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FOR

Senate Bill No. 185

(By SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,
BY REQUEST OF THE EXECUTIVE)

[PASSED APRIL 13, 2013; IN EFFECT FROM PASSAGE.]

SB 185

SECRETARY OF STATE

2013 MAY -3 PM 12:09

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Senate Bill No. 185

(BY SENATORS KESSLER (MR. PRESIDENT) AND M. HALL,
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[Passed April 13, 2013; in effect from passage.]

AN ACT to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended, all relating to the tax credit for alternative-fuel motor vehicles and qualified alternative-fuel vehicle refueling infrastructure and qualified alternative-fuel vehicle home refueling infrastructure; setting forth legislative findings; defining terms; restricting credit to purchases of and conversions to natural gas-fueled motor vehicles and liquefied petroleum gas-fueled motor vehicles; narrowing allowance of credit for alternative-fuel motor vehicle purchases, alternative-fuel motor vehicle conversions and alternative-fuel motor vehicle refueling infrastructure; outlining eligibility for credit and cessation of eligibility for credit for specified construction, purchases, expenditures, investments, installations or conversions made on or after cessation dates or tax years as specified; requiring that not more than one tax credit be granted under said article six-d, or any combination of articles set forth in said chapter eleven for purchase of an alternative-fuel motor vehicle or for costs relating to conversion

of a motor vehicle to an alternative-fuel motor vehicle, or for costs associated with alternative-fuel vehicle refueling infrastructure or for costs associated with alternative-fuel home refueling infrastructure; providing amount of credit for qualified alternative-fuel vehicle refueling infrastructure; providing limitations on credit; allowing pass-through entities to distribute credits to pass-through equity owners in any manner such equity owners see fit; providing for the termination of tax credit for alternative-fuel motor vehicles purchased after December 31, 2017; providing for the termination of tax credit for motor vehicles converted to operate on alternative fuel after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of alternative-fuel vehicle refueling infrastructure occurring after December 31, 2017; providing for the termination of tax credit for construction or purchase and installation of qualified alternative-fuel vehicle home refueling infrastructure occurring on or after April 15, 2013; providing for the termination of tax credit for purchases of motor vehicles that operate on fuels other than compressed natural gas or liquefied natural gas, or liquefied petroleum gas, occurring on or after April 15, 2013; providing for the termination of tax credit for conversions of motor vehicles to operate on fuels other than compressed natural gas or liquefied natural gas or liquefied petroleum gas occurring on or after April 15, 2013; providing limitations and restrictions of credit carryover; and providing that credit is nontransferable.

Be it enacted by the Legislature of West Virginia:

That §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLE TAX CREDIT.

§11-6D-1. Legislative findings and purpose.

1 Consistent with the public policy as stated in section one,
2 article two-d, chapter twenty-four of this code, the
3 Legislature hereby finds that the use of natural gas-based
4 alternative fuels is in the public interest and promotes the
5 general welfare of the people of this state insofar as it
6 addresses serious concerns for our environment and our
7 state's and nation's dependence on foreign oil as a source of
8 energy. The Legislature further finds that by encouraging the
9 use of natural gas-fueled and liquefied petroleum gas-fueled
10 motor vehicles, the state will be reducing its dependence on
11 foreign oil and attempting to improve its air quality. The
12 Legislature further finds that the wholesale cost of fuel for
13 certain natural gas-fueled and liquefied petroleum gas-fueled
14 motor vehicles is significantly lower than the cost of fuel for
15 traditional motor vehicles.

