WEST VIRGINIA TAX CREDIT REVIEW AND ACCOUNTABILITY REPORT

Economic Opportunity Tax Credit
Manufacturing Investment Tax Credit

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EXECUTIVE SUMMARY

West Virginia Law requires a triennial tax credit review and accountability report evaluating the cost effectiveness of three separate investment tax credit programs: (1) The Economic Opportunity Credit (Opportunity Credit); (2) The Strategic Research and Development Tax Credit (Research Credit); and (3) The Manufacturing Investment Tax Credit (Manufacturing Credit). The first evaluation report, issued in 2006, contained minimal feedback due to the lack of significant data on the new investment tax credit programs. With more extensive historical information now available, recent reports provide a broader evaluation of these tax credit programs.

Statutory changes enacted in recent years altered some of the tax credit programs. These changes included a temporary venture capital tax credit, called the High-Growth Business Investment Tax Credit, for investors who invested in qualified small research and development companies between July 2005 and June 2008 and a temporary refundable tax credit option available to qualified small research and development firms related to Research Credit investments made between July 2004 and December 2007. Opportunity Credits were made available under slightly modified rules to qualified high-technology manufacturers in 2007 and qualified businesses creating fewer than 20 new jobs in 2008. Finally, the Legislature repealed the Research Credit effective January 1, 2014.

In addition, the Legislature enacted comprehensive business tax reforms between 2006 and 2008, which have further altered the business tax structure. These changes include the phase-out of the Business Franchise Tax by 2015, required mandatory combined reporting for unitary corporations beginning in 2009, a nonrefundable tax credit equal to local West Virginia property taxes paid on manufacturing inventory beginning in 2009, and a gradual reduction of the Corporation Net Income Tax rate from 9.0 percent to 6.5 percent by 2014.

The 2021 report provides updated fiscal information on both the Opportunity Credit and the Manufacturing Credit for the period between 2012 and 2018.[1] The Research Credit is omitted from this report because this program was terminated at the end of 2013 and little new information is available since the 2018 evaluation report.[2] Recent costs of these programs follow in Table 1.

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[1] The statutes necessitating this triennial review require only the most recent three years for which information is available. This report includes a total of seven years to provide some context of recent trends in these credit programs. Analyses of credits for older taxable periods can be referenced in prior Tax Credit Review and Accountability reports.
[2] Due to expiration of the Research Credit, there has been no significant additional cost or benefits from this credit program in recent years. For this reason, any further analysis of this credit is generally omitted from this report.

Table 1 – Costs of Investment Credit Programs Tax Years 2012 – 2018

Tax Year	Opportunity Credit	Manufacturing Credit	Total
2012	$16,876,471	$6,330,102	$23,206,573
2013	$ 9,364,871	$5,769,443	$15,134,314
2014	$ 7,955,259	$5,749,579	$13,704,838
2015	$ 3,559,364	$4,306,907	$ 7,866,271
2016	$ 3,052,963	$4,485,598	$ 7,538,561
2017	$ 3,352,896	$3,356,514	$ 6,709,410
2018	$ 1,729,814	$1,900,565	$ 3,630,379

Data indicate that the average annual cost of the Opportunity Credit program was roughly $6.6 million from tax years 2012 to 2018 while the average annual cost of the Manufacturing Credit was nearly $4.6 million for this period. Other major report findings include:

- Employees of firms receiving tax credit benefits generally benefitted from employer-provided health insurance and pension plans.

- The amount of tax credit claimed on tax returns will generally be less than the amount of available tax credit due to the tax liability limits of the Taxpayer. Tax credit claims are further limited by the recent elimination of the Business Franchise Tax and reductions in the Corporation Net Income Tax rate.

- The credit programs may help some individual business Taxpayers, but the overall impact of the credit programs on economic growth is modest at best.

- The cost of the new business tax credit incentive programs is relatively small in comparison to both the overall state budget and other state and local tax expenditures.

- Business tax credits complicate the Tax Code and result in additional compliance costs for Taxpayers and additional administrative costs for the State Tax Department.

- The West Virginia State tax burden for the manufacturing sector is generally competitive with surrounding states because of the 60 percent tax break offered by the Manufacturing Credit. Local taxes are not part of this equation. Local taxes are a larger potential impediment to economic growth than are West Virginia State business taxes. Local property taxes on machinery and equipment represent a significant component of the total tax costs for West Virginia manufacturing businesses.

