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Senate Bill No. 465

(By Senators McCabe, Kessler (Acting President),
Browning, Unger, Snyder, Stollings, Plymale, Wells, Palumbo,
Beach, Klempa, Yost and Foster)

[Originating in the Committee on Finance;
reported February 24, 2011.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2H-1, §5B-2H-2 and §5B-2H-3; to amend said code by adding thereto a new section, designated §11-1C-11c; to amend and reenact §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code; to amend said code by adding thereto a new section, designated §11-6D-9; to amend and

reenact §11-6F-2 and §11-6F-3 of said code; to amend said code by adding thereto a new section, designated §11-13A-5b; to amend and reenact §11-13R-3 of said code; to amend and reenact §11-13S-3 and §11-13S-4 of said code; to amend and reenact §11-15-8d of said code; and to amend and reenact §24-2F-3 of said code, all relating generally to the Marcellus Gas and Manufacturing Development Act of 2011; providing short title; making legislative findings and declarations; creating a tax credit for the personal property tax on horizontal drilling rigs and related equipment; authorizing the tax commissioner to promulgate rules; amending and reinstating alternative fuel motor vehicle tax credit; providing credit for alternative fuel refueling facilities; making legislative findings; stating legislative purpose; defining terms; allowing credit for purchase of alternative fuel motor vehicles, conversion of vehicles to alternative fuel motor vehicles and for commercial and residential alternative fuel refueling facilities; providing for expiration of credits; requiring Tax Commissioner to promulgate rules and design forms; providing for carryover of unused credits and for recapture of credits; amending definition of “manufacturing” for purposes of special method for appraising qualified capital additions to manufacturing facilities for

property tax purposes; providing new rules for treatment of certified capital addition property; setting baseline for oil and gas severance tax collections; providing for excess distribution and deposit of excess collections; amending definition of “research and development” for purposes of strategic research and development tax credit; amending definition of “manufacturing” for purposes of manufacturing investment tax credit; requiring certain business activities comply with the West Virginia Jobs Act in order to be eligible for the manufacturing investment tax credit; providing additional exception to limitation on right to assert sales and use tax exemptions; and clarifying meaning of “natural gas” for purposes of Alternative and Renewable Energy Portfolio Standard Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-2H-1, §5B-2H-2 and §5B-2H-3; that said code be amended by adding thereto a new section, designated §11-1C-11c; that §11-6D-1, §11-6D-2, §11-6D-3, §11-6D-4, §11-6D-5, §11-6D-6, §11-6D-7 and §11-6D-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-6D-9; that §11-6F-2 and §11-6F-3 of said code be amended and reenacted; that said

code be amended by adding thereto a new section, designated §11-13A-5b; that §11-13R-3 of said code be amended and reenacted; that §11-13S-3 and §11-13S-4 of said code be amended and reenacted; that §11-15-8d of said code be amended and reenacted; and that §24-2F-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.
ARTICLE 2H. MARCELLUS GAS AND MANUFACTURING DEVELOPMENT ACT.

§5B-2H-1. Short Title.

1 This article shall be known and cited as the “Marcellus
2 Gas and Manufacturing Development Act”.

§5B-2H-2. Legislative findings; declaration of public policy.

1 (a) The Legislature finds that:
2 (1) The advent and advancement of new and existing
3 technologies and drilling practices have created the opportu-
4 nity for the efficient development of natural gas contained in
5 underground shales and other geological formations.
6 (2) With development of the Marcellus shale comes the
7 opportunity for economic development in related areas of the
8 economy including, but not limited to, manufacturing,

9 transmission of natural gas and related products and the
10 transportation of manufactured products.

11 (3) It is in the interest of national security to encourage
12 post-production uses of natural gas and its various compo-
13 nents as a replacement for oil imported from other countries.

14 (4) Producers of natural gas, transporters of natural gas
15 and manufacturers of products using natural gas face a
16 significant number of regulatory requirements, some of
17 which may be redundant, inconsistent, or overlapping.
18 Agencies should work together, where practical, to avoid
19 duplication, promote better coordination and reduce these
20 requirements, thus reducing costs, simplifying and harmo-
21 nizing rules and streamlining regulatory oversight.

22 (5) In developing regulatory actions and identifying
23 appropriate approaches, agencies should attempt to promote
24 coordination, simplification, and harmonization.

25 (6) Agencies should also seek to identify, as appropriate,
26 means to achieve regulatory goals that are designed to
27 promote innovation.

28 (7) Agencies should review their existing significant
29 legislative, interpretive and procedural rules to determine
30 whether any such rules should be modified, streamlined,

31 expanded or repealed so as to make the agency's regulatory
32 program more effective or less burdensome in achieving the
33 regulatory objectives.

34 (8) The West Virginia Economic Development Authority
35 established in article fifteen, chapter thirty-one of this code
36 and the West Virginia Infrastructure and Jobs Development
37 Council created in article fifteen-a, chapter thirty-one of this
38 code, should, where appropriate, provide assistance that
39 grows or sustains this segment of the economy.

40 (b) The Legislature declares that facilitating the develop-
41 ment of business activity directly and indirectly related to
42 development of the Marcellus shale serves the public interest
43 of the citizens of this state by promoting economic develop-
44 ment and improving economic opportunities for the citizens
45 of this state.

**§5B-2H-3. Tax Credit for the amount of personal property tax on
all horizontal drilling rigs and related equipment.**

1 (a) Each company organized in the state of West Virginia
2 with corporate headquarters in the state of West Virginia,
3 that owns a horizontal drilling rig and related equipment to
4 horizontal drilling is entitled to a tax credit against the taxes
5 imposed in articles thirteen, thirteen-a, twenty-one, twenty-

6 three, and twenty-four of chapter eleven of this code for the
7 amount provided in subsection (b) of this section: Provided,
8 that such company complies with the West Virginia Jobs Act
9 as provided in Article one-c, chapter twenty one of this code.

10 (b) The amount of credit allowed under this section is one
11 hundred percent of the annual personal property taxes
12 imposed on the company as a result of the company's
13 ownership of the horizontal drilling rig and related equip-
14 ment to the horizontal drilling.

15 (c) All companies eligible for this tax credit may only take
16 such credit for a five year period.

17 (d) No company is eligible to begin taking this credit for
18 the five-year period after July 1, 2013.

19 (e) No carryover of the credit is allowed.

20 (f) The tax commissioner shall propose rules for legislative
21 approval in accordance with article three, chapter
22 twenty-nine-a of this code to carry out the policy and
23 purposes of this section, to provide any necessary clarifica-
24 tion of the provisions of this section and to efficiently
25 provide for the general administration of this section. The
26 tax commissioner is authorized to promulgate emergency
27 rules to implement the provisions of this section.

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-11c. Valuation of oil and gas drilling rigs.