16 However, because the cost of motor vehicles which
17 utilize natural gas-fueled or liquefied petroleum gas-fueled
18 technologies remains high in relation to motor vehicles that
19 employ more traditional technologies, citizens of this state
20 who might otherwise choose a natural gas-fueled or liquefied
21 petroleum gas-fueled motor vehicle are forced by economic
22 necessity to continue using motor vehicles that are fueled by
23 more conventional means. Additionally, the availability of
24 commercial infrastructure to support natural gas-fueled and
25 liquefied petroleum gas-fueled vehicles available to the
26 public is inadequate to encourage the use of natural gas-
27 fueled and liquefied petroleum gas-fueled motor vehicles. It
28 is the intent of the Legislature that the alternative-fuel motor
29 vehicle tax credit previously expired in 2006 be hereby
30 reinstated with changes and amendments as set forth herein.
31 Therefore, in order to encourage the use of natural gas-fueled
32 and liquefied petroleum gas-fueled motor vehicles and
33 possibly reduce unnecessary pollution of our environment
34 and reduce our dependence on foreign sources of energy,

35 there is hereby created an alternative-fuel motor vehicle tax
36 credit and an alternative-fuel vehicle refueling infrastructure
37 tax credit.

§11-6D-2. Definitions.

1 As used in this article, the following terms have the
2 meanings ascribed to them in this section.

3 (a) "*Alternative fuel*". –

4 (1) For purchase or installations occurring on and after
5 January 1, 2011, but prior to April 15, 2013, the term
6 "alternative fuel" means and includes:

7 (A) Compressed natural gas;

8 (B) Liquefied natural gas;

9 (C) Liquefied petroleum gas;

10 (D) Ethanol;

11 (E) Fuel mixtures that contain eighty-five percent or more
12 by volume, when combined with gasoline or other fuels, of
13 the following:

14 (i) Methanol;

15 (ii) Ethanol; or

16 (iii) Other alcohols;

17 (F) Natural gas hydrocarbons and derivatives;

18 (G) Hydrogen;

19 (H) Coal-derived liquid fuels; and

20 (I) Electricity, including electricity from solar energy.

21 (2) For purchases or installations occurring on or after
22 April 15, 2013, the term “alternative fuel” means and is
23 limited to:

24 (A) Compressed natural gas;

25 (B) Liquefied natural gas; or

26 (C) Liquefied petroleum gas.

27 (b) “Alternative-fuel motor vehicle” or “qualified motor
28 vehicle” means a motor vehicle that as a new or retrofitted or
29 converted fuel vehicle:

30 (1) Operates solely on one alternative fuel;

31 (2) Is capable of operating on one or more alternative
32 fuels, singly or in combination; or

33 (3) Is capable of operating on an alternative fuel and is
34 also capable of operating on gasoline or diesel fuel.

35 (c) “Bi-fueled motor vehicle” means a motor vehicle
36 fueled from two or more tanks, each of which stores a
37 separate type of fuel, which has the ability to operate on an
38 alternative fuel and another form of fuel. “Bi-fueled motor
39 vehicles” as here defined are alternative-fuel motor vehicles.

40 (d) “Liquefied petroleum gas” means fuel commonly
41 known and designated as “liquefied petroleum gas” or “LP
42 gas”. The term “liquefied petroleum gas” also means and
43 includes:

44 (1) Propane;

45 (2) Butane; or

46 (3) A mix of gases used as motor fuel which is
47 predominantly propane or butane, or predominantly a mixture
48 of propane and butane.

49 (c) "Plug-in hybrid electric vehicle" means:

50 (1) A plug-in hybrid electric vehicle manufactured by an
51 established motor vehicle manufacturer of plug-in hybrid
52 electric vehicles that can operate solely on electric power and
53 that is capable of recharging its battery from an on-board
54 generation source and an off-board electricity source; and

55 (2) A plug-in hybrid electric vehicle conversion that
56 provides an increase in city fuel economy of seventy-five
57 percent or more as compared to a comparable nonhybrid
58 version vehicle for a minimum of twenty miles and that is
59 capable of recharging its battery from an on-board generation
60 source and an off-board electricity source. A vehicle is
61 comparable if it is the same model year and the same vehicle
62 class as established by the United States Environmental
63 Protection Agency and is comparable in weight, size and use.
64 Fuel economy comparisons shall be made using city fuel
65 economy standards in a manner that is substantially similar to
66 the manner in which city fuel economy is measured in
67 accordance with procedures set forth in 40 C. F. R. 600 as in
68 effect on January 1, 2011.