- Investment tax credits for the manufacturing sector offset a small portion of these total State and local tax costs.

- As the Opportunity Credit and Manufacturing Credit programs have matured, compliance with the respective tax credit application requirements has improved.

- Despite efforts to streamline the reporting process for the applications, schedules, and other forms required to evaluate and administer these credit programs, there always exists the possibility that some paperwork can be separated from the return a Taxpayer files. Tax returns, particularly those for corporate taxpayers, often exceed 100 pages. Given that these programs have annual filing requirements for supplementary forms to ascertain credit availability, penalties for failure to timely file applications or schedules are sometimes imposed. This constrains the State Tax Department's efforts to timely measure accountability of these credit programs.

INTRODUCTION

In 2002, the Legislature created three new tax credit programs applicable to investment placed in service or use on or after January 1, 2003: the Opportunity Credit, the Research Credit, and the Manufacturing Credit. In 2004, an additional new credit, the temporary High-Growth Business Investment Tax Credit, was enacted with a scheduled termination in 2008.

The enacting legislation for each of the aforementioned credits includes provisions for the State Tax Commissioner to submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a triennial tax credit review and accountability report evaluating the cost effectiveness of each tax credit program. The first report was due February 1, 2006, with subsequent reports due on February 1 every third year thereafter, and covered credits related to tax years ending in 2003. Subsequent reports have covered the period beginning with Tax Year 2003 and ending with the taxable year completed three years prior to report publication. This report covers credits related to tax years 2012 through 2018.

DATA NOTES

For the purpose of consistency, data in this report are organized by tax year. A tax year refers to the year in which a Taxpayer's filing period began (e.g., a filing period of October 1, 2014 to September 30, 2015 would be referred to as Tax Year 2014). The first day of a taxable period can vary throughout the year, so organizing these data by Tax Year provides uniformity in the analysis. This report focuses on credits claimed from Tax Year 2012 to Tax Year 2018. Although the statutory due dates[3] of Tax Year 2019 returns occurred before analysis for this report concluded, many Taxpayers use an automatic six-month extension before filing final returns with credit claims. These returns are currently under review and being processed by the State Tax Department.

Due to the complex nature of some tax returns, some of those filed for more recent tax years covered in this report have yet to be fully processed. For this reason, statistical results for these years do not represent complete records of credit claims. Tax returns can generally be amended through the third year following the original due date of the return, but older years can also be amended if opened for audit (e.g., by the Internal Revenue Service). It is important to note that credit claims as provided in the tables and graphs of this report may be subject to revision via amendment by the Taxpayer or upon audit by the State Tax Department.

Data for this report are generally extracted from tax credit application forms, tax credit schedules, and tax returns. Finalized changes resulting from tax audits and other review efforts by the Department are incorporated in the results to the extent possible. **It is important to note, however, that all data are subject to change.** Given that analysis for this report concluded in January 2021, any adjustments to tax credits occurring after that date, even for older taxable periods, would alter the number of claims and aggregate amounts reported in this document.

In addition, recent policy changes have collectively led to fewer credit claims and smaller aggregate credit amounts over time. One example of this reduction relates to the Business

[3] Tax Year 2019 due dates are July 15, 2020 for Pass-Through Entities treated as a partnership for federal and state income tax purpose and July 15, 2020 for C-Corporations and limited liability companies that elect to be treated as a corporation for federal and state income tax purposes. The three-month filing extension from the State Tax Department is in response to the COVD-19 Pandemic.

Franchise Tax, which terminated effective January 1, 2015 and thus began substantially affecting trends in Tax Year 2015. The termination of this tax reduced total offsets of the credits discussed in this report. Additionally, Corporation Net Income Tax rates declined by 1.25 percentage points during the taxable periods covered in this report. These modifications to Tax Law provided all corporate Taxpayers a tax benefit without the creation of additional tax credit programs.

