

Senate Bill No. 449

(By Senators McCabe, Browning, Prezioso, Snyder, Klempa, Unger,
Foster, Jenkins, Stollings, Plymale, Miller, Kessler (Acting
President) and Wells)

[Introduced February 7, 2011; referred to the Committee on
Economic Development; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §11-6L-1, §11-6L-2,
§11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and to
amend said code by adding thereto a new article, designated
§11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5,
§11-13BB-6, §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10,
§11-13BB-11, §11-13BB-12, §11-13BB-13, §11-13BB-14, §11-13BB-
15, §11-13BB-16, §11-13BB-17 and §11-13BB-18, all relating
generally to the West Virginia Innovation Free Trade Act of
2011, consisting of the Twenty-First Century Business
Technologies Property Valuation Act; specifying method for
valuation of certain property; providing for application to
county assessors by specified date; providing procedure for
protest and appeal of determination by county assessor;

1 requiring the West Virginia Development Office to report to
2 the Joint Committee on Government and Finance on the economic
3 impact of such valuation beginning in 2016; specifying
4 effective date; consisting of the West Virginia Twenty-First
5 Century Tax Credit Act; providing short title; setting forth
6 purpose and legislative findings; defining terms; allowing
7 credit and exemption from certain taxes; providing for
8 computation of credit, application of credit and period for
9 which credit is allowed; requiring application to claim
10 credit; requiring that new jobs be good-paying jobs with
11 health benefits; requiring identification of investment credit
12 property and recomputation of credit in event of premature
13 disposition of investment property; providing for forfeiture
14 of unused tax credits and redetermination of credit allowed;
15 imposing recapture tax under specified circumstances to
16 recover state taxes and property taxes; allowing transfer of
17 qualified investment to successors; providing rules for
18 interpretation and construction of act; providing for tax
19 credit review and accountability; specifying effective date;
20 and providing severability clause.

21 *Be it enacted by the Legislature of West Virginia:*

22 That the Code of West Virginia, 1931, as amended, be amended
23 by adding thereto a new article, designated §11-6L-1, §11-6L-2,
24 §11-6L-3, §11-6L-4, §11-6L-5, §11-6L-6 and §11-6L-7; and that said

1 code be amended by adding thereto a new article, designated §11-
2 13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6,
3 §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-
4 13BB-12, §11-13BB-13, §11-13BB-14, §11-13BB-15, §11-13BB-16, §11-
5 13BB-17 and §11-13BB-18, all to read as follows:

6 **ARTICLE 6L. SPECIAL METHOD FOR VALUATION OF TWENTY-FIRST CENTURY**
7 **BUSINESS TECHNOLOGY PROPERTY.**

8 **§11-6L-1. Short title.**

9 This article shall be known and cited as the "Twenty-First
10 Century Business Technologies Property Valuation Act".

11 **§11-6L-2. Definitions.**

12 For the purposes of this article:

13 (1) "Salvage value" means five percent of original cost; and

14 (2) "Twenty-first century business technologies" means
15 "twenty-first century business technologies" as defined in section
16 three, article thirteen-bb of this chapter when the owner of the
17 property qualifies or qualified for the tax credit allowed by that
18 article. Qualifications for that tax credit and the special
19 valuation methodology provided in this article include, but are not
20 limited to, a minimum capital investment requirement, a minimum new
21 jobs creation requirement and a requirement that the new jobs
22 created be good paying jobs with health insurance benefits, all as
23 defined in article thirteen-bb of this chapter.

24 **§11-6L-3. Valuation of certain twenty-first century business**

1 **technology property.**

2 Notwithstanding any other provision of this code to the
3 contrary, the value of tangible personal property directly used in
4 a twenty-first century business technology shall, for the purpose of
5 ad valorem property taxation under this chapter and under article
6 X of the Constitution of this state, be its salvage value.

7 **§11-6L-4. Initial determination by county assessor.**

8 (a) On or before September 1 of the assessment year, the owner
9 of tangible personal property directly used in a new business, or
10 in a new segment of an existing business, that utilizes twenty-
11 first century business technology and qualifies for the tax credit
12 allowed by article thirteen-bb of this chapter may file a report
13 with the county assessor of the county in which the property was
14 located on July 1 of that assessment year, listing the tangible
15 personal property that is qualified investment for purposes of the
16 credit allowed by article thirteen-bb of this chapter. A taxpayer
17 that fails to timely file the report required by this subsection
18 shall be deemed to have waived valuation of the property as
19 provided in this article for that assessment year.

20 (b) When the county assessor receives the report described in
21 subsection (a) of this section, the assessor shall review the
22 report and make such inquiries as he or she deems necessary to
23 determine whether the tangible personal property listed in the
24 report is eligible for valuation under this article. The county

1 assessor shall notify the taxpayer in writing of his or her
2 determination not later than January 15th of the assessment year.

3 (c) Upon making a determination that a taxpayer owns tangible
4 personal property directly used in a twenty-first century business
5 technology that is eligible for valuation under this article, the
6 county assessor shall notify the Tax Commissioner of that
7 determination and shall provide information to the Tax Commissioner
8 as he or she requires relating to that determination.

9 **§11-6L-5. Protest and appeal.**

10 (a) If the taxpayer disagrees with the county assessor's
11 determination under section four of this article or if the assessor
12 fails to notify the taxpayer of the assessor's determination on or
13 before the day specified in that section, the taxpayer may file
14 objections in writing with the county assessor. The county assessor
15 shall decide the matter by either sustaining the protest and making
16 proper corrections, or by stating, in writing if requested, the
17 reasons for the county assessor's refusal. The county assessor
18 may, and if the taxpayer requests, the county assessor shall,
19 before February 1 of the assessment year, certify the question to
20 the Tax Commissioner in a statement sworn to by both parties, or if
21 the parties are unable to agree, in separate sworn statements. The
22 sworn statement or statements shall contain a full description of
23 the property and any other information which the Tax Commissioner
24 may require.

1 (b) The Tax Commissioner shall, as soon as possible on receipt
2 of the question, but in no case later than February 28 of the
3 assessment year, instruct the county assessor as to how the
4 property shall be treated. The instructions issued and forwarded
5 by mail to the county assessor are binding upon the county
6 assessor, but either the county assessor or the taxpayer may apply
7 to the circuit court of the county for review of the question of
8 the applicability of this article to the property in the same
9 fashion as is provided for appeals from the county commission in
10 section twenty-five, article three of this chapter. The Tax
11 Commissioner shall prescribe forms on which the questions under
12 this section shall be certified and the Tax Commissioner has the
13 authority to pursue any inquiry and procure any information
14 necessary for disposition of the matter.

15 **§11-6L-6. Report on economic benefit.**

16 The West Virginia Development Office shall provide to the
17 Joint Committee on Government and Finance by March 1, 2016, and
18 again by March 1, 2019, a report detailing the economic benefit of
19 the valuation method specified in this article. The report shall
20 include the number of new jobs created due to the provisions of
21 this article and the ad valorem property tax impact.

22 **§11-6L-7. Effective date.**

23 This article shall be effective on and after July 1, 2011.

24 **ARTICLE 13BB. TWENTY-FIRST CENTURY TAX CREDIT.**

1 **§11-13BB-1. Short title.**

2 This article may be cited as the "West Virginia Twenty-First
3 Century Tax Credit Act."

4 **§11-13BB-2. Purpose and legislative findings.**

5 (a) *Purpose.* -- The purpose of this article is to encourage
6 economic opportunity, greater capital investment and development of
7 the use in this state of twenty-first century technologies by
8 enacting the twenty-first century tax credit.

9 (b) *Legislative findings.* --

10 (1) Future expansion and development of the West Virginia
11 economy, job creation potential, and the physical environment are
12 driven by the flow of energy and the nonstop emergence of new
13 technologies.

14 (2) State-of-the-art technologies are being developed,
15 demonstrated, and manufactured or used in manufacturing in other
16 states in order to support economic development by responding to
17 the emergence of new technologies and the rapidly expanding world-
18 wide export market for such technologies.

19 (3) West Virginia has been slow to recognize the potential
20 economic and technical benefits of these emerging technologies.