69 (f) "Qualified alternative-fuel vehicle refueling
70 infrastructure" means property owned by the applicant for the
71 tax credit and used for storing alternative fuels and for
72 dispensing such alternative fuels into fuel tanks of motor
73 vehicles, including, but not limited to, natural gas supply
74 lines, compression equipment, storage tanks and dispensing

75 units for alternative fuel at the point where the fuel is
76 delivered into a motor vehicle for consumption: *Provided*,
77 That the property is installed and located in this state and is
78 not located in or on a private residence or private home.

79 (g) "Qualified alternative-fuel vehicle home refueling
80 infrastructure" means property owned by the applicant for the
81 tax credit located on a private residence or private home and
82 used for storing alternative fuels and for dispensing such
83 alternative fuels into fuel tanks of motor vehicles, including,
84 but not limited to, compression equipment, storage tanks and
85 dispensing units for alternative fuel at the point where the
86 fuel is delivered or for providing electricity to plug-in hybrid
87 electric vehicles or electric vehicles: *Provided*, That the
88 property is installed and located in this state.

89 (h) "Taxpayer" means any natural person, corporation,
90 limited liability company or partnership subject to the tax
91 imposed under article twenty-one, article twenty-three or
92 article twenty-four of this chapter or any combination thereof.

**§11-6D-3. Credit allowed for alternative-fuel motor vehicles
and qualified alternative-fuel vehicle refueling
infrastructure; application against personal
income tax, business franchise tax or corporate
net income tax; effective date.**

1 The tax credits for the purchase of alternative-fuel motor
2 vehicles or conversion to alternative-fuel motor vehicles,
3 qualified alternative-fuel vehicle refueling infrastructure and
4 qualified alternative-fuel vehicle home refueling
5 infrastructure provided in this article may be applied against
6 the tax liability of a taxpayer imposed by the provisions of
7 either article twenty-one, article twenty-three or article
8 twenty-four of this chapter, but in no case may more than one
9 tax credit be granted under this article or any combination of
10 articles set forth in this chapter for purchase of an

11 alternative-fuel motor vehicle or for costs relating to
12 conversion to an alternative-fuel motor vehicle, or for costs
13 associated with alternative-fuel vehicle refueling
14 infrastructure or for costs associated with alternative-fuel
15 home refueling infrastructure as defined in this article. This
16 credit shall be available for those tax years beginning on or
17 after January 1, 2011, but shall not be available for, or with
18 relation to, any purchase, expenditure, investment,
19 installation, construction or conversion made in any tax year
20 beginning after the termination dates specified in this article,
21 as applicable to specified purchases, expenditures,
22 investments, installations, construction or conversions.

§11-6D-4. Eligibility for credit.

1 A taxpayer is eligible to claim the credit against tax
2 provided in this article if the taxpayer:

3 (a) Converts a motor vehicle that is presently registered
4 in West Virginia to operate exclusively on an alternative fuel
5 as defined in this article or to operate as a bi-fueled
6 alternative-fuel motor vehicle; or

7 (b) Purchases from an original equipment manufacturer
8 or an after-market conversion facility or any other automobile
9 retailer, a new dedicated alternative-fuel motor vehicle or
10 bi-fueled alternative-fuel motor vehicle for which the
11 taxpayer then obtains a valid West Virginia registration; or

12 (c) Constructs or purchases and installs qualified
13 alternative-fuel vehicle refueling infrastructure that is capable
14 of dispensing alternative fuel for alternative-fuel motor
15 vehicles.

