WEST VIRGINIA LEGISLATURE
2nd Extraordinary Session, 2002

ENROLLED

SENATE BILL NO. 2007

(By Senators Toman, Mr. President, and Sprouse, by Request of the Executive)

PASSED June 11, 2002

In Effect From Passage
ENROLLED

Senate Bill No. 2007

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE, BY REQUEST OF THE EXECUTIVE)

[Passed June 11, 2002; in effect from passage.]

AN ACT to amend and reenact section sixteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, eighteen and twenty-one, article thirteen-q of said chapter; to amend and reenact sections six, nine and eleven, article thirteen-r of said chapter; and to amend and reenact sections four, eight and ten, article thirteen-s of said chapter, all relating generally to tax credits for particular business activity; providing five percentage point increase over allowable new jobs percentage under economic opportunity credit when new business facility or expansion of existing facility is constructed under specified circumstances; requiring persons who claim economic opportunity credit, strategic research and development credit or manufacturing investment credit to report additional information pertaining to new jobs created, including types of jobs created, duration of jobs created, average wages and benefits
Be it enacted by the Legislature of West Virginia:

That section sixteen, article thirteen-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended be amended and reenacted; that sections nine, eighteen and twenty-one, article thirteen-q of said chapter be amended and reenacted; that sections six, nine and eleven, article thirteen-r of said chapter be amended and reenacted; and that sections four, eight and ten, article thirteen-s of said chapter be amended and reenacted, all to read as follows:

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

§11-13C-16. Termination of credit; effective date.

(a) Notwithstanding any other provision of this article to the contrary, no entitlement to any tax credit under this article may result from, and no credit is available to any taxpayer for, investment placed in service or use after the thirty-first day of December, two thousand two.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of sections one through fifteen, inclusive, of this article continue to apply to taxpayers that have gained entitlement to the credit pursuant to the placement of qualified investment into service or use prior to the first day of January, two thousand three.
(c) Transition rules. -- The general rule stated in subsection (a) of this section does not apply:

(1) To qualified investment property placed in service or use prior to the first day of January, two thousand three.

(2) To property purchased or leased for business expansion that is placed in service or use on or after the first day of January, two thousand three, if at least one of the following clauses applies to the property:

(A) The new or expanded business facility was constructed, reconstructed or erected, pursuant to a written construction contract executed prior to the first day of January, two thousand three, as limited to the provisions of the contract as of that date then binding on the taxpayer, but only to the extent the new or expanded business facility is placed in service or use prior to the first day of January, two thousand four;

(B) The new or expanded business facility is part of a project described in subdivision (1), subsection (a), section four-b of this article, for which the multiple year project investment period had commenced, but had not yet closed on or before the first day of January, two thousand three, and the new or expanded business facility constitutes or includes property placed in service or use prior to closure of the multiple year project investment period allowed for the project that is:

(i) Property constructed for a multiple year project certified before the first day of January, two thousand three, in accordance with section four-b of this article: Provided, That only that portion of the contract price attributable to that percentage of the construction contract completed prior to the last day of the multiple year project investment period (determined under principles set forth in Section 460(b) of the Internal Revenue Code of 1986, as in effect before the first day of January, two thousand three), which is placed in service or use prior to
the last day of the multiple year project investment period
allowed pursuant to subdivision (1), subsection (a), section
four-b of this article, may be treated as property pur-
chas ed for business expansion under section six of this
article;

(ii) A new or expanded business facility purchased or
leased for a multiple year project certified before the first
day of January, two thousand three, in accordance with
section four-b of this article; or

(iii) Machinery or equipment or other tangible personal
property purchased or leased for a multiple year project
certified before the first day of January, two thousand
three, in accordance with section four-b of this article.

For purposes of this paragraph, the multiple year project
investment period will be treated as having commenced if
the taxpayer has placed the qualified investment into
service or use in accordance with section four of this
article. A multiple year project period will not be treated
as having commenced merely as a result of the issuance of
certification of a project under section four-b of this
article. No entitlement to any tax credit under this
paragraph may result from, and no credit is available to
any taxpayer for, investment placed in service or use after
closure of the multiple year project investment period for
which certification has been issued.

