

HB 2999

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WEST VIRGINIA LEGISLATURE

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FIRST REGULAR SESSION, 1999



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 2999

(By Delegates Warner, Michael and Martin)



Passed March 5, 1999

In Effect from Passage

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STATE OF WEST VIRGINIA

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FOR

H. B. 2999

(BY DELEGATES WARNER, MICHAEL AND MARTIN)

[Passed March 5, 1999; in effect from passage.]

AN ACT to amend article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-f, relating to a tax credit for investment in aerospace industrial facilities; authorizing credit for eligible taxpayers, and members, distributive interest holders and partners of eligible taxpayers; specifying credit amount for qualified investment in property placed in service or use in an aerospace industrial facility after the thirtieth day of June, one thousand nine hundred ninety-eight; and specifying conditions and limitations on the tax credit.

Be it enacted by the Legislature of West Virginia:

That article thirteen-d, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended, by adding thereto a new section, designated section three-f, to read as follows:

ARTICLE 13D. TAX CREDITS FOR INDUSTRIAL EXPANSION AND REVITALIZATION, RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENT PROJECTS, MANAGEMENT INFORMATION

**SERVICES FACILITIES, INDUSTRIAL FACILITIES
PRODUCING COAL-BASED LIQUIDS USED TO
PRODUCE SYNTHETIC FUELS, AND AEROSPACE
INDUSTRIAL FACILITY INVESTMENTS.**

**§11-13D-3f. Amount of credit allowed and application of credit
for qualified investment in an aerospace indus-
trial facility.**

1 (a) *Credit allowed.* — (1) There is allowed to eligible
2 taxpayers which have made qualified investment in an aero-
3 space industrial facility, a credit against the taxes imposed by
4 articles twenty-three and twenty-four of this chapter for
5 qualified investment in an aerospace industrial facility. The
6 amount of credit is determined as provided in this section.

7 (2) There is allowed to members, distributive interest
8 holders and partners of eligible taxpayers described in para-
9 graph (3), subsection (c) of this section, a credit against the
10 taxes imposed by article twenty-four of this chapter for quali-
11 fied investment in an aerospace industrial facility. The amount
12 of credit is determined as provided in this section.

13 (b) *Credit amount for qualified investment in property*
14 *placed in service or use in an aerospace industrial facility after*
15 *the thirtieth day of June, one thousand nine hundred ninety-*
16 *eight.* — For property purchased or leased by an eligible
17 taxpayer and placed in service or use after the thirtieth day of
18 June, one thousand nine hundred ninety-eight, as part of an
19 aerospace industrial facility, the amount of allowable credit is
20 equal to fifteen percent of the qualified investment (as deter-
21 mined under subsection (e) of this section), and reduces the
22 taxpayer's annual business franchise tax liability under article
23 twenty-three of this chapter and the taxpayer's annual corpora-
24 tion net income tax liability under article twenty-four of this
25 chapter, subject to the following conditions and limitations:

26 (1) The amount of credit allowable is applied over a ten-
27 year period, at the rate of one-tenth thereof per taxable year,
28 beginning with the taxable year in which the qualified invest-
29 ment is first placed in service or use in this state.

30 (2) When in any taxable year a taxpayer is entitled to claim
31 credit under this section and under any other section of this

32 article, (or any combination thereof), the total amount of all
33 credits allowed for the tax year under this article shall not
34 exceed the sixty percent of total tax liability offset limitations
35 set forth in subsection (c) of this section.

36 (3) No carryover to a subsequent taxable year or carryback
37 to a prior taxable year is allowed for any unused portion of any
38 annual credit allowance. Such unused credit is forfeited.

39 (4) No credit is allowed under this article for investment in
40 any property for which credit is allowed under article thirteen-c
41 of this chapter.

42 (5) No credit is allowed under this section for investment in
43 any property for which credit is allowed under any other section
44 of this article.

45 (c) *Application of credit.* — (1) The annual credit for
46 qualified investment in an aerospace industrial facility is first
47 applied to reduce the annual West Virginia business franchise
48 tax liability imposed under article twenty-three of this chapter
49 for the tax year. The amount of annual credit allowed may not
50 reduce the annual liability for such tax year below sixty percent
51 of the amount of the annual tax liability which would otherwise
52 be imposed for such tax year in the absence of this credit and in
53 the absence of all other credits against such tax, except the
54 credits set forth in section seventeen, article twenty-three of this
55 chapter.

56 (2) After application of this credit against business fran-
57 chise tax as provided in subdivision (1) of this subsection, the
58 remaining annual credit, if any, is then applied to reduce the
59 annual West Virginia corporation net income tax liability
60 imposed under article twenty-four of this chapter for the tax
61 year. The amount of annual credit allowed may not reduce the
62 annual corporation net income tax liability for such tax year
63 below sixty percent of the amount of the annual tax liability
64 which would otherwise be imposed for such tax year in the
65 absence of this credit and in the absence of all other credits
66 against tax.

