WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4619

(By Mr. Speaker, Mr. Kiss,
and Delegate Michael)

Passed March 11, 1998

In Effect from Passage

ENROLLED

H. B. 4619

(BY MR. SPEAKER, MR. KISS, AND DELEGATE MICHAEL)

[Passed March 11, 1998; in effect from passage.]

AN ACT to amend and reenact sections seven-a and fourteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing small business tax credit, specifying amount of credit allowed; specifying application of credit; specifying certification of new jobs; providing for small business tax credit projects; providing for issuance of regulations; specifying effective dates; specifying restrictions and limitations on credits allowed by said article thirteen-c; setting forth legislative findings; specifying construction; specifying nonapplication against severance taxes; setting forth transition rules; specifying treatment of successor project participants; setting forth definitions; specifying requirement for application for credit; and specifying penalty for failure to file.

Be it enacted by the Legislature of West Virginia:

That sections seven-a and fourteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION CREDIT.

§11-13C-7a. Small business credit.

(a) *"Small business" defined.* — For purposes of this section, the term "small business" means a business which has an annual payroll of one million five hundred thousand dollars or less, or annual gross sales of not more than five million dollars: *Provided,* That beginning the first day of January, one thousand nine hundred eighty-nine, and each first day of January thereafter, the tax commissioner shall prescribe amounts which shall apply in lieu of the above amounts during that calendar year. These amounts shall be prescribed by increasing the amount of each by the cost-of-living adjustment for such calendar year. The requirements for annual payroll and annual gross receipts, once met by a given taxpayer in that taxable year when qualified investment is first placed in service or use shall not again be applied to that same taxpayer in subsequent years to defeat the small business credit to which the taxpayer gained entitlement in that year. However, the median compensation requirements applicable to any small business, except a small business entitled to a certified project credit, shall be determined when qualified investment is first placed in service or use; and subsequently redetermined inflation adjusted amounts for median compensation for each year shall be the requirements applicable to that small business for each year throughout the ten-year credit period and any further carryover or other extended credit period for the original credit to which the requirements relate.

(1) *Cost-of-living adjustment.* — For purposes of subsection (a), the cost-of-living adjustment for any calendar year is the percentage (if any) by which:

(A) The consumer price index for the preceding calendar year exceeds;

(B) The consumer price index for the calendar year one thousand nine hundred eighty-seven.

(2) *Consumer price index for any calendar year.* — For purposes of subdivision (1), the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on the thirty-first day of August of such calendar year.

(3) *Consumer price index.* — For purposes of subdivision (2), the term "Federal Consumer Price Index" means the last consumer price index for all urban consumers published by the United States department of labor.

(4) *Rounding.* — If any increase under subdivision (1) is not a multiple of fifty dollars, such increase shall be rounded to the next lowest multiple of fifty dollars.

(b) *Amount of credit allowed.*

(1) *Credit allowed.* — An eligible small business taxpayer shall be allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible small business taxpayer's qualified investment in a new or expanded business in this state which results in the creation of at least ten new jobs. The amount of this credit shall be determined as provided in this section.

(2) *Amount of credit.* — The amount of credit allowable under this section is determined by dividing the amount of the eligible small business taxpayer's "qualified investment" (determined under section six) in "property purchased for business expansion" (as defined in section three) by ten. The amount of qualified investment so apportioned to each year of the ten-year credit period shall be the annual measure against which taxpayer's annual new jobs percentage (determined under subsection (d)) is applied. The product of this calculation establishes the maximum amount of credit allowable each year for ten consecutive years under this section due to the qualified investment.

(3) *Application of credit.* — The annual credit allowance must be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the ten-year credit period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is placed in service or use. Once made, this

election cannot be revoked. The annual credit allowance shall be taken and applied in the manner prescribed in section five.