1 Notwithstanding any provision of this code to the contrary
2 and to facilitate the equal and uniform taxation of oil and
3 natural gas drilling rigs throughout the state, the State Tax
4 Commissioner shall annually compile a schedule of oil and
5 natural gas drilling rig values based on the wholesale values
6 shown in a nationally recognized guide or bulletin published
7 during the calendar year that includes the assessment date,
8 using the appropriate depth rating assigned to the
9 drawworks by its manufacturer and the actual condition of
10 the drilling rig. The State Tax Commissioner shall furnish
11 the schedule to each assessor and it shall be used by him or
12 her as a guide in placing the assessed values on all oil and
13 natural gas drilling rigs in his or her county. This section
14 applies to assessment years beginning on and after July 1,
15 2011.

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

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

1 Consistent with the public policy as stated in section one,
2 article two-d, chapter twenty-four of this code, the Legisla-

3 ture hereby finds that the use of alternative fuels is in the
4 public interest and promotes the general welfare of the
5 people of this state insofar as it addresses serious concerns
6 for our environment and our state's and nation's dependence
7 on foreign oil as a source of energy. The Legislature further
8 finds that this state has an abundant supply of alternative
9 fuels and an extensive supply network and that, by encour-
10 aging the use of alternatively-fueled motor vehicles, the state
11 will be reducing its dependence on foreign oil and attempt-
12 ing to improve its air quality. The Legislature further finds
13 that the wholesale cost of fuel for certain alternatively-
14 fueled motor vehicles is significantly lower than the cost of
15 fueling traditional motor vehicles with oil based fuels.

16 However, because the cost of motor vehicles which utilize
17 alternative-fuel technologies remains high in relation to
18 motor vehicles that employ more traditional technologies,
19 citizens of this state who might otherwise choose an
20 alternatively-fueled motor vehicle are forced by economic
21 necessity to continue using motor vehicles that are fueled by
22 more conventional means. Additionally, the availability of
23 commercial and residential infrastructure to support
24 alternatively-fueled vehicles available to the public is

25 inadequate to encourage the use of alternatively-fueled
26 motor vehicles. Therefore, in order to encourage the use of
27 alternatively-fueled motor vehicles and possibly reduce
28 unnecessary pollution of our environment and reduce our
29 dependence on foreign sources of energy, there is hereby
30 created an alternative-fuel motor vehicles tax credit and an
31 alternative-fuel infrastructure tax credit.

§11-6D-2. Definitions.

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

3 (a) “Alternative fuel” includes:

4 (1) Compressed natural gas;

5 (2) Liquified natural gas;

6 (3) Liquified petroleum gas;

7 ~~(4) Methanol;~~

8 ~~(5) Ethanol;~~

9 ~~(6) Fuel mixtures that contain eighty-five percent or more~~
10 ~~by volume, when combined with gasoline or other fuels, of~~
11 ~~the following:~~

12 ~~(A) Methanol;~~

13 ~~(B) Ethanol; or~~

14 ~~(C) Other alcohols;~~

15 (4) Natural gas hydrocarbons and derivatives;

16 (5) Hydrogen;

17 ~~(7)~~ (6) Coal-derived liquid fuels; and

18 ~~(8)~~ (7) Electricity, including electricity from solar energy.

19 (b) “Alternative-fuel motor vehicle” means a motor vehicle
20 that as a new or retrofitted or converted fuel vehicle:

21 (1) Operates solely on one alternative fuel;

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

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

26 (c) “Bi-fueled” means the ability of an alternative-fuel
27 motor vehicle to operate on an alternative fuel and another
28 form of fuel.

29 (d) “Plug-in hybrid electric vehicle” means:

30 (1) An original equipment manufacturer plug-in hybrid
31 electric vehicle that can operate solely on electric power and
32 that is capable of recharging its battery from an on-board
33 generation source and an off-board electricity source; and

34 (2) A plug-in hybrid electric vehicle conversion that
35 provides an increase in city fuel economy of seventy-five
36 percent or more as compared to a comparable nonhybrid

37 version vehicle for a minimum of twenty miles and that is
38 capable of recharging its battery from an on-board genera-
39 tion source and an off-board electricity source. A vehicle is
40 comparable if it is the same model year and the same vehicle
41 class as established by the United States Environmental
42 Protection Agency and is comparable in weight, size, and
43 use. Fuel economy comparisons shall be made using city fuel
44 economy standards in a manner that is substantially similar
45 to the manner in which city fuel economy is measured in
46 accordance with procedures set forth in 40 C.F.R. 600 as in
47 effect on January 1, 2011.

48 (e) “Qualified alternative fuel vehicle refueling infrastruc-
49 ture” means property owned by the applicant for the tax
50 credit and used for storing alternative fuels and for dispens-
51 ing such alternative fuels into fuel tanks of motor vehicles,
52 including but not limited to, compression equipment, storage
53 tanks and dispensing units for alternative fuel at the point
54 where the fuel is delivered: *Provided*, That the property is
55 installed and located in this state and is not located on a
56 private residence or private home.

57 (f) “Qualified alternative fuel vehicle home refueling
58 infrastructure” means property owned by the applicant for

59 the tax credit located on a private residence or private home
60 and used for storing alternative fuels and for dispensing such
61 alternative fuels into fuel tanks of motor vehicles, including
62 but not limited to, compression equipment, storage tanks and
63 dispensing units for alternative fuel at the point where the
64 fuel is delivered or for providing electricity to plug-in hybrid
65 electric vehicles or electric vehicles: *Provided*, That the
66 property is installed and located in this state.

67 (g) “Taxpayer” means any natural person, corporation,
68 limited liability company or partnership subject to the tax
69 imposed under article twenty-one, article twenty-three or
70 article twenty-four of this chapter or any combination
71 thereof.

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

1 The tax ~~credit~~ credits for the purchase of alternative-fuel
2 motor vehicles or conversion to alternative-fuel motor
3 vehicles, qualified alternative fuel vehicle refueling infra-
4 structure and qualified alternative fuel vehicle home refuel-

5 ing infrastructure provided in this article may be applied
6 against the tax liability of a taxpayer imposed by the
7 provisions of either article twenty-one, article twenty-three
8 or article twenty-four of this chapter but in no case may
9 more than one credit be granted for the same alternative-fuel
10 motor vehicle as defined in subdivision (b), section two of
11 this article. This credit shall be available for those tax years
12 beginning after ~~June 30, 1997~~ January 1, 2011.

§11-6D-4. Eligibility for credit.

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

3 (a) Converts a motor vehicle that is presently registered in
4 West Virginia to operate exclusively on an alternative fuel as
5 defined in subdivision (a), section two of this article; or

6 ~~(1) Exclusively on an alternative fuel as defined in subdivi-~~
7 ~~sion (a), section two of this article; or~~

8 ~~(2) In a dual fuel mode, as defined in paragraph (6),~~
9 ~~subdivision (a), section two of this article; as a bi-fueled~~
10 ~~alternative-fuel motor vehicle; or~~

11 (b) Purchases from an original equipment manufacturer or
12 an after-market conversion facility or any other automobile
13 retailer, a new dedicated or ~~dually-fueled~~ bi-fueled

14 alternative-fuel motor vehicle for which the taxpayer then
15 obtains a valid West Virginia registration; or

16 (c) Constructs or purchases and installs qualified alterna-
17 tive fuel vehicle refueling infrastructure or qualified alterna-
18 tive fuel vehicle home refueling infrastructure that is capable
19 of dispensing alternative fuel for alternative-fuel motor
20 vehicles.