16 (d) (1) The credit provided in this article is not available
17 to and may not be claimed by any taxpayer under any
18 obligation pursuant to any federal or state law, policy or

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19 regulation to convert to the use of alternative fuels for any
20 motor vehicle.

21 (2) The credit provided in this article is not available to
22 and may not be claimed by any taxpayer for construction or
23 purchase and installation of alternative-fuel vehicle home
24 refueling infrastructure on or after April 15, 2013.

25 (e) The credit provided in this article for purchase of an
26 alternative-fuel motor vehicle or conversion of a motor
27 vehicle to an alternative-fuel motor vehicle, is not available
28 to and may not be claimed by any taxpayer in, or for, any tax
29 year in which the taxpayer did not own the alternative-fuel
30 motor vehicle for which the claim is filed on the last day of
31 the taxpayer's tax year for which the credit is claimed.

32 (f) *Effective date.* –

33 The amendments to this article enacted in the 2013
34 Regular Legislative Session shall be effective upon passage.

§11-6D-5. Amount of credit for alternative-fuel motor vehicles.

1 (a) For taxable years beginning on and after January 1,
2 2011, but prior to termination or cessation of this credit as
3 specified in this article, the amount of the credit allowed
4 under this article for an alternative-fuel motor vehicle that
5 weighs less than twenty-six thousand pounds is thirty-five
6 percent of the purchase price of the alternative-fuel motor
7 vehicle up to a maximum amount of \$7,500 or fifty percent
8 of the actual cost of converting from a traditionally fueled
9 motor vehicle to an alternative-fuel motor vehicle up to a
10 maximum amount of \$7,500.

11 (b) For taxable years beginning on and after January 1,
12 2011, but prior to termination or cessation of this credit as
13 specified in this article, the amount of the credit allowed

14 under this article for an alternative-fuel motor vehicle that
15 weighs more than twenty-six thousand pounds is thirty-five
16 percent of the purchase price of the alternative-fuel motor
17 vehicle up to a maximum amount of \$25,000 or fifty percent
18 of the actual cost of converting from a traditionally fueled
19 motor vehicle to an alternative-fuel motor vehicle up to a
20 maximum amount of \$25,000.

**§11-6D-6. Amount of credit for qualified alternative-fuel
vehicle refueling infrastructure.**

1 (a) For taxable years beginning on and after January 1,
2 2011, but prior to January 1, 2014, the amount of the credit
3 allowed under this article for qualified alternative-fuel
4 vehicle refueling infrastructure is equal to fifty percent of the
5 total costs directly associated with the construction or
6 purchase and installation of the alternative-fuel vehicle
7 refueling infrastructure up to a maximum of \$250,000:
8 *Provided*, That if the qualified alternative-fuel vehicle
9 refueling infrastructure is generally accessible for public use,
10 the amount of the credit allowed will be multiplied by 1.25
11 and the maximum amount allowable will be \$312,500. The
12 amount of credit allowed may not exceed the cost of
13 construction of the alternative-fuel vehicle refueling
14 infrastructure.

15 (b) For taxable years beginning on and after January 1,
16 2014, but prior to termination or cessation of this credit as
17 specified in this article, the amount of the credit allowed
18 under this article for qualified alternative-fuel vehicle
19 refueling infrastructure is equal to twenty percent per facility
20 of the total costs directly associated with the construction or
21 purchase and installation of the alternative-fuel vehicle
22 refueling infrastructure up to a maximum of \$400,000 per
23 facility.

24 (c) The cost of construction of the alternative-fuel vehicle
25 refueling infrastructure or alternative-fuel vehicle home
26 refueling infrastructure eligible for a tax credit under this
27 article does not include costs associated with exploration,
28 development or production activities necessary for severing
29 natural resources from the soil or ground.

