ENROLLED

Committee Substitute

for

House Bill 2110

(By Delegates Howell, Moyle, Storch, Moffatt, Hamrick, Householder, Statler, Walters, Arvon, Blair and Kessinger)

[Passed March 12, 2016; in effect ninety days from passage.]
WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

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[Passed March 12, 2016; in effect ninety days from passage.]
AN ACT to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13S-3 and §11-13S-4 of said code, all relating to the tax treatment of manufacturing entities generally; amending definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes; amending definition of manufacturing for purposes of manufacturing investment tax credit; amending the formula for calculating credit allowed for manufacturing investment to include Small Arms Ammunition Manufacturing and Small Arms, Ordinance and Ordinance Accessories Manufacturing; and increasing the amount of such allowable credit.

Be it enacted by the Legislature of West Virginia:

That §11-6F-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-13S-3 and §11-13S-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

§11-6F-2. Definitions.

As used in this article, the term:

(a) "Certified capital addition property" means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the State Tax Commissioner in accordance with section four of this article: Provided, That airplanes and motor vehicles licensed by the Division of Motor Vehicles shall in no event constitute certified capital addition property.

(b) "Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of thirty-one, thirty-two or thirty-three or the six digit code number 211112.
(c) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse, building or complex of buildings, including land on which it is located, and all machinery, equipment, improvements and other real property and personal property located at or within the facility used in connection with the operation of the facility in a manufacturing business.

(d) "Personal property" means all property specified in subdivision (q), section ten, article two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and equipment, pollution control equipment, computers and related data processing equipment, spare parts and supplies.

(e) "Qualified capital addition to a manufacturing facility" means either:

1. All real property and personal property, the combined original cost of which exceeds $50 million to be constructed, located or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least $100 million. If the capital addition is made in a steel, chemical or polymer alliance zone as designated from time-to-time by executive order of the Governor, then the person making the capital addition may for purposes of satisfying the requirements of this subsection join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least $100 million if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility, consists of a facility used to store, handle, process or produce raw materials for the manufacturing facility, consists of a facility used to store, handle or process natural gas to produce fuel for the generation of steam or electricity for the manufacturing facility or consists of a facility that generates steam or electricity for the manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for the manufacturing facility's use in heating, manufacturing or generation of electricity. Beginning on and after July 1, 2011, when the new capital addition is a facility that is or will be classified under the North American Industry Classification System with a six digit code number 211112, or
is a manufacturing facility that uses product produced at a facility with code number 211112, then
wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted
and where the term "50 million" is used, the term "10 million" shall be substituted; and that
beginning on and after July 1, 2016, when the new capital addition is a facility that is or will be
classified under the North American Industry Classification System with a six-digit North American
Industry Classification System code a product produced at a facility with code numbers 332992
and 332994, then wherever the term "100 million" is used in this subsection, the term "2 million"
shall be substituted and where the term "50 million" is used, the term "1 million" shall be
substituted; or

(2) (A) All real property and personal property, the combined original cost of which exceeds
$2 billion to be constructed, located or installed at a facility, or a combination of facilities by a
single entity or combination of entities engaged in a unitary business, that:
    (i) Is or will be classified under the North American Industry Classification System with a
        six digit code number 211112;
    (ii) Is a manufacturing facility that uses one or more products produced at a facility with
code number 211112; or
    (iii) Is a manufacturing facility that uses one or more products produced at a facility
described in subparagraph (ii) of this subdivision.

(B) All real property and personal property, the combined original cost of which exceeds
$2 million to be constructed, located or installed at a facility, or a combination of facilities by a
single entity or combination of entities engaged in a unitary business, that is or will be classified
under North American Industry Classification System with a six digit code number 332992 or
332994.

(C) No preexisting investment made, or in place before the capital addition shall be
required for property specified in this subdivision (2). The requirements set forth in subdivision (1)
of this subsection shall not apply to property specified in this subdivision (2) relating to:
(i) Location or installation of investment at or within two miles of a manufacturing facility owned or operated by the person making the capital addition;

(ii) Total original cost of preexisting investment before the capital addition of at least $100 million or, $20 million or $2 million; or

(iii) Multiparty projects.