21 ~~(c)~~ (d) The credit provided in this article is not available to
22 and may not be claimed by any taxpayer under any obliga-
23 tion pursuant to any federal or state law, policy or regulation
24 to convert to the use of alternative fuels for any motor
25 vehicle.

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

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

10 (b) For taxable years beginning on and after January 1,
11 2011, the amount of the credit allowed under this article for
12 an alternative-fuel motor vehicle that weighs more than
13 twenty-six thousand pounds is thirty-five percent of the
14 purchase price of the alternative-fuel motor vehicle up to a
15 maximum amount of \$25,000 or fifty percent of the actual
16 cost of converting from a traditionally fueled motor vehicle
17 to an alternative fuel motor vehicle up to a maximum amount
18 of \$25,000.

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

1 (a) For taxable years beginning on and after January 1,
2 2011 but prior to January 1, 2014, the amount of the credit
3 allowed under this article for qualified alternative fuel
4 vehicle refueling infrastructure is equal to an amount of fifty
5 percent of the total costs directly associated with the
6 construction or purchase and installation of the alternative
7 fuel vehicle refueling infrastructure up to a maximum of
8 \$250,000: *Provided*, That if the qualified alternative fuel
9 vehicle refueling infrastructure is generally accessible for
10 public use, the amount of the credit allowed will be multi-

11 plied by 1.25 and the maximum amount allowable will be
12 \$312,500. The amount of credit allowed may not exceed the
13 cost of construction of the alternative fuel vehicle refueling
14 infrastructure.

15 (b) For taxable years beginning on and after January 1,
16 2014, but prior to January 1, 2016, the amount of the credit
17 allowed under this article for qualified alternative fuel
18 vehicle refueling infrastructure is equal to an amount of fifty
19 percent of the total costs directly associated with the
20 construction or purchase and installation of the alternative
21 fuel vehicle refueling infrastructure up to a maximum of
22 \$200,000: *Provided*, That if the qualified alternative fuel
23 vehicle refueling infrastructure is generally accessible for
24 public use, the amount of the credit allowed will be multi-
25 plied by 1.25 and the maximum amount allowable will be
26 \$250,000. The amount of credit allowed may not exceed the
27 cost of construction of the alternative fuel vehicle refueling
28 infrastructure.

29 (c) For taxable years beginning on and after January 1,
30 2016, but prior to January 1, 2022, the amount of the credit
31 allowed under this article for qualified alternative fuel
32 vehicle refueling infrastructure is equal to an amount of fifty

33 percent of the total costs directly associated with the
34 construction or purchase and installation of the alternative
35 fuel vehicle refueling infrastructure up to a maximum of
36 \$150,000: *Provided*, That if the qualified alternative fuel
37 vehicle refueling infrastructure is generally accessible for
38 public use, the amount of the credit allowed will be multi-
39 plied by 1.25 and the maximum amount allowable will be
40 \$187,500. The amount of credit allowed may not exceed the
41 cost of construction of the alternative fuel vehicle refueling
42 infrastructure.

43 (d) For taxable years beginning on and after January 1,
44 2011, the amount of the credit allowed under this article for
45 qualified alternative fuel vehicle home refueling infrastruc-
46 ture is equal to an amount of fifty percent of the total costs
47 directly associated with the construction or purchase and
48 installation of the alternative fuel vehicle home refueling
49 infrastructure up to a maximum of \$10,000.

50 (e) The cost of construction of the alternative fuel vehicle
51 refueling infrastructure or alternative fuel vehicle home
52 refueling infrastructure eligible for a tax credit under this
53 section does not include costs associated with exploration,

54 development or production activities necessary for severing
55 natural resources from the soil or ground.

56 (f) When the taxpayer is a pass-through entity treated like
57 a partnership for federal and state income tax purposes, the
58 credit allowed under this article for the year shall flow
59 through to the equity owners of the pass-through entity in
60 the same manner that distributive share flows through to the
61 equity owners and in accordance with any legislative rule
62 the Tax Commissioner may propose for legislative approval
63 in accordance with article three, chapter twenty-nine-a of
64 this code to administer this section.

65 (g) No credit allowed by this article may be applied against
66 employer withholding taxes imposed by article twenty-one
67 of this chapter.

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

1 No person is eligible to receive a tax credit under this
2 article for: (i) An alternative-fuel motor vehicle purchased
3 after December 31, 2021; (ii) a vehicle converted to an
4 alternative-fuel motor vehicle after December 31, 2021; or
5 (iii) the construction or purchase and installation of qualified
6 alternative fuel vehicle refueling infrastructure or qualified

7 alternative fuel vehicle home refueling infrastructure
8 occurring after December 31, 2021.

**§11-6D-8. Commissioner to design forms and schedules; promul-
gation of rules.**

1 (a) The Tax Commissioner shall design and provide to the
2 public simplified forms and schedules to implement and
3 effectuate the provisions of this article.

4 (b) The Tax Commissioner ~~is authorized to promulgate~~
5 shall promulgate new rules for the administration of this
6 article consistent with its provisions and in accordance with
7 article three, chapter twenty-nine-a of this code after the
8 effective date of the amendments to this article. Such rules
9 shall include rules relating to the necessary documentation
10 required to be filed in order to take the tax credits allowed
11 in this article.

12 (c) Within one year ~~following~~ prior to the expiration of the
13 credit established in this article, the State Tax Commissioner
14 shall provide a written report to the Legislature setting forth
15 the utilization of the credit, the benefit of the credit and the
16 overall cost of the credit.

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

1 (a) If the tax credit allowed under this article in any
2 taxable year exceeds the taxpayer's tax liability as deter-
3 mined in accordance with article twenty-one, article twenty-
4 three or article twenty-four of this chapter for that taxable
5 year, the excess may be applied for succeeding taxable years
6 until the full amount of the excess tax credit is used.

7 (b) No carry back to a prior taxable year is allowed for the
8 amount of any unused credit in any taxable year.

9 (c) A tax credit is subject to recapture, elimination or
10 reduction if it is determined by the State Tax Commissioner
11 that a taxpayer was not entitled to the credit, in whole or in
12 part, in the tax year in which it was claimed by the taxpayer.
13 The amount of credit that flows through to equity owners of
14 a passthrough entity may be recaptured or recovered from
15 either the taxpayer or the equity owners in the discretion of
16 the Tax Commissioner.

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

§11-6F-2. Definitions.

1 As used in this article, the term:

2 (a) “Certified capital addition property” means all real
3 property and personal property included within or to be
4 included within a qualified capital addition to a manufactur-
5 ing facility that has been certified by the State Tax Commis-
6 sioner in accordance with section four of this article: *Pro-*
7 *vided*, That airplanes and motor vehicles licensed by the
8 Division of Motor Vehicles shall in no event constitute
9 certified capital addition property.