21 (4) The Legislature finds that it is in public interest of the
22 citizens of West Virginia to:

23 (A) Establish a foothold in the West Virginia economy for
24 manufacturers of advanced products and the development of

1 businesses employing other emerging technologies that are magnets
2 for capital investment and produce new jobs that are
3 characteristically knowledge-based;

4 (B) Encourage the application of nanotechnology and other
5 supporting technology to:

6 (i) Aeronautics and space;

7 (ii) Agriculture;

8 (iii) Biotechnology;

9 (iv) Environment;

10 (v) Manufacturing and materials science;

11 (vi) Medicine and health;

12 (vii) Nanoelectronics and computer technology;

13 (viii) National and homeland security; and

14 (ix) Photonics; and

15 (C) Encourage the manufacture, sale and use of alternative
16 fuel vehicles fueled by natural gas, electricity, hydrogen or other
17 alternative fuel and development of the infrastructure necessary to
18 the convenient and efficient refueling of such vehicles.

19 **§11-13BB-3. Definitions.**

20 (a) *General.* -- When used in this article, or in the
21 administration of this article, terms defined in subsection (b)
22 have the meanings ascribed to them by this section, unless a
23 different meaning is clearly required by either the context in
24 which the term is used, or by specific definition, in this article.

1 (b) *Terms defined.* --

2 (1) "Advanced coal technology" includes, but is not limited
3 to, a technology that is used in a new or existing energy
4 generating facility to reduce airborne carbon emissions associated
5 with the combustion or use of coal and includes, but is not limited
6 to, carbon dioxide capture and sequestration technology,
7 supercritical technology, advanced supercritical technology as that
8 technology is determined by the West Virginia Public Service
9 Commission, ultrasupercritical technology and pressurized fluidized
10 bed technology and any other resource, method, project or
11 technology certified by the Public Service Commission as advanced
12 coal technology.

13 (2) "Advanced information technology" means the development,
14 installation and implementation of computer systems and
15 applications that utilize cloud computing, quantum computing or the
16 next evolution beyond cloud and quantum computing.

17 (3) "Advanced manufacturing" means the application of state-
18 of-the-art technologies, processes and methods to design and
19 manufacture tangible personal property for commercial or industrial
20 use or for use by consumers.

21 (4) "Bioinformatics" means the application of statistics and
22 computer science to the field of molecular biology and entails the
23 creation and advancement of databases, algorithms, computational
24 and statistical techniques and theory to solve formal and practical

1 problems arising from the management and analysis of biological
2 data. The primary goal of bioinformatics is to increase the
3 understanding of biological processes. What sets bioinformatics
4 apart from other approaches is its focus on developing and applying
5 computationally intensive techniques (e.g., pattern recognition,
6 data mining, machine learning algorithms, and visualization) to
7 achieve this goal.

8 (5) "Bioscience" means the use of compositions, methods and
9 organisms in cellular and molecular research, development and
10 manufacturing processes for such diverse areas as pharmaceuticals,
11 medical therapeutics, medical diagnostics, medical devices, medical
12 instruments, biochemistry, microbiology, veterinary medicine, plant
13 biology, agriculture and industrial, environmental, and homeland
14 security applications of bioscience, and future developments in the
15 biosciences. Bioscience includes biotechnology and life sciences.

16 (6) "Bioscience company" means a corporation, limited
17 liability company, S corporation, partnership, registered limited
18 liability partnership, foundation, association, nonprofit entity,
19 business trust, group, or other entity that is engaged in the
20 business of bioscience in this state and has business operations in
21 this state, including, without limitation, research, development,
22 or production directed towards developing or providing bioscience
23 products or processes for specific commercial or public purposes
24 and are identified by the following NAICS codes: 325411, 325412,

1 325413, 325414, 325193, 325199, 325311, 32532, 334516, 339111,
2 339112, 339113, 334510, 334517, 339115, 621511, 621512, 541710,
3 541380, 541940, 622110. "Bioscience company" does not include a
4 sole proprietorship.

5 (7) "Biotechnology" means those fields focusing on
6 technological developments in areas such as biocomputing,
7 biodefense, bioinformatics, genetic engineering, genomics,
8 molecular biology, nanotechnology, proteomics and physiomics.

9 (8) "Business" means any activity engaged in by any person in
10 this state that is taxable under article twenty-one, twenty-three
11 or twenty-four of this chapter (or any combination of those
12 articles of this chapter).

13 (9) "Business segment" means a component or subset of a
14 business enterprise that: (i) Provides a single product or service
15 or a group of related products and services; (ii) is subject to
16 risks and returns that are different from those of other business
17 segments; and (iii) earns revenue for the business enterprise.

18 (10) "Clean coal technology" means a technology first used
19 commercially in the United States after December 31, 2010, that
20 significantly reduces the environmental impact of coal usage
21 including but not limited to coal gasification and carbon capture
22 and storage.

23 (11) "Clean natural gas technology" means a technology first
24 used commercially in the United States after December 31, 2010,

1 that significantly reduces the environmental impact of natural gas.

2 (12) "Commissioner" and "Tax Commissioner" are used
3 interchangeably herein and means the Tax Commissioner of the State
4 of West Virginia, or his or her designee.

5 (13) "Compensation" means wages, salaries, commissions, the
6 cost of health insurance benefits and any other form of
7 remuneration paid to employees for personal services.

8 (14) "Controlled group" means one or more chains of
9 corporations connected through stock ownership with a common parent
10 corporation if stock possessing at least fifty percent of the
11 voting power of all classes of stock of each of the corporations is
12 owned directly or indirectly by one or more of the corporations;
13 and the common parent owns directly stock possessing at least fifty
14 percent of the voting power of all classes of stock of at least one
15 of the other corporations.

16 (15) "Corporation" means any corporation, joint-stock company
17 or association, and any business conducted by a trustee or trustees
18 wherein interest or ownership is evidenced by a certificate of
19 interest or ownership or similar written instrument.

20 (16) "Designee" in the phrase "or his or her designee," when
21 used in reference to the Tax Commissioner, means any officer or
22 employee of the Tax Division of the Department of Revenue duly
23 authorized by the commissioner directly, or indirectly by one or
24 more redelegations of authority, to perform the functions mentioned

1 or described in this article.

2 (17) "Eligible taxpayer" means a new business or a new segment
3 of a business that is primarily engaged in an emerging technology
4 industry or that is primarily utilizing twenty-first century
5 business technologies, that makes at least the minimum required
6 qualified investment in a new or expanded business facility located
7 in this state and creates the required number of new jobs that pay
8 good salaries and provide health insurance benefits, and that is
9 subject to any of the taxes imposed by articles twenty-one, twenty-
10 three and twenty-four of this chapter (or any one or any
11 combination of those articles).

12 (18) "Eligible taxpayer" means a new business or a new segment
13 of a business that is primarily engaged in an emerging technology
14 industry or that is primarily utilizing twenty-first century
15 business technologies, that makes at least the minimum required
16 qualified investment in a new or expanded business facility located
17 in this state and creates the required number of new jobs that pay
18 good salaries and provided health insurance benefits, and that is
19 subject to any of the taxes imposed by articles twenty-one, twenty-
20 three and twenty-four of this chapter (or any one or any
21 combination of those articles).

22 (19) Emerging technologies are technologies that are currently
23 being developed or will be developed over the next five to ten
24 years, that are significant technological developments that broach

1 new territory in some significant way in their field and which will
2 substantially alter the business and social environment. Examples
3 of currently emerging technologies include, but are not limited to,
4 advanced coal technologies, alternative fuel vehicles, artificial
5 intelligence, biotechnology, clean coal and clean natural gas
6 technologies, cognitive science, cloud computing, quantum
7 computing, man-machine communications, nanotechnology, photonics,
8 photovoltaic devices, and advanced robotics. Whether a technology
9 is an emerging technology is determined as of the date the new
10 business or a new segment of an existing business is placed in
11 service or use in this state.

12 (20) "Expanded business facility" means any business facility
13 (other than a new or replacement facility) resulting from the
14 acquisition, construction, reconstruction, installation or erection
15 of improvements or additions to existing property in this state
16 when the improvements or additions are purchased on or after July
17 1, 2011, but only to the extent of the taxpayer's qualified
18 investment in the improvements or additions and the extent to which
19 the expansion of the business facility is directly used in a new
20 segment of the taxpayer that primarily employs an emerging business
21 technology or a twenty-first century business technology.

22 (21) "Health insurance benefits" means employer provided
23 coverage for medical expenses of the employee or the employee and
24 his or her family under a group accident or health plan, or

1 employer contributions to an Archer medical savings account, as
2 defined in Section 220 of the Internal Revenue Code of 1986, as
3 amended, or to a health savings account, as defined in Section 223
4 of the Internal Revenue Code, of the employee when the employer's
5 contribution to any such account is not less than fifty percent of
6 the maximum amount permitted for the year as employer-provided
7 coverage under Section 220 or 223 of the Internal Revenue Code,
8 whichever section is applicable.

9 (22) "Includes" and "including," when used in a definition
10 contained in this article, shall not be considered to exclude other
11 things otherwise within the meaning of the term defined.

