WEST VIRGINIA LEGISLATURE
EXTRAORDINARY SESSION, 1996

ENROLLED

Com. S. u. to

HOUSE BILL No. 107

(By Delegate
Mr. Speaker, Mr. Chambers,
and Delegate Ashley)

(By Request of the Executive)

Passed July 16, 1996

In Effect From Passage
ENROLLED
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-I, 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 successorship; 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.
This article shall be known and cited as the "Specialized Manufacturing Production Property Valuation Act".

§11-6E-2. Definitions.
(a) When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

(b) Terms Defined.
(1) "Die" means a device for shaping, forming or stamping material by pressure or by a blow, or for impressing a figure or design on material by pressure or by a blow, and other devices as set forth in this subdivision.

(A) The term "die" means and includes:
(i) Dies used in compression molding, transfer molding, injection molding, blow molding or blowing, vacuum forming and extrusion molding;
(ii) Extrusion dies and drawing dies consisting of a block made of metal or other material which is perforated by a hole having a particular cross section which imparts a shape to plastic, thermoplastic, hot or ductile metal or other material that is extruded through the hole by ramming or pressure, or drawn through the hole;
(iii) A block made of metal or other material which is pressed into a blank of material, often sheet metal, positioned between the die and a mold, so that the material is...
pressed into the mold by the die and caused to assume a desired shape in manufacturing; and

(iv) A block or blocks of metal or other material constructed in halves, which operate in such a way that, when a blank of sheet metal is positioned between the halves of the die and pressed between the halves of the die, a desired shape is imparted to the sheet metal.

(B) The term "die" does not include threading dies, screwing dies, chasers, or any die holder or die stock for threading dies, screwing dies or chasers. For purposes of this section, the terms "threading die", "screwing die" or "chaser" mean one or more blocks made of steel, or other material, threaded internally with cutting points, or surfaces for producing screw threads. Threading dies, screwing dies or chasers can be made in a single block or in segments.

(2) "Directly used in manufacturing", in relation to specialized manufacturing production property directly used in manufacturing, means directly used in those activities or operations which constitute an integral and essential part of the manufacturing activity, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the manufacturing activity.

Those uses of specialized manufacturing production property which constitute direct use in the activity of manufacturing include only:

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

(B) In the case of jigs, use of the property to physically control or direct the physical movement or operation of property undergoing manufacturing in conjunction with and during the making of a direct physical change upon that property, or use of a jig in direct physical contact with the property undergoing manufacturing as a checking fixture, to test the property undergoing manufacturing or part for conformity to specifications;
(C) In the case of patterns, use of a pattern in each production cycle to make a new mold in the ongoing manufacturing process, where the mold made from the pattern is directly used to cause a direct physical change upon property undergoing manufacturing; and

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

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

(4) "Jig" means and includes a mechanical device used to accurately guide or locate a tool or other implement that causes a direct physical change in property undergoing manufacturing or used to maintain the correct position between property undergoing manufacturing and a tool or implement. The jig is mainly used for producing interchangeable parts or exact reproductions of the same manufactured item or product. The term "jig" shall not include any conveyor belt, roller conveyor, track conveyor, crane, chain line, chain conveyor or other apparatus which serves merely to move property from one operation or place in the manufacturing process to another operation or place. The term "jig" includes a checking fixture, which is a jig built to test manufactured parts produced from a set of dies or other manufactured parts, for conformation to specifications.

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

(6) "Manufacturing" means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. In no case
shall the term "manufacturing" include the activities of building construction, construction of other structures or facilities affixed to or on realty, retailing or agriculture, food processing or food manufacturing, the operation of any restaurant or retail food preparation or sales operation, the production of any natural resource, contract mining or any other activity of severing, producing, processing or extracting any natural resource. Manufacturing production begins with the arrival of raw materials and ends when the property has reached that point where no further chemical, physical or other changes are to be made to the resultant property in the production process.

(7) "Manufacturing service provider" means a person engaged in a manufacturing activity who does not have legal title to or any economic interest in the tangible personal property transformed or converted by the manufacturing process, and who engages in the manufacturing activity as a service to another person.

(8) "Mold" means a form, block, vessel or matrix containing a cavity or cavities into which fluid, molten material, plastic material or malleable material is poured, pressed, rammed or injected to form a manufactured object conforming to the contours of the mold and having the desired shape, pattern or relief. The term "mold" includes molds and mold cavities used in compression molding, transfer molding, injection molding, blow molding or blowing, and vacuum forming.

For purposes of this article, the term "mold" does not include any sand casting flask or other apparatus or equipment used in conjunction with sand casting. However, patterns used in sand casting may constitute specialized manufacturing production property, as defined in this section.