10 (b) “Manufacturing” means any business activity classified
11 as having a sector identifier, consisting of the first two digits
12 of the six-digit North American Industry Classification
13 System code number of thirty-one, thirty-two or thirty-three
14 or the six digit code number 211112.

15 ~~(b)~~ (c) “Manufacturing facility” means any factory, mill,
16 chemical plant, refinery, warehouse, building or complex of
17 buildings, including land on which it is located, and all
18 machinery, equipment, improvements and other real prop-
19 erty and personal property located at or within the facility
20 used in connection with the operation of the facility in a
21 manufacturing business.

22 ~~(c)~~ (d) “Personal property” means all property specified in
23 subdivision (q), section ten, article two, chapter two of this

24 code and includes, but is not limited to, furniture, fixtures,
25 machinery and equipment, pollution control equipment,
26 computers and related data processing equipment, spare
27 parts and supplies.

28 ~~(d)~~ (e) “Qualified capital addition to a manufacturing
29 facility” means all real property and personal property, the
30 combined original cost of all of the property which exceeds
31 \$50 million to be constructed, located or installed at or
32 within two miles of a manufacturing facility owned or
33 operated by the person making the capital addition that has
34 a total original cost before the capital addition of at least
35 \$100 million. ~~Provided, That~~ If the capital addition is made
36 in a steel, chemical or polymer alliance zone as designated
37 from time-to-time by executive order of the Governor, then
38 the person making the capital addition may for purposes of
39 satisfying the requirements of this subsection join in a
40 multiparty project with a person owning or operating a
41 manufacturing facility that has a total original cost before
42 the capital addition of at least \$100 million if the capital
43 addition creates additional production capacity of existing
44 or related products or feedstock or derivative products
45 respecting the manufacturing facility, consists of a facility

46 used to store, handle, process or produce raw materials for
47 the manufacturing facility, consists of a facility used to store,
48 handle or process natural gas to produce fuel for the genera-
49 tion of steam or electricity for the manufacturing facility or
50 consists of a facility that generates steam or electricity for
51 the manufacturing facility. Beginning July 1, 2011, wherever
52 the number “100” is used in this subsection, the number “20”
53 shall be substituted and where the number “50” is used, the
54 number “10” shall be substituted.

55 (e) (f) “Real property” means all property specified in
56 subdivision (p), section ten, article two, chapter two of this
57 code and includes, but is not limited to, lands, buildings and
58 improvements on the land such as sewers, fences, roads,
59 paving and leasehold improvements.

§11-6F-3. Tax treatment of certified capital addition property.

1 Notwithstanding any other provisions of law, the value of
2 certified capital addition property, for purposes of ad
3 valorem property taxation under this chapter, ~~shall be~~ is its
4 salvage value, which for purposes of this article is five
5 percent of the certified capital addition property’s original
6 cost. For capital additions certified on or after July 1, 2011,
7 the value of the land before any improvements shall be

8 subtracted from the value of the capital addition and the
9 unimproved land value shall not be given salvage value
10 treatment.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-5b. Distribution of oil and gas severance tax for maintenance of highways and permitting and inspection of shale gas wells.

1 (a) Effective July 1, 2011, a baseline for the imposition of
2 the severance tax on oil and gas that is deposited in the
3 General Revenue Fund and that is distributed to counties
4 and municipalities as provided in section five-a of this
5 article is established at \$64.8 million.

6 (b) The State Treasurer shall apportion any net collections
7 in excess of the baseline as follows:

8 (1) Ten percent of the excess shall be distributed as
9 provided in section five-a of this article; and

10 (2) Two million dollars shall be distributed into a special
11 revenue account hereby created within the State Treasury
12 and known as the "Marcellus Shale Permit Fund" as an
13 interest bearing, nonexpiring special revenue account. The
14 Marcellus Shale Permit Fund shall be separate and apart
15 from the General Revenue Fund and shall be administered

16 by the West Virginia Department of Environmental Protec-
17 tion. Expenditures from the special revenue account shall be
18 for the purposes set forth in this section and made in accor-
19 dance with appropriations from the Legislature and pursu-
20 ant to the provisions of article three, chapter twelve of this
21 code and after the fulfilment of the provisions of article two,
22 chapter eleven-b of this code: *Provided*, That for the fiscal
23 year ending June 30, 2012, expenditures are authorized from
24 collections. Moneys in the Marcellus Shale Permit Fund not
25 expended at the close of the fiscal year do not lapse or revert
26 to the General Fund but are carried forward to the next
27 fiscal year. Interest earnings on the revolving fund becomes
28 a part of the revolving fund and do not lapse or revert to the
29 General Fund. The West Virginia Department of Environ-
30 mental Protection shall use the moneys in the Marcellus
31 Shale Permit Fund for the purposes of paying for additional
32 costs associated with permitting activity in the marcellus
33 shale.

34 (3) The remaining balance after the distributions in
35 subdivision (1) and (2) of this subsection shall be divided pro
36 rata among the General Fund and the State Road Fund.

37 (c) This section shall have no force or effect after June 30,
38 2016.

**ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX
CREDIT.**

§11-13R-3. Definitions.

1 (a) *General.* — When used in this article or in the adminis-
2 tration of this article, terms defined in subsection (b) of this
3 section have the meanings ascribed to them by this section
4 unless a different meaning is clearly required by either the
5 context in which the term is used or by specific definition in
6 this article.

7 (b) *Terms defined.* —

8 (1) “Base amount” means:

9 (A) The average annual combined qualified research and
10 development expenditure for the three taxable years imme-
11 diately preceding the taxable year for which a credit is
12 claimed under this article;

13 (B) For a taxpayer that has filed a tax return under article
14 twenty-three of this chapter for fewer than three but at least
15 one prior taxable year, determined on the basis of all filings
16 by the taxpayer’s controlled group, the base amount is the
17 average annual combined qualified research and develop-

18 ment expenditure for the number of immediately preceding
19 taxable years, other than short taxable years, during which
20 the taxpayer has filed a tax return under article twenty-
21 three of this chapter; or

22 (C) For a taxpayer that has not filed a tax return under
23 article twenty-three of this chapter for at least one taxable
24 year, determined on the basis of all filings by the taxpayer's
25 controlled group, the base amount is zero.

26 (2) "Commissioner" and "Tax Commissioner" are used
27 interchangeably herein and mean the Tax Commissioner of
28 the State of West Virginia or his or her delegate.

29 (3) "Controlled group" means a controlled group as defined
30 by section 1563 of the Internal Revenue Code of 1986, as
31 amended.

32 (4) "Corporation" means any corporation, limited liability
33 company, joint-stock company or association and any
34 business conducted by a trustee or trustees wherein interest
35 or ownership is evidenced by a certificate of interest or
36 ownership or similar written instrument.

