

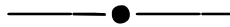
FILED

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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4047**

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]



Passed March 12, 2004

In Effect Ninety Days from Passage

FILED

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SECRETARY OF STATE

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FOR

## H. B. 4047

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

[BY REQUEST OF THE EXECUTIVE]

[Passed March 12, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13U-1, §11-13U-2, §11-13U-3, §11-13U-4, §11-13U-5, §11-13U-6, §11-13U-7, §11-13U-8, §11-13U-9 and §11-13U-10, all relating to the high-growth business investment tax credit.

*Be it enacted by the Legislature of West Virginia:*

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13U-1, §11-13U-2, §11-13U-3, §11-13U-4, §11-13U-5, §11-13U-6, §11-13U-7, §11-13U-8, §11-13U-9 and §11-13U-10, all to read as follows:

**ARTICLE 13U. HIGH-GROWTH BUSINESS INVESTMENT TAX CREDIT.**

**§11-13U-1. Short title.**

1 This article may be cited as the “High-Growth Business  
2 Investment Tax Credit”.

**§11-13U-2. Legislative finding and purpose.**

1 The Legislature finds the encouragement of investment in  
2 potentially high-growth research and development businesses  
3 in this state is in the public interest and promotes economic  
4 growth and development for the people of this state. In order to  
5 encourage investment in start-up, growth-oriented, research and  
6 development businesses in this state and thereby increase  
7 employment and economic development, there is hereby  
8 provided a high-growth business investment tax credit.

**§11-13U-3. Definitions.**

1 As used in this article, the following terms have the  
2 meanings ascribed to them in this section, unless the context in  
3 which the term is used clearly requires another meaning or a  
4 specific different definition is provided:

5 (1) “Alter ego” means a qualified research and development  
6 company where one or more of the following criteria are  
7 satisfied in relation to the eligible taxpayer:

8 (A) The ownership of the business is “substantially related”  
9 to the ownership of the eligible taxpayer. “Substantially  
10 related” means a five percent or more common ownership  
11 interest; or

12 (B) The board of directors of the qualified research and  
13 development company is controlled by the eligible taxpayer:  
14 *Provided*, That an eligible taxpayer is deemed to have control  
15 of the board of directors of a qualified research and develop-  
16 ment company if it controls a simple majority of the board of  
17 directors.

18       (2) “Corporate headquarters” means the place at which the  
19 corporation has its commercial domicile and from which the  
20 business of the corporation is primarily conducted.

21       (3) “Eligible taxpayer” means a person that has received  
22 certification from the economic development authority that a  
23 portion of the annual available high growth business investment  
24 credit has been allocated to it, that is subject to the tax imposed  
25 by either article twenty-three, article twenty-four or article  
26 twenty-one of this chapter, and that has made a qualified  
27 investment in a qualified research and development credit  
28 company.

29       (4) “Person” includes any natural person, corporation,  
30 limited liability company, or partnership.

31       (5) “Qualified investment” means an equity financing of a  
32 West Virginia qualified strategic research and development  
33 company. The investment must be in cash or cash equivalents  
34 and may not be an exchange of in-kind property.

35       (6) “Qualified research and development company” for  
36 purposes of the high growth business investment tax credit  
37 means an entity that has been certified by the state tax commis-  
38 sioner as eligible for the West Virginia research and develop-  
39 ment tax credit set forth in article thirteen-r, chapter eleven of  
40 this code, that has annual gross receipts of less than twenty  
41 million dollars and has annual payroll of less than two million  
42 five hundred thousand dollars.

43       (7) “Tax credit” means the high-growth business develop-  
44 ment tax credit authorized by this article.

45       (8) “Taxable year” means the tax year of the eligible  
46 taxpayer.

**§11-13U-4. High-growth business investment tax credit.**

1       (a) *Credit allowed.* — There shall be allowed to each  
2 eligible taxpayer in a qualified research and development  
3 company that maintains its corporate headquarters in West  
4 Virginia a tax credit for the taxable year in which the invest-  
5 ment was made. The total tax credit that may be used by an  
6 eligible taxpayer shall be equal to fifty percent of the total value  
7 of the qualified investment in the taxable year the qualified  
8 investment was actually made.

9       (b) No more than one million dollars of the tax credits  
10 allowed under subsection (a) of this section shall be allocated  
11 by the economic development authority during any fiscal year.  
12 The economic development authority shall allocate the tax  
13 credits in the order the applications therefor are received.

