

COMMITTEE SUBSTITUTE

FOR

H. B. 4547

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(Originating in the Committee on Finance)
[February 24, 2012]

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 §11-13CC-1, §11-13CC-2, §11-13CC-3, §11-13CC-4, §11-13CC-5, §11-13CC-6, §11-13CC-7, §11-13CC-8, §11-13CC-9, §11-13CC-10, §11-13CC-11, §11-13CC-12, §11-13CC-13, §11-13CC-14, §11-13CC-15, §11-13CC-16, §11-13CC-17 and §11-13CC-18, all relating to creating the West Virginia Innovation Free-Trade Business Technology Property Valuation Act and the West Virginia

Innovation Free-Trade Tax Credit Act; defining terms; 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; requiring the West Virginia Development Office to report to the Joint Committee on Government and Finance on the economic impact; specifying effective date; making legislative findings; allowing credits and exemptions from certain taxes; providing for computation of credit, application of credit and period for which credit is allowed; requiring application to claim credit; requiring that new jobs be good-paying jobs with health benefits; requiring identification of investment credit property and recomputation of credit in event of premature disposition of investment property; providing for forfeiture of unused tax credits and redetermination of credit allowed; imposing recapture tax under specified circumstances to recover state taxes and property taxes; allowing transfer of qualified investment to successors; providing for tax credit review and accountability; specifying

effective date and termination date; providing rule-making authority; and providing a severability clause.

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

**ARTICLE 6L. SPECIAL METHOD FOR APPRAISING
WEST VIRGINIA INNOVATION
FREE-TRADE ACT BUSINESS
TECHNOLOGY PROPERTY.**

§11-6L-1. Short title.

- 1 This article shall be known and cited as the “West
- 2 Virginia Innovation Free-Trade Business Technology
- 3 Property Valuation Act”.

§11-6L-2. Definitions.

1 For the purposes of this article:

2 (1) “Innovative business technologies” means “innovative
3 business technologies” as defined in section three, article
4 thirteen-cc of this chapter when the owner of the property
5 qualifies or qualified for the tax credit allowed by that article.
6 Qualifications for that tax credit and the special valuation
7 methodology provided in this article include, but are not
8 limited to, a minimum capital investment requirement, a
9 minimum new jobs creation requirement and a requirement
10 that the new jobs created be good paying jobs with health
11 insurance benefits, all as defined in article thirteen-cc of this
12 chapter; and

13 (2) “Salvage value” means five percent of original cost.

§11-6L-3. Valuation of Innovation Free-Trade Act business technology property.

1 Notwithstanding any other provision of this code to the
2 contrary, the value of tangible personal property and
3 improvements to real property placed in service or use on or

4 after July 1, 2012, and directly used in an innovative business
5 technology as defined in section two of this article shall, for
6 the purpose of ad valorem property taxation under this
7 chapter and under Article X of the Constitution of this state,
8 be its salvage value.

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

1 (a) On or before September 1 of the assessment year, the
2 owner of tangible personal property and improvements to
3 real property placed in service or use on or after July 1, 2012,
4 directly used in a new business, or in a new segment of an
5 existing business, that utilizes innovative business technology
6 and qualifies for the tax credit allowed by article thirteen-cc
7 of this chapter may file a report with the county assessor of
8 the county in which the property was located on July 1 of that
9 assessment year, listing the tangible personal property and
10 improvements to real property placed in service or use on or
11 after July 1, 2012, that is qualified investment for purposes
12 of the credit allowed by article thirteen-cc of this chapter. A
13 taxpayer that fails to timely file the report required by this

14 subsection shall be deemed to have waived valuation of the
15 property as provided in this article for that assessment year.

16 (b) When the county assessor receives the report
17 described in subsection (a) of this section, the assessor shall
18 review the report and make such inquiries as he or she deems
19 necessary to determine whether the tangible personal
20 property and improvements to real property placed in service
21 or use on or after July 1, 2012, listed in the report is eligible
22 for valuation under this article. The county assessor shall
23 notify the taxpayer in writing of his or her determination not
24 later than January 15 of the assessment year.

25 (c) Upon making a determination that a taxpayer owns
26 tangible personal property and improvements to real property
27 placed in service or use on or after July 1, 2012, directly used
28 in an innovative business technology that is eligible for
29 valuation under this article, the county assessor shall notify
30 the Tax Commissioner of that determination and shall
31 provide information to the Tax Commissioner as he or she
32 requires relating to that determination.

§11-6L-5. Protest and appeal.

1 (a) If the taxpayer disagrees with the county assessor's
2 determination under section four of this article or if the
3 assessor fails to notify the taxpayer of the assessor's
4 determination on or before the day specified in that section
5 the taxpayer may file objections in writing with the county
6 assessor. The county assessor shall decide the matter by
7 either sustaining the protest and making proper corrections,
8 or by stating, in writing if requested, the reasons for the
9 county assessor's refusal. The county assessor may, and if the
10 taxpayer requests, the county assessor shall, before February
11 1 of the assessment year, certify the question to the Tax
12 Commissioner in a statement sworn to by both parties, or if
13 the parties are unable to agree, in separate sworn statements.
14 The sworn statement or statements shall contain a full
15 description of the property and any other information which
16 the Tax Commissioner may require.
17 (b) The Tax Commissioner shall, as soon as possible on
18 receipt of the question, but in no case later than February 28

19 of the assessment year, instruct the county assessor as to how
20 the property shall be treated. The instructions issued and
21 forwarded by mail to the county assessor are binding upon
22 the county assessor, but either the county assessor or the
23 taxpayer may apply to the circuit court of the county for
24 review of the question of the applicability of this article to the
25 property in the same fashion as is provided for appeals from
26 the county commission in section twenty-five, article three of
27 this chapter. The Tax Commissioner shall prescribe forms on
28 which the questions under this section shall be certified and
29 the Tax Commissioner has the authority to pursue any
30 inquiry and procure any information necessary for disposition
31 of the matter.

§11-6L-6. Report on economic benefit.

1 The West Virginia Development Office shall provide to
2 the Joint Committee on Government and Finance by March
3 1, 2017, and again by March 1, 2020, a report detailing the
4 economic benefit of the valuation method specified in this
5 article. The report shall include the number of new jobs

6 created due to the provisions of this article and the ad
7 valorem property tax impact.

§11-6L-7. Effective date.

1 This article shall be effective on and after July 1, 2012,
2 for property placed in service or use on or after July 1, 2012,
3 when the property and its use meet the requirements of this
4 article.

ARTICLE 13CC. WEST VIRGINIA INNOVATION
FREE-TRADE TAX CREDIT ACT.

§11-13CC-1. Short title.

1 This article may be cited as the “West Virginia
2 Innovation Free-Trade Tax Credit Act”.

§11-13CC-2. Purpose and legislative findings.

1 (a) Purpose. -- The purpose of this article is to encourage
2 economic opportunity, greater capital investment and
3 development of the use in this state of new innovative
4 technologies by enacting this innovation free-trade tax credit.

5 (b) Legislative findings. --

6 (1) Future expansion and development of the West
7 Virginia economy, job creation potential and the physical

8 environment are driven by the flow of energy and the
9 nonstop emergence of new technologies.