30 (d) When the taxpayer is a pass-through entity treated like
31 a partnership for federal and state income tax purposes, the
32 credit allowed under this article for the year shall flow
33 through to the equity owners of the pass-through entity in any
34 manner that such equity owners see fit and is not required to
35 flow through such equity owners in the same manner as
36 distributive share flows through to the equity owners and in
37 accordance with any legislative rule the Tax Commissioner
38 may propose for legislative approval in accordance with
39 article three, chapter twenty-nine-a of this code to administer
40 this section.

41 (e) No credit allowed by this article may be applied
42 against employer withholding taxes imposed by article
43 twenty-one of this chapter.

§11-6D-7. Duration of availability of credit.

1 No person is eligible to receive a tax credit under this
2 article for:

3 (1) An alternative-fuel motor vehicle purchased after
4 December 31, 2017;

5 (2) A vehicle converted to an alternative-fuel motor
6 vehicle after December 31, 2017;

7 (3) The construction or purchase and installation of
8 qualified alternative-fuel vehicle refueling infrastructure
9 occurring after December 31, 2017;

10 (4) The construction or purchase and installation of
11 qualified alternative-fuel vehicle home refueling
12 infrastructure occurring on or after April 15, 2013;

13 (5) Purchases of motor vehicles that operate on fuels
14 other than compressed natural gas, liquefied natural gas or
15 liquefied petroleum gas, occurring on or after April 15, 2013;
16 or

17 (6) Conversions of motor vehicles to operate on fuels
18 other than compressed natural gas, liquefied natural gas or
19 liquefied petroleum gas, occurring on or after April 15, 2013.

§11-6D-9. Carryover credit allowed; recapture of credit.

1 (a) If the alternative-fuel motor vehicle tax credit allowed
2 under this article in the first taxable year in which the tax
3 credit is allowable to offset tax exceeds the taxpayer's tax
4 liability as determined in accordance with article twenty-one,
5 article twenty-three and article twenty-four of this chapter for
6 that taxable year, the excess may be applied for not more than
7 the four next succeeding taxable years until the excess tax
8 credit is used or the end of the fourth next succeeding taxable
9 year, whichever occurs first. Any excess credit remaining at
10 the end of the fourth next succeeding taxable year shall be
11 forfeited.

12 (b) If the qualified alternative-fuel vehicle refueling
13 infrastructure tax credit allowed under this article in any
14 taxable year exceeds the taxpayer's tax liability as determined
15 in accordance with article twenty-one, article twenty-three or
16 article twenty-four of this chapter for that taxable year, the
17 excess may be applied for succeeding taxable years until the
18 full amount of the excess tax credit is used.

19 (c) No carryback to a prior taxable year is allowed for the
20 amount of any unused credit in any taxable year.

21 (d) A tax credit is subject to recapture, elimination or
22 reduction if it is determined by the State Tax Commissioner
23 that a taxpayer was not entitled to the credit, in whole or in
24 part, in the tax year in which it was claimed by the taxpayer.
25 The amount of credit that flows through to equity owners of
26 a pass-through entity may be recaptured or recovered from
27 either the taxpayer or the equity owners in the discretion of
28 the Tax Commissioner.

29 (e) The tax credit allowed under this article may not be
30 sold, transferred or assigned to any person or entity. The tax
31 credit allowed under this article does not attach to or follow
32 the qualified motor vehicle or qualified infrastructure upon
33 sale, resale, transfer, assignment or any other change of
34 ownership of such vehicle or infrastructure. Credit shall not
35 be available to any successor owner of any qualified motor
36 vehicle or any qualified infrastructure property for which the
37 credit was available to the original owner or predecessor
38 owner.

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

Roby Ferguson
Member Chairman Senate Committee

Darry Wells
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joseph M. Misard
Clerk of the Senate

Suzanne B. ...
Clerk of the House of Delegates

[Signature]
President of the Senate
[Signature]
Speaker of the House of Delegates

2013 MAY -3 PM 12: 09
SECRETARY OF STATE
FILED

The within *is approved* this the *3rd*
Day of *May*, 2013.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 2 pm