A description of the two investment tax credits subject to evaluation in this report follows. Copies of tax credit applications and schedules for these and other West Virginia tax credits may be found on the West Virginia State Tax Department website.[4] Unless otherwise specified, West Virginia employment and wage data used to characterize labor force statistics obtained from credit applications is supplied by Workforce West Virginia.[5]

[4] http://tax.wv.gov/Pages/default.aspx
[5] http://workforcewv.org/

ECONOMIC OPPORTUNITY TAX CREDIT

The intent of the Opportunity Credit, as stated in Section 11-13Q-2 of the West Virginia Code, is as follows:

> "The Legislature finds that the encouragement of economic opportunity in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage greater capital investment in businesses in this state and thereby increase economic opportunity in this state, there is hereby enacted the economic opportunity tax credit."

In order to claim the Opportunity Credit, eligible Taxpayers must create a minimum number of new jobs. With the termination of the Business Investment and Jobs Expansion Tax Credit (Super Credit), the Opportunity Credit is West Virginia's primary job creation tax incentive. The major enhancement of the Opportunity Credit, compared to the Super Credit, was a reduction in the number of new jobs required to qualify for the credit from 50 to 20.

As enacted in 2002 and applicable for tax years beginning on or after January 1, 2003, the Opportunity Credit has three components that assist in determining qualification:

1. A requirement that qualifying Taxpayers create at least 20 new jobs.

2. A requirement directed toward small businesses, that qualifying Taxpayers create at least 10 new jobs.

3. A requirement directed toward corporate headquarters relocation, that businesses establish headquarters in West Virginia and create at least 15 new jobs.

Two additional components, the specified high-technology manufacturer, and additional jobs options, were added in 2007 and 2008, respectively.

The criteria for the review and accountability report for the Opportunity Credit, as stated in W. Va. Code §11-13Q-20, are as follows:

- The number of taxpayers claiming the credit.
- The net number of new jobs created by all taxpayers claiming the credit.
- The cost of the credit.
- The cost of the credit per new job created.
- Comparison of employment trends for an industry and for taxpayers within the industry that claim the credit.

The Opportunity Credit can be used to offset liabilities for the Business and Occupation Tax, Business Franchise Tax (prior to termination), Corporation Net Income Tax, and Personal Income Tax.[6] Since electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations can allocate credit among the members, the count of

[6] Due to Taxpayer confidentiality, a breakout of Opportunity Credit claims by year and by tax type is not provided as there are insufficient numbers of Business and Occupation Tax and Personal Income Tax credit offsets year-to-year to permit disclosure.

taxpayers claiming the credit is greater than the number of businesses that made the investment and created the jobs.

The Opportunity Credit may be claimed by the Taxpayer over a 10-year period. Thus, taxpayers that made qualifying investments in tax year 2003 would be entitled to claim an annual allocation of the credit for tax years 2003 through 2012. There is also a three-year credit carryover provision that could extend the application of the tax credit for up to 13 years. Table 2 provides counts of taxpayers claiming the Opportunity Credit and aggregate associated cost to the State from tax years 2012 to 2018. The number of taxpayers claiming the credit is not additive since most taxpayers are included in the counts for multiple years.

Table 2 – Opportunity Credit Claimants and Cost

Tax Year	Claimants	Cost
2012	21	$16,876,471
2013	17	$ 9,364,871
2014	25	$ 7,955,259
2015	12	$ 3,559,364
2016	13	$ 3,052,963
2017	11	$ 3,352,896
2018	9	$ 1,729,814

Data are subject to change.

Provisions in the Economic Opportunity Tax Credit Law require the credit claimant to certify the actual number of new jobs created in West Virginia that are directly attributable to the qualified investment with the annual tax return filed for the third taxable year in which the qualified investment was placed in service or use. Such information is collected on the Schedule for Opportunity Credit (form WV/EOTC-1). Where the WV/EOTC-1 for the third tax year was not readily available, the new job information was extracted from the Application for Opportunity Credit (form WV/EOTC-A) filed by the claimant.

By Law, a taxpayer must create a minimum number of new jobs (typically 20) by the third year following the initial placement of qualified investment into service. For example, if Company ABC makes a qualified investment in 2017, the company must attain the required number of new jobs by 2019, the third year, for ongoing entitlement to benefit from the Opportunity Credit. If the minimum number of new jobs is not attained at that time, all prior year claims to Opportunity Credit from the qualified investment are subject to recapture and no ongoing tax credit benefit remains in place. In any year after the third year that employment gains fall below the required minimum, tax credit benefits are forfeited for such year.

