any combination of perforations, cuts, cutout sections
211 or shaped edges, to be used as a guide or gauge for mark-
212 ing locations for, or otherwise locating the placement of
213 cuts, cutout sections, holes or a desired shape to be trans-
214 ferred to the property undergoing manufacturing. Only
215 those templates, as defined in this section, which are physi-

216 cally placed upon the property undergoing manufacturing
217 for the direct marking of, or direct location of, holes, con-
218 tours, cuts, cutout sections or shapes to be incorporated
219 into the property qualify as specialized manufacturing
220 production property for purposes of this article.

221 In no case shall templates constitute specialized manu-
222 facturing production property for purposes of this article
223 if the templates are used in:

224 (A) Drafting, drawing or design;

225 (B) Research and development;

226 (C) Layout and design of products or production
227 equipment;

228 (D) Set up, adjustment, ongoing operation or repair
229 of production machinery, tools and parts or other machin-
230 ery, tools and parts;

231 (E) Testing and inspecting products on the produc-
232 tion line or elsewhere for quality control purposes: *Pro-*
233 *vided*, That this exclusion shall not apply to tangible per-
234 sonal property which would otherwise meet the definition
235 of a jig; or

236 (F) Packaging or packing manufactured products for
237 sale.

§11-6E-3. Valuation of specialized manufacturing production property.

1 Notwithstanding any other provision of this code to
2 the contrary, the value of specialized manufacturing pro-
3 duction property, for the purpose of ad valorem property
4 taxation under this chapter and under Article X of the
5 Constitution of this State, shall be its salvage value.

§11-6E-4. Initial determination by county assessor.

1 The assessor of the county in which a specific item of
2 property is located shall determine, in writing, whether that
3 specific item of property is specialized manufacturing
4 production property subject to valuation in accordance
5 with this article. Upon making a determination that a

6 taxpayer has specialized manufacturing production prop-
7 erty, the county assessor shall notify the tax commissioner
8 of that determination, and shall provide such information
9 to the tax commissioner as the tax commissioner may
10 require relating to that determination.

§11-6E-5. Protest and appeal.

1 At any time after the property is returned for taxation
2 but prior to the first day of January of the assessment year,
3 any taxpayer may apply to the county assessor for infor-
4 mation regarding the issue of whether any particular item
5 or items or property constitute specialized production
6 manufacturing property under this article which should be
7 subject to valuation in accordance with this article. If the
8 taxpayer believes that some portion of the taxpayer's
9 property is subject to the provisions of this article, the
10 taxpayer shall file objections in writing with the county
11 assessor. The county assessor shall decide the matter by
12 either sustaining the protest and making proper correc-
13 tions, or by stating, in writing if requested, the reasons for
14 the county assessor's refusal. The county assessor may,
15 and if the taxpayer requests, the county assessor shall,
16 before the first day of January of the assessment year,
17 certify the question to the tax commissioner in a statement
18 sworn to by both parties, or if the parties are unable to
19 agree, in separate sworn statements. The sworn statement
20 or statements shall contain a full description of the proper-
21 ty and any other information which the tax commissioner
22 may require.

23 The tax commissioner shall, as soon as possible on
24 receipt of the question, but in no case later than the
25 twenty-eighth day of February of the assessment year,
26 instruct the county assessor as to how the property shall be
27 treated. The instructions issued and forwarded by mail to
28 the county assessor are binding upon the county assessor,
29 but either the county assessor or the taxpayer may apply
30 to the circuit court of the county for review of the ques-
31 tion of the applicability of this article to the property in
32 the same fashion as is provided for appeals from the coun-
33 ty commission in section twenty-five, article three of this
34 chapter. The tax commissioner shall prescribe forms on

35 which the questions under this section shall be certified
36 and the tax commissioner has the authority to pursue any
37 inquiry and procure any information which may be neces-
38 sary for disposition of the matter.

§11-6E-6. Effective date.

