

ENGROSSED

H. B. 3043

(By Mr. Speaker (Mr. Thompson) and Delegates
Craig, Hunt, Marcum, Caputo, Ferro,
R. Phillips, Williams and Boggs)

[Introduced March 22, 2013; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-13BB-3 of the Code of West
Virginia, 1931, as amended, relating to including methane
monitoring equipment as eligible safety equipment for tax
credit purposes.

Be it enacted by the Legislature of West Virginia:

That §11-13BB-3 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

**ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX
CREDIT ACT.**

§11-13BB-3. Definitions.

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

(b) For purposes of this article, the term:

1 (1) "Certified eligible safety property" means eligible safety
2 property in which an eligible taxpayer has made qualified
3 investment for which credit has been certified under this article.

4 (2) "Coal mining company" means:

5 (A) ~~Any~~ A person subject to tax imposed on the severance of
6 coal by section three, article thirteen-a of this chapter; or

7 (B) ~~Any~~ A person working as a contract miner of coal, ~~which~~
8 ~~mines~~ mining coal in this state, under contract with a person
9 subject to tax imposed on the severance of coal by section three,
10 article thirteen-a of this chapter.

11 (3) "Director" means the Director of the Office of Miners'
12 Health, Safety and Training or West Virginia Office of Miners'
13 Health, Safety and Training established under article one, chapter
14 twenty two-a of this code.

15 (4) "Eligible safety property" means safety technology
16 equipment that, at the time of acquisition, is on the list of
17 approved innovative mine safety technology: Provided, That eligible
18 safety property includes machine mounted methane monitors required
19 by section forty-three, article two, chapter twenty-two-a of this
20 code.

21 (5) "Eligible taxpayer" means a coal mining company ~~which~~ that
22 purchases eligible safety property.

23 (6) "List of approved innovative mine safety technology" means
24 the list required to be compiled and maintained by the Mine Safety

1 Technology Task Force and approved and published by the director
2 under this article.

3 (7) "Office of Miners' Health, Safety and Training" or "West
4 Virginia Office of Miners' Health, Safety and Training" means the
5 Office of Miners' Health, Safety and Training established under
6 article one, chapter twenty two-a of this code.

7 (8) "Person" includes any corporation, limited liability
8 company or partnership.

9 (9) "Qualified investment" means the eligible taxpayer's
10 investment in eligible safety property pursuant to a qualified
11 purchase as qualified and limited by section six of this article.

12 (10) "Qualified purchase" means and includes only acquisitions
13 of eligible safety property for use in this state.

14 (A) A lease of eligible safety property may constitute a
15 qualified purchase if the lease was entered into and became
16 effective at a time when the equipment is on the list of approved
17 innovative mine safety technology and if the primary term of the
18 lease for the eligible safety property is five years or more.
19 Leases having a primary term of less than five years do not
20 qualify.

21 (B) "Qualified purchase" does not include:

22 (i) Purchases or leases of realty or any cost for, or related
23 to, the construction of ~~any~~ a building, facility or structure
24 attached to realty;

1 (ii) Purchases or leases of ~~any~~ property not exclusively used
2 in West Virginia;

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

6 (iv) Motor vehicles licensed by the ~~Department~~ Division of
7 Motor Vehicles;

8 (v) Clothing;

9 (vi) Airplanes;

10 (vii) Off-premises transportation equipment;

11 (viii) Leases of tangible personal property having a primary
12 term of less than five years; ~~shall not qualify;~~

13 (ix) Property that is used outside this state; and

14 (x) Property that is acquired incident to the purchase of the
15 stock or assets of an industrial taxpayer ~~which property~~ that was
16 or had been used by the seller in his or her industrial business in
17 this state or in which investment was previously the basis of a
18 credit against tax taken under any other article of this chapter.

19 (C) Acquisitions, including leases, of eligible safety
20 property may constitute qualified purchases for purposes of this
21 article only if:

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

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

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

7 (iii) The basis of the property for federal income tax
8 purposes, in the hands of the person acquiring it, is not
9 determined, in whole or in part, by reference to the federal
10 adjusted basis of the property in the hands of the person from whom
11 it was acquired or under Section 1014(e) of the United States
12 Internal Revenue Code of 1986, as amended.

13 (11) "Safety technology" means depreciable tangible personal
14 property and equipment, other than clothing, principally designed
15 to directly minimize workplace injuries and fatalities in coal
16 mines.

17 (12) "Taxpayer" means ~~any~~ a person subject to any of the taxes
18 imposed by article thirteen-a, twenty-three or twenty-four of this
19 chapter.

NOTE: The purpose of this bill is to define eligible safety property as including methane monitoring equipment.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would

be added.