Based upon information from tax credit forms filed for the third year following Opportunity Credit investment, the number of new jobs created or anticipated to be created by Taxpayers claiming the credit after Year 3 was 7,098 from tax years 2012 to 2018[7]. However, total employment levels for any Taxpayer may fluctuate significantly from one year to the next due to general economic conditions. If the Taxpayer maintains the minimum number of new jobs (typically 20 for nearly all

[7] Note that some of these jobs could have initially been created prior to the beginning of this six-year period.

applicants) over each year of the remaining 10-year period of tax credit application beyond the third year of actual employment gain measure, the annual tax credit benefit is retained. Therefore, total net employment gains in any single year for all Taxpayers claiming the Opportunity Credit may be higher or lower than the collective number of certified new jobs attained in the third year by this group of taxpayers. In some cases, Taxpayers had increases in jobs and investments that qualified for multiple levels of the credit. For example, if a business created 20 or more new jobs over one three-year period and then created 20 or more new jobs over a subsequent three-year period, the Taxpayer would be entitled to a separate Opportunity Credit for each three-year period in which at least 20 jobs were created. Over the seven-year tax period covered by this report, claims for the Opportunity Credit totaled nearly $45.9 million, indicating a cost of roughly $6,500 per new job over that period.

As part of the data collected from the WV/EOTC-A, applicants were asked to provide information on health plans and retirement plans provided to employees. Table 3 summarizes information reported on those Applications of which Taxpayers provided the requested data. The values in this table exclude missing values from the calculations.

Table 3 – Benefits Provided by WV Opportunity Credit Businesses

	Health Plan	Retirement Plan
Opportunity Credit businesses providing 100 percent coverage	50.0%	37.5%
Weighted percentage of new jobs covered	80.0%	90.0%
Weighted average cost of benefit per employee	$7,541	$3,863

The State Tax Department monitors all Opportunity Credit claimants to ensure that the statutory job creation requirements are met over the life of the tax credit benefit. Taxpayers who fail to meet the job creation requirements set forth in the Statute lose entitlement to the Opportunity Credit for any year of non-compliance. It is important to note that, while efforts are made to verify these numbers, employment data is self-reported by taxpayers.

MANUFACTURING INVESTMENT TAX CREDIT

As stated in Section 11-13S-2 of the West Virginia Code, the intent and purpose of the Manufacturing Credit is as follows:

> "The Legislature finds that the encouragement of the location of new industry in this state, and the expansion, growth and revitalization of existing industrial facilities in this state is in the public interest and promotes the general welfare of the people of this state."

This credit essentially replaced the Industrial Expansion and Revitalization Credit (WV/IERC) for manufacturers. The WV/IERC was retained only for electric power producers. Although the percentage used in determining the amount of credit available from qualifying investment was reduced for the West Virginia Manufacturing Credit, the credit can now be used to offset Corporation Net Income Tax liability. Additionally, the definition of "manufacturers" was narrowed in comparison to the definition used for the WV/IERC.

The criteria for the review and accountability report for the Manufacturing Credit, as stated in W. Va. Code §11-13S-10, are as follows:

- The numbers of taxpayers claiming the credit.
- The net number, type, and duration of new jobs created by all taxpayers claiming the credit and the wages and benefits paid.
- The cost of the credit.
- The cost of the credit per new job created.
- Comparison of employment trends for an industry and for taxpayers within the industry that claim the credit.

The Manufacturing Credit essentially replaced the WV/IERC. One common feature of the two credits was that the total credit attributable to a qualifying investment was to be allocated evenly over a 10-year period. For example, investments qualifying for the Manufacturing Credit made in Tax Year 2008 would provide an annual credit available for offset for tax years 2008 through 2017. Since many manufacturers make annual upgrades to machinery and equipment, the available credit is often attributable to 10 different investment years.

Since the elimination of the Business Franchise Tax in 2015, tax burden offsets have been solely shifted to Corporation Net Income Tax and Severance Tax liabilities as shown in Table 4.