(C) The new or expanded business facility was purchased
or leased pursuant to a written contract executed prior to
the first day of January, two thousand three, as limited to
the provisions then binding on the taxpayer as of that
date, but only to the extent the new or expanded business
facility is placed in service or use prior to the first day of
January, two thousand four; or

(D) The machinery or equipment or other tangible
personal property purchased or leased for business expan-
sion 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 first day of January, two thousand three, as limited to the provisions of the written contract then binding on the taxpayer, but only to the extent the tangible personal property purchased or leased under the contract is placed in service or use before the first day of January, two thousand four.

(d) Notice of election required. — Any person intending to claim credit under one or more of the transition rules provided in subsection (c) of this section shall file written notice of his or her intention with the tax commissioner on or before the thirty-first day of December, two thousand two. In the case of a multiparticipant project, this notice may be filed by the managing project participant on behalf of all participants in the project. Notice is to be in a form prescribed by the tax commissioner and all information required by the form is to be provided.

(e) Failure to file notice. — If any person fails to timely file the notice required by subsection (d) of this section, that person is precluded from claiming credit under article thirteen-c for investment property placed in service or use after the thirty-first day of December, two thousand two, and may claim credit under article thirteen-q of this chapter to the extent credit is allowable under that article. For purposes of this section, notice, in proper and complete form, timely filed under section twenty-one, article thirteen-q of this chapter, fulfills the filing requirement of this section if that filing addresses the same qualified investment for which notice would be required under this section.

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.


(a) In general. — The new jobs percentage is based on the number of new jobs created in this state directly attributable to the qualified investment of the taxpayer.
(b) *When a job is attributable.* — An employee’s position is directly attributable to the qualified investment if:

1. The employee’s service is performed or his or her base of operations is at the new or expanded business facility;
2. 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
3. But for the qualified investment, the position would not have existed.

(c) *Applicable percentage.* — For the purpose of subsection (a) of this section, the applicable new jobs percentage is determined under the following table:

<table>
<thead>
<tr>
<th>If number of new jobs is at least:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>20%</td>
</tr>
<tr>
<td>280</td>
<td>25%</td>
</tr>
<tr>
<td>520</td>
<td>30%</td>
</tr>
</tbody>
</table>

(d) *Certification of new jobs.* — With the annual return for the applicable taxes filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f) of this section that are, or will be, directly attributable to the qualified investment of the taxpayer. For purposes of this section, “applicable taxes” means the taxes imposed by articles thirteen, twenty-one, twenty-three and twenty-four of this chapter against which this credit is applied.

(e) *Equivalency of permanent employees.* — The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees for the purpose of this section.
(f) Redetermination of new jobs percentage. — With the annual return for the applicable taxes imposed, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state that are directly attributable to the qualified investment of the taxpayer.

(1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended returns filed for the first and second taxable years that the qualified investment was in service or use in this state.

(2) If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in the prior two years to personal income taxes, then to corporation net income taxes, then to business franchise taxes and, lastly, to business and occupation taxes. Any additional taxes due under this chapter shall be remitted with the amended returns filed with the commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten-percent penalty determined on the amount of taxes due with the amended return, which may be waived by the commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was due to reasonable cause and not due to willful neglect.

(g) Additional new jobs percentage. — When the qualified investment is twenty million dollars or more and the new or expanded business facility is constructed using construction laborers and mechanics who are paid an average wage equal to or greater than the prevailing wage for their respective classes of work determined under
chapter twenty-one of this code, then, if the number of full-time construction laborers and mechanics working at the job site of the new or expanded business facility is seventy-five or more, or if the number of hours of all construction laborers and mechanics working at the job site is equal to or greater than the number of hours seventy-five full-time construction laborers and mechanics would have worked at the job site during a twelve consecutive month period, a taxpayer that is allowed a new jobs percentage determined under subsection (a) of this section shall be allowed a new jobs percentage that is five percentage points higher than the new jobs percentage allowed under subsection (a) of this section. In no event may construction laborers and mechanics be used to attain or retain a subsection (a) new jobs percentage. The number of full-time construction laborers and mechanics working at the job site shall be determined by dividing the total number of hours worked by all construction laborers and mechanics on a new or expanded business facility during a twelve consecutive month period by two thousand eighty hours per year. A taxpayer may not claim the additional new jobs percentage allowed by this section unless the taxpayer includes with the certification filed under subsection (d) of this section a certification signed by the general contractor or the construction manager certifying that construction laborers employed at the job site during a consecutive twelve month period aggregated the equivalent of at least seventy-five full-time employees and the taxpayer has received from the general contractor or construction manager records substantiating the certification, which records shall be retained by the taxpayer for thirteen years after the day the expansion to an existing business facility, or the new business facility, is first placed in service or use by the taxpayer. For purposes of subsection (g) of this section:

1. The term “construction laborers and mechanics” means those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in
nature, including those workers who use tools or are 
performing the work of a trade, as distinguished from 
mental or managerial and working foremen who devote 
more than twenty percent of their time during a workweek 
performing the duties of a laborer or mechanic; and 

(2) The term “job site” is limited to the physical place or 
places where the construction called for in the contract 
will remain when the work on it is completed and nearby 
property, as described in subdivision (3) of this subsection, 
used by the contractor or subcontractor during construc-
tion that, because of proximity, can reasonably be in-
cluded in the “site”.

(3) Except as provided in subdivision (4) of this subsec-
tion, fabrication plants, mobile factories, batch plants, 
borrow pits, job headquarters and tool yards are part of 
the “job site” provided they are dedicated exclusively, or 
nearly so, to performance of the contract or project and are 
located in proximity to the actual construction location so 
that it would be reasonable to include them.

(4) The term “job site” does not include permanent home 
offices, branch offices, branch plant establishments, 
fabrication yards or tool yards of a contractor or subcon-
tractor whose locations and continuance in operation are 
determined without regard to the contract or subcontract 
for construction of a new or expanded business facility.

§11-13Q-18. Burden of proof; application required; failure to 
make timely application.

(a) 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.

(b) Application for credit required. –

(1) Application required. – Notwithstanding any provi-
sion of this article to the contrary, no credit is allowed or 
may be applied under this article for any qualified invest-
ment property placed in service or use until the person
asserting a claim for the allowance of credit under this
article makes written application to the commissioner for
allowance of credit as provided in this subsection. An
application for credit shall be filed, in the form prescribed
by the tax commissioner, no later than the last day for
filing the tax returns, determined by including any autho-
rized extension of time for filing the return, 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 the form shall be provided.

(2) Failure to make timely application. – The failure to
timely apply for the credit results in the forfeiture of fifty
percent of the annual credit allowance otherwise allowable
under this article. This penalty applies annually until the
application is filed.

§11-13Q-21. Effective date; election; notice of claim or election
under transition rules.

(a) The credit allowed by this article is allowed for
qualified investment placed in service or use on or after
the first day of January, two thousand three, subject to the
rules contained in this section.

(b) Election. – Notwithstanding the general rule stated
in subsection (a), the taxpayer may elect to apply the
credit allowed under article thirteen-c of this chapter in
lieu of the credit allowed by this article to property
purchased or leased for business expansion that is placed
in service or use on or after the first day of January, two
thousand three, if the property qualifies for credit under
the transition rules set forth in subdivision (2), subsection
(c), section sixteen, article thirteen-c of this chapter.

(c) Notice of election required. -- Any person intending
to make the election allowed in subsection (b) of this
section shall file written notice of his or her intention with
the tax commissioner on or before the thirty-first day of December, two thousand two. In the case of a multiparticipant project, this notice may be filed by the managing project participant on behalf of all participants in the project. The notice shall be in a form prescribed by the tax commissioner and all information required by the form shall be provided.

(d) Failure to file notice. — If any person fails to timely file the notice required by subsection (c) of this section, that person is precluded from claiming credit under article thirteen-c of this chapter for property placed in service or use after the thirty-first day of December, two thousand two, and may claim credit under this article to the extent the credit is allowable under this article. For purposes of this section, notice, in proper and complete form, timely filed under section sixteen, article thirteen-c of this chapter fulfills the filing requirement of this section if that filing addresses the same qualified investment for which notice would be required under this section.

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.

§11-13R-6. Application of credit.

(a) Credit allowed. — Beginning in the year that the annual combined qualified research and development expenditure is paid or incurred, eligible taxpayers and owners of eligible taxpayers described in subsections (d) and (f) of this section are allowed a credit against the taxes imposed by articles twenty-three, twenty-four and twenty-one of this chapter, in that order, as specified in this section.

(b) Business franchise tax. — The credit is first applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).
(c) Corporation net income taxes. — After application of subsection (b) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).

(d) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subsections (b) and (c) of this section) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(e) Personal income tax taxes. — After application of subsections (b), (c) and (d) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-one of this chapter for the taxable year (determined before application of allowable credits against tax) of the eligible taxpayer.