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

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

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

21 (A) Establish a foothold in the West Virginia economy
22 for manufacturers of advanced products and the development
23 of businesses employing other emerging technologies that are
24 magnets for capital investment and produce new jobs that are
25 characteristically knowledge-based;

26 (B) Encourage the application of nanotechnology and
27 other supporting technology to:

- 28 (i) Aeronautics and space;
- 29 (ii) Agriculture;
- 30 (iii) Biotechnology;
- 31 (iv) Environment;
- 32 (v) Manufacturing and materials science;
- 33 (vi) Medicine and health;
- 34 (vii) Nanoelectronics and computer technology;
- 35 (viii) National and homeland security; and
- 36 (ix) Photonics; and
- 37 (C) Encourage the manufacture, sale and use of
- 38 alternative fuel vehicles fueled by natural gas, electricity,
- 39 hydrogen or other alternative fuel and development of the
- 40 infrastructure necessary to the convenient and efficient
- 41 refueling of such vehicles.

§11-13CC-3. Definitions.

- 1 (a) General. -- When used in this article, or in the
- 2 administration of this article, terms defined in subsection (b)
- 3 of this section have the meanings ascribed to them by this
- 4 section, unless a different meaning is clearly required by

5 either the context in which the term is used, or by specific
6 definition, in this article.

7 (b) Terms defined. --

8 (1) “Advanced coal technology” includes, but is not
9 limited to, a technology that is used in a new or existing
10 energy generating facility to reduce airborne carbon
11 emissions associated with the combustion or use of coal and
12 includes, but is not limited to, carbon dioxide capture and
13 sequestration technology, supercritical technology, advanced
14 supercritical technology as that technology is determined by
15 the West Virginia Public Service Commission,
16 ultrasupercritical technology and pressurized fluidized bed
17 technology and any other resource, method, project or
18 technology certified by the Public Service Commission as
19 advanced coal technology: *Provided, That the technology*
20 was not in commercial use anywhere in the United States
21 before July 1, 2012.

22 (2) “Advanced information technology” means the
23 development, installation and implementation of computer

24 systems and applications that utilize cloud computing,
25 quantum computing or the next evolution beyond cloud and
26 quantum computing: *Provided*, That the technology was not
27 in commercial use anywhere in the United States before July
28 1, 2012.

29 (3) “Advanced manufacturing” means the application of
30 state-of-the-art technologies, processes and methods to
31 design and manufacture tangible personal property for
32 commercial or industrial use or for use by consumers:
33 *Provided*, That the technology was not in commercial use
34 anywhere in the United States before July 1, 2012.

35 (4) “Bioinformatics” means the application of statistics
36 and computer science to the field of molecular biology and
37 entails the creation and advancement of databases,
38 algorithms, computational and statistical techniques and
39 theory to solve formal and practical problems arising from
40 the management and analysis of biological data. The primary
41 goal of bioinformatics is to increase the understanding of
42 biological processes. What sets bioinformatics apart from

43 other approaches is its focus on developing and applying
44 computationally intensive techniques (e.g., pattern
45 recognition, data mining, machine learning algorithms and
46 visualization) to achieve this goal: *Provided, That the*
47 technology was not in commercial use anywhere in the
48 United States before July 1, 2012.

49 (5) "Bioscience" means the use of compositions, methods
50 and organisms in cellular and molecular research,
51 development and manufacturing processes for such diverse
52 areas as pharmaceuticals, medical therapeutics, medical
53 diagnostics, medical devices, medical instruments,
54 biochemistry, microbiology, veterinary medicine, plant
55 biology, agriculture and industrial, environmental, and
56 homeland security applications of bioscience, and future
57 developments in the biosciences. Bioscience includes
58 biotechnology and life sciences: *Provided, That the*
59 technology was not in commercial use anywhere in the
60 United States before July 1, 2012.

61 (6) "Bioscience company" means a corporation, limited
62 liability company, S corporation, partnership, registered
63 limited liability partnership, foundation, association,
64 nonprofit entity, business trust, group, or other entity that is
65 engaged in the business of bioscience in this state and has
66 business operations in this state, including, without
67 limitation, research, development, or production directed
68 towards developing or providing bioscience products or
69 processes for specific commercial or public purposes and are
70 identified by the following NAICS codes: 325411, 325412,
71 325413, 325414, 325193, 325199, 325311, 32532, 334516,
72 339111, 339112, 339113, 334510, 334517, 339115, 621511,
73 621512, 541710, 541380, 541940, 622110. "Bioscience
74 company" does not include a sole proprietorship.

75 (7) "Biotechnology" means those fields focusing on
76 technological developments in areas such as biocomputing,
77 biodefense, bioinformatics, genetic engineering, genomics,
78 molecular biology, nanotechnology, proteomics and
79 physiomics: *Provided, That the technology was not in*

80 commercial use anywhere in the United States before July 1,
81 2012.

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

86 (9) "Business segment" means a component or subset of
87 a business enterprise that: (A) Provides a single product or
88 service or a group of related products and services; (B) is
89 subject to risks and returns that are different from those of
90 other business segments; and (C) earns revenue for the
91 business enterprise.

92 (10) "Clean coal technology" means a technology first
93 used commercially in the United States on or after July 1,
94 2012, that significantly reduces the environmental impact of
95 coal usage including, but not limited to, coal gasification and
96 carbon capture and storage: *Provided*, That the technology
97 was not in commercial use anywhere in the United States
98 before July 1, 2012.

99 (11) "Clean natural gas technology" means a technology
 100 first used commercially in the United States on or after July
 101 1, 2012, that significantly reduces the environmental impact
 102 of natural gas: *Provided*, That the technology was not in
 103 commercial use anywhere in the United States before July 1,
 104 2012.

105 (12) "Commissioner" and "Tax Commissioner" are used
 106 interchangeably herein and mean the Tax Commissioner of
 107 the State of West Virginia, or his or her designee.

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

112 (14) "Controlled group" means one or more chains of
 113 corporations connected through stock ownership with a
 114 common parent corporation if stock possessing at least fifty
 115 percent of the voting power of all classes of stock of each of
 116 the corporations is owned directly or indirectly by one or
 117 more of the corporations; and the common parent owns

118 directly stock possessing at least fifty percent of the voting
119 power of all classes of stock of at least one of the other
120 corporations.

121 (15) "Corporation" means any corporation, joint-stock
122 company or association, and any business conducted by a
123 trustee or trustees wherein interest or ownership is evidenced
124 by a certificate of interest or ownership or similar written
125 instrument.

126 (16) "Designee" in the phrase "or his or her designee",
127 when used in reference to the Tax Commissioner, means any
128 officer or employee of the Tax Division of the Department of
129 Revenue duly authorized by the commissioner directly, or
130 indirectly by one or more redelegations of authority, to
131 perform the functions mentioned or described in this article.

132 (17) "Eligible taxpayer" means a new business or a new
133 segment of a business that is primarily engaged in an
134 emerging technology industry or that is primarily utilizing
135 new innovative business technologies, that makes at least the
136 minimum required qualified investment in a new or expanded

137 business facility located in this state and creates the required
138 number of new jobs that pay good salaries and provide health
139 insurance benefits, and that is subject to any of the taxes
140 imposed by articles twenty-one, twenty-three and twenty-four
141 of this chapter (or any one or any combination of those
142 articles).

143 (18) “Emerging technologies” are technologies that are
144 currently being developed or will be developed over the next
145 five to ten years, that are significant technological
146 developments that broach new territory in some significant
147 way in their field and which will substantially alter the
148 business and social environment. Examples of currently
149 emerging technologies include, but are not limited to,
150 advanced coal technologies, alternative fuel vehicles,
151 artificial intelligence, biotechnology, clean coal and clean
152 natural gas technologies, cognitive science, cloud computing,
153 quantum computing, man-machine communications,
154 nanotechnology, photonics, photovoltaic devices and
155 advanced robotics. Whether a technology is an emerging

156 technology is determined as of the date the new business or
157 a new segment of an existing business is placed in service or
158 use in this state. Emerging technologies do not include any
159 technology that was in commercial use anywhere in the
160 United States before July 1, 2012.