1 This article shall be effective on and after the first day
2 of July, one thousand nine hundred ninety-seven.

**ARTICLE 13L. THE NATURAL GAS INDUSTRY JOBS RETEN-
TION ACT.**

§11-13L-1. Short title.

1 This article shall be known and cited as the "Natural
2 Gas Industry Jobs Retention Act".

§11-13L-2. Definitions.

1 (a) *General*. — When used in this article, or in the
2 administration of this article, terms defined in subsection
3 (b) of this section have the meanings ascribed to them by
4 this section, unless a different meaning is clearly required
5 by the context in which the term is used.

6 (b) *Terms defined*.

7 (1) "*Affiliate*" means and includes all persons, as de-
8 fined in this section, which are affiliates of each other
9 when either directly or indirectly:

10 (A) One person controls or has the power to control
11 the other or

12 (B) A third party or third parties control or have the
13 power to control two persons, the two thus being affiliates.
14 In determining whether concerns are independently
15 owned and operated and whether or not an affiliation
16 exists, consideration shall be given to all appropriate fac-
17 tors, including common ownership, common management
18 and contractual relationships.

19 (2) "*Commissioner or tax commissioner*" means the tax
20 commissioner of the state of West Virginia, or the tax
21 commissioner's delegate.

22 (3) "*Corporation*" means any corporation, joint-stock
23 company or association, and any business conducted by a
24 trustee or trustees wherein interest or ownership is evi-
25 denced by a certificate of interest or ownership or similar
26 written instrument.

27 (4) "*Delegate*", when used in reference to the tax
28 commissioner, means any officer or employee of the tax
29 division of the department of tax and revenue duly autho-
30 rized by the tax commissioner directly, or indirectly by
31 one or more redelegations of authority, to perform the
32 functions mentioned or described in this article.

33 (5) "*Eligible taxpayer*" means any person subject to
34 the tax prescribed by section two-e, article thirteen of this
35 chapter that had at least one qualified employee on the
36 first day of January, one thousand nine hundred
37 ninety-six. "Eligible taxpayer" also means and includes
38 those members of an affiliated group of taxpayers en-
39 gaged in a unitary business, in which one or more mem-
40 bers of the affiliated group is a person subject to the tax
41 prescribed by section two-e, article thirteen of this chapter
42 that had at least one qualified employee on the first day of
43 January, one thousand nine hundred ninety-six. Affiliates
44 not engaged in the unitary business with an affiliated
45 group member subject to the tax prescribed by section
46 two-e, article thirteen of this chapter that had at least one
47 qualified employee on the first day of January, one thou-
48 sand nine hundred ninety-six do not qualify as eligible
49 taxpayers.

50 (6) "*Full-time employee*" means an employee who
51 works, is on a work site, on paid vacation leave or other
52 paid leave, in the aggregate, at least one thousand five
53 hundred hours per year.

54 (7) "*Natural person*" or "*individual*" means a human
55 being.

56 (8) "*New job*" means a full-time employment position
57 held by a West Virginia resident domiciled in this state
58 which did not exist in this state with any employer prior to
59 the taxpayer's current taxable year.

60 (9) "*Partnership*" and "*partner*" means and includes a
61 syndicate, group, pool, joint venture or other unincorpo-
62 rated organization through or by means of which any
63 business, financial operation or venture is carried on, and
64 which is not a trust or estate, a corporation or a sole pro-
65 prietorship. The term "*partner*" includes a member in a
66 syndicate, group, pool, joint venture or organization.

67 (10) "*Person*" means and includes any natural person,
68 corporation, limited liability company or partnership.

69 (11) "*Qualified employee*" means a West Virginia
70 resident domiciled in this state who is a full-time employee
71 of a taxpayer.