(f) "Real property" means all property specified in subdivision (p), section ten, article two, chapter two of this code and includes, but is not limited to, lands, buildings and improvements on the land such as sewers, fences, roads, paving and leasehold improvements: Provided, That for capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.


(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purpose of this article, the term:

(1) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion or for the purpose of industrial revitalization of an existing industrial facility in this state.

(2) "Industrial expansion" means capital investment in a new or expanded industrial facility in this state.

(3) "Industrial facility" means any factory, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within the facility primarily used in connection with the operation of the manufacturing business.
(4) "Industrial revitalization" or "revitalization" means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with the operation of the facility in an industrial business of the taxpayer including the acquisition of any real property necessary to the industrial revitalization.

(5) "Industrial taxpayer" means any taxpayer who is primarily engaged in a manufacturing business.

(6) "Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number, of thirty-one, thirty-two or thirty-three or the six digit code number 211112.

(7) "Property purchased for manufacturing investment" means real property, and improvements thereto, and tangible personal property but only if the property was constructed or purchased on or after January 1, 2003, for use as a component part of a new, expanded or revitalized industrial facility. This term includes only that tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property is placed in service or use in this state, of four years or more. Property acquired by written lease for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, is included within this definition.

(A) "Property purchased for manufacturing investment" does not include:

(i) Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(ii) Motor vehicles licensed by the Department of Motor Vehicles;

(iii) Airplanes;

(iv) Off-premises transportation equipment;

(v) Property which is primarily used outside this state; and
(vi) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer which property was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(B) Purchases or acquisitions of land or depreciable property qualify as purchases of property purchased for manufacturing investment for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(8) "Qualified manufacturing investment" means that amount determined under section five of this article as qualified manufacturing investment.

(9) "Taxpayer" means any person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter or any combination of those articles of this chapter.


(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: Provided, That a tax credit for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six
digit code number 211112 such eligible taxpayer must comply with the provisions of subsection (e) of this section for all construction related thereto in order to be eligible for any credit under this article. 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): Provided, That the amount of allowable credit under this article is equal to fifty percent of the qualified manufacturing investment (as determined in section five of this article) for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 332992 or 332994. This credit 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:

(1) 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: Provided, That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed may not reduce the severance tax, imposed under article thirteen-a of this chapter, below forty 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): Provided, however, That when in any taxable year beginning on and
after January 1, 2009, 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 forty percent
of the amount which would be imposed for such taxable year as 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: Provided, That for tax years beginning on
and after January 1, 2009, the amount of annual credit allowed will not reduce the business
franchise tax, imposed under article twenty-three of this chapter, below forty 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):

*Provided, however,* That when in any taxable year beginning on and after January 1, 2009, 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 forty percent of the amount which would be imposed for the taxable year as 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: *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below forty 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): *Provided, however,* That when in any taxable year beginning
on and after January 1, 2009, 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 forty percent of the amount which would be imposed for the taxable year as
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): Provided, That for tax years beginning on and after
January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax,
imposed under article twenty-four of this chapter, below forty 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 as 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): Provided, That when in any taxable year beginning on and after January 1,
2009, 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 forty percent of the amount that would be imposed for such taxable year on the
conduit income as 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. Any 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 the application is filed.

(e) (1) Any person or entity undertaking any construction related to any business activity included within North American Industrial Code six-digit code number 211112, the value of which is an amount equal to or greater than $500,000, shall hire at least seventy-five percent of employees for said construction from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project, “the local labor market” being defined as every county in West Virginia and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia.

(2) Any person or entity unable to employ the minimum number of employees from the local labor market shall inform the nearest office of the bureau of employment programs’ division of employment services of the number of qualified employees needed and provide a job description of the positions to be filled.

(3) If, within three business days following the placing of a job order, the division is unable to refer any qualified job applicants to the person or entity engaged in said construction or refers fewer qualified job applicants than the number requested, then the division shall issue a waiver to the person or entity engaged in said construction stating the unavailability of applicants and shall permit the person or entity engaged in said construction to fill any positions covered by the waiver from outside the local labor market. The waiver shall be either oral or in writing and shall be issued
within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged
in said construction for its permanent project records.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

[Signatures]

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is disapproved this the 1st day of April, 2016.

[Signature]

Governor
PRESENTED TO THE GOVERNOR

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