

WEST VIRGINIA LEGISLATURE FILED

2019 REGULAR SESSION

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

House Bill 3144

BY DELEGATES HARTMAN, STORCH, SKAFF, GRAVES,
ESPINOSA, ROWAN, MAYNARD, HILL, LONGSTRETH AND

BARRETT

[Passed March 9, 2019; in effect ninety days from
passage.]

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-
3 6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12,
4 §11-13EE-13, §11-13EE-14, §11-13EE-15, and §11-13EE-16, all relating generally to
5 Coal Severance Tax Rebate; findings and purpose; defining terms; providing for rebate of
6 severance tax when capital investment made in new machinery, equipment, or
7 improvements to real property directly used in severance of coal, or in coal preparation
8 and processing plants; providing rules and procedures for claiming rebate and transfer to
9 successors; imposing recapture tax in certain circumstance; providing rules for
10 interpretation and construction; requiring periodic rebate reports; authorizing rulemaking;
11 and providing for severability and effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13EE. COAL SEVERANCE TAX REBATE.

§11-13EE-1. Findings and purpose.

1 The Legislature finds that the encouragement of economic growth and development in this
2 state is in the public interest and promotes the general welfare of the people of this state. In order
3 to encourage capital investment in the coal industry in this state and thereby increase economic
4 development, there is hereby provided a coal severance tax rebate.

§11-13EE-2. Definitions.

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

5 (b) *Terms defined*—

6 (1) “Affiliated group” means one or more chains of corporations, limited liability entities, or
7 partnerships, or any combination thereof, connected through the ownership of stock or ownership

8 interests with a common parent which is a corporation, limited liability entity, or partnership, but
9 only if the common parent owns directly, or indirectly, a controlling interest in each of the members
10 of the group.

11 (2) "Business" means and is limited to the activity of producing coal for sale, profit or
12 commercial use including coal preparation and processing.

13 (3) "Capital investment in new machinery, equipment, or improvements to real property"
14 means:

15 (A) Tangible personal property in the form of machinery and equipment that is purchased
16 on or after the effective date of this article and placed in service for direct use in the production of
17 coal, when the original or first use of the machinery or equipment commences in this state on or
18 after the effective date of this article;

19 (B) Tangible personal property in the form of machinery and equipment that is leased by
20 the taxpayer and placed in service for direct use in the production of coal by the taxpayer on or
21 after the effective date of this article, if the original or first use of the machinery or equipment
22 commences in this state, with the taxpayer, on or after the effective date of this article and the
23 machinery or equipment is depreciable, or amortizable, for federal income tax purposes and has
24 a useful life of five or more years for federal income tax purposes;

25 (C) Improvements to real property having a useful life or 5 or more years, that are
26 depreciable or amortizable for federal income tax purposes, purchased on or after the effective
27 date of this article, if the original or first use of such improvements commences in this state on or
28 after the effective date of this article and the improvements are placed in service for direct use in
29 the production of coal.

30 (4) "Coal mine" or "mine" includes:

31 (A) A "surface mine," or "surface mining operation" which means:

32 (i) Activities conducted on the surface of lands for the removal of coal, or, subject to the
33 requirements of §11-13EE-14 of this code, surface operations and surface impacts incident to an

34 underground coal mine, including the drainage and discharge from the mine. The activities
35 include: Excavation for the purpose of obtaining coal, including, but not limited to, common
36 methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the
37 uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other
38 chemical or physical processing; the cleaning, concentrating or other processing or preparation
39 and loading of coal for commercial purposes at or near the mine site; and

40 (ii) The areas upon which the above activities occur or where the activities disturb the
41 natural land surface. The areas also include any adjacent land, the use of which is incidental to
42 the activities; all lands affected by the construction of new roads or the improvement or use of
43 existing roads to gain access to the site of the activities and for haulage; and excavations,
44 workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles,
45 overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage
46 areas, processing areas, shipping areas and other areas upon which are sited structures,
47 facilities, or other property or materials on the surface, resulting from or incident to the activities:
48 *Provided*, That the activities do not include the extraction of coal incidental to the extraction of
49 other minerals where coal does not exceed 16 and two-thirds percent of the tonnage of minerals
50 removed for purposes of commercial use or sale, or coal prospecting. Surface mining does not
51 include any of the following:

52 (I) Coal extraction authorized pursuant to a government-financed reclamation contract;
53 (II) Coal extraction authorized as an incidental part of development of land for commercial,
54 residential, industrial or civic use; or

55 (III) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract;
56 and

57 (B) An "underground mine" which includes the shafts, slopes, drifts or inclines connected
58 with, or intended in the future to be connected with, excavations penetrating coal seams or strata,
59 which excavations are ventilated by one general air current or divisions thereof, and connected

60 by one general system of mine haulage over which coal may be delivered to one or more points
61 outside the mine, and the surface structures or equipment connected or associated therewith
62 which contribute directly or indirectly to the mining, preparation or handling of coal.

63 (5) "Coal mining operation" includes the mine and the coal preparation and processing
64 plant.

65 (6) "Coal preparation and processing plant" means any facility (excluding underground
66 mining operations) which prepares coal by one or more of the following processes: breaking,
67 crushing, screening, wet or dry cleaning, and thermal drying.

