

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2110

(BY DELEGATES HOWELL, MOYE, STORCH, MOFFATT,
HAMRICK, HOUSEHOLDER, STATLER, WALTERS, ARVON,
BLAIR AND KESSINGER)

[Passed March 12, 2016; in effect ninety days from passage.]

1 AN ACT to amend and reenact §11-6F-2 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §11-13S-3 and §11-13S-4 of said code, all relating to the tax treatment
3 of manufacturing entities generally; amending definition of manufacturing for purposes of
4 special method for appraising qualified capital additions to manufacturing facilities for
5 property tax purposes; amending definition of manufacturing for purposes of
6 manufacturing investment tax credit; amending the formula for calculating credit allowed
7 for manufacturing investment to include Small Arms Ammunition Manufacturing and Small
8 Arms, Ordinance and Ordinance Accessories Manufacturing; and increasing the amount
9 of such allowable credit.

Be it enacted by the Legislature of West Virginia:

1 That §11-6F-2 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that §11-13S-3 and §11-13S-4 of said code be amended and reenacted, all to
3 read as follows:

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

§11-6F-2. Definitions.

1 As used in this article, the term:

2 (a) "Certified capital addition property" means all real property and personal property
3 included within or to be included within a qualified capital addition to a manufacturing facility that
4 has been certified by the State Tax Commissioner in accordance with section four of this article:
5 *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles shall in no
6 event constitute certified capital addition property.

7 (b) "Manufacturing" means any business activity classified as having a sector identifier,
8 consisting of the first two digits of the six-digit North American Industry Classification System code
9 number of thirty-one, thirty-two or thirty-three or the six digit code number 211112.

10 (c) "Manufacturing facility" means any factory, mill, chemical plant, refinery, warehouse,
11 building or complex of buildings, including land on which it is located, and all machinery,
12 equipment, improvements and other real property and personal property located at or within the
13 facility used in connection with the operation of the facility in a manufacturing business.

14 (d) "Personal property" means all property specified in subdivision (q), section ten, article
15 two, chapter two of this code and includes, but is not limited to, furniture, fixtures, machinery and
16 equipment, pollution control equipment, computers and related data processing equipment, spare
17 parts and supplies.

18 (e) "Qualified capital addition to a manufacturing facility" means either:

19 (1) All real property and personal property, the combined original cost of which exceeds
20 \$50 million to be constructed, located or installed at or within two miles of a manufacturing facility
21 owned or operated by the person making the capital addition that has a total original cost before
22 the capital addition of at least \$100 million. If the capital addition is made in a steel, chemical or
23 polymer alliance zone as designated from time-to-time by executive order of the Governor, then
24 the person making the capital addition may for purposes of satisfying the requirements of this
25 subsection join in a multiparty project with a person owning or operating a manufacturing facility
26 that has a total original cost before the capital addition of at least \$100 million if the capital addition
27 creates additional production capacity of existing or related products or feedstock or derivative
28 products respecting the manufacturing facility, consists of a facility used to store, handle, process
29 or produce raw materials for the manufacturing facility, consists of a facility used to store, handle
30 or process natural gas to produce fuel for the generation of steam or electricity for the
31 manufacturing facility or consists of a facility that generates steam or electricity for the
32 manufacturing facility, including but not limited to a facility that converts coal to a gas or liquid for
33 the manufacturing facility's use in heating, manufacturing or generation of electricity. Beginning
34 on and after July 1, 2011, when the new capital addition is a facility that is or will be classified
35 under the North American Industry Classification System with a six digit code number 211112, or

36 is a manufacturing facility that uses product produced at a facility with code number 211112, then
37 wherever the term “100 million” is used in this subsection, the term “20 million” shall be substituted
38 and where the term “50 million” is used, the term “10 million” shall be substituted; and that
39 beginning on and after July 1, 2016, when the new capital addition is a facility that is or will be
40 classified under the North American Industry Classification System with a six-digit North American
41 Industry Classification System code a product produced at a facility with code numbers 332992
42 and 332994, then wherever the term “100 million” is used in this subsection, the term “2 million”
43 shall be substituted and where the term “50 million” is used, the term “1 million” shall be
44 substituted; or

45 (2) (A) All real property and personal property, the combined original cost of which exceeds
46 \$2 billion to be constructed, located or installed at a facility, or a combination of facilities by a
47 single entity or combination of entities engaged in a unitary business, that:

48 (i) Is or will be classified under the North American Industry Classification System with a
49 six digit code number 211112;

50 (ii) Is a manufacturing facility that uses one or more products produced at a facility with
51 code number 211112; or

52 (iii) Is a manufacturing facility that uses one or more products produced at a facility
53 described in subparagraph (ii) of this subdivision.