161 (19) "Expanded business facility" means any business
162 facility (other than a new or replacement facility) resulting
163 from the acquisition, construction, reconstruction, installation
164 or erection of improvements or additions to existing property
165 in this state when the improvements or additions are
166 purchased on or after July 1, 2012, but only to the extent of
167 the taxpayer's qualified investment in the improvements or
168 additions and the extent to which the expansion of the
169 business facility is directly used in a new segment of the
170 taxpayer that primarily employs an emerging innovative
171 business technology.

172 (20) "Health insurance benefits" means employer
173 provided coverage for medical expenses of the employee or
174 the employee and his or her family under a group accident or

175 health plan, or employer contributions to an Archer medical
176 savings account, as defined in Section 220 of the Internal
177 Revenue Code of 1986, as amended, or to a health savings
178 account, as defined in Section 223 of the Internal Revenue
179 Code, of the employee when the employer's contribution to
180 any such account is not less than fifty percent of the
181 maximum amount permitted for the year as
182 employer-provided coverage under Section 220 or 223 of the
183 Internal Revenue Code, whichever section is applicable.

184 (21) "Includes" and "including", when used in a
185 definition or sentence contained in this article, shall not be
186 considered to exclude other things otherwise within the
187 meaning of the term being defined or the sentence in which
188 the word is used.

189 (22) "Innovative business technologies" means and
190 includes, but is not limited to, emerging technologies and
191 other business technologies that primarily use state-of-the-art
192 methodologies, practices or techniques to manufacture,
193 produce or provide its primary goods or services. Innovative

194 business technologies do not include any technology that was
195 in commercial use anywhere in the United States prior to July
196 1, 2012.

197 (23) “Internal Revenue Code of 1986, as amended”, or
198 “Internal Revenue Code”, means the United States Internal
199 Revenue Code of 1986 as codified in Title 26 of the United
200 States Code, as amended, and as defined in section three,
201 article twenty-four of this chapter as last updated by the
202 Legislature.

203 (24) “Leased property” does not include property which
204 the taxpayer is required to show on its books and records as
205 an asset under generally accepted principles of financial
206 accounting. If the taxpayer is prohibited from expensing the
207 lease payments for federal income tax purposes, the property
208 shall be treated as purchased property under this section.

209 (25) “Life science” means any of several branches of
210 science, such as biology, medicine, anthropology or ecology,
211 that deal with living organisms and their organization, life
212 processes and relationships to each other and their

213 environment: *Provided*, That the technology was not in
214 commercial use anywhere in the United States before July 1,
215 2012.

216 (26) “Nanotechnology” means the branch of engineering
217 that deals with things smaller than one hundred nanometers.
218 Nanotechnology includes the materials and systems whose
219 structures and components exhibit novel and significantly
220 improved physical, chemical, and biological properties,
221 phenomena, and processes due to their nanoscale size:
222 *Provided*, That the technology was not in commercial use
223 anywhere in the United States before July 1, 2012.

224 (27) “New business” means any business primarily
225 employing emerging technology or a twenty-first century
226 business technology whose ownership and activities are not
227 closely related to a preexisting business. A mere change in
228 the stock ownership of a corporation, or the equity ownership
229 of a partnership or other entity treated as a partnership for
230 federal income tax purposes, shall not affect its status as an
231 existing business. Additionally, a new business that acquires

232 substantially all of the assets of a corporation or other
233 business entity or of a sole proprietorship shall not be treated
234 as a new business for purposes of this article. In determining
235 whether or not a new business is closely related to a
236 preexisting business, all facts and circumstances shall be
237 considered by the Tax Commissioner. The existence of a
238 majority of the following factors establish that a new
239 business is closely related to an existing business:

240 (A) The new business's products or services are very
241 similar to the products or services provided by the preexisting
242 business;

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

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

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

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

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

256 (G) If the new business and the preexisting business are
257 regulated or licensed, they are regulated or licensed by the
258 same or similar governmental authority; and

259 (H) Twenty percent or more of the equity of the new
260 business is collectively owned by individuals and/or
261 businesses that collectively owned more than fifty percent of
262 the equity of the preexisting business.

263 These eight listed factors are not the only ones that may
264 be considered by the Tax Commissioner. Others may also be
265 taken into account, in the discretion of the Tax
266 Commissioner. However, this definition shall not exclude the
267 categorization of a business as a new business for the sole
268 reason that the entity engaging in the new business already
269 does business in the State of West Virginia.

270 (28) “New business facility” means a business facility
271 located in this state which satisfies all the requirements of
272 paragraphs (A), (B), (C) and (D) of this subdivision.

273 (A) The facility is employed by the taxpayer in a new
274 business or in a new segment of an existing business the
275 conduct of a business the net income of which is or will be
276 taxable under article twenty-one or twenty-four of this chapter.
277 The facility is not considered a new business facility in the hands
278 of the taxpayer if the taxpayer's only activity with respect to the
279 facility is to lease it to another person or persons;

280 (B) The facility is purchased by, or leased to, the
281 taxpayer on or after July 1, 2012;

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

287 (D) The facility was not in service or use during the
288 ninety days immediately prior to transfer of the title to the

289 facility, or prior to the commencement of the term of the
290 lease of the facility: *Provided*, That this ninety-day period
291 may be waived by the Tax Commissioner if the
292 commissioner determines that persons employed at the
293 facility may be treated as "new employees" as that term is
294 defined in this subsection.

295 (29) "New employee" means:

296 (A) A person residing and domiciled in this state, hired
297 by the taxpayer to fill a position or a job in this state which
298 previously did not exist in the taxpayer's business enterprise
299 in this state prior to the date on which the taxpayer's qualified
300 investment is placed in service or use in this state. The term
301 "new employee" also includes a person employed by the
302 taxpayer who works outside this state who relocates in this
303 state, becomes domiciled in this state and is employed
304 full-time at the new business facility in this state. In no case
305 may the number of new employees directly attributable to the
306 investment for purposes of this credit exceed the total net
307 increase in the taxpayer's employment in this state: *Provided*,

308 That the Tax Commissioner may require that the net increase
309 in the taxpayer's employment in this state be determined and
310 certified for the taxpayer's controlled group.

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

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

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

319 (II) "Permanent" does not include employment that is
320 temporary or seasonal and therefore the wages, salaries and
321 other compensation paid to the temporary or seasonal
322 employees may not be considered for purposes of sections
323 five and seven of this article; or

324 (III) A regular, part-time and permanent basis: *Provided,*
325 That the person is customarily performing the duties at least
326 twenty hours per week for at least six months during the
327 taxable year.

328 (30) “New job” means a job which did not exist in the
 329 business of the taxpayer in this state prior to the taxpayer's
 330 qualified investment being made, and which is filled by a
 331 new employee.

332 (31) “New property” means:

333 (A) Property, the construction, reconstruction or erection
 334 of which is completed on or after July 1, 2012, and placed in
 335 service or use after that date; and

336 (B) Property leased or acquired by the taxpayer that is
 337 placed in service or use in this state on or after July 1, 2012,
 338 if the original use of the property commences with the
 339 taxpayer and commences after that date.

340 (32) “NAICS” means the North American Industry
 341 Classification System.