12 (23) "Internal Revenue Code of 1986, as amended," or "Internal
13 Revenue Code," means the United States Internal Revenue Code of
14 1986 as codified in Title 26 of the United States Code, as amended,
15 and as defined in section three, article twenty-four of this
16 chapter as last updated by the Legislature.

17 (24) "Leased property" does not include property which the
18 taxpayer is required to show on its books and records as an asset
19 under generally accepted principles of financial accounting. If the
20 taxpayer is prohibited from expensing the lease payments for
21 federal income tax purposes, the property shall be treated as
22 purchased property under this section.

23 (25) "Life science" means any of several branches of science,
24 such as biology, medicine, anthropology, or ecology, that deal with

1 living organisms and their organization, life processes, and
2 relationships to each other and their environment.

3 (26) "Nanotechnology" means the branch of engineering that
4 deals with things smaller than one hundred nanometers.
5 Nanotechnology includes the materials and systems whose structures
6 and components exhibit novel and significantly improved physical,
7 chemical, and biological properties, phenomena, and processes due
8 to their nanoscale size.

9 (27) "New business" means any business primarily employing
10 emerging technology or a twenty-first century business technology
11 whose ownership and activities are not closely related to a
12 preexisting business. A mere change in the stock ownership of a
13 corporation, or the equity ownership of a partnership or other
14 entity treated as a partnership for federal income tax purposes,
15 shall not affect its status as an exiting business. Additionally,
16 a new business that acquires substantially all of the assets of a
17 corporation or other business entity or of a sole proprietorship
18 shall not be treated as a new business for purposes of this
19 article. In determining whether or not a new business is closely
20 related to a preexisting business, all facts and circumstances
21 shall be considered by the Tax Commissioner. The existence of a
22 majority of the following factors establish that a new business is
23 closely related to an existing business:

24 (A) The new business's products or services are very similar

1 to the products or services provided by the preexisting business;

2 (B) The new business markets products and services to the same
3 class of customers as that of the preexisting business;

4 (C) The new business is conducted in the same general location
5 as the preexisting business;

6 (D) The new business requires the use of the same or similar
7 operating assets as those used in the preexisting business;

8 (E) The new business's economic success builds on, or depends
9 on, the success of the preexisting business;

10 (F) The activity of the new business is of a type that would
11 normally be treated as a unit with the preexisting business in the
12 accounting records of the preexisting business;

13 (G) If the new business and the preexisting business are
14 regulated or licensed, they are regulated or licensed by the same
15 or similar governmental authority; and

16 (H) Twenty percent or more of the equity of the new business
17 is collectively owned by individuals and/or businesses that
18 collectively owned more than fifty percent of the equity of the
19 preexisting business.

20 These eight listed factors are not the only ones that may be
21 considered by the Tax Commissioner. Others may also be taken into
22 account, in the discretion of the Tax Commissioner. However, this
23 definition shall not exclude the categorization of a business as a
24 new business for the sole reason that the entity engaging in the

1 new business already does business in the State of West Virginia.

2 (28) "New business facility" means a business facility located
3 in this state which satisfies all the requirements of paragraphs
4 (A), (B), (C) and (D) of this subdivision.

5 (A) The facility is employed by the taxpayer in a new business
6 or in a new segment of an existing business, the conduct of a
7 business, the net income of which is or will be taxable under
8 article twenty-one or twenty-four of this chapter. The facility is
9 not considered a new business facility in the hands of the taxpayer
10 if the taxpayer's only activity with respect to the facility is to
11 lease it to another person or persons;

12 (B) The facility is purchased by, or leased to, the taxpayer
13 on or after July 1, 2011;

14 (C) The facility was not purchased or leased by the taxpayer
15 from a related person: *Provided*, That the Tax Commissioner may
16 waive this requirement if the facility was acquired from a related
17 person for its fair market value and the acquisition was not tax
18 motivated; and

19 (D) The facility was not in service or use during the ninety
20 days immediately prior to transfer of the title to the facility, or
21 prior to the commencement of the term of the lease of the facility:
22 *Provided*, That this ninety-day period may be waived by the Tax
23 Commissioner if the commissioner determines that persons employed
24 at the facility may be treated as "new employees" as that term is

1 defined in this subsection.

2 (29) "New employee" means:

3 (A) A person residing and domiciled in this state, hired by
4 the taxpayer to fill a position or a job in this state which
5 previously did not exist in the taxpayer's business enterprise in
6 this state prior to the date on which the taxpayer's qualified
7 investment is placed in service or use in this state. The term "new
8 employee" also includes a person employed by the taxpayer who works
9 outside this state who relocates in this state, becomes domiciled
10 in this state and is employed full-time at the new business
11 facility in this state. In no case may the number of new employees
12 directly attributable to the investment for purposes of this credit
13 exceed the total net increase in the taxpayer's employment in this
14 state: *Provided*, That the Tax Commissioner may require that the net
15 increase in the taxpayer's employment in this state be determined
16 and certified for the taxpayer's controlled group.

17 (B) A person is considered to be a "new employee" only if the
18 person's duties in connection with the operation of the business
19 facility are on:

20 (i) A regular, full-time and permanent basis:

21 (I) "Full-time" means employment for at least one hundred
22 forty hours per month at a wage not less than the prevailing state
23 or federal minimum wage, depending on which minimum wage provision
24 is applicable to the business;

1 (II) "Permanent" does not include employment that is temporary
2 or seasonal and therefore the wages, salaries and other
3 compensation paid to the temporary or seasonal employees may not be
4 considered for purposes of sections five and seven of this article;
5 or

6 (ii) A regular, part-time and permanent basis: *Provided*, That
7 the person is customarily performing the duties at least twenty
8 hours per week for at least six months during the taxable year.

9 (30) "New job" means a job which did not exist in the business
10 of the taxpayer in this state prior to the taxpayer's qualified
11 investment being made, and which is filled by a new employee.

12 (31) "New property" means:

13 (A) Property, the construction, reconstruction or erection of
14 which is completed on or after July 1, 2011, and placed in service
15 or use after that date; and

16 (B) Property leased or acquired by the taxpayer that is placed
17 in service or use in this state on or after July 1, 2011, if the
18 original use of the property commences with the taxpayer and
19 commences after that date.

20 (32) "NAICS" means the North American Industry Classification
21 System.

22 (33) "Original use" means the first use to which the property
23 is put, whether or not the use corresponds to the use of the
24 property by the taxpayer.

1 (34) "Partnership" includes a syndicate, group, pool, joint
2 venture or other unincorporated organization through or by means of
3 which any business or venture is carried on, and which is not a
4 trust or estate, a corporation or a sole proprietorship and which
5 is treated as a partnership for tax purposes under the laws of this
6 state. The term "partner" includes a member in such a syndicate,
7 group, pool, joint venture or other organization.

8 (35) "Person" includes any natural person, corporation or
9 partnership, and includes any entity that is treated like a
10 corporation or partnership for federal income tax purposes.

11 (36) "Photonics" includes the generation, emission,
12 transmission, modulation, signal processing, switching,
13 amplification, detection and sensing of light.

14 (37) "Photovoltaic devices" means those products designed,
15 manufactured, and produced to convert sunlight directly into
16 electricity.

17 (38) "Property purchased or leased for business expansion"
18 means:

19 (A) *Included property*. -- Except as provided in paragraph (B)
20 of this subdivision, the term "property purchased or leased for
21 business expansion" means real property and improvements thereto,
22 and tangible personal property, but only if the real or personal
23 property was constructed, purchased, or leased and placed in
24 service or use by the taxpayer, for use as a component part of a

1 new business facility or expanded business facility as defined in
2 this section, which is located within the State of West Virginia.