72 (12) "*Related entity*", "*related person*", "*entity related*
73 *to*" or "*person related to*" means:

74 (A) An individual, corporation, partnership, affiliate,
75 association or trust or any combination or group thereof
76 controlled by the taxpayer;

77 (B) An individual, corporation, partnership, affiliate,
78 association or trust or any combination or group thereof
79 that is in control of the taxpayer;

80 (C) An individual, corporation, partnership, affiliate,
81 association or trust or any combination or group thereof
82 controlled by an individual, corporation, partnership, affil-
83 iate, association or trust or any combination or group
84 thereof that is in control of the taxpayer; or

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

87 For purposes of this article, "control," with respect to a
88 corporation, means ownership, directly or indirectly, of
89 stock possessing fifty percent or more of the total com-
90 bined voting power of all classes of the stock of the corpo-
91 ration which entitles its owner to vote. "Control," with
92 respect to a trust, means ownership, directly or indirectly,
93 of fifty percent or more of the beneficial interest in the
94 principal or income of the trust. The ownership of stock
95 in a corporation, of a capital or profits interest in a part-
96 nership or association or of a beneficial interest in a trust

97 shall be determined in accordance with the rules for con-
98 structive ownership of stock provided in section 267(c) of
99 the United States Internal Revenue Code, as amended:
100 *Provided*, That paragraph (3) of section 267(c) of the
101 United States Internal Revenue Code shall not apply.

102 (13) "*Tax year*" or "*taxable year*" means the tax year
103 of the taxpayer for federal income tax purposes.

104 (14) "*Taxpayer*" means any person subject to the tax
105 prescribed by section two-e, article thirteen of this chapter.

106 (15) "*Unitary business*" means a business structured so
107 that the operations of the business segments of a corpora-
108 tion, including segments consisting of members of an
109 affiliated group of commonly owned and controlled cor-
110 porations or entities, contribute to or depend on each
111 other in such a way as to result in functional integration
112 between business segments in engaging in the natural gas
113 business. "Unitary natural gas business" includes business
114 segments involved in the exploration, development, pur-
115 chase, transportation, storage, marketing, distribution and
116 sale of natural gas and distribution and sale of heavier
117 hydrocarbons, such as propane, and such business seg-
118 ments or affiliates which provide services supporting any
119 of the foregoing natural gas business activities. Where the
120 taxpayer asserts that business segments are unitary, the
121 taxpayer has the burden of proof.

§11-13L-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a
2 credit against the tax prescribed under section two-e, arti-
3 cle thirteen of this chapter, as determined under this arti-
4 cle.

§11-13L-4. Amount of credit allowed.

1 (a) *Credit allowed.* — Eligible taxpayers shall be al-
2 lowed a credit against the tax prescribed by section two-e,
3 article thirteen of this chapter, the application of which
4 and the amount of which shall be determined as provided
5 in this article.

6 (b) *Amount of credit.* —

7 (1) The amount of credit allowed to the eligible tax-
8 payer is one thousand dollars multiplied by the number of
9 qualified employees employed by the eligible taxpayer
10 during the taxable year, as determined under section six of
11 this article: *Provided*, That if the number of qualified
12 employees employed by the eligible taxpayer during the
13 taxable year, as determined under section six of this arti-
14 cle, is less than sixty percent of the number of qualified
15 employees employed by the eligible taxpayer on the first
16 day of January, one thousand nine hundred ninety-six, as
17 adjusted under subdivision (2) of this subsection, then no
18 credit shall be allowed for the taxable year.

19 (2) For purposes of this section, the tax commissioner
20 shall adjust the number of qualified employees deter-
21 mined to be in place on the first day of January, one thou-
22 sand nine hundred ninety six, to reflect a sale, transfer or
23 spin off of an affiliate or segment of the business of an
24 eligible taxpayer in circumstances where the sale, transfer
25 or spin off does not result in a decrease in the number of
26 jobs in place in this state. A sale, transfer or spin off that
27 results in no loss of jobs in this state shall not cause the
28 eligible taxpayer to lose entitlement to the credit in cir-
29 cumstances where the sixty percent limitation set forth in
30 this section would otherwise operate to cause a disallow-
31 ance of the credit. This subsection shall not be construed
32 to prevent adjustment of the amount of credit allowed to
33 the eligible taxpayer based upon the number of qualified
34 employees employed by the eligible taxpayer during the
35 taxable year, as determined under section six of this arti-
36 cle.