37 (5) "Delegate" in the phrase "or his or her delegate," when
38 used in reference to the Tax Commissioner, means any
39 officer or employee of the State Tax Division of the Depart-

40 ment of Tax and Revenue duly authorized by the Tax
41 Commissioner directly, or indirectly by one or more
42 redelegations of authority, to perform the functions men-
43 tioned or described in this article.

44 (6) “Eligible taxpayer” means any person that is subject to
45 the tax imposed by article twenty-three or article twenty-
46 four of this chapter that is engaged in qualified research and
47 development that has paid or incurred investment in quali-
48 fied research and development credit property or that has
49 paid or incurred qualified research and development ex-
50 penses as defined in section four of this article. In the case of
51 a sole proprietorship subject to neither the tax imposed by
52 article twenty-three nor the tax imposed by article twenty-
53 four, the term “eligible taxpayer” means any sole proprietor
54 who is subject to the tax imposed by article twenty-one of
55 this chapter and who is engaged in qualified research and
56 development that has paid or incurred investment in quali-
57 fied research and development credit property or that has
58 paid or incurred qualified research and development ex-
59 penses as defined in section four of this article.

60 (7) “Partnership” includes a syndicate, group, pool, joint
61 venture or other unincorporated organization through or by

62 means of which any business, financial operation or venture
63 is carried on, and which is not a trust or estate, a corporation
64 or a sole proprietorship. The term “partner” includes a
65 member in such a syndicate, group, pool, joint venture or
66 other organization.

67 (8) “Person” includes any natural person, corporation,
68 limited liability company or partnership.

69 (9) “Qualified research and development credit property”
70 means depreciable property purchased for the conduct of
71 qualified research and development.

72 (10) “Research and development” means systematic
73 scientific, engineering or technological study and investiga-
74 tion in a field of knowledge in the physical, computer or
75 software sciences often involving the formulation of hypoth-
76 eses and experimentation for the purpose of revealing new
77 facts, theories or principles or increasing scientific knowl-
78 edge which may reveal the basis for new or enhanced
79 products, equipment or manufacturing processes.

80 (A) Research and development includes, but is not limited
81 to, design, refinement and testing of prototypes of new or
82 improved products ~~or design or equipment or the design,~~
83 refinement and testing of manufacturing processes before

84 commercial sales relating thereto have begun. For purposes
85 of this section, commercial sales includes, but is not limited
86 to, sales of prototypes or sales for market testing.

87 (B) Research and development does not include:

88 (i) Market research;

89 (ii) Sales research;

90 (iii) Efficiency surveys;

91 (iv) Consumer surveys;

92 (v) Product market testing;

93 (vi) Product testing by product consumers or through
94 consumer surveys for evaluation of consumer product
95 performance or consumer product usability;

96 (vii) The ordinary testing or inspection of materials or
97 products for quality control; ~~(quality control testing);~~

98 (viii) Management studies;

99 (ix) Advertising;

100 (x) Promotions;

101 (xi) The acquisition of another's patent, model, production
102 or process or investigation or evaluation of the value or
103 investment potential related thereto;

104 (xii) Research in connection with literary, historical or
105 similar activities;

106 (xiii) Research in the social sciences, economics, humani-
107 ties or psychology and other nontechnical activities; and

108 (xiv) The providing of sales services or any other service,
109 whether technical service or nontechnical service.

110 (11) “Related person” means:

111 (A) A corporation, limited liability company, partnership,
112 association or trust controlled by the taxpayer;

113 (B) An individual, corporation, limited liability company,
114 partnership, association or trust that is in control of the
115 taxpayer;

116 (C) A corporation, limited liability company, partnership,
117 association or trust controlled by an individual, corporation,
118 partnership, association or trust that is in control of the
119 taxpayer; or

120 (D) A member of the same controlled group as the tax-
121 payer.

122 For purposes of this article, “control”, with respect to a
123 corporation, means ownership, directly or indirectly, of stock
124 possessing fifty percent or more of the total combined voting
125 power of all classes of the stock of the corporation entitled to
126 vote. “Control”, with respect to a trust, means ownership,
127 directly or indirectly, of fifty percent or more of the benefi-

128 cial interest in the principal or income of the trust. The
129 ownership of stock in a corporation, of a capital or profits
130 interest in a partnership or association or of a beneficial
131 interest in a trust is determined in accordance with the rules
132 for constructive ownership of stock provided in section
133 267(c) of the United States Internal Revenue Code of 1986, as
134 amended, other than paragraph (3) of that section.

135 (12) "Taxpayer" means any person subject to the tax
136 imposed by article twenty-three or twenty-four of this
137 chapter or both. In the case of a sole proprietorship subject
138 to neither the tax imposed by article twenty-three nor the
139 tax imposed by article twenty-four, the term "taxpayer"
140 means any sole proprietor who is subject to the tax imposed
141 by article twenty-one of this chapter.

142 (13) "This code" means the Code of West Virginia, 1931, as
143 amended.

144 (14) "This state" means the State of West Virginia.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-3. Definitions.

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

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

5 (1) "Eligible taxpayer" means an industrial taxpayer who
6 purchases new property for the purpose of industrial expan-
7 sion or for the purpose of industrial revitalization of an
8 existing industrial facility in this state.

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

11 (3) "Industrial facility" means any factory, mill, plant,
12 refinery, warehouse, building or complex of buildings
13 located within this state, including the land on which it is
14 located, and all machinery, equipment and other real and
15 tangible personal property located at or within the facility
16 primarily used in connection with the operation of the
17 manufacturing business.

18 (4) "Industrial revitalization" or "revitalization" means
19 capital investment in an industrial facility located in this
20 state to replace or modernize buildings, equipment, machin-
21 ery and other tangible personal property used in connection
22 with the operation of the facility in an industrial business of
23 the taxpayer including the acquisition of any real property
24 necessary to the industrial revitalization.

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

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

32 (7) “Property purchased for manufacturing investment”
33 means real property, and improvements thereto, and tangible
34 personal property but only if the property was constructed or
35 purchased on or after ~~the first day of January, two thousand~~
36 ~~three, January 1, 2003,~~ for use as a component part of a new,
37 expanded or revitalized industrial facility. This term in-
38 cludes only that tangible personal property with respect to
39 which depreciation, or amortization in lieu of depreciation,
40 is allowable in determining the federal income tax liability
41 of the industrial taxpayer, that has a useful life, at the time
42 the property is placed in service or use in this state, of four
43 years or more. Property acquired by written lease for a
44 primary term of ten years or longer, if used as a component
45 part of a new or expanded industrial facility, is included
46 within this definition.

47 (A) "Property purchased for manufacturing investment"

48 does not include:

49 (i) Repair costs, including materials used in the repair,

50 unless for federal income tax purposes, the cost of the repair

51 must be capitalized and not expensed;

52 (ii) Motor vehicles licensed by the department of motor

53 vehicles;

54 (iii) Airplanes;

55 (iv) Off-premises transportation equipment;

56 (v) Property which is primarily used outside this state; and

57 (vi) Property which is acquired incident to the purchase of

58 the stock or assets of an industrial taxpayer which property

59 was or had been used by the seller in his or her industrial

60 business in this state or in which investment was previously

61 the basis of a credit against tax taken under any other article

62 of this chapter.