342 (33) “Original use” means the first use to which the
 343 property is put, whether or not the use corresponds to the use
 344 of the property by the taxpayer.

345 (34) “Partnership” includes a syndicate, group, pool, joint
 346 venture or other unincorporated organization through or by

347 means of which any business or venture is carried on, and
348 which is not a trust or estate, a corporation or a sole
349 proprietorship and which is treated as a partnership for tax
350 purposes under the laws of this state. The term "partner"
351 includes a member in such a syndicate, group, pool, joint
352 venture or other organization.

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

356 (36) "Photonics" includes the generation, emission,
357 transmission, modulation, signal processing, switching,
358 amplification, detection and sensing of light: *Provided, That*
359 the technology was not in commercial use anywhere in the
360 United States before July 1, 2012.

361 (37) "Photovoltaic devices" means those products
362 designed, manufactured and produced to convert sunlight
363 directly into electricity: *Provided, That* the technology was
364 not in commercial use anywhere in the United States before
365 July 1, 2012.

366 (38) "Property purchased or leased for business
 367 expansion" means:

368 (A) Included property. -- Except as provided in paragraph

369 (B) of this subdivision, the term "property purchased or

370 leased for business expansion" means real property and

371 improvements thereto, and tangible personal property, but

372 only if the real or personal property was constructed,

373 purchased, or leased and placed in service or use by the

374 taxpayer, for use as a component part of a new business

375 facility or expanded business facility as defined in this

376 section, which is located within the State of West Virginia.

377 This term includes only:

378 (i) Real property and improvements thereto having a

379 useful life of four or more years, placed in service or use on

380 or after July 1, 2012, by the taxpayer;

381 (ii) Real property and improvements thereto, acquired by

382 written lease having a primary term of ten or more years and

383 placed in service or use by the taxpayer on or after July 1,

384 2012;

385 (iii) Tangible personal property placed in service or use
386 by the taxpayer on or after July 1, 2012, with respect to
387 which depreciation, or amortization in lieu of depreciation,
388 is allowable in determining the personal or corporation net
389 income tax liability of the business taxpayer under article
390 twenty-one or twenty-four of this chapter, and which has a
391 useful life, at the time the property is placed in service or use
392 in the state, of four or more years;

393 (iv) Tangible personal property acquired by written lease
394 having a primary term of four years or longer, that
395 commenced and was executed by the parties thereto on or
396 after July 1, 2012, if used as a component part of a new or
397 expanded business facility, shall be included within this
398 definition; and

399 (v) Tangible personal property owned or leased, and used
400 by the taxpayer at a business location outside the state which
401 is moved into the State of West Virginia on or after July 1,
402 2012, for use as a component part of a new or expanded
403 business facility located in the state: *Provided, That if the*

404 property is owned, it must be depreciable or amortizable
405 personal property for income tax purposes, and have a useful
406 life of four or more years remaining at the time it is placed in
407 service or use in the state, and if the property is leased, the
408 primary term of the lease remaining at the time the leased
409 property is placed in service or use in the state, must be four
410 or more years;

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

413 (i) Property owned or leased by the taxpayer and for
414 which the taxpayer was previously allowed tax credit under
415 article thirteen-c, thirteen-d, thirteen-e, thirteen-h, thirteen-q,
416 thirteen-r, thirteen-s, thirteen-t, thirteen-u, thirteen-aa or
417 thirteen-bb of this chapter, or the tax credits allowed by this
418 article;

419 (ii) Property owned or leased by the taxpayer and for
420 which the seller, lessor, or other transferor, was previously
421 allowed tax credit under article thirteen-c, thirteen-d,
422 thirteen-e, thirteen-h, thirteen-q, thirteen-r, thirteen-s,

423 thirteen-t, thirteen-u, thirteen-aa or thirteen-bb of this
424 chapter, or the tax credits allowed by this article;

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

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

431 (v) Airplanes;

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

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

439 (viii) Natural resources in place; or

440 (ix) Purchased or leased property the cost or
441 consideration for which cannot be quantified with any

442 reasonable degree of accuracy at the time the property is
443 placed in service or use: *Provided*, That when the contract of
444 purchase or lease specifies a minimum purchase price or
445 minimum annual rent the amount thereof shall be used to
446 determine the qualified investment in the property under
447 section eight of this article if the property otherwise qualifies
448 as property purchased or leased for business expansion.

449 (39) "Purchase" means any acquisition of property, but
450 only if:

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

456 (B) The property is not acquired by one component
457 member of a controlled group from another component
458 member of the same controlled group. The commissioner
459 may waive this requirement if the property was acquired
460 from a related party for its then fair market value; and

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

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

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

469 (40) “Qualified activity” means any business or other
470 activity subject to any of the taxes imposed by article
471 thirteen, twenty-one, twenty-three or twenty-four of this
472 chapter (or any combination of those articles of this chapter).
473 but does not include the activity of severance or production
474 of natural resources.

475 (41) “Related person” means:

476 (A) A corporation, partnership, association or trust
477 controlled by the taxpayer;

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

480 (C) A corporation, partnership, association or trust
481 controlled by an individual, corporation, partnership,
482 association or trust that is in control of the taxpayer; or

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

485 For purposes of this definition, "control", with respect to
486 a corporation, means ownership, directly or indirectly, of
487 stock possessing fifty percent or more of the total combined
488 voting power of all classes of the stock of the corporation
489 entitled to vote. "Control", with respect to a trust, means
490 ownership, directly or indirectly, of fifty percent or more of
491 the beneficial interest in the principal or income of the trust.
492 The ownership of stock in a corporation, of a capital or
493 profits interest in a partnership or association or of a
494 beneficial interest in a trust is determined in accordance with
495 the rules for constructive ownership of stock provided in
496 Section 267(c) of the United States Internal Revenue Code of
497 1986, as amended, other than paragraph (3) of that section.

498 (42) “Replacement facility” means any property (other
499 than an expanded facility) that replaces or supersedes any
500 other property located within this state that:

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

506 (B) Is not used by the taxpayer or a related person in or
507 in connection with any qualified activity for a continuous
508 period of one year or more commencing with the date the
509 replacement or superseding property is placed in service by
510 the taxpayer.

511 (43) “State-of-the-art technology” or “leading edge
512 technology” means the highest level of development, as of a
513 device, technique, or scientific field achieved at a particular
514 time: *Provided*, That the technology was not in commercial
515 use anywhere in the United States before July 1, 2012.

516 (44) “Taxpayer” means any person subject to any of the
517 taxes imposed by article twenty-one, twenty-three or
518 twenty-four of this chapter (or any combination of those
519 articles of this chapter).

520 (45) “This code” means the Code of West Virginia, 1931,
521 as amended.

522 (46) “This state” means the State of West Virginia.

523 (47) “Used property” means property acquired after June
524 30, 2012, that is not "new property".

§11-13CC-4. Amount of credit allowed.

1 (a) *Credit allowed.* — Eligible taxpayers are allowed a
2 credit against the portion of taxes imposed by this state that
3 are attributable to and the consequence of the taxpayer's
4 qualified investment, as described in section six of this
5 article, in a new business, or in a new segment of an existing
6 business, in this state that utilizes innovative business
7 technology, which results in the creation of new jobs. The
8 amount of this credit is determined and applied as provided
9 in this article.