(f) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subsections (b), (c), (d) and (e) of this section) is allowed as a credit against the taxes imposed by article twenty-one of this chapter on owners of the eligible taxpayer on the conduit income.
directly derived from the eligible taxpayer by its owners.

Only those portions of the tax imposed by article twenty-one of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(g) The total amount of tax credit that may be used in any taxable year by any eligible taxpayer in combination with the owners of the eligible taxpayer under subsections (d) and (f) of this section may not exceed two million dollars.

(h) Unused credit carry forward. – If the credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subsections (b), (c), (d), (e) and (f) of this section for that taxable year, the eligible taxpayer and owners of eligible taxpayers described in subsections (d) and (f) of this section may apply the excess as a credit against those taxes, in the order and manner stated in this section, for succeeding taxable years until the earlier of the following:

(1) The full amount of the excess credit is used; or

(2) The expiration of the tenth taxable year after the taxable year in which the annual combined qualified research and development expenditure was paid or incurred. Credit remaining thereafter is forfeited.

(i) Application for certification. – No credit is allowed or may be applied under this article until the person seeking to claim the credit has filed a written application for
certification of the proposed research and development program or project with the tax commissioner and has received certification of the research and development program or project from the tax commissioner pursuant to that written application. The certification of the program or project must be received by the eligible taxpayer from the tax commissioner prior to any credit being claimed or allowed for any annual combined qualified research and development expenditure for any research activity or project. This application shall be filed, in the form prescribed by the tax commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, 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, or the qualified research and development expenses to which the credit relates are incurred by the taxpayer, and all information required by the form shall be provided by the taxpayer.

(1) In the case of owners of eligible taxpayers described in subsection (d) or (f) of this section, the application for certification filed under this section by the limited liability company, small business corporation or partnership owned by the person is considered to be filed on behalf of the owner and no separate filing of the application is required of the owner.

(2) Form of application. — The application for certification must be filed in the form as the tax commissioner may prescribe and shall contain the information as the tax commissioner may require to determine whether the project should be certified as eligible for credit under this article.

(3) Time period covered by certification. — The application may request certification of the research and development program for one taxable year or multiple taxable years, as applicable, based on the nature and character of
(4) **Requirements for application.** – The application shall specifically set forth a written research and development program plan generally describing the nature of the research and development to be undertaken, the number and types of jobs, if any, created by the applicant as a direct result of the research and development program and the average wages and benefits paid to those employees, the projected time period over which the research and development shall be carried out, the period of time for which the applicant seeks certification of the program or project and such other information as the tax commissioner may require.

(5) **Certification.** – The tax commissioner may issue certification of a research and development program or project if it appears to the tax commissioner that the applicant intends to engage in a bona fide research and development activity, as described in this article, and will otherwise comply with the requirements of this article and all rules and requirements applicable thereto.

(6) **Time period covered by certification.** – The tax commissioner may issue certification for the period of time for which the eligible taxpayer seeks certification or a different period of time, within the discretion of the tax commissioner. In his or her discretion, the tax commissioner may require that a separate application be filed for each taxable year in which qualified research and development activity is to be undertaken or in which qualified research and development property is to be placed in service or use.

(7) **Failure to file.** – The failure to timely file the application for certification of a research and development program or project under this section results in forfeiture of one hundred percent of the annual credit otherwise allowable under this article. This penalty applies annually until such application is filed.
(8) Research and development undertaken without certification. – If a person has filed an application for certification of a research and development program or project and has failed to receive certification of the plan or program from the tax commissioner, no credit is allowed under this article for the research and development activity or investment relating thereto.

(9) Failure to comply with terms of certification. – If a person has filed an application for certification of a research and development program or project and has received certification of the plan or program from the tax commissioner, but fails to conform to the terms of the certification, no credit is allowed under this article for the research and development activity or for investment in the research and development activity by the eligible taxpayer. This restriction may be waived by the tax commissioner upon a finding that the research and development undertaken was within the requirements of this article and that there was no intent to defraud the state or willful neglect in the applicant’s failure to conform to the terms of the certification.