63 (B) Purchases or acquisitions of land or depreciable

64 property qualify as purchases of property purchased for

65 manufacturing investment for purposes of this article only if:

66 (i) The property is not acquired from a person whose

67 relationship to the person acquiring it would result in the

68 disallowance of deductions under section 267 or 707(b) of the
69 United States Internal Revenue Code of 1986, as amended;

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

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

82 (8) “Qualified manufacturing investment” means that
83 amount determined under section five of this article as
84 qualified manufacturing investment.

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

§11-13S-4. Amount of credit allowed for manufacturing investment.

1 (a) *Credit allowed.* — There is allowed to eligible taxpayers
2 and to persons described in subdivision (5), subsection (b) of
3 this section a credit against the taxes imposed by articles
4 thirteen-a, twenty-three and twenty-four of this chapter:
5 Provided, that a tax credit for any eligible taxpayer operat-
6 ing a business activity classified as having a sector identifier,
7 consisting of the six digit code number 211112, such eligible
8 taxpayer must comply with the West Virginia Jobs Act as
9 provided in Article one-c, chapter twenty one of this code in
10 order to be eligible for any credit under this article. The
11 amount of credit shall be determined as hereinafter provided
12 in this section.

13 (b) *Amount of credit allowable.* — The amount of allowable
14 credit under this article is equal to five percent of the
15 qualified manufacturing investment (as determined in
16 section five of this article) and shall reduce the severance
17 tax, imposed under article thirteen-a of this chapter, the
18 business franchise tax imposed under article twenty-three of
19 this chapter and the corporation net income tax imposed

20 under article twenty-four of this chapter, in that order,
21 subject to the following conditions and limitations:

22 (1) The amount of credit allowable is applied over a ten-
23 year period, at the rate of one-tenth thereof per taxable year,
24 beginning with the taxable year in which the property
25 purchased for manufacturing investment is first placed in
26 service or use in this state;

27 (2) *Severance tax*. — The credit is applied to reduce the
28 severance tax imposed under article thirteen-a of this
29 chapter (determined before application of the credit allowed
30 by section three, article twelve-b of this chapter and before
31 any other allowable credits against tax and before applica-
32 tion of the annual exemption allowed by section ten, article
33 thirteen-a of this chapter). The amount of annual credit
34 allowed may not reduce the severance tax, imposed under
35 article thirteen-a of this chapter, below fifty percent of the
36 amount which would be imposed for such taxable year in the
37 absence of this credit against tax: *Provided*, That for tax
38 years beginning on and after January 1, 2009, the amount of
39 annual credit allowed may not reduce the severance tax,
40 imposed under article thirteen-a of this chapter, below forty
41 percent of the amount which would be imposed for such

42 taxable year in the absence of this credit against tax. When
43 in any taxable year the taxpayer is entitled to claim credit
44 under this article and article thirteen-d of this chapter, the
45 total amount of all credits allowable for the taxable year may
46 not reduce the amount of the severance tax, imposed under
47 article thirteen-a of this chapter, below fifty percent of the
48 amount which would be imposed for such taxable year
49 (determined before application of the credit allowed by
50 section three, article twelve-b of this chapter and before any
51 other allowable credits against tax and before application of
52 the annual exemption allowed by section ten, article
53 thirteen-a of this chapter): *Provided, however,* That when in
54 any taxable year beginning on and after January 1, 2009, the
55 taxpayer is entitled to claim credit under this article and
56 article thirteen-d of this chapter, the total amount of all
57 credits allowable for the taxable year may not reduce the
58 amount of the severance tax, imposed under article thirteen-
59 a of this chapter, below forty percent of the amount which
60 would be imposed for such taxable year as determined before
61 application of the credit allowed by section three, article
62 twelve-b of this chapter and before any other allowable
63 credits against tax and before application of the annual

64 exemption allowed by section ten, article thirteen-a of this
65 chapter;

66 (3) *Business franchise tax.* —

67 After application of subdivision (2) of this subsection, any
68 unused credit is next applied to reduce the business fran-
69 chise tax imposed under article twenty-three of this chapter
70 (determined after application of the credits against tax
71 provided in section seventeen, article twenty-three of this
72 chapter, but before application of any other allowable
73 credits against tax). The amount of annual credit allowed
74 will not reduce the business franchise tax, imposed under
75 article twenty-three of this chapter, below fifty percent of
76 the amount which would be imposed for such taxable year in
77 the absence of this credit against tax: *Provided*, That for tax
78 years beginning on and after January 1, 2009, the amount of
79 annual credit allowed will not reduce the business franchise
80 tax, imposed under article twenty-three of this chapter,
81 below forty percent of the amount which would be imposed
82 for such taxable year in the absence of this credit against
83 tax. When in any taxable year the taxpayer is entitled to
84 claim credit under this article and article thirteen-d of this
85 chapter, the total amount of all credits allowable for the

86 taxable year will not reduce the amount of the business
87 franchise tax, imposed under article twenty-three of this
88 chapter, below fifty percent of the amount which would be
89 imposed for the taxable year (determined after application
90 of the credits against tax provided in section seventeen,
91 article twenty-three of this chapter, but before application
92 of any other allowable credits against tax): *Provided,*
93 *however,* That when in any taxable year beginning on and
94 after January 1, 2009, the taxpayer is entitled to claim credit
95 under this article and article thirteen-d of this chapter, the
96 total amount of all credits allowable for the taxable year will
97 not reduce the amount of the business franchise tax, imposed
98 under article twenty-three of this chapter, below forty
99 percent of the amount which would be imposed for the
100 taxable year as determined after application of the credits
101 against tax provided in section seventeen, article twenty-
102 three of this chapter, but before application of any other
103 allowable credits against tax;

104 (4) *Corporation net income tax.* --

105 After application of subdivision (3) of this subsection, any
106 unused credit is next applied to reduce the corporation net
107 income tax imposed under article twenty-four of this chapter

108 (determined before application of any other allowable credits
109 against tax). The amount of annual credit allowed will not
110 reduce corporation net income tax, imposed under article
111 twenty-four of this chapter, below fifty percent of the
112 amount which would be imposed for such taxable year in the
113 absence of this credit against tax: *Provided*, That for tax
114 years beginning on and after January 1, 2009, the amount of
115 annual credit allowed will not reduce corporation net income
116 tax, imposed under article twenty-four of this chapter, below
117 forty percent of the amount which would be imposed for such
118 taxable year in the absence of this credit against tax. When
119 in any taxable year the taxpayer is entitled to claim credit
120 under this article and article thirteen-d of this chapter, the
121 total amount of all credits allowable for the taxable year may
122 not reduce the amount of the corporation net income tax,
123 imposed under article twenty-four of this chapter, below
124 fifty percent of the amount which would be imposed for the
125 taxable year (determined before application of any other
126 allowable credits against tax): *Provided, however*, That when
127 in any taxable year beginning on and after January 1, 2009,
128 the taxpayer is entitled to claim credit under this article and
129 article thirteen-d of this chapter, the total amount of all

130 credits allowable for the taxable year may not reduce the
131 amount of the corporation net income tax, imposed under
132 article twenty-four of this chapter, below forty percent of the
133 amount which would be imposed for the taxable year as
134 determined before application of any other allowable credits
135 against tax;

136 (5) *Pass-through entities.* --

137 (A) If the eligible taxpayer is a limited liability company,
138 small business corporation or a partnership, then any unused
139 credit (after application of subdivisions (2), (3) and (4) of this
140 subsection) is allowed as a credit against the taxes imposed
141 by article twenty-four of this chapter on owners of the
142 eligible taxpayer on the conduit income directly derived
143 from the eligible taxpayer by its owners. Only those portions
144 of the tax imposed by article twenty-four of this chapter that
145 are imposed on income directly derived by the owner from
146 the eligible taxpayer are subject to offset by this credit.