54 (B) All real property and personal property, the combined original cost of which exceeds
55 \$2 million to be constructed, located or installed at a facility, or a combination of facilities by a
56 single entity or combination of entities engaged in a unitary business, that is or will be classified
57 under North American Industry Classification System with a six digit code number 332992 or
58 332994.

59 (C) No preexisting investment made, or in place before the capital addition shall be
60 required for property specified in this subdivision (2). The requirements set forth in subdivision (1)
61 of this subsection shall not apply to property specified in this subdivision (2) relating to:

62 (i) Location or installation of investment at or within two miles of a manufacturing facility
63 owned or operated by the person making the capital addition;

64 (ii) Total original cost of preexisting investment before the capital addition of at least \$100
65 million or, \$20 million or \$2 million; or

66 (iii) Multiparty projects.

67 (f) "Real property" means all property specified in subdivision (p), section ten, article two,
68 chapter two of this code and includes, but is not limited to, lands, buildings and improvements on
69 the land such as sewers, fences, roads, paving and leasehold improvements: *Provided*, That for
70 capital additions certified on or after July 1, 2011, the value of the land before any improvements
71 shall be subtracted from the value of the capital addition and the unimproved land value shall not
72 be given salvage value treatment.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

§11-13S-3. Definitions.

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

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

4 (1) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the
5 purpose of industrial expansion or for the purpose of industrial revitalization of an existing
6 industrial facility in this state.

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

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

13 (4) “Industrial revitalization” or “revitalization” means capital investment in an industrial
14 facility located in this state to replace or modernize buildings, equipment, machinery and other
15 tangible personal property used in connection with the operation of the facility in an industrial
16 business of the taxpayer including the acquisition of any real property necessary to the industrial
17 revitalization.

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

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

23 (7) “Property purchased for manufacturing investment” means real property, and
24 improvements thereto, and tangible personal property but only if the property was constructed or
25 purchased on or after January 1, 2003, for use as a component part of a new, expanded or
26 revitalized industrial facility. This term includes only that tangible personal property with respect
27 to which depreciation, or amortization in lieu of depreciation, is allowable in determining the
28 federal income tax liability of the industrial taxpayer, that has a useful life, at the time the property
29 is placed in service or use in this state, of four years or more. Property acquired by written lease
30 for a primary term of ten years or longer, if used as a component part of a new or expanded
31 industrial facility, is included within this definition.

32 (A) “Property purchased for manufacturing investment” does not include:

33 (i) Repair costs, including materials used in the repair, unless for federal income tax
34 purposes, the cost of the repair must be capitalized and not expensed;

35 (ii) Motor vehicles licensed by the Department of Motor Vehicles;

36 (iii) Airplanes;

37 (iv) Off-premises transportation equipment;

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

39 (vi) Property which is acquired incident to the purchase of the stock or assets of an
40 industrial taxpayer which property was or had been used by the seller in his or her industrial
41 business in this state or in which investment was previously the basis of a credit against tax taken
42 under any other article of this chapter.

43 (B) Purchases or acquisitions of land or depreciable property qualify as purchases of
44 property purchased for manufacturing investment for purposes of this article only if:

45 (i) The property is not acquired from a person whose relationship to the person acquiring
46 it would result in the disallowance of deductions under section 267 or 707(b) of the United States
47 Internal Revenue Code of 1986, as amended;

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

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

56 (8) "Qualified manufacturing investment" means that amount determined under section
57 five of this article as qualified manufacturing investment.

58 (9) "Taxpayer" means any person subject to any of the taxes imposed by article thirteen-a,
59 twenty-three or twenty-four of this chapter or any combination of those articles of this chapter.

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

1 (a) *Credit allowed.* — There is allowed to eligible taxpayers and to persons described in
2 subdivision (5), subsection (b) of this section a credit against the taxes imposed by articles
3 thirteen-a, twenty-three and twenty-four of this chapter: *Provided*, That a tax credit for any eligible
4 taxpayer operating a business activity classified as having a sector identifier, consisting of the six

5 digit code number 211112 such eligible taxpayer must comply with the provisions of subsection
6 (e) of this section for all construction related thereto in order to be eligible for any credit under this
7 article. The amount of credit shall be determined as hereinafter provided in this section.