(c) *New jobs.* — The term "new jobs" has the meaning ascribed to it in subdivision (14), subsection (b), section three of this article: *Provided,* That the median compensation of such new jobs shall not be less than eleven thousand dollars per year and that beginning the first day of January, one thousand nine hundred eighty-nine, and each first day of January thereafter, the tax commissioner shall adjust the median annual compensation specified in this subsection by increasing the amount thereof by the annual cost-of-living adjustment determined under subsection (a).

(1) The term "new employee" shall have the meaning ascribed to it in subdivision (13), subsection (b), section three of this article: *Provided,* That such term shall not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns ten percent or more of the business with such ownership interest to be determined under rules set forth in subsection (b), section 267 of said Internal Revenue Code; or

(B) Worked for the taxpayer during the six-month period ending on the date taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date taxpayer's qualified investment is placed in service or use.

(2) *When a job is attributable.* — An employee's position is directly attributable to the qualified investment if:

(A) The employee's service is performed or his or her base of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(C) But for the qualified investment, the position would not have existed.

(d) *New jobs percentage.* — The annual new jobs percentage is based on the number of new jobs created in this state by the taxpayer that is directly attributable to taxpayer's qualified investment.

(1) If at least ten new jobs are created and filled during the taxable year in which the qualified investment is placed in service or use, the applicable new jobs percentage shall be thirty percent: *Provided,* That for each new job over ten, up to forty such additional new jobs, the applicable new jobs percentage shall be increased by adding thereto one half of one percent, with the maximum new jobs percentage not to exceed fifty percent.

(2) During each of the remaining nine years of the ten-year credit period, the annual new jobs percentage shall be based on the average number of new jobs that were filled during that taxable year: *Provided,* That for purposes of estimating the new jobs percentage that will be applicable for each subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable year immediately prior thereto, and in the annual income tax return filed under this chapter for the then current tax year, taxpayer shall redetermine his or her allowable new jobs percentage for that year based on the average number of new employees employed in new jobs during that year (determined on a monthly basis) created as the direct result of taxpayer's qualified investment.

(e) *Certification of new jobs.* — With the annual income tax return filed under this chapter for each taxable year during the ten-year credit period, the taxpayer shall certify:

(1) The new jobs percentage for that taxable year;

(2) The amount of the credit allowance for that year;

(3) If the business is a partnership or electing small business corporation, the amount of credit allocated to the partners or shareholders, as the case may be;

(4) That qualified investment property continue to be used in the business, or if any of it was disposed of during the year the date of disposition and that such property was not disposed of prior to expiration of its useful life, as determined under section six;

(5) That the new jobs created by the qualified investment continue to exist and are filled by persons who meet the definition of new employee (as defined in subdivision (1), subsection (c) of this section) and are paid an average annual compensation equal to or greater than the minimum average annual compensation required by this section.

(f) *Small business project.* — A small business may apply to the tax commissioner under section four-b for certification of subdivision (1), subsection (a), section four-b project if that project will create at least ten new jobs.

(g) *Regulations.* — The tax commissioner shall prescribe such regulations as he or she may deem necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify taxpayer's continued entitlement to claim such credit; and to verify proper application of the credit allowed. The tax commissioner may, by regulation, require a taxpayer intending to claim credit under this section to file with the tax commissioner a notice of intent to claim this credit, before the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated tax for the credit provided in this section.

(h) *Effective date.*

(1) The credit provided in this section shall be allowed for qualified investment property purchased or leased after the thirtieth day of June, one thousand nine hundred eighty-seven.

(2) The amendments to this section, enacted in the year one thousand nine hundred ninety-eight, shall be retroactive to tax years beginning on or after the first day of January, one thousand nine hundred ninety-five.

§11-13C-14. Restrictions and limitations on credits allowed by this article.