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

30 emerging technology business activity in this state. The
31 eligible business shall also be exempt from paying the taxes
32 imposed by articles fifteen and fifteen-a of this chapter on
33 tangible personal property and services purchased for use or
34 consumption by the eligible taxpayer in the emerging
35 technology business activity during the same five-year
36 period, except that this exemption shall not apply to the
37 purchase of motor fuel or alternative fuels to power a vehicle
38 or to the purchase or lease of motor vehicles, unless the
39 vehicle is an alternative fuel vehicle. The exemption from
40 paying the taxes imposed by articles fifteen and fifteen-a of
41 this chapter on purchases for use in business allowed by this
42 subsection is in addition to any exemption that might
43 otherwise be available to the taxpayer under articles fifteen
44 and fifteen-a of this chapter. When the taxpayer qualifies for
45 tax benefits under this subsection, these benefits are not
46 forfeited if during the applicable five-year period, the new
47 business creates additional new jobs or makes additional
48 capital investment at the new business facility or does both.

49 (c) Amount of credit. -- When the eligible taxpayer does
50 not qualify for credit under subsection (b) of this section,
51 either because the qualified investment exceeds \$10 million
52 or the number of new jobs created is fifteen or more, or for
53 both reasons, the amount of credit allowable is determined by
54 multiplying the amount of the taxpayer's "qualified
55 investment" (determined under section six of this article) in
56 "property purchased or leased for business expansion" (as
57 defined in section three of this article) using innovative
58 business technologies (as defined in section three of this
59 article) by the taxpayer's new jobs percentage (determined
60 under section seven of this article). The product of this
61 calculation establishes the maximum amount of credit
62 allowable under this article due to the qualified investment.

§11-13CC-5. Application of annual credit allowance.

1 (a) In general. -- When the credit is determined pursuant
2 to the provisions of subsection (c), section four of this
3 section, the aggregate annual credit allowance for the current
4 taxable year is an amount equal to the sum of the following:

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

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

11 (b) *Application of current year annual credit allowance.*

12 -- The amount determined under subsection (a) of this section
 13 is allowed as a credit against one hundred percent of that
 14 portion of the taxpayer's state tax liability which is
 15 attributable to and the direct result of the taxpayer's qualified
 16 investment, and applied as provided in subsections (c)
 17 through (f), both inclusive, of this section, and in that order.

18 (c) *Business and occupation taxes.* -- That portion of the
 19 allowable credit attributable to qualified investment in a
 20 business or other activity subject to the taxes imposed by
 21 article thirteen of this chapter under section two-o of that
 22 article must first be applied to reduce the taxes imposed or
 23 payable under section two-o, article thirteen of this chapter,

24 for the taxable year (determined before application of
25 allowable credits against tax and the annual exemption). In
26 no case may the credit allowed under this article be applied
27 to reduce any tax imposed under any other section of article
28 thirteen of this chapter except section two-o.

29 (1) If the taxes due under section two-o, article thirteen
30 of this chapter are not solely attributable to and the direct
31 result of the taxpayer's qualified investment in a business or
32 other activity taxable under section two-o, article thirteen of
33 this chapter, the amount of those taxes that are attributable is
34 determined by multiplying the amount of taxes due under
35 section two-o, article thirteen of this chapter, for the taxable
36 year (determined before application of any allowable credits
37 against tax and the annual exemption), by a fraction, the
38 numerator of which is all wages, salaries and other
39 compensation paid during the taxable year to all employees
40 of the taxpayer employed in this state, whose positions are
41 directly attributable to the qualified investment in a business
42 or other activity taxable under section two-o, article thirteen

43 of this chapter. The denominator of the fraction shall be the
44 wages, salaries and other compensation paid during the
45 taxable year to all employees of the taxpayer employed in
46 this state, whose positions are directly attributable to the
47 business or other activity of the taxpayer that is taxable under
48 article thirteen of this chapter.

49 (2) The annual exemption allowed by section three,
50 article thirteen of this chapter, plus any credits allowable
51 under articles thirteen-d, thirteen-e, thirteen-q, thirteen-r and
52 thirteen-s of this chapter, shall be applied against and reduce
53 only the portion of article thirteen taxes not apportioned to
54 the qualified investment under this article: *Provided, That*
55 any excess exemption or credits may be applied against the
56 amount of article thirteen taxes apportioned to the qualified
57 investment under this article, that is not offset by the amount
58 of annual credit against the taxes allowed under this article
59 for the taxable year, unless their application is otherwise
60 prohibited by this chapter.

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

62 (1) After application of subsection (c) of this section, any
63 unused allowable credit is next applied to reduce the taxes
64 imposed by article twenty-three of this chapter for the taxable
65 year (determined after application of the credits against tax
66 provided in section seventeen of article twenty-three of this
67 chapter, but before application of any other allowable credits
68 against tax).

69 (2) If the taxes due under article twenty-three of this
70 chapter are not solely attributable to and the direct result of
71 the taxpayer's qualified investment in a business or other
72 activity taxable under article twenty-three of this chapter for
73 the taxable year, the amount of the taxes which are so
74 attributable are determined by multiplying the amount of
75 taxes due (determined after application of the credits against
76 tax as provided in section seventeen of article twenty-three of
77 this chapter, but before application of any other allowable
78 credits), by a fraction, the numerator of which is all wages,
79 salaries and other compensation paid during the taxable year
80 to all employees of the taxpayer employed in this state,

81 whose positions are directly attributable to the qualified
82 investment in a business or other activity taxable under
83 article twenty-three of this chapter. The denominator of the
84 fraction is wages, salaries and other compensation paid
85 during the taxable year to all employees of the taxpayer
86 employed in this state, whose positions are directly
87 attributable to the business or other activity of the taxpayer
88 that is taxable under article twenty-three of this chapter.

89 (3) Any credits allowable under articles thirteen-d,
90 thirteen-e, thirteen-q, thirteen-r and thirteen-s of this chapter
91 are applied against and reduce only the portion of article
92 twenty-three taxes not apportioned to the qualified
93 investment under this article: *Provided*, That any excess
94 exemption or credits may be applied against the amount of
95 article twenty-three taxes apportioned to the qualified
96 investment under this article that is not offset by the amount
97 of annual credit against those taxes allowed under this article
98 for the taxable year, unless their application is otherwise
99 prohibited by this chapter.

100 (e) Corporation net income taxes. --

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

106 (2) If the taxes due under article twenty-four of this
107 chapter (determined before application of allowable credits
108 against tax) are not solely attributable to and the direct result
109 of the taxpayer's qualified investment, the amount of the
110 taxes that is attributable are determined by multiplying the
111 amount of taxes due under article twenty-four of this chapter
112 for the taxable year (determined before application of
113 allowable credits against tax), by a fraction, the numerator of
114 which is all wages, salaries and other compensation paid
115 during the taxable year to all employees of the taxpayer
116 employed in this state whose positions are directly
117 attributable to the qualified investment. The denominator of
118 the fraction is the wages, salaries and other compensation

119 paid during the taxable year to all employees of the taxpayer
120 employed in this state.

121 (3) Any credits allowable under article twenty-four of this
122 chapter are applied against and reduce only the amount of
123 article twenty-four of this chapter taxes not apportioned to
124 the qualified investment under this article: *Provided, That*
125 any excess credits may be applied against the amount of
126 article twenty-four of this chapter taxes apportioned to the
127 qualified investment under this article that is not offset by the
128 amount of annual credit against such taxes allowed under this
129 article for the taxable year, unless their application is
130 otherwise prohibited by this chapter.