8 (b) *Amount of credit allowable.* — The amount of allowable credit under this article is equal
9 to five percent of the qualified manufacturing investment (as determined in section five of this
10 article): *Provided,* That the amount of allowable credit under this article is equal to fifty percent of
11 the qualified manufacturing investment (as determined in section five of this article) for any eligible
12 taxpayer operating a business activity classified as having a sector identifier, consisting of the six
13 digit code number 332992 or 332994. This credit shall reduce the severance tax, imposed under
14 article thirteen-a of this chapter, the business franchise tax imposed under article twenty-three of
15 this chapter and the corporation net income tax imposed under article twenty-four of this chapter,
16 in that order, subject to the following conditions and limitations:

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

20 (2) *Severance tax.* — The credit is applied to reduce the severance tax imposed under
21 article thirteen-a of this chapter (determined before application of the credit allowed by section
22 three, article twelve-b of this chapter and before any other allowable credits against tax and before
23 application of the annual exemption allowed by section ten, article thirteen-a of this chapter). The
24 amount of annual credit allowed may not reduce the severance tax, imposed under article
25 thirteen-a of this chapter, below fifty percent of the amount which would be imposed for such
26 taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on
27 and after January 1, 2009, the amount of annual credit allowed may not reduce the severance
28 tax, imposed under article thirteen-a of this chapter, below forty percent of the amount which
29 would be imposed for such taxable year in the absence of this credit against tax. When in any
30 taxable year the taxpayer is entitled to claim credit under this article and article thirteen-d of this

31 chapter, the total amount of all credits allowable for the taxable year may not reduce the amount
32 of the severance tax, imposed under article thirteen-a of this chapter, below fifty percent of the
33 amount which would be imposed for such taxable year (determined before application of the credit
34 allowed by section three, article twelve-b of this chapter and before any other allowable credits
35 against tax and before application of the annual exemption allowed by section ten, article
36 thirteen-a of this chapter): *Provided, however,* That when in any taxable year beginning on and
37 after January 1, 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d
38 of this chapter, the total amount of all credits allowable for the taxable year may not reduce the
39 amount of the severance tax imposed under article thirteen-a of this chapter, below forty percent
40 of the amount which would be imposed for such taxable year as determined before application of
41 the credit allowed by section three, article twelve-b of this chapter and before any other allowable
42 credits against tax and before application of the annual exemption allowed by section ten, article
43 thirteen-a of this chapter;

44 (3) *Business franchise tax.* —

45 After application of subdivision (2) of this subsection, any unused credit is next applied to
46 reduce the business franchise tax imposed under article twenty-three of this chapter (determined
47 after application of the credits against tax provided in section seventeen, article twenty-three of
48 this chapter, but before application of any other allowable credits against tax). The amount of
49 annual credit allowed will not reduce the business franchise tax, imposed under article
50 twenty-three of this chapter, below fifty percent of the amount which would be imposed for such
51 taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on
52 and after January 1, 2009, the amount of annual credit allowed will not reduce the business
53 franchise tax, imposed under article twenty-three of this chapter, below forty percent of the
54 amount which would be imposed for such taxable year in the absence of this credit against tax.
55 When in any taxable year the taxpayer is entitled to claim credit under this article and article
56 thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will not

57 reduce the amount of the business franchise tax, imposed under article twenty-three of this
58 chapter, below fifty percent of the amount which would be imposed for the taxable year
59 (determined after application of the credits against tax provided in section seventeen, article
60 twenty-three of this chapter, but before application of any other allowable credits against tax):
61 *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the
62 taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total
63 amount of all credits allowable for the taxable year will not reduce the amount of the business
64 franchise tax, imposed under article twenty-three of this chapter, below forty percent of the
65 amount which would be imposed for the taxable year as determined after application of the credits
66 against tax provided in section seventeen, article twenty-three of this chapter, but before
67 application of any other allowable credits against tax;

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

69 After application of subdivision (3) of this subsection, any unused credit is next applied to
70 reduce the corporation net income tax imposed under article twenty-four of this chapter
71 (determined before application of any other allowable credits against tax). The amount of annual
72 credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this
73 chapter, below fifty percent of the amount which would be imposed for such taxable year in the
74 absence of this credit against tax: *Provided,* That for tax years beginning on and after January 1,
75 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed
76 under article twenty-four of this chapter, below forty percent of the amount which would be
77 imposed for such taxable year in the absence of this credit against tax. When in any taxable year
78 the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the
79 total amount of all credits allowable for the taxable year may not reduce the amount of the
80 corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent
81 of the amount which would be imposed for the taxable year (determined before application of any
82 other allowable credits against tax): *Provided, however,* That when in any taxable year beginning