(a) *Findings.* — The Legislature finds that the tax credits allowed under provisions of this article heretofore enacted have not effectively and efficiently increased employment through investment in certain industry segments; that while there has been a significant net decrease in employment in the coal industry in recent years the amount of credit being claimed by producers of coal has significantly increased; that the increasing cost of the credits allowed by this article to coal producers is eroding the state's ability to reasonably fund essential state services such as public education, public safety and basic human services; and that this erosion will continue unless remedial legislation is enacted.

(b) *Construction.* — The rule of statutory construction codified in subsection (b), section twelve of this article, is hereby replaced with a rule of reasonable construction in which the burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

(c) *Credit not to be applied against severance taxes.*

(1) Notwithstanding any provision in this chapter to the contrary, no credit shall be allowed against the taxes imposed by article thirteen-a of this chapter for taxable years ending on or after the tenth day of March, one thousand nine hundred ninety, unless one of the transition rules in paragraph (2) of this subsection (c) applies.

(2) *Transition rules.* — The general rule stated in paragraph (1) of this subsection (c) shall not apply:

(A) To qualified investment property placed in service or use prior to the tenth day of March, one thousand nine hundred ninety.

(B) To property purchased or leased for business expansion that is placed in service or use on or after the tenth day of March, one thousand nine hundred ninety, if at least one of the following clauses applies to such property:

(i) The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the tenth day of March, one thousand nine hundred ninety, as limited to the provisions of such contract as of such date then binding on the taxpayer, but only to the extent such new or expanded business facility is placed in service or use prior to the first day of January, one thousand nine hundred ninety-two.

(ii) The new or expanded business facility which is part of a project described in paragraph (1), subsection (a), section four-b of this article, was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the tenth day of March, one thousand nine hundred ninety, as limited to the provisions of such contract as of such date then binding on the taxpayer: *Provided*, That only that portion of the contract price attributable to that percentage of the construction contract completed prior to the first day of January, one thousand nine hundred ninety-two, (determined under principles set forth in Section 460(b) of the Internal Revenue Code of 1986, as in effect before the tenth day of March, one thousand nine hundred ninety, which is placed in service or use prior to the first day of January, one thousand nine hundred ninety-four, may be treated as property purchased for business expansion under section six of this article.

(iii) The new or expanded business facility was purchased or leased pursuant to a written contract executed prior to the tenth day of March, one thousand nine hundred ninety, as limited to the provisions then binding on the taxpayer as of such date, but only to the extent such new or expanded business facility is placed in service or use prior to the first day of January, one thousand nine hundred ninety-two.

(iv) The machinery or equipment or other tangible personal property purchased or leased for business expansion at a new or expanded business facility was purchased or leased by the taxpayer pursuant to a written contract to purchase or lease identifiable tangible personal property executed before the tenth day of March, one thousand nine hundred ninety, as limited to the provisions of such written contract then binding on the taxpayer, but only to the extent the tangible personal property purchased or leased under such contract is placed in service or use before the first day of January, one thousand nine hundred ninety-two: *Provided*, That when such tangible personal property is purchased or leased as aforesaid as part of a project described in clause (ii) of this subparagraph (B), such tangible personal property must be placed in service or use prior to the first day of January, one thousand nine hundred ninety-four, to be treated as property purchased or leased for business expansion under section six of this article.

(C) To property purchased or leased for business expansion that is placed in service or use on or after the tenth day of March, one thousand nine hundred ninety, as part of a project otherwise eligible for the credit under subsection (a), section four-b of this article, if all of the requirements of clauses (i), (ii), (iii) and (iv) of this subparagraph are satisfied:

(i) The taxpayer and other participants in the project, if any, have made investments in property purchased or leased for business expansion as defined in subsection (b)(19), section three of this article prior to the tenth day of March, one thousand nine hundred ninety, in excess of ten million dollars.

(ii) The investments described in clause (i) were made pursuant to a plan for an integrated project to be developed over a period of one or more years and with the expectation of making additional investments in the integrated project.