(9) "Pattern" means a model for making a mold, as defined in this section, where production of the manufactured product by use of the mold entails the destruction of the mold with each production cycle, such as sand casting. The term "pattern" includes a model for making a sand casting mold into which molten metal is poured to form a casting.
A pattern qualifies as specialized manufacturing production property under this article only where the pattern must be repeatedly used in each production cycle to make a new mold in the ongoing manufacturing process, and where the mold made from the pattern is directly used in manufacturing to cause a direct physical change upon property undergoing manufacturing.

For purposes of this subdivision, the term "model" means a shape or figure made of wood, metal or other material having the basic shape of the manufactured product, with such appropriate sprues, runners and other necessary additional features as may be needed for efficient casting or production of the manufactured product.

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

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

(12) "Specialized manufacturing production property" means molds, jigs, dies, forms, patterns or templates, as defined in this section, directly used in manufacturing. Molds, jigs, dies, forms, patterns and templates directly used in manufacturing may qualify as specialized manufacturing production property notwithstanding the fact that the molds, jigs, dies, forms, patterns and templates may be owned by a person other than the West Virginia manufacturer or the West Virginia manufacturing service provider. In no case shall specialized manufacturing production property include any property not actively and directly used by a West Virginia manufacturer or West Virginia manufacturing service provider in the activity of manufacturing.
For purposes of this article, specialized manufacturing production property does not include:

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

(B) Computers and computer software;

(C) Layout and design equipment, including computers and computer software;

(D) Machinery, tools, parts and materials used to repair equipment, including equipment directly used in the manufacturing process;

(E) Drawings, blueprints or blueprinting equipment;

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

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

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

(I) Any equipment or property other than molds, jigs, dies, forms, patterns or templates, as defined in this section.

(13) "Template" means an instrument or implement, often in the form of a flat or contoured sheet, plate, or strip of metal, plastic, wood or other material, having markings or lines, perforations, cuts, cutout sections, or one or more edges shaped to conform to a desired shape or any combination of perforations, cuts, cutout sections or shaped edges, to be used as a guide or gauge for marking locations for, or otherwise locating the placement of cuts, cutout sections, holes or a desired shape to be transferred to the property undergoing manufacturing. Only those templates, as defined in this section, which are physi-
cally placed upon the property undergoing manufacturing for the direct marking of, or direct location of, holes, contours, cuts, cutout sections or shapes to be incorporated into the property qualify as specialized manufacturing production property for purposes of this article.

In no case shall templates constitute specialized manufacturing production property for purposes of this article if the templates are used in:

(A) Drafting, drawing or design;

(B) Research and development;

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

(D) Set up, adjustment, ongoing operation or repair of production machinery, tools and parts or other machinery, tools and parts;

(E) Testing and inspecting products on the production line or elsewhere for quality control purposes: Provided, That this exclusion shall not apply to tangible personal property which would otherwise meet the definition of a jig; or

(F) Packaging or packing manufactured products for sale.

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

Notwithstanding any other provision of this code to the contrary, the value of specialized manufacturing production property, for the purpose of ad valorem property taxation under this chapter and under Article X of the Constitution of this State, shall be its salvage value.

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

The assessor of the county in which a specific item of property is located shall determine, in writing, whether that specific item of property is specialized manufacturing production property subject to valuation in accordance with this article. Upon making a determination that a
taxpayer has specialized manufacturing production property, the county assessor shall notify the tax commissioner of that determination, and shall provide such information to the tax commissioner as the tax commissioner may require relating to that determination.

§11-6E-5. Protest and appeal.

At any time after the property is returned for taxation but prior to the first day of January of the assessment year, any taxpayer may apply to the county assessor for information regarding the issue of whether any particular item or items or property constitute specialized production manufacturing property under this article which should be subject to valuation in accordance with this article. If the taxpayer believes that some portion of the taxpayer's property is subject to the provisions of this article, the taxpayer shall file objections in writing with the county assessor. The county assessor shall decide the matter by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for the county assessor's refusal. The county assessor may, and if the taxpayer requests, the county assessor shall, before the first day of January of the assessment year, certify the question to the tax commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements. The sworn statement or statements shall contain a full description of the property and any other information which the tax commissioner may require.

The tax commissioner shall, as soon as possible on receipt of the question, but in no case later than the twenty-eighth day of February of the assessment year, instruct the county assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the county assessor are binding upon the county assessor, but either the county assessor or the taxpayer may apply to the circuit court of the county for review of the question of the applicability of this article to the property in the same fashion as is provided for appeals from the county commission in section twenty-five, article three of this 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".