3 This term includes only:

4 (i) Real property and improvements thereto having a useful
5 life of four or more years, placed in service or use on or after
6 July 1, 2011, by the taxpayer;

7 (ii) Real property and improvements thereto, acquired by
8 written lease having a primary term of ten or more years and placed
9 in service or use by the taxpayer on or after July 1, 2011;

10 (iii) Tangible personal property placed in service or use by
11 the taxpayer on or after July 1, 2011, with respect to which
12 depreciation, or amortization in lieu of depreciation, is allowable
13 in determining the personal or corporation net income tax liability
14 of the business taxpayer under article twenty-one or twenty-four of
15 this chapter, and which has a useful life, at the time the property
16 is placed in service or use in the state, of four or more years;

17 (iv) Tangible personal property acquired by written lease
18 having a primary term of four years or longer, that commenced and
19 was executed by the parties thereto on or after July 1, 2011, if
20 used as a component part of a new or expanded business facility,
21 shall be included within this definition; and

22 (v) Tangible personal property owned or leased, and used by
23 the taxpayer at a business location outside the state which is
24 moved into the State of West Virginia on or after July 1, 2011, for

1 use as a component part of a new or expanded business facility
2 located in the state: *Provided*, That if the property is owned, it
3 must be depreciable or amortizable personal property for income tax
4 purposes, and have a useful life of four or more years remaining at
5 the time it is placed in service or use in the state, and if the
6 property is leased, the primary term of the lease remaining at the
7 time the leased property is placed in service or use in the state,
8 must be four or more years;

9 (B) *Excluded property*. -- The term "property purchased or
10 leased for business expansion" does not include:

11 (i) Property owned or leased by the taxpayer and for which the
12 taxpayer was previously allowed tax credit under article thirteen-
13 c, thirteen-d, thirteen-e, thirteen-h, thirteen-q, thirteen-r,
14 thirteen-s, thirteen-t, thirteen-u or thirteen-aa of this chapter,
15 or the tax credits allowed by this article;

16 (ii) Property owned or leased by the taxpayer and for which
17 the seller, lessor, or other transferor, was previously allowed tax
18 credit under article thirteen-c, thirteen-d, thirteen-e, thirteen-
19 h, thirteen-q, thirteen-r, thirteen-s, thirteen-t, thirteen-u or
20 thirteen-aa of this chapter, or the tax credits allowed by this
21 article;

22 (iii) Property owned or leased by the taxpayer that is used to
23 qualify for any other credit against state taxes allowed by this
24 code;

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

4 (v) Airplanes;

5 (vi) Property which is primarily used outside the state, with
6 use being determined based upon the amount of time the property is
7 actually used both within and outside the state;

8 (vii) Property which is acquired incident to the purchase of
9 the stock or assets of the seller, unless for good cause shown, the
10 commissioner consents to waiving this requirement;

11 (viii) Natural resources in place; or

12 (ix) Purchased or leased property the cost or consideration
13 for which cannot be quantified with any reasonable degree of
14 accuracy at the time the property is placed in service or use:
15 *Provided*, That when the contract of purchase or lease specifies a
16 minimum purchase price or minimum annual rent the amount thereof
17 shall be used to determine the qualified investment in the property
18 under section eight of this article if the property otherwise
19 qualifies as property purchased or leased for business expansion.

20 (39) "Purchase" means any acquisition of property, but only
21 if:

22 (A) The property is not acquired from a person whose
23 relationship to the person acquiring it would result in the
24 disallowance of deductions under Section 267 or 707 (b) of the

1 United States Internal Revenue Code of 1986, as amended;

2 (B) The property is not acquired by one component member of a
3 controlled group from another component member of the same
4 controlled group. The commissioner may waive this requirement if
5 the property was acquired from a related party for its then fair
6 market value; and

7 (C) The basis of the property for federal income tax purposes,
8 in the hands of the person acquiring it, is not determined:

9 (i) In whole or in part, by reference to the federal adjusted
10 basis of the property in the hands of the person from whom it was
11 acquired; or

12 (ii) Under Section 1014(e) of the United States Internal
13 Revenue Code of 1986, as amended.

14 (40) "Qualified activity" means any business or other activity
15 subject to any of the taxes imposed by article thirteen, twenty-
16 one, twenty-three or twenty-four of this chapter (or any
17 combination of those articles of this chapter), but does not
18 include the activity of severance or production of natural
19 resources.

20 (41) "Related person" means:

21 (A) A corporation, partnership, association or trust
22 controlled by the taxpayer;

23 (B) An individual, corporation, partnership, association or
24 trust that is in control of the taxpayer;

1 (C) A corporation, partnership, association or trust
2 controlled by an individual, corporation, partnership, association
3 or trust that is in control of the taxpayer; or

4 (D) A member of the same controlled group as the taxpayer.

5 For purposes of this definition, "control," with respect to a
6 corporation, means ownership, directly or indirectly, of stock
7 possessing fifty percent or more of the total combined voting power
8 of all classes of the stock of the corporation entitled to vote.
9 "Control," with respect to a trust, means ownership, directly or
10 indirectly, of fifty percent or more of the beneficial interest in
11 the principal or income of the trust. The ownership of stock in a
12 corporation, of a capital or profits interest in a partnership or
13 association or of a beneficial interest in a trust is determined in
14 accordance with the rules for constructive ownership of stock
15 provided in Section 267(c) of the United States Internal Revenue
16 Code of 1986, as amended, other than paragraph (3) of that section.

17 (42) "Replacement facility" means any property (other than an
18 expanded facility) that replaces or supersedes any other property
19 located within this state that:

20 (A) The taxpayer or a related person used in or in connection
21 with any activity for more than two years during the period of five
22 consecutive years ending on the date the replacement or superseding
23 property is placed in service by the taxpayer; or

24 (B) Is not used by the taxpayer or a related person in or in

1 connection with any qualified activity for a continuous period of
2 one year or more commencing with the date the replacement or
3 superseding property is placed in service by the taxpayer.

4 (43) "State-of-the-art technology" or "leading edge technology"
5 means the highest level of development, as of a device, technique,
6 or scientific field achieved at a particular time.

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

10 (45) "This code" means the Code of West Virginia, 1931, as
11 amended.

12 (46) "This state" means the State of West Virginia.

13 (47) "Twenty-first century business technologies" means and
14 includes, but is not limited to, emerging technologies and other
15 business technologies that primarily use state-of-the-art
16 methodologies, practices or techniques to manufacture, produce or
17 provide its primary goods or services.

18 (48) "Used property" means property acquired after June 30,
19 2011, that is not "new property."

20 **§11-13BB-4. Amount of credit allowed.**

21 (a) *Credit allowed.* -- Eligible taxpayers are allowed a credit
22 against the portion of taxes imposed by this state that are
23 attributable to and the consequence of the taxpayer's qualified
24 investment, as described in section six of this article, in a new

1 business, or in a new segment of an existing business, in this
2 state that utilized twenty-first century technologies, which
3 results in the creation of new jobs. The amount of this credit is
4 determined and applied as provided in this article.

5 (b) *Amount of credit.* -- When the eligible taxpayer creates
6 at least ten new jobs but less than fifteen new jobs in a new
7 business in this state that utilizes twenty-first century business
8 technologies and whose qualified investment in this state is at
9 least \$5 million but is less than \$10 million, the eligible
10 taxpayer shall for the tax year in which the ten employees are
11 first employed by the eligible taxpayer and for the next four tax
12 years thereafter be exempt from payment of the taxes imposed by
13 articles twenty-three and twenty-four of this chapter on the
14 taxable capital and West Virginia taxable income of the new
15 business utilizing twenty-first century business technologies in
16 this state: *Provided,* That the eligible taxpayer may elect to defer
17 for one tax year the start of this five-year period. When the
18 eligible business is a partnership or other entity treated as a
19 partnership for federal income tax purposes, the partners, S
20 corporation shareholders or members of the limited liability
21 company shall be exempt from paying the tax imposed by article
22 twenty-one of this chapter on his or her distributive share
23 attributable to the emerging technology business activity in this
24 state. The eligible business shall also be exempt from paying the

1 taxes imposed by article fifteen and fifteen-a of this chapter on
2 tangible personal property and services purchased for use or
3 consumption by the eligible taxpayer in the emerging technology
4 business activity during the same five-year period, except that
5 this exemption shall not apply to the purchase of motor fuel or
6 alternative fuels to power a vehicle or to the purchase or lease of
7 motor vehicles, unless the vehicle is an alternative fuel vehicle.
8 The exemption from paying the taxes imposed by articles fifteen and
9 fifteen-a of this chapter on purchases for use in business allowed
10 by this subsection is in addition to any exemption that might
11 otherwise be available to the taxpayer under articles fifteen and
12 fifteen-a of this chapter. When the taxpayer qualifies for tax
13 benefits under this subsection, these benefits are not forfeited if
14 during the applicable five-year period, the new business creates
15 additional new jobs or makes additional capital investment at the
16 new business facility or does both.

17 (c) *Amount of credit.* -- When the eligible taxpayer does not
18 qualify for credit under subsection (b) of this section, either
19 because the qualified investment exceeds \$10 million or the number
20 of new jobs created is fifteen or more, or for both reasons, the
21 amount of credit allowable is determined by multiplying the amount
22 of the taxpayer's "qualified investment" (determined under section
23 six of this article) in "property purchased or leased for business
24 expansion" (as defined in section three of this article) using

1 twenty-first century business technologies by the taxpayer's new
2 jobs percentage (determined under section seven of this article).
3 The product of this calculation establishes the maximum amount of
4 credit allowable under this article due to the qualified
5 investment.