Table 4 – Manufacturing Credit Claims by Tax Type

Tax Year	Credit Claims: BFT		Credit Claims: CNIT		Credit Claims: SEV		Total Claims	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount
2012	121	$ 3,506,195	23	$ 1,989,689	8	$ 834,218	152	$ 6,330,102
2013	121	$ 2,980,203	26	$ 1,894,057	8	$ 895,183	155	$ 5,769,443
2014	110	$ 2,011,462	35	$ 2,803,883	8	$ 934,234	153	$ 5,749,579
2015	0	$ 0	39	$ 3,624,097	10	$ 682,810	49	$ 4,306,907
2016	0	$ 0	35	$ 3,994,128	10	$ 491,470	45	$ 4,485,598
2017	0	$ 0	27	$ 2,894,938	9	$ 461,576	36	$ 3,356,514
2018	0	$ 0	15	$ 1,464,907	9	$ 435,658	24	$ 1,900,565

Table 5 – Average Manufacturing Credit Claims for Tax Years 2012 Through 2018

Tax Year	Total Manufacturing Credit Claimed	Count	Average Manufacturing Credit Claimed
2012	$6,330,102	152	$ 41,645
2013	$5,769,443	155	$ 37,222
2014	$5,749,579	153	$ 37,579
2015	$4,306,907	49	$ 87,896
2016	$4,485,598	45	$ 99,680
2017	$3,356,514	36	$ 93,237
2018	$1,900,565	24	$ 79,190

Data are subject to change. The Business Franchise Tax was eliminated for all taxpayers beginning in 2015.

Although job creation is not a requirement for the Manufacturing Credit, information on new jobs is part of the report criteria. Similar to the previous credits included in this report, potential Manufacturing Credit claimants were required to file an Application for West Virginia Manufacturing Investment Tax Credit (WV/MITC-A) before claiming the credit. Based upon information from the WV/MITC-A, the number of new jobs created, as reported by taxpayers applying for this credit, is shown in Table 6. It is important to note that, while efforts are made to verify these numbers, employment data is self-reported by taxpayers.

Table 6 – Change in Employment of West Virginia Manufacturing Credit Applicants

Tax Year	Prior to Investment	Year Investment Placed in Service	Net Change
2012	14,384	13,750	(634)
2013	13,349	13,823	474
2014	16,687	16,733	46
2015	11,191	12,078	887
2016	9,662	9,749	87
2017	9,745	9,765	20
2018	9,607	9,582	(25)

The largest single-year increase in this period (887 jobs) was reported in Tax Year 2015. Many manufacturers make annual upgrades to machinery and equipment and therefore submit a new WV/MITC-A each tax year.

Between 2012 and 2017, annual State manufacturing employment changes ranged from a minimum loss of -0.4 percent in 2015 to a maximum employment loss of -1.7 percent in 2016. However, between 2017 and 2019, there was a modest State manufacturing employment gain of 0.6 percent. Reinvestment is critical to the long-run survival of any manufacturing facility. Increasing productivity in a globally competitive environment tends to limit growth in manufacturing employment. The employment numbers provided by manufacturing credit recipients in Table 6 and the overall State employment numbers provided in Table 7 both generally indicate overall employment stability for these groups of taxpayers.