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.
(3) "Corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(4) "Delegate", when used in reference to the tax commissioner, means any officer or employee of the tax division of the department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(5) "Eligible taxpayer" means any person subject to the tax prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on the first day of January, one thousand nine hundred ninety-six. "Eligible taxpayer" also means and includes those members of an affiliated group of taxpayers engaged in a unitary business, in which one or more members of the affiliated group is a person subject to the tax prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on the first day of January, one thousand nine hundred ninety-six. Affiliates not engaged in the unitary business with an affiliated group member subject to the tax prescribed by section two-e, article thirteen of this chapter that had at least one qualified employee on the first day of January, one thousand nine hundred ninety-six do not qualify as eligible taxpayers.

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

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

(8) "New job" means a full-time employment position held by a West Virginia resident domiciled in this state which did not exist in this state with any employer prior to the taxpayer's current taxable year.
(9) "Partnership" and "partner" means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in a syndicate, group, pool, joint venture or organization.

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

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

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

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

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

(C) An individual, corporation, partnership, affiliate, association or trust or any combination or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust or any combination or group thereof that is in control of the taxpayer; or

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

For purposes of this article, "control," with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of the corporation which entitles its owner to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust
shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code, as amended: Provided. That paragraph (3) of section 267(c) of the United States Internal Revenue Code shall not apply.

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

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

(15) "Unitary business" means a business structured so that the operations of the business segments of a corporation, including segments consisting of members of an affiliated group of commonly owned and controlled corporations or entities, contribute to or depend on each other in such a way as to result in functional integration between business segments in engaging in the natural gas business. "Unitary natural gas business" includes business segments involved in the exploration, development, purchase, transportation, storage, marketing, distribution and sale of natural gas and distribution and sale of heavier hydrocarbons, such as propane, and such business segments or affiliates which provide services supporting any of the foregoing natural gas business activities. Where the taxpayer asserts that business segments are unitary, the taxpayer has the burden of proof.

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

There shall be allowed to every eligible taxpayer a credit against the tax prescribed under section two-e, article thirteen of this chapter, as determined under this article.

§11-13L-4. Amount of credit allowed.

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

(b) Amount of credit. —
(1) The amount of credit allowed to the eligible taxpayer is one thousand dollars multiplied by the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article: Provided, That if the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article, is less than sixty percent of the number of qualified employees employed by the eligible taxpayer on the first day of January, one thousand nine hundred ninety-six, as adjusted under subdivision (2) of this subsection, then no credit shall be allowed for the taxable year.

(2) For purposes of this section, the tax commissioner shall adjust the number of qualified employees determined to be in place on the first day of January, one thousand nine hundred ninety-six, to reflect a sale, transfer or spin off of an affiliate or segment of the business of an eligible taxpayer in circumstances where the sale, transfer or spin off does not result in a decrease in the number of jobs in place in this state. A sale, transfer or spin off that results in no loss of jobs in this state shall not cause the eligible taxpayer to lose entitlement to the credit in circumstances where the sixty percent limitation set forth in this section would otherwise operate to cause a disallowance of the credit. This subsection shall not be construed to prevent adjustment of the amount of credit allowed to the eligible taxpayer based upon the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article.

(3) For any taxable year subsequent to a taxable year when credit was disallowed by reason of employment falling below the sixty percent level, an eligible taxpayer may be allowed credit under this article if the number of qualified employees employed by the eligible taxpayer during the taxable year, as determined under section six of this article, has increased to a number equal to or greater than sixty percent of the number of qualified employees employed by the eligible taxpayer on the first day of January, one thousand nine hundred ninety-six.
§11-13L-5. Application of annual credit allowance.

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

(b) For purposes of asserting the credit against tax, the taxpayer shall prepare and file with the monthly tax return filed under section two-e, article thirteen of this chapter for the last month of the taxpayer's tax year, an annual schedule showing the amount of tax paid for the taxable year, and the amount of credit allowed under this article. The annual schedule shall set forth the information and be in the form prescribed by the tax commissioner. The credit allowed under this article shall be allowed against a pro rata portion of monthly tax liabilities of the qualified taxpayer under section two-e, article thirteen of this chapter, in accordance with the procedures and requirements prescribed by the tax commissioner. The annual total tax liability and total tax credit allowed under this article are subject to adjustment and reconciliation pursuant to the filing of the annual schedule. The taxpayer shall pay any tax due or claim any credit allowable for the taxable year and shown on the annual schedule, with the monthly tax return filed under section two-e, article thirteen of this 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.

(a) The taxpayer shall determine the number of jobs held by qualified employees of the taxpayer in the taxable year by calculating the average number of qualified employees holding jobs for each month of the taxable year by averaging the beginning and ending monthly employ-
ment of qualified employees, then totalling the monthly averages and dividing that total by twelve.