37 (3) For any taxable year subsequent to a taxable year
38 when credit was disallowed by reason of employment
39 falling below the sixty percent level, an eligible taxpayer
40 may be allowed credit under this article if the number of
41 qualified employees employed by the eligible taxpayer
42 during the taxable year, as determined under section six of
43 this article, has increased to a number equal to or greater
44 than sixty percent of the number of qualified employees
45 employed by the eligible taxpayer on the first day of
46 January, one thousand nine hundred ninety-six.

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

1 (a) *Application of credit.* — The amount of credit
2 allowed shall be taken against the tax liabilities of the
3 eligible taxpayer for the current taxable year prescribed
4 by section two-e, article thirteen of this chapter. Any credit
5 remaining after application of the credit against the tax
6 liabilities for the current taxable year is forfeited and shall
7 not carry back to any prior taxable year and shall not
8 carry forward to any subsequent taxable year. The credit
9 allowed under this article shall be applied after application
10 of all other applicable tax credits allowed for the taxable
11 year against the tax prescribed by section two-e, article
12 thirteen of this chapter.

13 (b) For purposes of asserting the credit against tax, the
14 taxpayer shall prepare and file with the monthly tax return
15 filed under section two-e, article thirteen of this chapter
16 for the last month of the taxpayer's tax year, an annual
17 schedule showing the amount of tax paid for the taxable
18 year, and the amount of credit allowed under this article.
19 The annual schedule shall set forth the information and be
20 in the form prescribed by the tax commissioner. The cred-
21 it allowed under this article shall be allowed against a pro
22 rata portion of monthly tax liabilities of the qualified
23 taxpayer under section two-e, article thirteen of this chap-
24 ter, in accordance with the procedures and requirements
25 prescribed by the tax commissioner. The annual total tax
26 liability and total tax credit allowed under this article are
27 subject to adjustment and reconciliation pursuant to the
28 filing of the annual schedule. The taxpayer shall pay any
29 tax due or claim any credit allowable for the taxable year
30 and shown on the annual schedule, with the monthly tax
31 return filed under section two-e, article thirteen of this
32 chapter for the last month of the taxpayer's tax year.

§11-13L-6. Annual computation of the number of jobs held by qualified employees.

1 (a) The taxpayer shall determine the number of jobs
2 held by qualified employees of the taxpayer in the taxable
3 year by calculating the average number of qualified em-
4 ployees holding jobs for each month of the taxable year
5 by averaging the beginning and ending monthly employ-

6 ment of qualified employees, then totalling the monthly
7 averages and dividing that total by twelve.

8 (b) If, as a result of business growth, merger, expan-
9 sion or any other growth in the number of jobs in place,
10 the number of full-time employees employed by a tax-
11 payer in the taxable year exceeds (1) the number of quali-
12 fied employees employed by the taxpayer on the first day
13 of January, one thousand nine hundred ninety-six, or (2)
14 the number of qualified employees employed by the tax-
15 payer during the prior taxable year, then only that portion
16 of the increase in the number of full-time jobs that results
17 from the creation of new jobs, as defined in section two of
18 this article, shall be counted, along with qualified jobs in
19 place from the prior taxable year, as part of the total num-
20 ber of qualified jobs in place for the taxable year. Preex-
21 isting jobs carried over from a corporation or other entity
22 merged with the taxpayer, and not reflective of a true
23 increase in the number of jobs in West Virginia, or preex-
24 isting jobs formerly in place with a contract service pro-
25 vider which are taken over or supplanted by the internal
26 operations of the taxpayer, or any other increase in the
27 count of jobs in place with a taxpayer which is not reflec-
28 tive of new jobs, as defined in section two of this article,
29 shall not count as qualified jobs for purposes of the credit
30 allowed under this article.