147 (B) The amount of annual credit allowed will not reduce
148 corporation net income tax, imposed under article twenty-
149 four of this chapter, below fifty percent of the amount which
150 would be imposed on the conduit income directly derived
151 from the eligible taxpayer by each owner for such taxable

152 year in the absence of this credit against the taxes (deter-
153 mined before application of any other allowable credits
154 against tax): *Provided*, That for tax years beginning on and
155 after January 1, 2009, the amount of annual credit allowed
156 will not reduce corporation net income tax, imposed under
157 article twenty-four of this chapter, below forty percent of the
158 amount which would be imposed on the conduit income
159 directly derived from the eligible taxpayer by each owner for
160 such taxable year in the absence of this credit against the
161 taxes as determined before application of any other allow-
162 able credits against tax.

163 (C) When in any taxable year the taxpayer is entitled to
164 claim credit under this article and article thirteen-d of this
165 chapter, the total amount of all credits allowable for the
166 taxable year will not reduce the corporation net income tax
167 imposed on the conduit income directly derived from the
168 eligible taxpayer by each owner below fifty percent of the
169 amount that would be imposed for such taxable year on the
170 conduit income (determined before application of any other
171 allowable credits against tax): *Provided*, That when in any
172 taxable year beginning on and after January 1, 2009, the
173 taxpayer is entitled to claim credit under this article and

174 article thirteen-d of this chapter, the total amount of all
175 credits allowable for the taxable year will not reduce the
176 corporation net income tax imposed on the conduit income
177 directly derived from the eligible taxpayer by each owner
178 below forty percent of the amount that would be imposed for
179 such taxable year on the conduit income as determined
180 before application of any other allowable credits against tax;

181 (6) Small business corporations, limited liability compa-
182 nies, partnerships and other unincorporated organizations
183 shall allocate any unused credit after application of subdivi-
184 sions (2), (3) and (4) of this subsection among their members
185 in the same manner as profits and losses are allocated for the
186 taxable year; and

187 (7) No credit is allowed under this article against any tax
188 imposed by article twenty-one of this chapter.

189 (c) No carryover to a subsequent taxable year or carryback
190 to a prior taxable year is allowed for the amount of any
191 unused portion of any annual credit allowance. Any unused
192 credit is forfeited.

193 (d) *Application for credit required.* --

194 (1) *Application required.* -- Notwithstanding any provision
195 of this article to the contrary, no credit is allowed or may be

196 applied under this article for any qualified investment
197 property placed in service or use until the person claiming
198 the credit makes written application to the Tax Commis-
199 sioner for allowance of credit as provided in this section.
200 This application shall be in the form prescribed by the Tax
201 Commissioner and shall provide the number and type of jobs
202 created, if any, by the manufacturing investment, the average
203 wage rates and benefits paid to employees filling the new
204 jobs and any other information the Tax Commissioner may
205 require. This application shall be filed with the Tax Commis-
206 sioner no later than the last day for filing the annual return,
207 determined by including any authorized extension of time for
208 filing the return, required under article twenty-one or
209 twenty-four of this chapter for the taxable year in which the
210 property to which the credit relates is placed in service or
211 use.

212 (2) *Failure to file.* — The failure to timely apply the
213 application for credit under this section results in forfeiture
214 of fifty percent of the annual credit allowance otherwise
215 allowable under this article. This penalty applies annually
216 until the application is filed.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8d. Limitations on right to assert exemptions.

1 (a) Persons who perform “contracting” as defined in
2 section two of this article or persons acting in an agency
3 capacity may not assert any exemption to which the pur-
4 chaser of such contracting services or the principal is
5 entitled. Any statutory exemption to which a taxpayer may
6 be entitled ~~shall be~~ is invalid unless the tangible personal
7 property or taxable service is actually purchased by such
8 taxpayer and is directly invoiced to and paid by such
9 taxpayer. This section ~~shall not~~ does not apply to purchases
10 by an employee for his or her employer, purchases by a
11 partner for his or her partnership or purchases by a duly
12 authorized officer of a corporation, or unincorporated
13 organization, for his or her corporation or unincorporated
14 organization so long as the purchase is invoiced to and paid
15 by the employer, partnership, corporation or unincorporated
16 organization.

17 (b) *Transition rule.* — This section ~~shall not~~ does not apply
18 to purchases of tangible personal property or taxable
19 services in fulfillment of a purchasing agent or procurement
20 agent contract executed and legally binding on the parties

21 thereto prior to September 15, 1999. ~~Provided, That~~ This
22 transition rule ~~shall not~~ does not apply to any purchases of
23 tangible personal property or taxable services made under
24 such a contract after August 31, 1991 and this transition rule
25 ~~shall not~~ does not apply if the primary purpose of the
26 purchasing agent or procurement agent contract was to avoid
27 payment of consumers sales and use taxes. ~~However,~~ Effec-
28 tive July 1, 2007, this section ~~shall not~~ does not apply to
29 purchases of services, machinery, supplies or materials,
30 except gasoline and special fuel, to be directly used or
31 consumed in the construction, alteration, repair or improve-
32 ment of a new or existing building or structure by a person
33 performing “contracting”, as defined in section two of this
34 article, if the purchaser of the “contracting” services would
35 be entitled to claim the refundable exemption under subdivi-
36 sion (2), subsection (b), section nine of this article had it
37 purchased the services, machinery, supplies or materials.
38 Effective July 1, 2009, this section ~~shall not~~ does not apply to
39 purchases of services, computers, servers, building materials
40 and tangible personal property, except purchases of gasoline
41 and special fuel, to be installed into a building or facility or

42 directly used or consumed in the construction, alteration,
43 repair or improvement of a new or existing building or
44 structure by a person performing “contracting”, as defined
45 in section two of this article, if the purchaser of the “con-
46 tracting” services would be entitled to claim the exemption
47 under subdivision (7), subsection (a), section nine-h of this
48 article. Effective July 1, 2011, this section does not apply to
49 purchases of services, machinery, supplies or materials,
50 except gasoline and special fuel, to be directly used or
51 consumed in the construction, alteration, repair or improve-
52 ment of a new or existing natural gas compressor station or
53 gas transmission line having a diameter of twenty inches or
54 more by a person performing “contracting”, as defined in
55 section two of this article, if the purchaser of the “contract-
56 ing” services would be entitled to claim the refundable
57 exemption under subdivision (2), subsection (b), section nine
58 of this article had it purchased the services, machinery,
59 supplies or materials.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.