(iii) The portion of the project constructed, purchased or leased after the tenth day of March, one thousand nine hundred ninety, meets the definition of new business facility in subsection (e)(3) of this section.

(iv) The new jobs created by the project after the tenth day of March, one thousand nine hundred ninety, are filled by new employees as defined in subsection (e)(4) of this section.

(3) *Notice of claim under transition rules.*

(A) *Notice required.* — Any person intending to assert a claim for credit based, in whole or in part, on application of the transition rules in subparagraph (B) or (C), paragraph (2) of this subsection (c), shall file written notice of such intention with the tax commissioner on or before the first day of July, one thousand nine hundred ninety. In the case of a multiparticipant project, this notice may be filed by the managing project participant on behalf of all participants in such project. Such notice shall be in a form prescribed by the tax commissioner and all information required by such form shall be provided.

(B) *Failure to file notice.* — If any person fails to timely file the notice required by this paragraph (3), such person shall be precluded from claiming credit under this article for such investment.

(d) *Treatment of successor project participants.* — Whenever a participant in a project certified under paragraph (2) or (3), subsection (a), section four-b of this article, is replaced by another participant in that project on or after the tenth day of March, one thousand nine hundred ninety, the tax credits available to such successor participant as a result of the transfer shall not exceed the amount of credits that would have been available to the predecessor participant had the transfer to the successor participant not occurred: *Provided*, That if the project plan provides for annual recalculation of the division of the credit allowable for each year among the participants in the project in order to maximize the collective use of such credit by the project participants, or for any other purpose, then the credit available to the successor participant as a result of the transfer shall be limited each year to the amount of credit actually used by the predecessor participant to offset taxes for the taxable year immediately preceding the taxable year in which such participant's obligations or interest in the project, as described in the project plan certified by the tax commissioner, passed to the successor participant in the project.

(e) *Certain terms redefined.* — Notwithstanding the provisions of subsection (b), section three of this article, or any other provision of this article, to the contrary, the following terms have the meanings assigned to them by this section.

(1) *Construction contract.* — The term "construction contract" means any contract for the building, construction, reconstruction or rehabilitation of, or the installation of any integral components to, or improvements of, a new or existing business facility.

(2) *Excluded property.* — The term "property purchased or leased for business expansion" shall not include:

(A) Property owned or leased by the taxpayer and for which the taxpayer was previously allowed tax credit for industrial expansion, tax credit for industrial revitalization, tax credit for coal loading facilities or the tax credits allowed by this article.

(B) Property owned or leased by the taxpayer and for which the seller, lessor, or other transferor, was previously allowed tax credit for industrial expansion, tax credit for industrial revitalization, tax credit for coal loading facilities, or the tax credits allowed by this article.

(C) Repair costs, including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed.

(D) Airplanes.

(E) Property which is primarily used outside this state, with use being determined based upon the amount of time the property is actually used both within and without this state.

(F) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the tax commissioner consents to waiving this requirement.

(G) Natural resources in place purchased or leased prior to the first day of March, one thousand nine hundred eighty-five, or purchased or leased after such date pursuant to an option to purchase or lease such natural resources in place acquired prior to such date but exercised, in whole or in part, on or after the tenth day of March, one thousand nine hundred ninety; and natural resources in place purchased or leased on or after the tenth day of March, one thousand nine hundred ninety, unless pursuant to a written contract to purchase or lease executed prior to the passage of this section.

(H) Property purchased or leased on or after the tenth day of March, one thousand nine hundred ninety, unless pursuant to a written contract to purchase or lease executed prior to the passage of this section, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time such property is placed in service or use: *Provided*, That when the contract of purchase or lease specifies a minimum purchase price or minimum annual rent the amount thereof shall be used to determine the qualified investment in such property under section six of this article if the property otherwise qualifies as property purchased or leased for business expansion.

(3) *New business facility.* — The term "new business facility" means a business facility which satisfies all the requirements of subparagraphs (A), (B), (C) and (D) of this paragraph.