83 on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and article
84 thirteen-d of this chapter, the total amount of all credits allowable for the taxable year may not
85 reduce the amount of the corporation net income tax, imposed under article twenty-four of this
86 chapter, below forty percent of the amount which would be imposed for the taxable year as
87 determined before application of any other allowable credits against tax;

88 (5) *Pass-through entities.* —

89 (A) If the eligible taxpayer is a limited liability company, small business corporation or a
90 partnership, then any unused credit (after application of subdivisions (2), (3) and (4) of this
91 subsection) is allowed as a credit against the taxes imposed by article twenty-four of this chapter
92 on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer
93 by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that
94 are imposed on income directly derived by the owner from the eligible taxpayer are subject to
95 offset by this credit.

96 (B) The amount of annual credit allowed will not reduce corporation net income tax,
97 imposed under article twenty-four of this chapter, below fifty percent of the amount which would
98 be imposed on the conduit income directly derived from the eligible taxpayer by each owner for
99 such taxable year in the absence of this credit against the taxes (determined before application
100 of any other allowable credits against tax): *Provided*, That for tax years beginning on and after
101 January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax,
102 imposed under article twenty-four of this chapter, below forty percent of the amount which would
103 be imposed on the conduit income directly derived from the eligible taxpayer by each owner for
104 such taxable year in the absence of this credit against the taxes as determined before application
105 of any other allowable credits against tax.

106 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and
107 article thirteen-d of this chapter, the total amount of all credits allowable for the taxable year will
108 not reduce the corporation net income tax imposed on the conduit income directly derived from

109 the eligible taxpayer by each owner below fifty percent of the amount that would be imposed for
110 such taxable year on the conduit income (determined before application of any other allowable
111 credits against tax): *Provided*, That when in any taxable year beginning on and after January 1,
112 2009, the taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter,
113 the total amount of all credits allowable for the taxable year will not reduce the corporation net
114 income tax imposed on the conduit income directly derived from the eligible taxpayer by each
115 owner below forty percent of the amount that would be imposed for such taxable year on the
116 conduit income as determined before application of any other allowable credits against tax;

117 (6) Small business corporations, limited liability companies, partnerships and other
118 unincorporated organizations shall allocate any unused credit after application of subdivisions (2),
119 (3) and (4) of this subsection among their members in the same manner as profits and losses are
120 allocated for the taxable year; and

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

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

126 (d) *Application for credit required.* —

127 (1) *Application required.* — Notwithstanding any provision of this article to the contrary, no
128 credit is allowed or may be applied under this article for any qualified investment property placed
129 in service or use until the person claiming the credit makes written application to the Tax
130 Commissioner for allowance of credit as provided in this section. This application shall be in the
131 form prescribed by the Tax Commissioner and shall provide the number and type of jobs created,
132 if any, by the manufacturing investment, the average wage rates and benefits paid to employees
133 filling the new jobs and any other information the Tax Commissioner may require. This application

134 shall be filed with the Tax Commissioner no later than the last day for filing the annual return,
135 determined by including any authorized extension of time for filing the return, required under
136 article twenty-one or twenty-four of this chapter for the taxable year in which the property to which
137 the credit relates is placed in service or use.

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

141 (e) (1) Any person or entity undertaking any construction related to any business activity
142 included within North American Industrial Code six-digit code number 211112, the value of which
143 is an amount equal to or greater than \$500,000, shall hire at least seventy-five percent of
144 employees for said construction from the local labor market, to be rounded off, with at least two
145 employees from outside the local labor market permissible for each employer per project, “the
146 local labor market” being defined as every county in West Virginia and any county outside of West
147 Virginia if any portion of that county is within fifty miles of the border of West Virginia.

148 (2) Any person or entity unable to employ the minimum number of employees from the
149 local labor market shall inform the nearest office of the bureau of employment programs’ division
150 of employment services of the number of qualified employees needed and provide a job
151 description of the positions to be filled.

152 (3) If, within three business days following the placing of a job order, the division is unable
153 to refer any qualified job applicants to the person or entity engaged in said construction or refers
154 less qualified job applicants than the number requested, then the division shall issue a waiver to
155 the person or entity engaged in said construction stating the unavailability of applicants and shall
156 permit the person or entity engaged in said construction to fill any positions covered by the waiver
157 from outside the local labor market. The waiver shall be either oral or in writing and shall be issued

158 within the prescribed three days. A waiver certificate shall be sent to the person or entity engaged
159 in said construction for its permanent project records.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2016.

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Governor