6 **§11-13BB-5. Application of annual credit allowance.**

7 (a) *In general.* -- The aggregate annual credit allowance for
8 the current taxable year is an amount equal to the sum of the
9 following:

10 (1) The one-tenth part allowed under subsection (c), section
11 four of this article for qualified investment placed into service
12 or use during a prior taxable year; plus

13 (2) The one-tenth part allowed under subsection (c), section
14 four of this article for qualified investment placed into service
15 or use during the current taxable year.

16 (b) *Application of current year annual credit allowance.* --
17 The amount determined under subsection (a) of this section is
18 allowed as a credit against one hundred percent of that portion of
19 the taxpayer's state tax liability which is attributable to and the
20 direct result of the taxpayer's qualified investment, and applied
21 as provided in subsections (c) through (f), both inclusive, of this
22 section, and in that order.

23 (c) *Business and occupation taxes.* -- That portion of the
24 allowable credit attributable to qualified investment in a business

1 or other activity subject to the taxes imposed by article thirteen
2 of this chapter under section two-o of article thirteen must first
3 be applied to reduce the taxes imposed or payable under section
4 two-o, article thirteen of this chapter, for the taxable year
5 (determined before application of allowable credits against tax and
6 the annual exemption). In no case may the credit allowed under this
7 article be applied to reduce any tax imposed by under any other
8 section of article thirteen of this chapter except section two-o.

9 (1) If the taxes due under section two-o, article thirteen of
10 this chapter are not solely attributable to and the direct result
11 of the taxpayer's qualified investment in a business or other
12 activity taxable under section two-o, article thirteen of this
13 chapter, the amount of those taxes that are attributable is
14 determined by multiplying the amount of taxes due under section
15 two-o, article thirteen of this chapter, for the taxable year
16 (determined before application of any allowable credits against tax
17 and the annual exemption), by a fraction, the numerator of which is
18 all wages, salaries and other compensation paid during the taxable
19 year to all employees of the taxpayer employed in this state, whose
20 positions are directly attributable to the qualified investment in
21 a business or other activity taxable under section two-o, article
22 thirteen of this chapter. The denominator of the fraction shall be
23 the wages, salaries and other compensation paid during the taxable
24 year to all employees of the taxpayer employed in this state, whose

1 positions are directly attributable to the business or other
2 activity of the taxpayer that is taxable under article thirteen of
3 this chapter.

4 (2) The annual exemption allowed by section three, article
5 thirteen of this chapter, plus any credits allowable under articles
6 thirteen-d, thirteen-e, thirteen-q, thirteen-r and thirteen-s of
7 this chapter, shall be applied against and reduce only the portion
8 of article thirteen taxes not apportioned to the qualified
9 investment under this article: *Provided*, That any excess exemption
10 or credits may be applied against the amount of article thirteen
11 taxes apportioned to the qualified investment under this article,
12 that is not offset by the amount of annual credit against the taxes
13 allowed under this article for the taxable year, unless their
14 application is otherwise prohibited by this chapter.

15 (d) *Business franchise tax.* --

16 (1) After application of subsection (c) of this section, any
17 unused allowable credit is next applied to reduce the taxes imposed
18 by article twenty-three of this chapter for the taxable year
19 (determined after application of the credits against tax provided
20 in section seventeen of article twenty-three of this chapter, but
21 before application of any other allowable credits against tax).

22 (2) If the taxes due under article twenty-three of this
23 chapter are not solely attributable to and the direct result of the
24 taxpayer's qualified investment in a business or other activity

1 taxable under article twenty-three of this chapter for the taxable
2 year, the amount of the taxes which are so attributable are
3 determined by multiplying the amount of taxes due (determined after
4 application of the credits against tax as provided in section
5 seventeen of article twenty-three of this chapter, but before
6 application of any other allowable credits), by a fraction, the
7 numerator of which is all wages, salaries and other compensation
8 paid during the taxable year to all employees of the taxpayer
9 employed in this state, whose positions are directly attributable
10 to the qualified investment in a business or other activity taxable
11 under article twenty-three of this chapter. The denominator of the
12 fraction is wages, salaries and other compensation paid during the
13 taxable year to all employees of the taxpayer employed in this
14 state, whose positions are directly attributable to the business or
15 other activity of the taxpayer that is taxable under article
16 twenty-three of this chapter.

17 (3) Any credits allowable under articles thirteen-d, thirteen-
18 e, thirteen-q, thirteen-r and thirteen-s of this chapter are
19 applied against and reduce only the portion of article twenty-three
20 taxes not apportioned to the qualified investment under this
21 article: *Provided*, That any excess exemption or credits may be
22 applied against the amount of article twenty-three taxes
23 apportioned to the qualified investment under this article that is
24 not offset by the amount of annual credit against those taxes

1 allowed under this article for the taxable year, unless their
2 application is otherwise prohibited by this chapter.

3 (e) *Corporation net income taxes.* --

4 (1) After application of subsections (c) and (d) of this
5 section, any unused credit is next applied to reduce the taxes
6 imposed by article twenty-four of this chapter for the taxable year
7 (determined before application of allowable credits against tax).

8 (2) If the taxes due under article twenty-four of this chapter
9 (determined before application of allowable credits against tax)
10 are not solely attributable to and the direct result of the
11 taxpayer's qualified investment, the amount of the taxes that is
12 attributable are determined by multiplying the amount of taxes due
13 under article twenty-four of this chapter for the taxable year
14 (determined before application of allowable credits against tax),
15 by a fraction, the numerator of which is all wages, salaries and
16 other compensation paid during the taxable year to all employees of
17 the taxpayer employed in this state whose positions are directly
18 attributable to the qualified investment. The denominator of the
19 fraction is the wages, salaries and other compensation paid during
20 the taxable year to all employees of the taxpayer employed in this
21 state.

22 (3) Any credits allowable under article twenty-four of this
23 chapter are applied against and reduce only the amount of article
24 twenty-four taxes not apportioned to the qualified investment under

1 this article: *Provided*, That any excess credits may be applied
2 against the amount of article twenty-four taxes apportioned to the
3 qualified investment under this article that is not offset by the
4 amount of annual credit against such taxes allowed under this
5 article for the taxable year, unless their application is otherwise
6 prohibited by this chapter.

7 (f) *Personal income taxes.* --

8 (1) If the person making the qualified investment is an
9 electing small business corporation (as defined in Section 1361 of
10 the United States Internal Revenue Code of 1986, as amended), a
11 partnership, or a limited liability company that is treated as a
12 partnership for federal income tax purposes, then any unused credit
13 (after application of subsections (c), (d) and (e) of this section)
14 is allowed as a credit against the taxes imposed by article twenty-
15 one of this chapter on the income from business or other activity
16 subject to tax under article thirteen or twenty-three of this
17 chapter that is attributable to the business activity for credit is
18 allowed under this article.

19 (2) Electing small business corporations, limited liability
20 companies, partnerships and other unincorporated organizations
21 shall allocate the credit allowed by this article among its members
22 in the same manner as profits and losses are allocated for the
23 taxable year.

24 (3) If the amount of taxes due under article twenty-one of

1 this chapter (determined before application of allowable credits
2 against tax) that is attributable to business, is not solely
3 attributable to and the direct result of the qualified investment
4 of the electing small business corporation, limited liability
5 company, partnership, other unincorporated organization or sole
6 proprietorship, the amount of the taxes that are so attributable
7 are determined by multiplying the amount of taxes due under article
8 twenty-one of this chapter (determined before application of
9 allowable credits against tax), that is attributable to business by
10 a fraction, the numerator of which is all wages, salaries and other
11 compensation paid during the taxable year to all employees of the
12 electing small business corporation, limited liability company,
13 partnership, other unincorporated organization or sole
14 proprietorship employed in this state, whose positions are directly
15 attributable to the qualified investment. The denominator of the
16 fraction is the wages, salaries and other compensation paid during
17 the taxable year to all employees of the taxpayer.

18 (4) No credit is allowed under this section against any
19 employer withholding taxes imposed by article twenty-one of this
20 chapter.

21 (g) If the wages, salaries and other compensation fraction
22 formula provisions of subsections (c) through (f) of this section,
23 inclusive, do not fairly represent the taxes solely attributable to
24 and the direct result of qualified investment of the taxpayer the

1 commissioner may require, in respect to all or any part of the
2 taxpayer's businesses or activities, if reasonable:

3 (1) Separate accounting or identification;

4 (2) Adjustment to the wages, salaries and other compensation
5 fraction formula to reflect all components of the tax liability;

6 (3) The employment of any other method to effectuate an
7 equitable attribution of the taxes.

