WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Senate Bill 816

BY SENATOR BLAIR

[Passed February 29, 2020; to take effect July 1, 2020]
Enrolled

Senate Bill 816

BY SENATOR BLAIR

[Passed February 29, 2020; to take effect July 1, 2020]
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 of said code, all relating generally to updating the North American Industry Classification System code references; and making other technical changes to conform to new bill-drafting requirements.

Be it enacted by the Legislature of West Virginia:

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 §11-6F-4 of this code: Provided, That airplanes and motor vehicles licensed by the Division of Motor Vehicles are not 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 31, 32, or 33. For purposes of this article, manufacturing also includes the processing of raw natural gas or oil to recover or extract liquid hydrocarbons, which activity is classified under North American Industry Classification System code number 211130. This definition does not mean or include any other processes or activities classified, categorized, grouped, or identified under North American Industry Classification System code number 211130.

(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 §2-2-10(q) 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. When the new capital addition is a facility that is or will be processing raw natural gas or oil to recover or extract liquid hydrocarbons, or is a manufacturing facility that uses product produced at a facility engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons, 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; 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:
Enr SB 816

(i) Is or will be engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons; or

(ii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (i) above; or

(iii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (ii) of this subdivision.

(B) No preexisting investment made, or in place before the capital addition is required for property specified in this subdivision. The requirements set forth in subdivision (1) of this subsection do not apply to property specified in this subdivision 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

(iii) Multiparty projects.

(f) “Real property” means all property specified in §2-2-10(p) 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:
4 (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.

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

6 (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.

7 (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.

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

9 (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 31, 32, or 33. For purposes of this article, manufacturing also includes the processing of raw natural gas or oil to recover or extract liquid hydrocarbons, which is classified under North American Industry Classification System code number 211130. This definition does not mean or include any other processes or activities classified, categorized, grouped, or identified under North American Industry Classification System code number 211130.

10 (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 10 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 Division 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 defined in §11-21-1 et seq. and §11-24-1 et seq. of this code;

(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.

(8) “Qualified manufacturing investment” means that amount determined under §11-13S-5 of this code as qualified manufacturing investment.

(9) “Taxpayer” means any person subject to any of the taxes imposed by §11-13A-1 et seq., §11-21-1 et seq., or §11-24-1 et seq. of this code, or any combination of those articles 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.

To take effect July 1, 2020.

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 25th Day of March, 2020.

Governor
PRESENTED TO THE GOVERNOR

MAR 13 2020

Time 3:16 pm