67 (3) In the case of an eligible taxpayer that:

68 (A) Is a limited liability company, partnership or other
69 business organization taxed under article twenty-three of this
70 chapter, but not taxed under article twenty-four of this chapter,

71 (B) Is not treated as a corporation for federal income tax
72 purposes, and

73 (C) Is a “flow through” entity or conduit for income
74 distributed to members, distributional interest holders or
75 partners, the following applies: Members, distributional interest
76 holders or partners, of the eligible taxpayer subject to the
77 corporation net income tax imposed under article twenty-four
78 of this chapter may apply this credit against that portion of their
79 annual corporation net income tax liability imposed under
80 article twenty-four of this chapter for the tax year on that
81 distributive income directly and solely derived from the eligible
82 taxpayer. The amount of annual credit allowed may not reduce
83 the annual corporation net income tax liability for such tax year
84 below sixty percent of the amount of the annual tax liability
85 which would otherwise be imposed for such tax year in the
86 absence of this credit and in the absence of all other credits
87 against tax.

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

89 (1) “Aerospace industrial facility” means a facility used by
90 an eligible taxpayer for the manufacturing, rebuilding or
91 physical refurbishment of:

92 (A) Aircraft,

93 (B) Aircraft engines,

94 (C) Aircraft engine parts,

95 (D) Other aircraft parts,

96 (E) Aircraft auxiliary equipment, including fluid power
97 aircraft subassemblies,

98 (F) Guided missiles,

99 (G) Space vehicles,

100 (H) Guided missile and space vehicle propulsion units,

- 101 (I) Guided missile parts,
- 102 (J) Propellers,
- 103 (K) Space vehicle parts, or
- 104 (L) Guided missile and space vehicle auxiliary parts.

105 (2) "Controlled group" means one or more chains of
106 corporations connected through stock ownership with a
107 common parent corporation if stock possessing at least fifty
108 percent of the voting power of all classes of stock of each of the
109 corporations is owned directly or indirectly by one or more of
110 the corporations; and the common parent owns directly stock
111 possessing at least fifty percent of the voting power of all
112 classes of stock of at least one of the other corporations.

113 (3) "Corporation" means any corporation, joint-stock
114 company or association, and any business conducted by a
115 trustee or trustees wherein interest or ownership is evidenced by
116 a certificate of interest or ownership or similar written instru-
117 ment, and any organization which is treated as a corporation for
118 federal income tax purposes.

119 (4) "Eligible taxpayer" means, for purposes of this section,
120 a person subject to tax under article twenty-three or article
121 twenty-four of this chapter, and regularly engaged in the
122 business of manufacturing, rebuilding or physical refurbishment
123 of:

- 124 (A) Aircraft,
- 125 (B) Aircraft engines,
- 126 (C) Aircraft engine parts,
- 127 (D) Other aircraft parts,
- 128 (E) Aircraft auxiliary equipment, including fluid power
129 aircraft subassemblies,
- 130 (F) Guided missiles,
- 131 (G) Space vehicles,
- 132 (H) Guided missile and space vehicle propulsion units,
- 133 (I) Guided missile parts,

134 (J) Propellers,

135 (K) Space vehicle parts, or

136 (L) Guided missile and space vehicle auxiliary parts.

137 The term "eligible taxpayer" does not include any person
138 whose only activity with respect to an aerospace industrial
139 facility is to lease it to another person or persons.

140 (5) "Placed in service or use." For purposes of the credit
141 allowed by this section, property shall be considered "placed in
142 service or use" on the earliest of the following dates:

143 (A) The date on which the property is physically placed in
144 service or use in an aerospace industrial facility;

145 (B) The closing date of the eligible taxpayer's federal
146 income tax year during which federal income tax depreciation
147 with respect to the property has begun, or in the case of leased
148 property, the closing date of the eligible taxpayer's federal
149 income tax year during which expenses for lease payments for
150 the property are first taken as a deduction from income for
151 federal income tax purposes; or

152 (C) The closing date of the eligible taxpayer's federal
153 income tax year during which the property is placed in a
154 condition or state of readiness and availability for a specifically
155 assigned function in an aerospace industrial facility, but where
156 the property has not been physically placed in service or use in
157 the aerospace industrial facility on that closing date.

158 (e) *Qualified investment in an aerospace industrial facility.*
159 — (1) *Purchased property.* — The qualified investment in
160 tangible personal property or real property purchased for use as
161 a component part of an aerospace industrial facility is the
162 applicable percentage of the cost of such property purchased for
163 an aerospace industrial facility, which is placed in service or
164 use in this state, by the eligible taxpayer during the tax year as
165 determined under this section.