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

132 (1) If the person making the qualified investment is an
133 electing small business corporation (as defined in Section
134 1361 of the United States Internal Revenue Code of 1986 as
135 amended), a partnership, or a limited liability company that
136 is treated as a partnership for federal income tax purposes,
137 then any unused credit (after application of subsections (c),

138 (d) and (e) of this section) is allowed as a credit against the
139 taxes imposed by article twenty-one of this chapter on the
140 income from business or other activity subject to tax under
141 article thirteen or twenty-three of this chapter that is
142 attributable to the business activity for credit is allowed under
143 this article.

144 (2) Electing small business corporations, limited liability
145 companies, partnerships and other unincorporated
146 organizations shall allocate the credit allowed by this article
147 among its members in the same manner as profits and losses
148 are allocated for the taxable year.

149 (3) If the amount of taxes due under article twenty-one of
150 this chapter (determined before application of allowable
151 credits against tax) that is attributable to business, is not
152 solely attributable to and the direct result of the qualified
153 investment of the electing small business corporation, limited
154 liability company, partnership, other unincorporated
155 organization or sole proprietorship, the amount of the taxes
156 that are so attributable are determined by multiplying the

157 amount of taxes due under article twenty-one of this chapter
158 (determined before application of allowable credits against
159 tax), that is attributable to business by a fraction, the
160 numerator of which is all wages, salaries and other
161 compensation paid during the taxable year to all employees
162 of the electing small business corporation, limited liability
163 company, partnership, other unincorporated organization or
164 sole proprietorship employed in this state, whose positions
165 are directly attributable to the qualified investment. The
166 denominator of the fraction is the wages, salaries and other
167 compensation paid during the taxable year to all employees
168 of the taxpayer.

169 (g) No credit is allowed under this section against any
170 employer withholding taxes imposed by article twenty-one of
171 this chapter.

172 (h) If the wages, salaries and other compensation fraction
173 formula provisions of subsections (c) through (f) of this
174 section, inclusive, do not fairly represent the taxes solely
175 attributable to and the direct result of qualified investment of

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

179 (1) Separate accounting or identification;

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

183 (3) The employment of any other method to effectuate an
184 equitable attribution of the taxes. In order to effectuate the
185 purposes of this subsection, the commissioner may propose
186 for promulgation rules, including emergency rules, in
187 accordance with article three, chapter twenty-nine-a of this
188 code.

189 (j) *Unused credit.* -- If any credit remains after
190 application of subsection (b) of this section, the amount
191 thereof is carried forward to each ensuing tax year until used
192 or until the expiration of the third taxable year subsequent to
193 the end of the initial ten year credit application period. If any
194 unused credit remains after the thirteenth year, the amount

195 thereof is forfeited. No carryback to a prior taxable year is
 196 allowed for the amount of any unused portion of any annual
 197 credit allowance.

§11-13CC-6. Qualified investment.

1 (a) General. -- The qualified investment in property
 2 purchased or leased for business expansion is the applicable
 3 percentage of the cost of each property purchased or leased for
 4 the purpose of business expansion which is placed in service or
 5 use in this state by the taxpayer during the taxable year.

6 (b) Applicable percentage. -- For the purpose of
 7 subsection (a), the applicable percentage of any property is
 8 determined under the following table:

<u>If useful life is:</u>	<u>The applicable percentage is:</u>
10 <u>Less than 4 years</u>	<u>0%</u>
11 <u>4 years or more but less than 6 years</u>	<u>33 1/3%</u>
12 <u>6 years or more but less than 8 years</u>	<u>66 2/3%</u>
13 <u>8 years or more</u>	<u>100%</u>

14 The useful life of any property, for purposes of this section,
 15 is determined as of the date the property is first placed in

16 service or use in this state by the taxpayer, determined in
17 accordance with rules and requirements the Tax
18 Commissioner may proscribe.

19 (c) Cost. -- For purposes of subsection (a), the cost of
20 each property purchased for business expansion is
21 determined under the following rules:

22 (1) Trade-ins. -- Cost does not include the value of
23 property given in trade or exchange for the property
24 purchased for business expansion.

25 (2) Damaged, destroyed or stolen property. -- If property
26 is damaged or destroyed by fire, flood, storm or other
27 casualty, or is stolen, then the cost of replacement property
28 does not include any insurance proceeds received in
29 compensation for the loss.

30 (3) Rental property. --

31 (A) The cost of real property acquired by written lease
32 for a primary term of ten years or longer is one hundred
33 percent of the rent reserved for the primary term of the lease,
34 not to exceed twenty years.

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

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

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

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

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

51 (5) *Transferred property*. -- The cost of property used by
 52 the taxpayer out-of-state and then brought into this state, is
 53 determined based on the remaining useful life of the property

54 at the time it is placed in service or use in this state, and the
55 cost is the original cost of the property to the taxpayer less
56 straight line depreciation allowable for the tax years or
57 portions thereof the taxpayer used the property outside this
58 state. In the case of leased tangible personal property, cost is
59 based on the period remaining in the primary term of the
60 lease after the property is brought into this state for use in a
61 new or expanded business facility of the taxpayer, and is the
62 rent reserved for the remaining period of the primary term of
63 the lease, not to exceed twenty years, or the remaining useful
64 life of the property (determined as above), whichever is less.

§11-13CC-7. New jobs; new jobs percentage.

1 (a) In general. -- For purposes of this article, the new jobs
2 created by the taxpayer must be directly attributable to
3 taxpayer's qualified investment in this state, must be filled by
4 new employees as defined in section three of this article and
5 the compensation of new employees filling the new jobs must
6 be equal to or exceed the compensation and health insurance
7 benefits set forth in section eight of this article during the

27 (d) Certification of new jobs. -- With the annual return for
28 the applicable taxes filed for the taxable year in which the
29 qualified investment is first placed in service or use in this
30 state, the taxpayer shall estimate and certify the number of
31 new jobs reasonably projected to be created by it in this state
32 within the period prescribed in subsection (f) of this section
33 that are, or will be, directly attributable to the qualified
34 investment of the taxpayer. For purposes of this section,
35 "applicable taxes" means the taxes imposed by articles
36 thirteen, twenty-one, twenty-three and twenty-four of this
37 chapter against which this credit is applied.

38 (e) Equivalency of permanent employees. -- The hours of
39 part-time employees shall be aggregated to determine the
40 number of equivalent full-time employees for the purpose of
41 this section.

42 (f) Redetermination of new jobs percentage. -- With the
43 annual return for the applicable taxes imposed, filed for the
44 third taxable year in which the qualified investment is in
45 service or use, the taxpayer shall certify the actual number of

46 new jobs created by it in this state that are directly
47 attributable to the qualified investment of the taxpayer.

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

53 (2) If the actual number of jobs created would result in a
54 lower new jobs percentage, the credit previously allowed
55 under this article shall be redetermined and amended returns
56 filed for the first and second taxable years. In applying the
57 amount of redetermined credit allowable for the two
58 preceding taxable years, the redetermined credit shall first be
59 applied to the extent it was originally applied in the prior two
60 years to personal income taxes, then to corporation net
61 income taxes, then to business franchise taxes and, lastly, to
62 business and occupation taxes. Any additional taxes due
63 under this chapter shall be remitted with the amended returns
64 filed with the commissioner, along with interest, as provided

65 in section seventeen, article ten of this chapter, and a
66 ten-percent penalty determined on the amount of taxes due
67 with the amended return, which may be waived by the
68 commissioner if the taxpayer shows that the over-claimed
69 amount of the new jobs percentage was due to reasonable
70 cause and not due to willful neglect.

§11-13CC-8. New jobs compensation and benefits requirement.