8 In order to effectuate the purposes of this subsection, the
9 commissioner may propose for promulgation rules, including
10 emergency rules, in accordance with article three, chapter twenty-
11 nine-a of this code.

12 (h) *Unused credit.* -- If any credit remains after application
13 of subsection (b) of this section, the amount thereof is carried
14 forward to each ensuing tax year until used or until the expiration
15 of the third taxable year subsequent to the end of the initial ten
16 year credit application period. If any unused credit remains after
17 the thirteenth year, the amount thereof is forfeited. No carryback
18 to a prior taxable year is allowed for the amount of any unused
19 portion of any annual credit allowance.

20 **§11-13BB-6. Qualified investment.**

21 (a) *General.* -- The qualified investment in property purchased
22 or leased for business expansion is the applicable percentage of
23 the cost of each property purchased or leased for the purpose of
24 business expansion which is placed in service or use in this state

1 by the taxpayer during the taxable year.

2 (b) *Applicable percentage.* -- For the purpose of subsection
 3 (a), the applicable percentage of any property is determined under
 4 the following table:

5 If useful life is:	6 The applicable percentage is:
7 Less than 4 years.....	8 0%
9 4 years or more but less than 6 years	33 1/3%
6 years or more but less than 8 years	66 2/3%
8 years or more	100%

10 The useful life of any property, for purposes of this section, is
 11 determined as of the date the property is first placed in service
 12 or use in this state by the taxpayer, determined in accordance with
 13 such rules and requirements the Tax Commissioner may prescribe.

14 (c) *Cost.* -- For purposes of subsection (a), the cost of each
 15 property purchased for business expansion is determined under the
 16 following rules:

17 (1) *Trade-ins.* - Cost does not include the value of property
 18 given in trade or exchange for the property purchased for business
 19 expansion.

20 (2) *Damaged, destroyed or stolen property.* -- If property is
 21 damaged or destroyed by fire, flood, storm or other casualty, or is
 22 stolen, then the cost of replacement property does not include any
 23 insurance proceeds received in compensation for the loss.

24 (3) *Rental property.* --

25 (A) The cost of real property acquired by written lease for a
 26 primary term of ten years or longer is one hundred percent of the

1 rent reserved for the primary term of the lease, not to exceed
2 twenty years.

3 (B) The cost of tangible personal property acquired by written
4 lease for a primary term of:

5 (i) Four years, or longer, is one third of the rent reserved
6 for the primary term of the lease;

7 (ii) Six years, or longer, is two thirds of the rent reserved
8 for the primary term of the lease; or

9 (iii) Eight years, or longer, is one hundred percent of the
10 rent reserved for the primary term of the lease, not to exceed
11 twenty years: *Provided*, That in no event may rent reserved include
12 rent for any year subsequent to expiration of the book life of the
13 equipment, determined using the straight-line method of
14 depreciation.

15 (4) *Self-constructed property*. -- In the case of self-
16 constructed property, the cost thereof is the amount properly
17 charged to the capital account for depreciation in accordance with
18 federal income tax law.

19 (5) *Transferred property*. -- The cost of property used by the
20 taxpayer out-of-state and then brought into this state, is
21 determined based on the remaining useful life of the property at
22 the time it is placed in service or use in this state, and the cost
23 is the original cost of the property to the taxpayer less straight
24 line depreciation allowable for the tax years or portions thereof

1 the taxpayer used the property outside this state. In the case of
2 leased tangible personal property, cost is based on the period
3 remaining in the primary term of the lease after the property is
4 brought into this state for use in a new or expanded business
5 facility of the taxpayer, and is the rent reserved for the
6 remaining period of the primary term of the lease, not to exceed
7 twenty years, or the remaining useful life of the property
8 (determined as aforesaid), whichever is less.

9 **§11-13BB-7. New jobs; new jobs percentage.**

10 (a) *In general.* -- For purposes of this article, the new jobs
11 created by the taxpayer must be directly attributable to taxpayer's
12 qualified investment in this state, must be filled by new employees
13 as defined in section three of this article and the compensation of
14 new employees filling the new jobs must be equal to or exceed the
15 compensation and health insurance benefits set forth in section
16 eight of this article during the period for which the credit
17 allowed by this article may be taken.

18 (b) *When a job is attributable.* -- An employee's position is
19 directly attributable to the qualified investment if:

20 (1) The employee's service is performed or his or her base of
21 operations is at the new or expanded business facility;

22 (2) The position did not exist prior to the construction,
23 renovation, expansion or acquisition of the business facility and
24 the making of the qualified investment; and

1 (3) But for the qualified investment, the position would not
2 have existed.

3 (c) *Applicable percentage.* -- The taxpayer's new jobs
4 percentage is determined under the following table:

5	If number of new jobs	The applicable percentage is:
6	is at least:	
7	15	15%
8	20	20%
9	280	30%
10	520	40%

11 (d) *Certification of new jobs.* -- With the annual return for
12 the applicable taxes filed for the taxable year in which the
13 qualified investment is first placed in service or use in this
14 state, the taxpayer shall estimate and certify the number of new
15 jobs reasonably projected to be created by it in this state within
16 the period prescribed in subsection (f) of this section that are,
17 or will be, directly attributable to the qualified investment of
18 the taxpayer. For purposes of this section, "applicable taxes"
19 means the taxes imposed by articles thirteen, twenty-one, twenty-
20 three and twenty-four of this chapter against which this credit is
21 applied.

22 (e) *Equivalency of permanent employees.* -- The hours of part-
23 time employees shall be aggregated to determine the number of
24 equivalent full-time employees for the purpose of this section.

25 (f) *Redetermination of new jobs percentage.* -- With the annual
26 return for the applicable taxes imposed, filed for the third
27 taxable year in which the qualified investment is in service or

1 use, the taxpayer shall certify the actual number of new jobs
2 created by it in this state that are directly attributable to the
3 qualified investment of the taxpayer.

4 (1) If the actual number of jobs created would result in a
5 higher new jobs percentage, the credit allowed under this article
6 shall be redetermined and amended returns filed for the first and
7 second taxable years that the qualified investment was in service
8 or use in this state.

9 (2) If the actual number of jobs created would result in a
10 lower new jobs percentage, the credit previously allowed under this
11 article shall be redetermined and amended returns filed for the
12 first and second taxable years. In applying the amount of
13 redetermined credit allowable for the two preceding taxable years,
14 the redetermined credit shall first be applied to the extent it was
15 originally applied in the prior two years to personal income taxes,
16 then to corporation net income taxes, then to business franchise
17 taxes and, lastly, to business and occupation taxes. Any
18 additional taxes due under this chapter shall be remitted with the
19 amended returns filed with the commissioner, along with interest,
20 as provided in section seventeen, article ten of this chapter, and
21 a ten-percent penalty determined on the amount of taxes due with
22 the amended return, which may be waived by the commissioner if the
23 taxpayer shows that the over-claimed amount of the new jobs
24 percentage was due to reasonable cause and not due to willful

1 neglect.

2 **§11-13BB-8. New jobs compensation and benefits requirement.**

3 (a) Notwithstanding any provision of this article to the
4 contrary, no credit shall be allowed under this article unless the
5 following compensation requirements are met beginning with the tax
6 year when the new employee first begins working at the new or
7 expanded business facility and continuing through the period for
8 which credit is allowed under this article:

9 (1) The median compensation paid to the employees filling the
10 new jobs must be at least \$50,000 annually: *Provided*, That
11 beginning November 1, 2012, and on or before November 1
12 thereafter, the Tax Commissioner shall adjust this minimum annual
13 compensation requirement in the manner provided in subsection (b)
14 of this section, which adjustment shall apply to compensation paid
15 for employee services during the next calendar year;

16 (2) Health insurance benefits are provided to all full-time
17 permanent employees working at the new or expanded business
18 facility in this state; and

19 (3) Each new job is a full-time, permanent position, as those
20 terms are defined in section three, of this article.

21 Jobs that do not provide health insurance benefits do not
22 qualify as new jobs for purposes of the credit authorized by this
23 article. Additionally, jobs that are less than full-time,
24 permanent positions do not qualify as new jobs under this article.