31 (c) The tax commissioner may prescribe alternative
32 methods for determining the number of jobs held by
33 qualified employees in place in the taxable year upon a
34 finding by the tax commissioner that an alternative meth-
35 od is appropriate for ascertaining an accurate and realistic
36 determination of jobs held by qualified employees in the
37 taxable year. For purposes of prescribing alternative
38 methods, the tax commissioner may require the deduction
39 or inclusion of jobs in place with contract service provid-
40 ers that provide or at any time provided any service to any
41 eligible taxpayer or to any member of the affiliated group
42 related to any eligible taxpayer or to any one or more
43 entities related to the eligible taxpayer: *Provided*, That
44 deduction, or inclusion of those jobs shall only pertain to
45 jobs held by employees of the contract service provider
46 that are attributable or that were formerly attributable to

47 the service provided by the contract service provider to the
48 taxpayer. The tax commissioner may require any
49 deconsolidation of any filing entity, or may require an
50 alternative method based on separate accounting, unitary
51 combination, combination of the affiliated group or com-
52 bination of the taxpayer and one or more entities related
53 to the taxpayer, or any other method determined by the
54 tax commissioner to be appropriate for ascertaining an
55 accurate and realistic determination of jobs held by quali-
56 fied employees in the taxable year.

§11-13L-7. Availability of credit to successors.

1 (a) (1) Where there has been a transfer or sale of the
2 business assets of an eligible taxpayer to a successor tax-
3 payer which continues to operate the business in this State,
4 and remains subject to the tax prescribed under section
5 two-e, article thirteen of this chapter, the successor taxpay-
6 er is entitled to the credit allowed under this article: *Pro-*
7 *vided*, That the successor taxpayer otherwise remains in
8 compliance with the requirements of this article for entitle-
9 ment to the credit.

10 (2) For any taxable year during which a transfer, or
11 sale of the business assets of an eligible taxpayer to a suc-
12 cessor taxpayer under this section occurs, or a merger
13 allowed under this section occurs, the credit allowed under
14 this article shall be apportioned between the predecessor
15 eligible taxpayer and the successor taxpayer based on the
16 number of days during the taxable year that each taxpayer
17 acted as the legal employer of qualified employees upon
18 which the credit allowed under this article is based and the
19 number of days during the taxable year that each taxpayer
20 owned the business assets transferred.

21 (b) *Stock purchases.* — Where a corporation which is
22 an eligible taxpayer entitled to the credit allowed under
23 this article is purchased through a stock purchase by a new
24 owner and remains a legal entity so as to retain its corpo-
25 rate identity, the entitlement of that corporation to the
26 credit allowed under this article will not be affected by the
27 ownership change.

28 (c) *Mergers.* —

29 (1) Where a corporation or other entity which is an
30 eligible taxpayer entitled to the credit allowed under this
31 article is merged with another corporation or entity, the
32 surviving corporation or entity shall be entitled to the
33 credit to which the predecessor eligible taxpayer was origi-
34 nally entitled only if the surviving corporation or entity
35 otherwise complies with the provisions of this article.

36 (2) The amount of credit available in any taxable year
37 during which a merger occurs shall be apportioned be-
38 tween the predecessor eligible taxpayer and the successor
39 eligible taxpayer based on the number of days during the
40 taxable year that each taxpayer acted as the legal employ-
41 er of qualified employees upon which the credit allowed
42 under this article is based and the number of days during
43 the tax year that each owned the transferred business as-
44 sets.

45 (d) No provision of this section or of this article shall
46 be construed to allow sales or other transfers of the tax
47 credit allowed under this article. The credit allowed under
48 this article can be transferred only in circumstances where
49 there is a valid successorship as described under this sec-
50 tion.