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

8 (1) The median compensation paid to the employees
9 filling the new jobs must be at least \$50,000 annually:
10 *Provided*, That beginning November 1, 2013, and on or
11 before every November 1 thereafter, the Tax Commissioner
12 shall adjust this minimum annual compensation requirement

13 in the manner provided in subsection (b) of this section,
14 which adjustment shall apply to compensation paid for
15 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
18 business facility in this state; and

19 (3) Each new job is a full-time, permanent position, as
20 those 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
23 this article. Additionally, jobs that are less than full-time,
24 permanent positions do not qualify as new jobs under this
25 article.

26 (b) Adjustment of annual compensation for inflation. --
27 The compensation requirements for credit under this article
28 shall be adjusted for inflation by application of a
29 cost-of-living adjustment. The annual compensation amount
30 shall be applicable, as adjusted, each year throughout the
31 ten-year credit period. Failure of a taxpayer entitled to credit

32 under this article to meet the annual compensation
33 requirement for any year shall result in forfeiture of the credit
34 for that year. However, if in any succeeding year within the
35 original ten-year credit period, the taxpayer pays annual
36 compensation to its employees which exceeds the inflation
37 adjusted annual compensation amount for that year, the
38 taxpayer shall regain entitlement to take the credit for that
39 year only. No credit forfeited in a prior year may be taken,
40 and the tax year or years to which the forfeited credit would
41 have been applied shall be forfeited and deducted from the
42 remainder of the years over which the credit can be taken.

43 (1) *Cost-of-living adjustment.* -- For purposes of this
44 section, the cost-of-living adjustment for any calendar year
45 is the percentage, if any, by which the consumer price index
46 for the preceding calendar year exceeds the consumer price
47 index for calendar year 2012.

48 (2) *Consumer price index for any calendar year.* -- For
49 purposes of this section, the consumer price index for any
50 calendar year is the average of the federal consumer price

51 index as of the close of the twelve-month period ending on
52 August 31 of such calendar year.

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

57 (4) *Rounding.* -- If any increase in the annual
58 compensation amount under this section is not a multiple of
59 \$50, such increase shall be rounded to the next lowest
60 multiple of \$50.

61 (c) Unused credit remaining in any tax year after
62 application against the taxes specified in section five of this
63 article is forfeited and does not carry forward to any
64 succeeding tax year and does not carry back to a prior tax
65 year.

66 (d) *Reduction in number of employees credit forfeiture.*
67 -- If during the year when a new job was created for which
68 credit was granted under this section or during the remainder
69 of the credit period allowed by either subsection (b) or (c),

70 section four of this article, net jobs that are attributable to and
71 the consequence of the taxpayer's business operations in this
72 state, decrease, counting both new jobs for which credit was
73 granted under this article and preexisting jobs, then the total
74 amount of credit to which the taxpayer is entitled under this
75 section shall be decreased and forfeited in the amount of
76 \$3,000 for each net job lost.

**§11-13CC-9. Application for credit required; failure to make
timely application; burden of proof.**

1 (a) Application for credit required. -- Notwithstanding
2 any provision of this article to the contrary, no credit is
3 allowed or may be applied under this article for any qualified
4 investment property placed in service or use until the person
5 asserting a claim for the allowance of credit under this article
6 makes written application to the Tax Commissioner for
7 allowance of credit as provided in this subsection. An
8 application for credit shall be filed, in the form prescribed by
9 the Tax Commissioner, no later than the last day for filing the
10 tax returns, determined by including any authorized

11 extension of time for filing the return, required under article
 12 twenty-one or twenty-four of this chapter for the taxable year
 13 in which the property to which the credit relates is placed in
 14 service or use and all information required by the form shall
 15 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
 19 under this article. This penalty applies annually until the
 20 application 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
 23 the benefits allowed by this article.

§11-13CC-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.

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

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

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

6 (2) Ceases to be used in an eligible business of the
7 taxpayer in this state prior to the end of its useful life, as
8 determined under section eight of this article, then the unused
9 portion of the credit allowed for the property is forfeited for
10 the taxable year and all ensuing years. Additionally, except
11 when the property is damaged or destroyed by fire, flood,
12 storm or other casualty, or is stolen, the taxpayer shall

13 redetermine the amount of credit allowed in all earlier years
14 by reducing the applicable percentage of cost of the property
15 allowed under section eight of this article, to correspond with
16 the percentage of cost allowable for the period of time that
17 the property was actually used in this state in the new or
18 expanded business of the taxpayer. The taxpayer shall then
19 file a reconciliation statement for the year in which the
20 forfeiture occurs and pay any additional taxes owed due to
21 reduction of the amount of credit allowable for the earlier
22 years, plus interest and any applicable penalties. The
23 reconciliation statement shall be filed with the annual return
24 for the primary tax for which the taxpayer is liable under
25 article twenty-three of this chapter, or under article
26 twenty-one or twenty-four of this chapter.

27 (b) *Cessation of operation of business facility.* -- If during
28 any taxable year the taxpayer ceases operation of a business
29 facility in this state for which credit was allowed under this
30 article, before expiration of the useful life of property with
31 respect to which tax credit has been allowed under this
32 article, then the unused portion of the allowed credit is

33 forfeited for the taxable year and for all ensuing years.
34 Additionally, except when the cessation is due to fire, flood,
35 storm or other casualty, the taxpayer shall redetermine the
36 amount of credit allowed in earlier years by reducing the
37 applicable percentage of cost of the property allowed under
38 section eight of this article, to correspond with the percentage
39 of cost allowable for the period of time that the property was
40 actually used in this state in a business of the taxpayer that is
41 taxable under article twenty-three or twenty-four of this
42 chapter, or in the case of a partnership, the distributive share
43 of partnership items is taxable under article twenty-one of
44 this chapter. The taxpayer shall then file a reconciliation
45 statement with the annual return for the primary tax for which
46 the taxpayer is liable under article twenty-one, twenty-three
47 or twenty-four of this chapter, for the year in which the
48 forfeiture occurs, and pay any additional taxes owed due to
49 the reduction of the amount of credit allowable for the earlier
50 years, plus interest and any applicable penalties.

51 (c) Reduction in number of employees. -- If during any
52 taxable year subsequent to the taxable year in which the new

53 jobs percentage is redetermined as provided in section seven
54 of this article, the average number of employees of the
55 taxpayer, for the then current taxable year, employed in
56 positions created because of and directly attributable to the
57 qualified investment falls below the minimum number of new
58 jobs created upon which the taxpayer's annual credit
59 allowance is based, the taxpayer shall calculate what his or
60 her annual credit allowance would have been had his or her
61 new jobs percentage been determined based upon the average
62 number of employees, for the then current taxable year,
63 employed in positions created because of and directly
64 attributable to the qualified investment. The difference
65 between the result of this calculation and the taxpayer's
66 annual credit allowance for the qualified investment as
67 determined under section four of this article, is forfeited for
68 the then current taxable year, and for each succeeding taxable
69 year unless for a succeeding taxable year the taxpayer's
70 average employment in positions directly attributable to the
71 qualified investment once again meets the level required to

72 enable the taxpayer to utilize its full annual credit allowance
73 for that taxable year.