14       (c) *Business franchise tax.* — The tax credit is first applied  
15 to reduce the taxes imposed upon the eligible taxpayer by  
16 article twenty-three of this chapter for the taxable year (deter-  
17 mined after application of the credits against tax provided in  
18 section seventeen of said article, but before application of any  
19 other allowable credits against tax).

20       (d) *Corporation net income taxes.* — After application of  
21 subsection (c) of this section, any unused tax credit is next  
22 applied to reduce the taxes imposed upon the eligible taxpayer  
23 by article twenty-four of this chapter for the taxable year  
24 (determined before application of allowable credits against tax).

25       (e) If the eligible taxpayer is a limited liability company, an  
26 electing small business corporation (as defined in section 1361  
27 of the United States Internal Revenue Code of 1986, as  
28 amended), or a partnership, any unused tax credit remaining  
29 after application of subsections (c) and (d) of this section is

30 allowed as a tax credit against the taxes imposed by article  
31 twenty-four of this chapter on owners of the eligible taxpayer.

32 (1) Electing small business corporations (as defined above  
33 in subsection (e)), limited liability companies, and partnerships  
34 shall allocate the tax credit allowed by this article among their  
35 members in the same manner as profits and losses are allocated  
36 for the taxable year.

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

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

46 (g) If the eligible taxpayer is a limited liability company, an  
47 electing small business corporation (as defined in subsection (e)  
48 of this section) or a partnership, any unused tax credit remain-  
49 ing after application of subsections (c), (d), (e) and (f) of this  
50 section is allowed as a tax credit against the taxes imposed by  
51 article twenty-one of this chapter on owners of the eligible  
52 taxpayer.

53 (1) Electing small business corporations (as defined in  
54 subsection (e) of this section), limited liability companies, and  
55 partnerships shall allocate the tax credit allowed by this article  
56 among their members in the same manner as profits and losses  
57 are allocated for the taxable year.

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

61 (h) The total amount of tax credit that may be used in any  
62 taxable year by any eligible taxpayer in combination with the  
63 owners of the eligible taxpayer under subsections (e) and (g) of  
64 this section may not exceed fifty thousand dollars. The total  
65 amount of qualified investment that a qualified research and  
66 development company may accept from all eligible taxpayers  
67 in any taxable year is one million dollars.

68 (i) *Unused credit carryforward.* — If the tax credit allowed  
69 under this article in any taxable year exceeds the sum of the  
70 taxes enumerated in subsections (c), (d), (e), (f) and (g) of this  
71 section for that taxable year, the eligible taxpayer and owners  
72 of eligible taxpayers described in subsections (e) and (g) of this  
73 section may apply the excess as a tax credit against those taxes,  
74 in the order and manner stated in this section, for succeeding  
75 taxable years until the earlier of the following:

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

77 (2) The expiration of the fourth taxable year after the  
78 taxable year in which the investment was made. The tax credit  
79 remaining thereafter is forfeited.

80 (j) No tax credit is allowed or may be applied under this  
81 article until the taxpayer seeking to claim the tax credit has:

82 (1) Filed with the economic development authority a  
83 written application for the tax credit;

84 (2) Filed with the economic development authority the  
85 research and development program or project certification  
86 issued pursuant to section six, article thirteen-r of this chapter  
87 for the qualified research and development company that will  
88 benefit from the investment;

89 (3) Filed with the economic development authority the  
90 certificate of incorporation for the qualified research and

91 development company that will benefit from the investment;  
92 and

93 (4) Received from the economic development authority  
94 certification of the amount of tax credit to be allocated to the  
95 eligible taxpayer.

**§11-13U-5. Restrictions on investment.**

1 (a) No qualified investment may be made in a qualified  
2 research and development company that is the alter ego of the  
3 eligible taxpayer.

4 (b) The eligible taxpayer shall maintain its qualified  
5 investment for a minimum period of five years: Provided, That  
6 an eligible taxpayer receiving repayment or return of a qualified  
7 investment (exclusive of interest, dividends or other earnings on  
8 the investment) shall within three calendar months from the  
9 date of repayment or return reinvest the repaid or returned  
10 amount of the initial investment in another qualified research  
11 and development company for a period of time at least equal to  
12 the remainder of the initial five-year term.