§24-2F-3. Definitions.

1 Unless the context clearly requires a different meaning, as
2 used in this article:

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

14 (2) “Alternative and renewable energy portfolio standard”
15 or “portfolio standard” means a requirement in any given
16 year that requires an electric utility to own credits in an
17 amount equal to a certain percentage of electric energy sold
18 in the preceding calendar year by the electric utility to retail
19 customers in this state.

20 (3) “Alternative energy resources” means any of the
21 following resources, methods or technologies for the produc-
22 tion or generation of electricity:

- 23 (A) Advanced coal technology;
- 24 (B) Coal bed methane;
- 25 (C) Natural gas, including any component of raw natural
26 gas;
- 27 (D) Fuel produced by a coal gasification or liquefaction
28 facility;
- 29 (E) Synthetic gas;
- 30 (F) Integrated gasification combined cycle technologies;
- 31 (G) Waste coal;
- 32 (H) Tirederived fuel;
- 33 (I) Pumped storage hydroelectric projects; and
- 34 (J) Any other resource, method, project or technology
35 certified as an alternative energy resource by the Public
36 Service Commission.
- 37 (4) “Alternative and renewable energy resource credit” or
38 “credit” means a tradable instrument that is used to estab-
39 lish, verify and monitor the generation of electricity from
40 alternative and renewable energy resource facilities, energy
41 efficiency or demand-side energy initiative projects or
42 greenhouse gas emission reduction or offset projects.
- 43 (5) “Alternative energy resource facility” means a facility
44 or equipment that generates electricity from alternative
45 energy resources.

46 (6) “Commission” or “Public Service Commission” means
47 the Public Service Commission of West Virginia as continued
48 pursuant to section three, article one of this chapter.

49 (7) “Customer-generator” means an electric retail customer
50 who owns and operates a customer-sited generation project
51 utilizing an alternative or renewable energy resource or a net
52 metering system in this state.

53 (8) “Electric utility” means any electric distribution
54 company or electric generation supplier that sells electricity
55 to retail customers in this state. Unless specifically provided
56 for otherwise, for the purposes of this article, the term
57 “electric utility” may not include rural electric cooperatives,
58 municipally-owned electric facilities or utilities serving less
59 than thirty thousand residential electric customers in West
60 Virginia.

61 (9) “Energy efficiency or demand-side energy initiative
62 project” means a project in this state that promotes customer
63 energy efficiency or the management of customer consump-
64 tion of electricity through the implementation of:

65 (A) Energy efficiency technologies, equipment, manage-
66 ment practices or other strategies utilized by residential,
67 commercial, industrial, institutional or government custom-
68 ers that reduce electricity consumption by those customers;

69 (B) Load management or demand response technologies,
70 equipment, management practices, interruptible or
71 curtailable tariffs, energy storage devices or other strategies
72 in residential, commercial, industrial, institutional and
73 government customers that shift electric load from periods
74 of higher demand to periods of lower demand;

75 (C) Industrial by-product technologies consisting of the use
76 of a by-product from an industrial process, including, but not
77 limited to, the reuse of energy from exhaust gases or other
78 manufacturing by-products that can be used in the direct
79 production of electricity at the customer's facility;

80 (D) Customer-sited generation, demand-response, energy
81 efficiency or peak demand reduction capabilities, whether
82 new or existing, that the customer commits for integration
83 into the electric utility's demand-response, energy efficiency
84 or peak demand reduction programs; or

85 (E) Infrastructure and modernization projects that help
86 promote energy efficiency, reduce energy losses or shift load
87 from periods of higher demand to periods of lower demand,
88 including the modernization of metering and communica-
89 tions, (also known as "smart grid"), distribution automation,

90 energy storage, distributed energy resources and investments
91 to promote the electrification of transportation.

92 (10) “Greenhouse gas emission reduction or offset project”
93 means a project to reduce or offset greenhouse gas emissions
94 from sources in this state other than the electric utility’s own
95 generating and energy delivery operations. Greenhouse gas
96 emission reduction or offset projects include, but are not
97 limited to:

98 (A) Methane capture and destruction from landfills, coal
99 mines or farms;

100 (B) Forestation, afforestation or reforestation; and

101 (C) Nitrous oxide or carbon dioxide sequestration through
102 reduced fertilizer use or no-till farming.

103 (11) “Net metering” means measuring the difference
104 between electricity supplied by an electric utility and
105 electricity generated from an alternative or renewable
106 energy resource facility owned or operated by an electric
107 retail customer when any portion of the electricity generated
108 from the alternative or renewable energy resource facility is
109 used to offset part or all of the electric retail customer’s
110 requirements for electricity.

111 (12) "Reclaimed surface mine" means a surface mine, as
112 that term is defined in section three, article three, chapter
113 twenty-two of this code, that is reclaimed or is being re-
114 claimed in accordance with state or federal law.

115 (13) "Renewable energy resource" means any of the
116 following resources, methods, projects or technologies for the
117 production or generation of electricity:

118 (A) Solar photovoltaic or other solar electric energy;

119 (B) Solar thermal energy;

120 (C) Wind power;

121 (D) Run of river hydropower;

122 (E) Geothermal energy, which means a technology by
123 which electricity is produced by extracting hot water or
124 steam from geothermal reserves in the earth's crust to power
125 steam turbines that drive generators to produce electricity;

126 (F) Biomass energy, which means a technology by which
127 electricity is produced from a nonhazardous organic material
128 that is available on a renewable or recurring basis, including
129 pulp mill sludge;

130 (G) Biologically derived fuel including methane gas,
131 ethanol or biodiesel fuel;

132 (H) Fuel cell technology, which means any electrochemical
133 device that converts chemical energy in a hydrogen-rich fuel
134 directly into electricity, heat and water without combustion;

135 (I) Recycled energy, which means useful thermal, mechani-
136 cal or electrical energy produced from: (i) Exhaust heat from
137 any commercial or industrial process; (ii) waste gas, waste
138 fuel or other forms of energy that would otherwise be flared,
139 incinerated, disposed of or vented; and (iii) electricity or
140 equivalent mechanical energy extracted from a pressure drop
141 in any gas, excluding any pressure drop to a condenser that
142 subsequently vents the resulting heat; and

143 (J) Any other resource, method, project or technology
144 certified by the commission as a renewable energy resource.

145 (14) “Renewable energy resource facility” means a facility
146 or equipment that generates electricity from renewable
147 energy resources.

148 (15) “Waste coal” means a technology by which electricity
149 is produced by the combustion of the by-product, waste or
150 residue created from processing coal, such as gob.