1 (b) *Adjustment of annual compensation for inflation.* -- The
2 compensation requirements for credit under this article shall be
3 adjusted for inflation by application of a cost-of-living
4 adjustment. The annual compensation amount shall be applicable, as
5 adjusted, each year throughout the ten-year credit period. Failure
6 of a taxpayer entitled to credit under this article to meet the
7 annual compensation requirement for any year shall result in
8 forfeiture of the credit for that year. However, if in any
9 succeeding year within the original ten-year credit period, the
10 taxpayer pays annual compensation to its employees which exceeds
11 the inflation adjusted annual compensation amount for that year,
12 the taxpayer shall regain entitlement to take the credit for that
13 year only. No credit forfeited in a prior year may be taken, and
14 the tax year or years to which the forfeited credit would have been
15 applied shall be forfeited and deducted from the remainder of the
16 years over which the credit can be taken.

17 (1) *Cost-of-living adjustment.* -- For purposes of this
18 section, the cost-of-living adjustment for any calendar year is the
19 percentage, if any, by which the consumer price index for the
20 preceding calendar year exceeds the consumer price index for
21 calendar year 2011.

22 (2) *Consumer price index for any calendar year.* -- For
23 purposes of this section, the consumer price index for any calendar
24 year is the average of the federal consumer price index as of the

1 close of the twelve-month period ending on August 31 of such
2 calendar year.

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

7 (4) *Rounding.* -- If any increase in the annual compensation
8 amount under this section is not a multiple of \$50, such increase
9 shall be rounded to the next lowest multiple of \$50.

10 (c) Unused credit remaining in any tax year after application
11 against the taxes specified in section seven of this article is
12 forfeited and does not carry forward to any succeeding tax year and
13 does not carry back to a prior tax year.

14 (d) *Reduction in number of employees credit forfeiture.* -- If
15 during the year when a new job was created for which credit was
16 granted under this section or during any of the next succeeding
17 four tax years thereafter, net jobs that are attributable to and
18 the consequence of the taxpayer's business operations in this
19 state, decrease, counting both new jobs for which credit was
20 granted under this article and preexisting jobs, then the total
21 amount of credit to which the taxpayer is entitled under this
22 section shall be decreased and forfeited in the amount of \$3,000
23 for each net job lost.

24 **§11-13BB-9. Application for credit required; failure to make**

1 **timely application; burden of proof.**

2 (a) *Application for credit required.* -- Notwithstanding any
3 provision of this article to the contrary, no credit is allowed or
4 may be applied under this article for any qualified investment
5 property placed in service or use until the person asserting a
6 claim for the allowance of credit under this article makes written
7 application to the Tax Commissioner for allowance of credit as
8 provided in this subsection. An application for credit shall be
9 filed, in the form prescribed by the Tax Commissioner, no later
10 than the last day for filing the tax returns, determined by
11 including any authorized extension of time for filing the return,
12 required under article twenty-one or twenty-four of this chapter
13 for the taxable year in which the property to which the credit
14 relates is placed in service or use and all information required by
15 the form shall be provided.

16 (b) *Failure to make timely application.* -- The failure to
17 timely apply for the credit results in the forfeiture of fifty
18 percent of the annual credit allowance otherwise allowable under
19 this article. This penalty applies annually until the application
20 is filed.

21 (c) The burden of proof is on the taxpayer to establish by
22 clear and convincing evidence that the taxpayer is entitled to the
23 benefits allowed by this article.

24 **§11-13BB-10. Identification of investment credit property.**

1 Every taxpayer who claims credit under this article shall
2 maintain sufficient records to establish the following facts for
3 each item of qualified property:

4 (1) Its identity;

5 (2) Its actual or reasonably determined cost;

6 (3) Its straight-line depreciation life;

7 (4) The month and taxable year in which it was placed in
8 service;

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be
11 qualified property.

12 **§11-13BB-11. Forfeiture of unused tax credits; redetermination of**
13 **credit allowed.**

14 (a) *Disposition of property or cessation of use.* -- If during
15 any taxable year, property with respect to which a tax credit has
16 been allowed under this article:

17 (1) Is disposed of prior to the end of its useful life, as
18 determined under section eight of this article; or

19 (2) Ceases to be used in an eligible business of the taxpayer
20 in this state prior to the end of its useful life, as determined
21 under section eight of this article, then the unused portion of the
22 credit allowed for the property is forfeited for the taxable year
23 and all ensuing years. Additionally, except when the property is
24 damaged or destroyed by fire, flood, storm or other casualty, or is

1 stolen, the taxpayer shall redetermine the amount of credit allowed
2 in all earlier years by reducing the applicable percentage of cost
3 of the property allowed under section eight of this article, to
4 correspond with the percentage of cost allowable for the period of
5 time that the property was actually used in this state in the new
6 or expanded business of the taxpayer. The taxpayer shall then file
7 a reconciliation statement for the year in which the forfeiture
8 occurs and pay any additional taxes owed due to reduction of the
9 amount of credit allowable for the earlier years, plus interest and
10 any applicable penalties. The reconciliation statement shall be
11 filed with the annual return for the primary tax for which the
12 taxpayer is liable under articles thirteen and twenty-three of this
13 chapter, or under article twenty-one or twenty-four of this
14 chapter.

15 (b) *Cessation of operation of business facility.* -- If during
16 any taxable year the taxpayer ceases operation of a business
17 facility in this state for which credit was allowed under this
18 article, before expiration of the useful life of property with
19 respect to which tax credit has been allowed under this article,
20 then the unused portion of the allowed credit is forfeited for the
21 taxable year and for all ensuing years. Additionally, except when
22 the cessation is due to fire, flood, storm or other casualty, the
23 taxpayer shall redetermine the amount of credit allowed in earlier
24 years by reducing the applicable percentage of cost of the property

1 allowed under section eight of this article, to correspond with the
2 percentage of cost allowable for the period of time that the
3 property was actually used in this state in a business of the
4 taxpayer that is taxable under article twenty-three or twenty-four
5 of this chapter, or in the case of a partnership, the distributive
6 share of partnership items is taxable under article twenty-one of
7 this chapter. The taxpayer shall then file a reconciliation
8 statement with the annual return for the primary tax for which the
9 taxpayer is liable under article twenty-one, twenty-three or
10 twenty-four of this chapter, for the year in which the forfeiture
11 occurs, and pay any additional taxes owed due to the reduction of
12 the amount of credit allowable for the earlier years, plus interest
13 and any applicable penalties.

14 (c) *Reduction in number of employees.* -- If during any taxable
15 year subsequent to the taxable year in which the new jobs
16 percentage is redetermined as provided in section nine of this
17 article, the average number of employees of the taxpayer, for the
18 then current taxable year, employed in positions created because of
19 and directly attributable to the qualified investment falls below
20 the minimum number of new jobs created upon which the taxpayer's
21 annual credit allowance is based, the taxpayer shall calculate what
22 his or her annual credit allowance would have been had his or her
23 new jobs percentage been determined based upon the average number
24 of employees, for the then current taxable year, employed in

1 positions created because of and directly attributable to the
2 qualified investment. The difference between the result of this
3 calculation and the taxpayer's annual credit allowance for the
4 qualified investment as determined under section four of this
5 article, is forfeited for the then current taxable year, and for
6 each succeeding taxable year unless for a succeeding taxable year
7 the taxpayer's average employment in positions directly
8 attributable to the qualified investment once again meets the level
9 required to enable the taxpayer to utilize its full annual credit
10 allowance for that taxable year.

11 **§11-13BB-12. Recapture of credit; recapture tax imposed.**

12 (a) *When recapture tax applies.* --

13 (1) Any person who places qualified investment property in
14 service or use and who fails to use the qualified investment
15 property for at least the period of its useful life (determined as
16 of the time the property was placed in service or use), or the
17 period of time over which tax credits allowed under this article
18 with respect to the property are applied under this article,
19 whichever period is less, and who reduces the number of its
20 employees filling new jobs in its business in this state, which
21 were created and are directly attributable to the qualified
22 investment property, after the third taxable year in which the
23 qualified investment property was placed in service or use, or
24 fails to continue to employ individuals in all the new jobs created

1 as a direct result of the qualified investment property and used to
2 qualify for the credit allowed by this article, prior to the end of
3 the tenth taxable year after the qualified investment property was
4 placed in service or use, the person shall pay the recapture tax
5 imposed by subsection (b) of this section.

6 (2) This section does not apply when section thirteen of this
7 article applies. However, the successor, or the successors, and
8 the person, or persons, who previously claimed credit under this
9 article with respect to the qualified investment property and the
10 new jobs attributable thereto, are jointly and severally liable for
11 payment of any recapture tax subsequently imposed under this
12 section with respect to the qualified investment property and new
13 jobs.