(A) The facility is employed by the taxpayer in the conduct of a business the net income of which is or would be taxable under article twenty-one or twenty-four of this chapter. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons.

(B) Such facility is purchased by, or leased to, the taxpayer after the first day of March, one thousand nine hundred eighty-five.

(C) The facility was not purchased or leased by the taxpayer from a related person or a project participant, or related person of a project participant, in any certified project in which the taxpayer is a participant. The tax commissioner may waive this requirement if the facility was acquired from a related party for its fair market value and the acquisition was not tax motivated.

(D) Such facility was not in service or use during the ninety days immediately prior to transfer of the title to such facility, or prior to the commencement of the term of the lease of such facility: *Provided*, That this ninety-day period may be waived by the tax commissioner if the commissioner determines that persons employed at the facility may be treated as "new employees" as that term is defined under paragraph (4) of this subsection.

(4) *New Employee.*

(A) The term "new employee" means a person residing and domiciled in this state, hired by the taxpayer to fill a position or a job in this state which previously did not exist in taxpayer's business enterprise in this state prior to the date on which the taxpayer's qualified investment is placed in service or use in this state. In no case shall the number of new employees directly attributable to such investment for purposes of this credit exceed the total net increase in the taxpayer's employment in this state: *Provided,* That with respect to taxpayers who file application for certification after the tenth day of March, one thousand nine hundred ninety, the tax commissioner may require that the net increase in the taxpayer's employment in this state be determined and certified for the taxpayer's controlled group; and in the case of a project involving more than one person for the controlled groups of all participants, taken as a whole: *Provided, however*, That persons filling jobs saved as a direct result of taxpayer's qualified investment in property purchased or leased for business expansion on or after the tenth day of March, one thousand nine hundred ninety, may be treated as new employees filling new jobs if the taxpayer certifies the material facts to the tax commissioner and the tax commissioner expressly finds that:

(i) But for the new employer purchasing the assets of a business in bankruptcy under chapter seven or eleven of the United States bankruptcy code and such new employer making qualified investment in property purchased or leased for business expansion, the assets would have been sold by the United States bankruptcy court in a liquidation sale and the jobs so saved would have been lost; or

(ii) But for taxpayer's qualified investment in property purchased or leased for business expansion in this state, taxpayer would have closed its business facility in this state and the employees of the taxpayer located at such facility would have lost their jobs: *Provided*, That the tax commissioner shall not make this certification unless the tax commissioner finds that the taxpayer is insolvent as defined in 11 U.S.C. §101 (31) or that the taxpayer's business facility was destroyed, in whole or in significant part, by fire, flood or other act of God.

(B) A person shall be deemed to be a "new employee" only if such person's duties in connection with the operation of the business facility are on:

(i) A regular, full-time and permanent basis.

(I) "Full-time employment" means employment for at least one hundred forty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business;

(II) "Permanent employment" does not include employment that is temporary or seasonal and therefore the wages, salaries and other compensation paid to such temporary or seasonal employees will not be considered for purposes of sections five and seven of this article; or

(ii) A regular, part-time and permanent basis: *Provided*, That such person is customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(5) *Leased property.* — The term "leased property" does not include property which the taxpayer is required to show on its books and records as an asset under generally accepted principles of financial accounting. If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes, the property shall be treated as purchased property under this section if the property was purchased on or after the tenth day of March, one thousand nine hundred ninety.