**§11-13U-6. Penalty.**

1 An eligible taxpayer that fails to maintain a qualified  
2 investment for the required period of time stated in section five  
3 of this article shall pay to the state tax commissioner a penalty  
4 equal to all of the tax credits asserted under this article by the  
5 eligible taxpayer with interest, calculated at the rate set forth in  
6 section seventeen-a, article ten of this chapter, from the date the  
7 tax credits were certified as allocated to the eligible taxpayer.  
8 The tax commissioner shall give notice to the eligible taxpayer  
9 of any penalties imposed under this section. The penalty shall  
10 be assessed and collected in the same manner as tax. The tax  
11 commissioner shall deposit any amounts received under this  
12 subsection in the general revenue fund.



**§11-13U-7. Disclosure of tax credits.**

1       Notwithstanding any provision in this code to the contrary,  
2 the tax commissioner shall annually publish in the state register  
3 the name and address of every eligible taxpayer and the amount  
4 of any tax credit asserted under this article.

**§11-13U-8. Tax credit review and accountability.**

1       (a) Beginning on the first day of February, two thousand  
2 six, and on the first day of February every third year thereafter,  
3 the tax commissioner shall submit to the governor, the president  
4 of the Senate and the speaker of the House of Delegates a tax  
5 credit review and accountability report evaluating the cost  
6 effectiveness of the tax credit allowed under this article during  
7 the most recent three-year period for which information is  
8 available: *Provided*, That the requirement to file the credit  
9 review and accountability report terminates the thirtieth day of  
10 June, two thousand eleven, unless the termination of entitlement  
11 to the tax credit as stated in section ten of this article termi-  
12 nates. The criteria to be evaluated includes, but is not limited to,  
13 for each year of the three-year period:

14       (1) The numbers of eligible taxpayers claiming the tax  
15 credit;

16       (2) The net number, type, and duration of new jobs created  
17 by all qualified research and development companies in which  
18 taxpayers claiming the credit made investment in and the wages  
19 and benefits paid by such companies;

20       (3) The cost of the tax credit;

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

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

24 (b) Eligible taxpayers claiming the tax credit shall provide  
25 any information required by the tax commissioner for the  
26 purpose of preparing the report: *Provided*, That such informa-  
27 tion shall be subject to the confidentiality and disclosure  
28 provisions of sections five-d and five-s, article ten of this  
29 chapter.

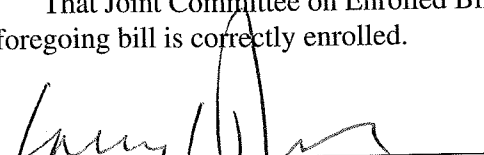
**§11-13U-9. Rules.**


1 The state tax department and the economic development  
2 authority may promulgate rules in accordance with article three,  
3 chapter twenty-nine-a of this code to carry out the policy and  
4 purposes of this article, to provide any necessary clarification  
5 of the provisions of this article and to efficiently provide for the  
6 general administration of this article.

**§11-13U-10. Effective date; expiration of credit.**

1 The provisions of this article become effective on the first  
2 day of July, two thousand five, and apply only to qualified  
3 investment made on or after that date: *Provided*, That no  
4 entitlement to the tax credit shall result from any qualified  
5 investment made after the thirtieth day of June, two thousand  
6 eight: *Provided, however*, That unless sooner terminated by  
7 law, the high growth business investment tax credit act will  
8 terminate on the first day of July, two thousand eight. Taxpay-  
9 ers who have gained entitlement to the tax credit pursuant to  
10 qualified investment prior to the earlier of the first day of July,  
11 two thousand eight, or termination of the tax credit prior to that  
12 date shall retain that entitlement and apply the credit in due  
13 course pursuant to the requirements and limitations of this  
14 article.

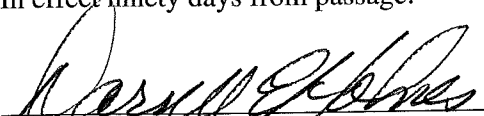
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
Chairman Senate Committee

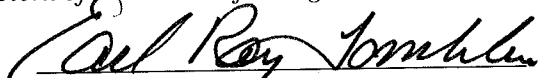
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 1st  
day of April, 2004.

  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 4/1/04

TIME 7:00 pm