14 (b) *Recapture tax imposed.* -- The recapture tax imposed by
15 this subsection is the amount determined as follows:

16 (1) *Full recapture.* -- If the taxpayer prematurely removes
17 qualified investment property placed in service (when considered as
18 a class) from economic service in the taxpayer's qualified
19 investment business activity in this state, and the number of
20 employees filling the new jobs created by the person falls below
21 the number of new jobs required to be created in order to qualify
22 for the amount of credit being claimed or the requirements of
23 section eight of this article are not satisfied, the taxpayer shall
24 recapture the amount of credit claimed under section seven of this

1 article for the taxable year, and all preceding taxable years, on
2 qualified investment property which has been prematurely removed
3 from service. Additionally, the property tax benefit allowed under
4 article six-1 of this chapter shall be recaptured for a like
5 period. The amount of tax due under this subdivision is an amount
6 equal to the amount of credit that is recaptured under this
7 subdivision plus the amount of the property tax benefit recaptured
8 under this section.

9 (2) *Partial recapture.* -- If the taxpayer prematurely removes
10 qualified investment property from economic service in the
11 taxpayer's qualified investment business activity in this state,
12 and the number of employees filling the new jobs created by the
13 person remains ten or more, but falls below the number necessary to
14 sustain continued application of credit determined by use of the
15 new job percentage upon which the taxpayer's one-tenth annual
16 credit allowance was determined under section four or section ten
17 of this article, taxpayer shall recapture an amount of credit equal
18 to the difference between: (A) The amount of credit claimed under
19 section seven of this article for the taxable year, and all
20 preceding taxable years; and (B) the amount of credit that would
21 have been claimed in those years if the amount of credit allowable
22 under section four or ten of this article had been determined based
23 on the qualified investment property which remains in service using
24 the average number of new jobs filled by employees in the taxable

1 year for which recapture occurs. The amount of tax due under this
2 subdivision is an amount equal to the amount of credit that is
3 recaptured under this subdivision.

4 (3) *Additional recapture.* -- If after a partial recapture
5 under subdivision (2) of this subsection, the taxpayer further
6 reduces the number of employees filling new jobs, the taxpayer
7 shall recapture an additional amount determined as provided under
8 subdivision (1) of this subsection. The amount of tax due under
9 this subdivision is an amount equal to the amount of credit that is
10 recaptured under this subdivision.

11 (d) *Payment of recapture tax.* -- The amount of tax recaptured
12 under this section is due and payable on the day the person's
13 annual return is due for the taxable year in which this section
14 applies, under article twenty-one or twenty-four of this chapter.
15 When the employer is a partnership, limited liability company or S
16 corporation for federal income tax purposes, the recapture tax
17 shall be paid by those persons who are partners in the partnership,
18 members in the company, or shareholders in the S corporation, in
19 the taxable year in which recapture occurs under this section.
20 The Tax Commissioner shall cause the property tax benefit
21 recaptured to be paid over to the sheriff of the county in which
22 the property is or was located within sixty days after the
23 recapture tax is paid to the Tax Commissioner.

24 (e) *Rules.* -- The Tax Commissioner may promulgate such rules

1 as may be useful or necessary to carry out the purpose of this
2 section and to implement the intent of the Legislature. Rules
3 shall be promulgated in accordance with the provisions of article
4 three, chapter twenty-nine-a of this code.

5 **§11-13BB-13. Transfer of qualified investment to successors.**

6 (a) *Mere change in form of business.* -- Property may not be
7 treated as disposed of under section eleven of this article, by
8 reason of a mere change in the form of conducting the business as
9 long as the property is retained in the successor business in this
10 state, and the transferor business retains a controlling interest
11 in the successor business. In this event, the successor business
12 is allowed to claim the amount of credit still available with
13 respect to the business facility or facilities transferred, and the
14 transferor business may not be required to redetermine the amount
15 of credit allowed in earlier years.

16 (b) *Transfer or sale to successor.* -- Property is not treated
17 as disposed of under section eleven of this article by reason of
18 any transfer or sale to a successor business which continues to
19 operate the business facility in this state. Upon transfer or
20 sale, the successor shall acquire the amount of credit that remains
21 available under this article for each subsequent taxable year and
22 the transferor business is not required to redetermine the amount
23 of credit allowed in earlier years.

24 **§11-13BB-14. Failure to keep records of investment credit**

1 **property.**

2 A taxpayer who does not keep the records required for
3 identification of investment credit property is subject to the
4 following rules:

5 (1) A taxpayer is treated as having disposed of, during the
6 taxable year, any investment credit property which the taxpayer
7 cannot establish was still on hand, in this state, at the end of
8 that year.

9 (2) If a taxpayer cannot establish when investment credit
10 property reported for purposes of claiming this credit returned
11 during the taxable year was placed in service, the taxpayer is
12 treated as having placed it in service in the most recent prior
13 year in which similar property was placed in service, unless the
14 taxpayer can establish that the property placed in service in the
15 most recent year is still on hand. In that event, the taxpayer
16 will be treated as having placed the returned property in service
17 in the next most recent year.

18 **§11-13BB-15. Interpretation and construction.**

19 (a) No inference, implication or presumption of legislative
20 construction or intent may be drawn or made by reason of the
21 location or grouping of any particular section, provision or
22 portion of this article; and no legal effect may be given to any
23 descriptive matter or heading relating to any section, subsection
24 or paragraph of this article.

1 (b) The provisions of this article shall be reasonably
2 construed in order to effectuate the legislative intent recited in
3 section two of this article.

4 (c) In no event may any property that is treated as qualified
5 investment property for purposes of this article be used to qualify
6 for credit under any other article of this chapter.

7 **§11-13BB-16. Tax credit review and accountability.**

8 (a) On or before February 1, 2016, and on or before February
9 1 of every third year thereafter, the Tax Commissioner shall submit
10 to the Governor, the President of the Senate and the Speaker of the
11 House of Delegates, a tax credit review and accountability report
12 evaluating the cost effectiveness of the credit allowed by this
13 article during the most recent three-year period for which
14 information is available. The criteria to be evaluated shall
15 include, but not be limited to, for each year of the three-year
16 period:

17 (1) The numbers of taxpayers claiming the credit;

18 (2) The net number of new jobs created by all taxpayers
19 claiming the credit;

20 (3) The cost of the credit;

21 (4) The cost of the credit per new job created; and

22 (5) Comparison of employment trends for an industry and for
23 taxpayers within the industry that claim the credit.

24 (b) Taxpayers claiming the credit shall provide any

1 information the Tax Commissioner may require to prepare the report:
2 *Provided*, That the information provided is subject to the
3 confidentiality and disclosure provisions of sections five-d and
4 five-s, article ten of this chapter.

5 **§11-13BB-17. Effective date; termination date.**

6 (A) *Effective date.* - The credit allowed by this article is
7 allowed for qualified investment placed in service or use on or
8 after July 1, 2011, subject to the rules contained in this section.

9 (b) *Termination date.* - Unless extended by the Legislature,
10 this credit shall not be allowed for any qualified investment
11 property placed in service or use after December 31, 2019:
12 *Provided*, That when the qualified investment property was placed in
13 service or use prior to January 1, 2020, taxpayers shall be allowed
14 the tax benefits allowed by section four of this article for the
15 remainder of the five-year period allowed by subsection (b) of that
16 section, or the remainder of the credit period allowed under
17 subsection (c) of that section, depending upon which is applicable
18 to the taxpayer.

19 **§11-13BB-18. Severability.**

20 (a) If any provision of this article or the application
21 thereof is for any reason adjudged by any court of competent
22 jurisdiction to be invalid, the judgment may not affect, impair or
23 invalidate the remainder of the article, but shall be confined in
24 its operation to the provision thereof directly involved in the

1 controversy in which the judgment shall have been rendered, and the
2 applicability of the provision to other persons or circumstances
3 may not be affected thereby.

4 (b) If any provision of this article or the application
5 thereof is made invalid or inapplicable by reason of the repeal or
6 any other invalidation of any statute therein addressed or referred
7 to, such invalidation or inapplicability may not affect, impair or
8 invalidate the remainder of the article, but shall be confined in
9 its operation to the provision thereof directly involved with,
10 pertaining to, addressing or referring to the statute, and the
11 application of the provision with regard to other statutes or in
12 other instances not affected by any such repealed or invalid
13 statute may not be abrogated or diminished in any way.

NOTE: The purpose of this bill is to enact the West Virginia Innovation Free Trade Act of 2011 consisting of the Twenty-First Century Business Technologies Property Valuation Act and the Twenty-First Century Tax Credit Act, the purpose of which is to encourage the development and use of emerging technologies to create good jobs and grow West Virginia's economy.

These articles are new; therefore, strike-throughs and underscoring have been omitted.