Table 7 – Statewide Manufacturing Employment

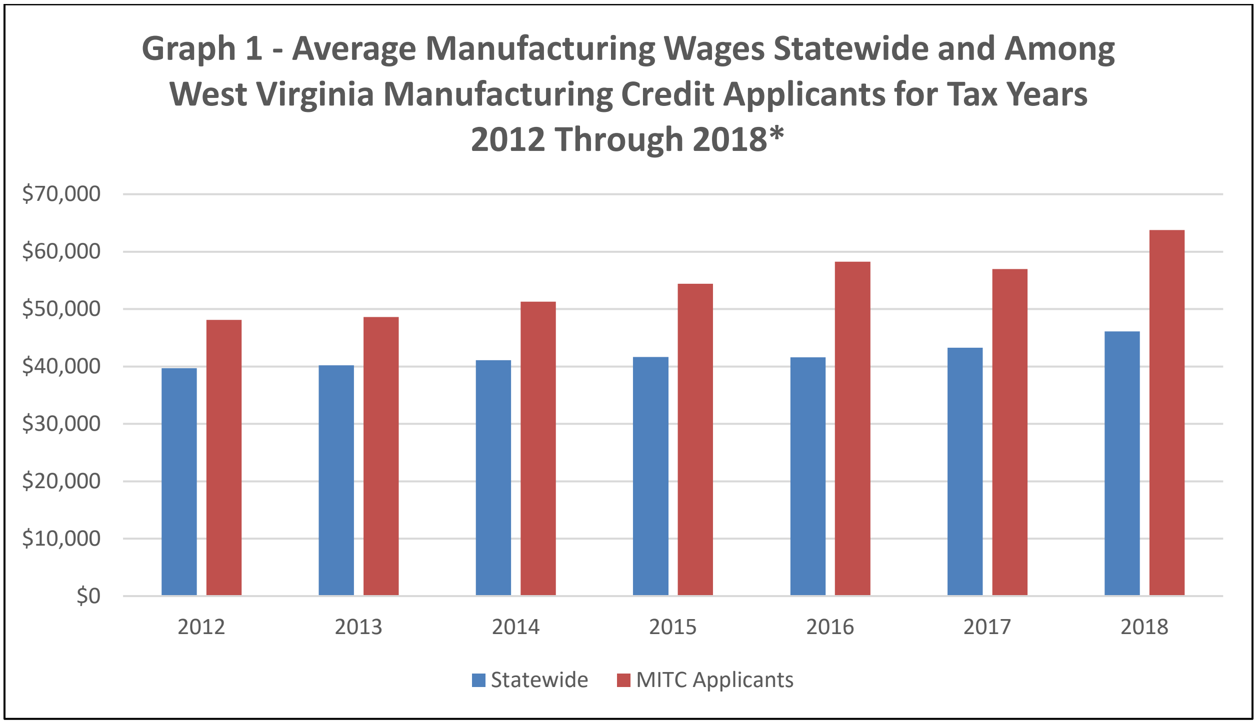
Year	Total Manufacturing Employment	Change in Manufacturing Employment
2012	49,100	-0.8%
2013	48,400	-1.4%
2014	47,900	-1.0%
2015	47,700	-0.4%
2016	46,900	-1.7%
2017	46,700	-0.4%
2018	47,000	0.6%
2019	47,000	0.0%

As part of the data collected in the WV/MITC-A, applicants were asked to provide information on health plans and retirement plans provided to employees. Table 8 summarizes information reported on the WV/MITC-A. While employment, health plan, and retirement data requested on applications are generally completed by most businesses, a few were filed with one or more data elements missing. The values in the following table exclude applications with missing data for the benefits from the calculations.

Table 8 – Benefits Provided by Manufacturing Credit Businesses

	Health Plan	Retirement Plan
Manufacturing Credit businesses providing 100 percent coverage	38.5%	41.7%
Weighted average cost of benefit per employee	$8,272	$3,753

The final criterion for West Virginia Manufacturing Credit analysis is a comparison of net wage trends for the industry and for taxpayers within the industry that claim the credit. As shown in Figure 1, the average wage of employees of applicants for the Manufacturing Credit was greater than the statewide average wage for all manufacturing jobs for all periods covered by this report. On average, between tax years 2012 through 2018, the wages reported by Manufacturing Credit applicants was 29.6% higher than the statewide average. The highest deviation in wages occurred in Tax Year 2016, where the average wage reported of $58,222 per year by Manufacturing Credit applicants was 40 percent higher than the statewide wage average of $41,595 per year. Some of the deviation may be attributed to incomplete wage information from Manufacturing Credit applicants.



*Statewide average annual manufacturing wages retrieved from the U.S. Bureau of Labor Statistics.

CONCLUSION

Since the enactment of various new tax credit programs in 2002, West Virginia policymakers greatly altered State tax policy with greater emphasis on broad-based tax relief rather than tax preferences for select businesses. The broad-based tax relief included the phase-out of the Business Franchise Tax and the reduction in the Corporation Net Income Tax rate from 9.0 percent in 2002 to 6.5 percent by 2014. These changes effectively lowered the potential future offset value of tax credits, including those covered in this report.

A relatively low number of applications for the Opportunity Credit is likely attributable to a number of factors, including the complex filing and job creation requirements. The Manufacturing Credit program which applies to a similar subset of taxpayers and does not require employment creation, is a reasonable substitute for many businesses. For the period covered by this report, employment by all manufacturers fell slightly nearly every year, but employment by manufacturing receiving tax credits rose slightly in most years.

In some cases, taxpayers filing an application and making the necessary investment or expenditure to gain entitlement to either the Opportunity Credit or Manufacturing Credit did not use any of the credit due to outstanding credit allowances for other credits, including terminated credits or the lack of taxable income and pre-credit tax liability. The presence of these alternative credits could impact the use of the credits reviewed in this report.