(10) Failure to comply with certification time restrictions. – If a person has filed an application for certification of a research and development program or project and has received certification of the plan or program from the tax commissioner, but fails to conform to the time periods specified therein for the certified research and development program or project, or fails to renew the certification so as to cover ongoing or subsequent research and development activity, the research and development activity is out of compliance with the terms of the certification and no credit is allowed under this article for, or relating to, the research and development activity by any person or taxpayer. This restriction may be waived by the tax commissioner upon a finding that the research and development thus undertaken was within the requirements of this article and that there was no intent to defraud the

(a) Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified research and development property:

(1) Its identity;
(2) Its actual or reasonably determined cost;
(3) Its straight-line depreciation life;
(4) The month and taxable year in which it was placed in service;
(5) The amount of credit taken; and
(6) The date it was disposed of or otherwise ceased to be qualified research and development property.

(b) Every taxpayer who claims credit under this article shall also maintain sufficient records to establish the number and types of new jobs, if any, created, the wages and benefits paid to employees filling the new jobs and the duration of each job.

§11-13R-11. Tax credit review and accountability.

(a) Beginning on the first day of February, two thousand six, and on the first day of February every third year thereafter, the commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the credit allowed under this article during the most recent three-year period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:
(1) The numbers of taxpayers claiming the credit;

(2) The net number, type and duration of new jobs created by all taxpayers claiming the credit and wages and benefits paid;

(3) The cost of the credit;

(4) The cost of the credit per new job created; and

(5) Comparison of employment trends for the industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide such information as the tax commissioner may require to prepare the report: Provided, That such information shall be subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.


(a) Credit allowed. — There is allowed to eligible taxpayers and to persons described in subdivision (5), subsection (b) of this section a credit against the taxes imposed by articles thirteen-a, twenty-three and twenty-four of this chapter. The amount of credit shall be determined as hereinafter provided in this section.

(b) Amount of credit allowable. — The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article), and shall reduce the severance tax, imposed under article thirteen-a of this chapter, the business franchise tax imposed under article twenty-three of this chapter and the corporation net income tax imposed under article twenty-four of this chapter, in that order, subject to the following conditions and limitations:
The amount of credit allowable is applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

(2) Severance tax. — The credit is applied to reduce the severance tax imposed under article thirteen-a of this chapter (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter). The amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such taxable year (determined before application of the credit allowed by section three, article twelve-b of this chapter and before any other allowable credits against tax and before application of the annual exemption allowed by section ten, article thirteen-a of this chapter);

(3) Business franchise tax. — After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the business franchise tax imposed under article twenty-three of this chapter (determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which
would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the amount of the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax);

(4) Corporation net income tax. – After application of subdivision (3) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under article twenty-four of this chapter (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax);

(5) Pass-through entities. –

(A) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income
directly derived from the eligible taxpayer by its owners.

Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax).

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below fifty percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax);

(6) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit (after application of subdivisions (2), (3) and (4) of this subsection) among their members in the same manner as profits and losses are allocated for the taxable year; and

(7) No credit is allowed under this article against any tax imposed by article twenty-one of this chapter.

(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Such unused credit is forfeited.

(d) Application for credit required.
(1) Application required. – Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the tax commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the tax commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage rates and benefits paid to employees filling the new jobs and any other information the tax commissioner may require. This application shall be filed with the tax commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, 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.

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

§11-13S-8. Identification of investment credit property.

(a) Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of property purchased for manufacturing investment:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its straight-line depreciation life;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken; and
(6) The date it was disposed of or otherwise ceased to be property purchased for manufacturing investment.

(b) Every taxpayer who claims credit under this article shall also maintain sufficient records to establish the number and types of new jobs, if any, created, the wages and benefits paid to employees filling the new jobs and the duration of each job.

§11-13S-10. Tax credit review and accountability.

(a) Beginning on the first day of February, two thousand six, and on the first day of February every third year thereafter, the commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the credit allowed under this article during the most recent three-year period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

(1) The numbers of taxpayers claiming the credit;

(2) The net number, type and duration of new jobs created by all taxpayers claiming the credit and the wages and benefits paid;

(3) The cost of the credit;

(4) The cost of the credit per new job created; and

(5) Comparison of employment trends for the industry and for taxpayers within the industry that claim the credit.

(b) Taxpayers claiming the credit shall provide the information as the tax commissioner may require to prepare the report: Provided, That the information is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 21st Day of June, 2002.

Governor
PRESENTED TO THE
GOVERNOR

DATE  6/19/02
TIME  11:30am