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

1 (a) When recapture tax applies. --
2 (1) Any person who places qualified investment property
3 in service or use and who fails to use the qualified investment
4 property for at least the period of its useful life (determined
5 as of the time the property was placed in service or use), or
6 the period of time over which tax credits allowed under this
7 article with respect to the property are applied under this
8 article, whichever period is less, and who reduces the number
9 of its employees filling new jobs in its business in this state,
10 which were created and are directly attributable to the
11 qualified investment property, after the third taxable year in
12 which the qualified investment property was placed in
13 service or use, or fails to continue to employ individuals in
14 all the new jobs created as a direct result of the qualified
15 investment property and used to qualify for the credit allowed
16 by this article, prior to the end of the tenth taxable year after

17 the qualified investment property was placed in service or
18 use, the person shall pay the recapture tax imposed by
19 subsection (b) of this section.

20 (2) This section does not apply when section thirteen of
21 this article applies. However, the successor, or the
22 successors, and the person, or persons, who previously
23 claimed credit under this article with respect to the qualified
24 investment property and the new jobs attributable thereto, are
25 jointly and severally liable for payment of any recapture tax
26 subsequently imposed under this section with respect to the
27 qualified investment property and new jobs.

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

30 (1) Full recapture. -- If the taxpayer prematurely removes
31 qualified investment property placed in service (when
32 considered as a class) from economic service in the
33 taxpayer's qualified investment business activity in this state,
34 and the number of employees filling the new jobs created by
35 the person falls below the number of new jobs required to be

36 created in order to qualify for the amount of credit being
37 claimed or the requirements of section eight of this article are
38 not satisfied, the taxpayer shall recapture the amount of credit
39 claimed under section four of this article for the taxable year,
40 and all preceding taxable years, on qualified investment
41 property which has been prematurely removed from service.
42 Additionally, the property tax benefit allowed under article
43 six-L of this chapter shall be recaptured for a like period. The
44 amount of tax due under this subdivision is an amount equal
45 to the amount of credit that is recaptured under this
46 subdivision plus the amount of the property tax benefit
47 recaptured under this section.

48 (2) *Partial recapture.* -- If the taxpayer prematurely
49 removes qualified investment property from economic
50 service in the taxpayer's qualified investment business
51 activity in this state, and the number of employees filling the
52 new jobs created by the person remains ten or more, but falls
53 below the number necessary to sustain continued application
54 of credit determined by use of the new job percentage upon

55 which the taxpayer's one-tenth annual credit allowance was
56 determined under section four or section ten of this article,
57 taxpayer shall recapture an amount of credit equal to the
58 difference between: (A) The amount of credit claimed under
59 section four of this article for the taxable year, and all
60 preceding taxable years; and (B) the amount of credit that
61 would have been claimed in those years if the amount of
62 credit allowable under section four of this article had been
63 determined based on the qualified investment property which
64 remains in service using the average number of new jobs
65 filled by employees in the taxable year for which recapture
66 occurs. The amount of tax due under this subdivision is an
67 amount equal to the amount of credit that is recaptured under
68 this subdivision.

69 (3) *Additional recapture.* -- If after a partial recapture
70 under subdivision (2) of this subsection, the taxpayer further
71 reduces the number of employees filling new jobs, the
72 taxpayer shall recapture an additional amount determined as
73 provided under subdivision (1) of this subsection. The

74 amount of tax due under this subdivision is an amount equal
75 to the amount of credit that is recaptured under this
76 subdivision.

77 (c) *Payment of recapture tax.* -- The amount of tax
78 recaptured under this section is due and payable on the day
79 the person's annual return is due for the taxable year in which
80 this section applies, under article twenty-one or twenty-four
81 of this chapter. When the employer is a partnership, limited
82 liability company or Subchapter S corporation for federal
83 income tax purposes, the recapture tax shall be paid by those
84 persons who are partners in the partnership, members in the
85 company, or shareholders in the Subchapter S corporation, in
86 the taxable year in which recapture occurs under this section.
87 The Tax Commissioner shall cause the property tax benefit
88 recaptured to be paid over to the sheriff of the county in
89 which the property is or was located within sixty days after
90 the recapture tax is paid to the Tax Commissioner.

91 (d) *Rules.* -- The Tax Commissioner may promulgate
92 such rules as may be useful or necessary to carry out the

93 purpose of this section and to implement the intent of the
94 Legislature. Rules shall be promulgated in accordance with
95 the provisions of article three, chapter twenty-nine-a of this
96 code.

§11-13CC-13. Transfer of qualified investment to successors.

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

12 (b) Transfer or sale to successor. -- Property is not
13 treated as disposed of under section eleven of this article by
14 reason of any transfer or sale to a successor business which

15 continues to operate the business facility in this state. Upon
16 transfer or sale, the successor shall acquire the amount of
17 credit that remains available under this article for each
18 subsequent taxable year and the transferor business is not
19 required to redetermine the amount of credit allowed in
20 earlier years.

§11-13CC-14. Failure to keep records of investment credit property.

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

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

8 (2) If a taxpayer cannot establish when investment credit
9 property reported for purposes of claiming this credit
10 returned during the taxable year was placed in service, the
11 taxpayer is treated as having placed it in service in the most

12 recent prior year in which similar property was placed in
13 service, unless the taxpayer can establish that the property
14 placed in service in the most recent year is still on hand. In
15 that event, the taxpayer will be treated as having placed the
16 returned property in service in the next most recent year.

§11-13CC-15. Interpretation and construction.

1 (a) No inference, implication or presumption of
2 legislative construction or intent may be drawn or made by
3 reason of the location or grouping of any particular section,
4 provision or portion of this article; and no legal effect may be
5 given to any descriptive matter or heading relating to any
6 section, subsection or paragraph of this article.

7 (b) The provisions of this article shall be reasonably
8 construed in order to effectuate the legislative intent recited
9 in section two of this article.

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

§11-13CC-16. Tax credit review and accountability.

1 (a) On or before February 1, 2017, and on or before
2 February 1 of every third year thereafter, the Tax
3 Commissioner shall submit to the Governor, the President of
4 the Senate and the Speaker of the House of Delegates, a tax
5 credit review and accountability report evaluating the cost
6 effectiveness of the credit allowed by this article during the
7 most recent three-year period for which information is
8 available. The criteria to be evaluated shall include, but not
9 be limited to, for each year of the three-year period:

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

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

13 (3) The cost of the credit;

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

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

17 (b) Taxpayers claiming the credit shall provide any
18 information the Tax Commissioner may require to prepare

19 the report: *Provided*, That the information provided is
20 subject to the confidentiality and disclosure provisions of
21 sections five-d and five-s, article ten of this chapter.

§11-13CC-17. Effective date; termination date.

1 (a) *Effective date*. -- The credit allowed by this article is
2 allowed for qualified investment placed in service or use on
3 or after July 1, 2012, subject to the rules contained in this
4 section.

5 (b) *Termination date*. -- Unless extended by the
6 Legislature, this credit shall not be allowed for any qualified
7 investment property placed in service or use after December
8 31, 2020: *Provided*, That when the qualified investment
9 property was placed in service or use prior to January 1,
10 2020, taxpayers shall be allowed the tax benefits allowed by
11 section four of this article for the remainder of the credit
12 period allowed by subsection (b) of that section, or the
13 remainder of the credit period allowed under subsection (c)
14 of that section, depending upon which is applicable to the
15 taxpayer.

§11-13CC-18. Severability.

1 (a) If any provision of this article or the application thereof
2 is for any reason adjudged by any court of competent
3 jurisdiction to be invalid, the judgment may not affect, impair or
4 invalidate the remainder of the article, but shall be confined in
5 its operation to the provision thereof directly involved in the
6 controversy in which the judgment shall have been rendered,
7 and the applicability of the provision to other persons or
8 circumstances may not be affected thereby.

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