**§11-13L-8. Credit recapture; interest; penalties; additions to
tax; statute of limitations.**

1 (a) If it appears upon audit or otherwise that any per-
2 son or entity has taken the credit against tax allowed under
3 this article and was not entitled to take the credit, then the
4 credit improperly taken under this article shall be recap-
5 tured. Amended returns shall be filed for any tax year for
6 which the credit was improperly taken. Any additional
7 taxes due under this chapter shall be remitted with the
8 amended return or returns filed with the tax commissioner,
9 along with interest, as provided in section seventeen, article
10 ten of this chapter and a ten percent penalty and such
11 other penalties and additions to tax as may be applicable
12 pursuant to the provisions of article ten of this chapter.

13 (b) *Recapture for jobs loss.* —

14 (1) In any tax year when the number of qualified
15 employees employed by the taxpayer, as determined un-
16 der section six of this article, is less than sixty percent of
17 the number of qualified employees employed by the tax-
18 payer on the first day of January, one thousand nine hun-
19 dred ninety-six, as adjusted, in addition to the loss of cred-
20 it allowed under this article for the tax year, credit recap-
21 ture shall apply, and the tax payer shall return to the state
22 an amount of tax determined by subtracting the number
23 of qualified employees for such tax year from sixty per-
24 cent of the number of qualified employees employed by
25 the taxpayer as of the first day of January, one thousand
26 nine hundred ninety six, as adjusted, and multiplying the
27 difference by one thousand dollars. An amended return
28 shall be filed for the prior tax year for which credit recap-
29 ture is required. Any additional taxes due under this
30 chapter shall be remitted with the amended return filed
31 with the tax commissioner, along with interest, as provided
32 in section seventeen, article ten of this chapter, and a ten
33 percent penalty and such other penalties and additions to
34 tax as may be applicable pursuant to the provisions of
35 article ten of this chapter.


36 (2) Notwithstanding the provisions of article ten of this
37 chapter, penalties and additions to tax imposed under
38 article ten of this chapter and the ten percent penalty im-
39 posed under this section may be waived at the discretion
40 of the tax commissioner. However, interest is not subject to
41 waiver.

42 (c) Notwithstanding the provisions of article ten of this
43 chapter, the statute of limitations for the issuance of an
44 assessment of tax by the tax commissioner shall be five
45 years from the date of filing of any tax return on which
46 this credit was taken or five years from the date of pay-
47 ment of any tax liability calculated pursuant to the asser-
48 tion of the credit allowed under this article, whichever is
49 later.

§11-13L-9. Effective date.

1 This article shall be effective for tax years beginning
2 on or after the first day of October, one thousand nine
3 hundred ninety-six.

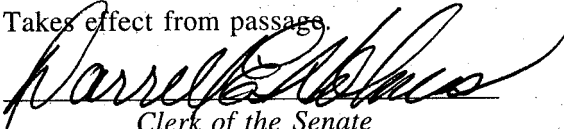
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

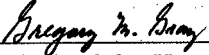

Chairman Senate Committee

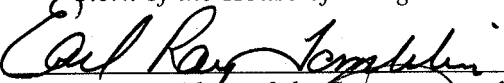

Chairman House Committee


Originating in the House.

Takes effect from passage.

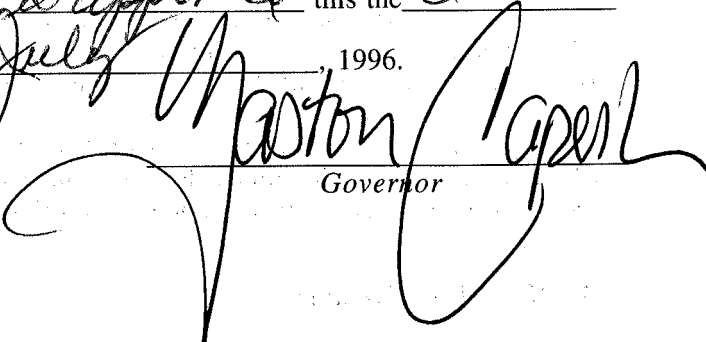

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 25th
day of July, 1996.


Governor

PRESENTED TO THE

GOVERNOR

Date 7/19/96

Time 3:48 pm