166 (2) *Applicable percentage.* — For the purposes of this
167 subsection, the applicable percentage for any property shall be
168 determined under the following table:

169	If useful life is:	The applicable
170		percentage is:
171	4 years or more but less than 6 years	33 1/3%
172	6 years or more but less than 8 years	66 2/3%
173	8 years or more	100%

174 The useful life of any property for purposes of this section shall
 175 be the actual economic useful life determined as of the date
 176 such property is first placed in service or use in this state by the
 177 taxpayer, determined for financial accounting purposes in
 178 accordance with generally accepted principles of accounting.

179 (3)(A) *Cost.* — For purposes of this subsection, the cost of
 180 each item of property purchased for use as a component part of
 181 an aerospace industrial facility shall be the fair market value or
 182 the actual cost, whichever is less, and in no event shall the cost
 183 exceed the fair market value as of the date such property is first
 184 placed in service or use in this state by the eligible taxpayer.
 185 Cost is determined under the following rules:

186 (B) *Trade-ins.* — Cost does not include the value of
 187 property given in trade or exchange for the property purchased
 188 for use as a component part of an aerospace industrial facility.

189 (C) *Damaged, destroyed or stolen property.* — If property
 190 is damaged or destroyed by fire, flood, storm or other casualty,
 191 or is stolen, then the cost of replacement property does not
 192 include any insurance proceeds received in compensation for
 193 the loss.

194 (4) *Rental property.* — (A) The qualified investment in
 195 tangible personal property or real property leased for use as a
 196 component part of an aerospace industrial facility is the portion
 197 specified in this subdivision of the cost of such property
 198 purchased for an aerospace industrial facility, which is placed
 199 in service or use in this state, by the eligible taxpayer during the
 200 tax year as determined under this section.

201 (B) The qualified investment in leases of real property
 202 acquired by written lease for a primary term of ten years or
 203 longer is one hundred percent of the rent reserved for the

204 primary term of the lease, not to exceed twenty years. Leases of
205 realty having a primary term of less than ten years do not
206 qualify for purposes of this section.

207 (C) The qualified investment in leases of tangible personal
208 property acquired by written lease for a primary term of:

209 (i) Four years, or longer, is one third of the rent reserved for
210 the primary term of the lease;

211 (ii) Six years, or longer, is two thirds of the rent reserved
212 for the primary term of the lease; or

213 (iii) Eight years, or longer, is one hundred percent of the
214 rent reserved for the primary term of the lease, not to exceed
215 twenty years: *Provided*, That in no event does rent reserved
216 include rent for any year subsequent to expiration of the book
217 life of the property, determined using the straight-line method
218 of depreciation.

219 (5) *Transferred property*. — (A) The cost of property
220 owned and used by the taxpayer out-of-state and then brought
221 into this state, is determined based on the remaining useful life
222 of the property at the time it is placed in service or use in this
223 state, and the cost is the original cost of the property to the
224 taxpayer less straight line depreciation allowable for the tax
225 years or portions thereof taxpayer used the property outside this
226 state.

227 (B) In the case of leased tangible personal property, cost is
228 based on the period remaining in the primary term of the lease
229 after the property is brought into this state for use in an aero-
230 space industrial facility of an eligible taxpayer, and is the rent
231 reserved for the remaining period of the primary term of the
232 lease, not to exceed twenty years, or the remaining useful life
233 of the property, whichever is less.

234 (C) Qualified investment in transferred property is com-
235 puted by applying the four year, six year and eight year
236 requirements of this section to the cost thereof with the applica-
237 ble four year, six year and eight year period determined based
238 on the remaining useful life or remaining primary lease term at
239 the time the property is placed in service or use in this state.

240 (6) *Property purchased for multiple use.* — Investment in
241 property purchased for use in an aerospace industrial facility
242 and for some other use does not qualify for purposes of this
243 credit.

244 (7) *Self-constructed property.* — In the case of self-
245 constructed property, the cost thereof is the amount properly
246 charged to the capital account for purposes of depreciation for
247 federal income tax purposes.

248 (8) *Specific exclusions from qualification.* — The following
249 investment does not constitute qualified investment in an
250 aerospace industrial facility, and does not qualify for purposes
251 of this credit.

252 (A) Investment by purchase or lease in natural resources in
253 place.

254 (B) Investment in purchased or leased property, the cost or
255 consideration for which cannot be quantified with any reason-
256 able degree of accuracy at the time such property is placed in
257 service or use: *Provided*, That when the contract of purchase or
258 lease specifies a minimum purchase price which can be
259 quantified or minimum annual rent which can be quantified, the
260 amount thereof shall be used to determine the cost thereof. If
261 the property and lease otherwise qualify under the, primary
262 lease term requirements and other requirements of this section
263 for property purchased or leased for use as a component part of
264 an aerospace industrial facility, then qualified investment in
265 such property is determined in accordance with the four year,
266 six year and eight year useful life or primary lease term
267 requirements of this subsection.

