HB 3048S

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 3048

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

Passed March 9, 2007

In Effect January 1, 2008

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 9, 2007; in effect January 1, 2008.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13Q-10a, relating to the economic opportunity tax credit; providing credit for specified high technology manufacturers; specifying definitions.

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 section, designated §11-13Q-10a, to read as follows:

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-10a. Credit allowed for specified high technology manufacturers.

(a) *High technology manufacturing business defined.* -- For purposes of this section, the term "high technology manufacturing business" means and is limited to only those businesses engaging in a manufacturing activity properly classified as having one or more of the following six-digit North American Industry Classification System code numbers.

North American Industry Classification System Code	Manufacturing Activity
	Computer & Peripheral Equipment
334111	Electronic Computers
334112	Computer Storage Devices
	Electronic Components
334411	Electron Tubes
334414	Electronic Capacitors
	Semiconductors
334413	Semiconductor & Related Devices
333295	Semiconductor Machinery

(b) *Amount of credit allowed.*

(1) *Credit allowed.* -- An eligible high technology manufacturing business taxpayer is allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible high technology manufacturing business taxpayer's qualified investment in a new or expanded high technology manufacturing business in this state which results in the creation of at least twenty new jobs within twelve months after placing qualified investment into service. The amount of this credit is determined as provided in this section.

(2) *Amount of credit.* -- The annual amount of credit allowable under this subsection is one hundred percent of the tax attributable to qualified investment, for each consecutive year of a twenty-year credit period.

(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 twenty-year credit period until the next succeeding taxable year. This election is made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is first placed in service or use. Once made, this election cannot be revoked. The annual credit allowance shall be taken and applied against the taxes enumerated in section seven of this article. The credit shall offset 100 percent of tax attributable to qualified investment and shall be applied for a period of twenty consecutive years without carryover.

(c) *New jobs.* -- The term "new jobs" has the meaning ascribed to it in section three of this article.

(1) The term "new employee" has the meaning ascribed to it in section three of this article: *Provided*, That this term does 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 the Internal Revenue Code of 1986; or

(B) Worked for the taxpayer during the six-month period ending on the date the 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;

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

(D) The median compensation of the new jobs attributable to the qualified investment is greater than forty-five thousand dollars per year: *Provided*, That this median compensation amount shall be adjusted for inflation each year in accordance with the provisions of this section.

(3) *Median compensation adjusted for inflation.* -- The median compensation requirements applicable to high technology manufacturing business taxpayers for purposes of this section, shall be adjusted for inflation by application of a cost-of-living adjustment. The adjusted median compensation amount shall be applicable, as adjusted, each year throughout the twenty-year credit period. Failure of a taxpayer entitled to credit under this section to meet the median compensation requirement for any year will result in forfeiture of the credit for that year. However, if in any succeeding year within the original twenty year credit period, the taxpayer pays a median compensation to its employees which exceeds the inflation adjusted median compensation amount for that year, the taxpayer shall regain entitlement to take the credit for that year only. No credit forfeited in a prior year shall be taken, and the tax year or years to which the forfeited credit would have been applied shall be forfeited and deducted from the remainder of the years over which the credit can be taken.

(A) *Cost-of-living adjustment.* -- For purposes of this section, the cost-of-living adjustment for any calendar year is the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year two thousand seven.

(B) *Consumer price index for any calendar year.* -- For purposes of this section, 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.

(C) Consumer price index. -- For purposes of this section, the term "Federal Consumer Price Index" means the last consumer price index for all urban consumers published by the United States Department of Labor.

(D) *Rounding.* -- If any increase in the median compensation amount under this section is not a multiple of fifty dollars, such increase shall be rounded to the next lowest multiple of fifty dollars.

(d) *Credit exclusion.* --

(1) Any taxpayer that has taken the credit against tax authorized under this section shall not be eligible for application of the credit allowed under any other section of this article during the twenty year credit period authorized by this section for the same qualified investment on which credit allowed by this article was taken.

(2) Any taxpayer that has taken the credit against tax authorized under this section may not take the credit authorized under any other provision of this code for the same qualified investment on which credit allowed by this article was taken.

(e) *Rules.* -- The commissioner may prescribe such rules as he or she determines necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the credit allowed.

(f) *Notices and reports.* -- The commissioner may require a taxpayer intending to claim credit under this section to file with the 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.

(g) *Report to the Legislature.* -- The Tax Commissioner shall report to the Legislature by January 1, 2014, regarding the use of this tax credit. The Tax Commissioner shall forward this report to the Joint Committee on Government and Finance and the House and Senate Finance Committees.

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 on January 1, 2008

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 23rd day of March, 2007.

Governor

PRESENTED TO THE
GOVERNOR

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Time 2:02pm