(b) If, as a result of business growth, merger, expansion or any other growth in the number of jobs in place, the number of full-time employees employed by a taxpayer in the taxable year exceeds (1) the number of qualified employees employed by the taxpayer on the first day of January, one thousand nine hundred ninety-six, or (2) the number of qualified employees employed by the taxpayer during the prior taxable year, then only that portion of the increase in the number of full-time jobs that results from the creation of new jobs, as defined in section two of this article, shall be counted, along with qualified jobs in place from the prior taxable year, as part of the total number of qualified jobs in place for the taxable year. Preexisting jobs carried over from a corporation or other entity merged with the taxpayer, and not reflective of a true increase in the number of jobs in West Virginia, or preexisting jobs formerly in place with a contract service provider which are taken over or supplanted by the internal operations of the taxpayer, or any other increase in the count of jobs in place with a taxpayer which is not reflective of new jobs, as defined in section two of this article, shall not count as qualified jobs for purposes of the credit allowed under this article.

(c) The tax commissioner may prescribe alternative methods for determining the number of jobs held by qualified employees in place in the taxable year upon a finding by the tax commissioner that an alternative method is appropriate for ascertaining an accurate and realistic determination of jobs held by qualified employees in the taxable year. For purposes of prescribing alternative methods, the tax commissioner may require the deduction or inclusion of jobs in place with contract service providers that provide or at any time provided any service to any eligible taxpayer or to any member of the affiliated group related to any eligible taxpayer or to any one or more entities related to the eligible taxpayer: Provided, That deduction, or inclusion of those jobs shall only pertain to jobs held by employees of the contract service provider that are attributable or that were formerly attributable to
the service provided by the contract service provider to the taxpayer. The tax commissioner may require any deconsolidation of any filing entity, or may require an alternative method based on separate accounting, unitary combination, combination of the affiliated group or combination of the taxpayer and one or more entities related to the taxpayer, or any other method determined by the tax commissioner to be appropriate for ascertaining an accurate and realistic determination of jobs held by qualified employees in the taxable year.

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

(a) (1) Where there has been a transfer or sale of the business assets of an eligible taxpayer to a successor taxpayer which continues to operate the business in this State, and remains subject to the tax prescribed under section two-e, article thirteen of this chapter, the successor taxpayer is entitled to the credit allowed under this article: Provided, That the successor taxpayer otherwise remains in compliance with the requirements of this article for entitlement to the credit.

(2) For any taxable year during which a transfer, or sale of the business assets of an eligible taxpayer to a successor taxpayer under this section occurs, or a merger allowed under this section occurs, the credit allowed under this article shall be apportioned between the predecessor eligible taxpayer and the successor taxpayer based on the number of days during the taxable year that each taxpayer acted as the legal employer of qualified employees upon which the credit allowed under this article is based and the number of days during the taxable year that each taxpayer owned the business assets transferred.

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

(c) Mergers. —
(1) Where a corporation or other entity which is an eligible taxpayer entitled to the credit allowed under this article is merged with another corporation or entity, the surviving corporation or entity shall be entitled to the credit to which the predecessor eligible taxpayer was originally entitled only if the surviving corporation or entity otherwise complies with the provisions of this article.

(2) The amount of credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each taxpayer acted as the legal employer of qualified employees upon which the credit allowed under this article is based and the number of days during the tax year that each owned the transferred business assets.

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

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

(a) If it appears upon audit or otherwise that any person or entity has taken the credit against tax allowed under this article and was not entitled to take the credit, then the credit improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter and a ten percent penalty and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(b) Recapture for jobs loss.
(1) In any tax year when the number of qualified employees employed by the taxpayer, as determined under section six of this article, is less than sixty percent of the number of qualified employees employed by the taxpayer on the first day of January, one thousand nine hundred ninety-six, as adjusted, in addition to the loss of credit allowed under this article for the tax year, credit recapture shall apply, and the taxpayer shall return to the state an amount of tax determined by subtracting the number of qualified employees for such tax year from sixty percent of the number of qualified employees employed by the taxpayer as of the first day of January, one thousand nine hundred ninety-six, as adjusted, and multiplying the difference by one thousand dollars. An amended return shall be filed for the prior tax year for which credit recapture is required. Any additional taxes due under this chapter shall be remitted with the amended return filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(2) Notwithstanding the provisions of article ten of this chapter, penalties and additions to tax imposed under article ten of this chapter and the ten percent penalty imposed under this section may be waived at the discretion of the tax commissioner. However, interest is not subject to waiver.

(c) Notwithstanding the provisions of article ten of this chapter, the statute of limitations for the issuance of an assessment of tax by the tax commissioner shall be five years from the date of filing of any tax return on which this credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under this article, whichever is later.


This article shall be effective for tax years beginning on or after the first day of October, one thousand nine 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 approved this the 25th day of July, 1996.

Governor