268 (C) Investment in property purchased, or leased, or placed
269 in service or use prior to the first day of July, one thousand nine
270 hundred ninety-eight.

271 (D) Investment in the purchase, acquisition or transfer of
272 any facility or component thereof that was in service or use
273 during the ninety days immediately prior to transfer of the title
274 to such facility or component thereof, or to the commencement
275 of the term of the lease of such facility or component thereof,

276 unless upon application of the taxpayer, setting forth good and
277 sufficient cause, the tax commissioner consents to waiving this
278 ninety day period.

279 (E) Investment in any facility or component part thereof
280 that was acquired by the taxpayer from a related person. The tax
281 commissioner may waive this requirement if the facility was
282 acquired from a related party for its fair market value, and the
283 basis of the property for federal income tax purposes, in the
284 hands of the person acquiring it, is not determined:

285 (i) In whole or in part by reference to the federal adjusted
286 basis of such property in the hands of the person from whom it
287 was acquired; or

288 (ii) Under Section 1014(e) of the United States Internal
289 Revenue Code of 1986, as amended, and in effect on the first
290 day of January, one thousand nine hundred ninety-eight.

291 (F) Investment in or cost incurred for property owned or
292 leased by the taxpayer and for which credit was previously
293 taken under article thirteen-c, article thirteen-d or thirteen-e of
294 this chapter: *Provided*, That this paragraph shall not be con-
295 strued to prevent the transfer of this credit in the event of a
296 mere change in the form of doing business of an eligible
297 taxpayer, or transfer of credit to successors in business in
298 accordance with section seven of this article.

299 (G) Repair costs, including costs or materials used in the
300 repair, unless for federal income tax purposes, the cost of the
301 repair must be capitalized.

302 (H) Investment in airplanes.

303 (I) Investment in property which is primarily used outside
304 this state.

305 (J) Investment in property acquired incident to the purchase
306 of a corporation, business organization or ongoing business or
307 a substantial portion thereof through transfer of stock, owner-
308 ship interests or assets thereof, or any other transfer, merger or
309 purchase, unless for good cause shown, the tax commissioner
310 consents to waiving this requirement: *Provided*, That this

311 paragraph shall not be construed to prevent the transfer of this
312 credit in the event of a mere change in the form of doing
313 business of an eligible taxpayer, or transfer of credit to succes-
314 sors in business in accordance with section seven of this article.

315 (K) Investment in property acquired from a person whose
316 relationship to the person acquiring it would result in the
317 disallowance of deductions under Section 267 or 707(b) of the
318 United States Internal Revenue Code of 1986, as amended, and
319 in effect on the first day of January, one thousand nine hundred
320 ninety-nine.

321 (L) Investment in property acquired by one component
322 member of a controlled group from another component member
323 of the same controlled group: *Provided*, That, the tax commis-
324 sioner can waive this requirement if the property was acquired
325 from a related party for its then fair market value, and the basis
326 of the property for federal income tax purposes, in the hands of
327 the person acquiring it, is not determined:

328 (i) In whole or in part by reference to the federal adjusted
329 basis of such property in the hands of the person from whom it
330 was acquired; or

331 (ii) Under Section 1014(e) of the United States Internal
332 Revenue Code of 1986, as amended, and in effect on the first
333 day of January, one thousand nine hundred ninety-nine.

Enr. Com. Sub. for H. B. 2999] 12

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



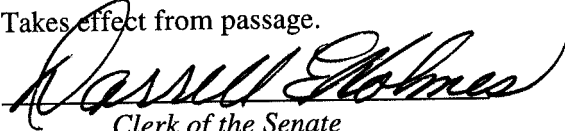
Chairman Senate Committee



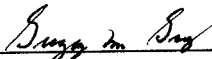
Chairman House Committee

Originating in the House.

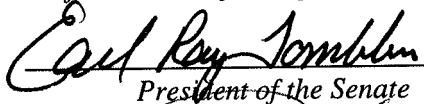
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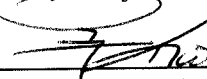
Clerk of the Senate



Clerk of the House of Delegates

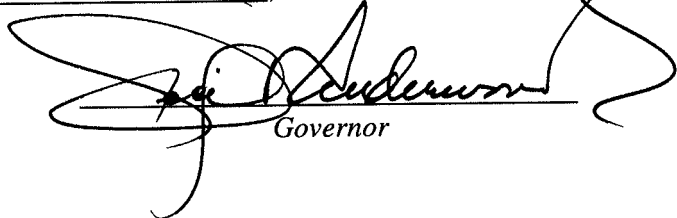


President of the Senate



Speaker of the House of Delegates

The within approved this the 18th
day of March, 1999.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/12/99

Time 9:31am