(6) *Small business.* — The term "small business" means a small business which has an annual payroll of one million seven hundred thousand dollars or less, and annual gross receipts of not more than five million five hundred thousand dollars: *Provided*, That on or before the fifteenth of January, one thousand nine hundred ninety-one, and on or before each fifteenth day of January thereafter, the tax commissioner shall prescribe amounts which shall apply in lieu of the above amounts for taxable years beginning on or after the first day of January of the calendar year in which determination is made. The prescribed amounts shall be determined in accordance with section seven-a of this article and notice thereof shall be filed in the state register. The requirements for annual payroll and annual gross receipts, once met by a given taxpayer in that taxable year when qualified investment is first placed in service or use shall not again be applied to that same taxpayer in subsequent years to defeat the small business credit to which the taxpayer gained entitlement in that year. However, the median compensation requirements applicable to any small business, except a small business entitled to a certified project credit, shall be determined when qualified investment is first placed in service or use; and subsequently redetermined inflation adjusted amounts for median compensation for each year shall be the requirements applicable to that small business for each year throughout the ten-year credit period and any further carryover or other extended credit period for the original credit to which the requirements relate. For purposes of this definition:

(A) *Annual Payroll.* — The annual payroll of a business shall include the employees of its domestic and foreign affiliates, whether employed on a full-time, part-time, temporary, or other basis, during the preceding twelve months. If a business has not been in existence for twelve months, the payroll of the business shall be divided by the number of weeks, including fractions of a week, that it has been in business, and the result multiplied by fifty-two. That amount shall then be added to the twelve month payrolls of its domestic and foreign affiliates to determine the annual payroll of the business for purposes of this section.

(B) *Annual gross receipts.* — The annual gross receipts of a business shall include the annual gross receipts of its foreign and domestic affiliates.

(i) The "annual gross receipts" of a business which has been in business for three or more complete fiscal years means the annual gross revenues of the business for the last three fiscal years. For purposes of this definition, the gross revenues of the business includes revenues from sales of tangible personal property and services, interest, rents, royalties, fees, commissions and receipts from any other source, but less returns and allowances, sales of fixed assets, interaffiliated transactions between a business and its domestic and foreign affiliates, and taxes collected for remittance to a third party, as shown on its books for federal income tax purposes.

(ii) The annual receipts of a business that has been in business for less than three complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by fifty-two.

(C) *Affiliates.* — The term "affiliates" includes all concerns which are affiliates of each other when either directly or indirectly: (i) One concern controls or has the power to control the other; or (ii) a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

(D) *Concern.* — The term "concern" means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity), having a place of business located in this state, and which makes a contribution to the economy of this state through payment of taxes, or the sale or use in this state of tangible personal property, or the procurement or providing of services in this state, or the hiring of employees who work in this state. "Concern" includes, but is not limited to, any person as defined in paragraph eighteen, subsection (b), section three of this article.

(f) *Application for credit required.*

(1) *Application required.* — Notwithstanding any provision of this article to the contrary, no credit shall be allowed or applied under this article for any qualified investment property placed in service or use on or after the first day of January, one thousand nine hundred ninety, until the person asserting a claim for the allowance of credit under this article makes written application to the tax commissioner for allowance of credit as provided in this subsection and receives written acknowledgment of its receipt from tax commissioner: *Provided,* That in the case of a multiparticipant project this notice may be filed by the managing project participant on behalf of all participants in that project. An application for credit shall be filed no later than the last day of the due date, without extensions, for filing the tax returns required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use and all information required by such form shall be provided.

(2) *Failure to file.* — The failure to timely apply for the credit shall result in the forfeiture of fifty percent of the annual credit allowance otherwise allowable under this article. This penalty shall apply annually until such application is filed.

(g) *Effective date.*

(1) Except as otherwise expressly provided in this section, the provisions of this section shall apply to property placed in service or use on or after the tenth day of March, one thousand nine hundred ninety, notwithstanding any provision of prior law which may be in conflict with this section. In the case of any such ambiguity, the provisions of this section shall control resolution of such ambiguity.

(2) The amendments to this section enacted in the year, one thousand nine hundred ninety-eight, shall be retroactive, and shall be effective for tax years beginning on or after the first day of January, one thousand nine hundred ninety-five.

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 27th day of March, 1998.

Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/98

Time 3:15pm