68 (7) "Coal production" means the privilege of severing, extracting, reducing to possession
69 and producing coal for sale, profit or commercial use and includes the processing of coal at a coal
70 preparation and processing plant.

71 (8) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean
72 the Tax Commissioner of the State of West Virginia, or his or her delegate.

73 (9) "Controlled group" means one or more chains of corporations connected through stock
74 ownership with a common parent corporation if stock possessing at least 50 percent of the voting
75 power of all classes of stock of each of the corporations is owned, directly or indirectly, by one or
76 more of the corporations; and the common parent owns directly stock possessing at least 50
77 percent of the voting power of all classes of stock of at least one of the other corporations.

78 (10) "Controlling interest" means:

79 (A) For a corporation, either more than 50 percent ownership, directly or indirectly, of the
80 total combined voting power of all classes of stock of the corporation, or more than 50 percent
81 ownership, directly or indirectly, of the beneficial ownership interest in the voting stock of all
82 classes of stock of the corporation;

83 (B) For a partnership, association, trust or other entity other than a limited liability
84 company, more than 50 percent ownership, directly or indirectly, of the capital, profits, or
85 beneficial interest in the partnership, association, trust, or other entity;

86 (C) For a limited liability company, either more than 50 percent ownership, directly or
87 indirectly, of the total membership interest of the limited liability company, or more than 50 percent
88 ownership, directly or indirectly, of the beneficial ownership interest in the membership interest of
89 the limited liability company.

90 (11) "Corporation" means any corporation, joint-stock company or association, and any
91 business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
92 certificate of interest or ownership or similar written instrument.

93 (12) "Delegate" used in the phrase "or his delegate", when used in reference to the Tax
94 Commissioner, means any officer or employee of the State Tax Department duly authorized by
95 the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform
96 the functions mentioned or described in this article.

97 (13) "Directly used or consumed in the production of coal" means used or consumed in
98 those activities or operations which constitute an integral and essential part of the production of
99 coal, as contrasted with and distinguished from those activities or operations which are simply
100 incidental, convenient or remote to the production of coal.

101 (A) Uses of tangible personal property or improvements to real property which constitute
102 direct use or consumption in the production of coal include only:

103 (i) New machinery, equipment, or improvements to real property that are depreciable, or
104 amortizable, and have a useful life of five or more years for federal income tax purposes, and that
105 are directly used in the production of coal in this state;

106 (ii) Transportation of coal within the coal mine from the coal face or coal deposit to the
107 exterior of the mine or to a point where the extracted coal is transported away from the mine;

108 (iii) Directly and physically recording the flow of coal during the production of coal including
109 those coal treatment processes specified in §11-13A-4 of this code;

110 (iv) Safety equipment and apparatus directly used in the production of coal, or to secure
111 the safety of mine personnel in direct use in the production of coal;

112 (v) Controlling or otherwise regulating atmospheric conditions required for the production
113 of coal;

114 (vi) Transformers, pumps, rock dusting equipment and other property used to supply
115 electricity or water, or to supply or apply rock dust directly used in the production of coal;

116 (vii) Storing, removal or transportation of economic waste, including coal gob, resulting
117 from the production of coal;

118 (viii) Engaging in pollution control or environmental quality or protection activity directly
119 relating to the production of coal; or

120 (ix) Otherwise using as an integral and essential part of the production of coal.

121 (B) Uses of tangible personal property or improvements to real property which do not
122 constitute direct use or consumption in the production of coal include, but are not limited to:

123 (i) Heating and illumination of office buildings;

124 (ii) Janitorial or general cleaning activities;

125 (iii) Personal comfort of personnel: *Provided*, That safety equipment and apparatus directly
126 used in the production of coal or to secure the safety of mine personnel is direct use in the
127 production of coal when the tangible personal property is depreciable, or amortizable, for federal
128 income tax purposes and has a useful life of five or more years for federal income tax purposes
129 when it is placed in service or use;

130 (iv) Production planning, scheduling of work or inventory control;

131 (v) Marketing, general management, supervision, finance, training, accounting and
132 administration;

133 (vi) Measuring or determining weight, and ash content, water content and other physical
134 and chemical characteristics of the coal after production;

135 (vii) An activity or function incidental or convenient to the production of coal, rather than
136 an integral and essential part of these activities.

137 (14) "Eligible taxpayer" means:

138 (A) Any person who pays the tax imposed by §11-13A-3 of this code on the privilege of
139 producing coal for sale, profit or commercial use for at least two years before the capital
140 investment in new machinery, equipment, or improvements to real property is placed in service
141 or use in this state; or

142 (B) A taxpayer that has experienced a change in business composition through merger,
143 acquisition, split-up, spin-off or other ownership changes or changes in the form of the business
144 organization from limited liability company to C corporation, or partnership, or from one form of
145 business organization to a different form of business organization, may constitute an eligible
146 taxpayer if the entity currently operating in this state was operating in a different form of business
147 organization in this state at least two years before the capital investment in new machinery,
148 equipment, or improvements to real property is placed in service or use in this state. In the case
149 of business composition change through merger, acquisition, split-up, spin-off or other ownership
150 changes the current business may constitute an eligible taxpayer if at least 50 percent of the
151 business assets of such component were actively and directly used in coal production activity in
152 this state for such two-year period. If less than 50 percent of the assets of the current entity were
153 not actively and directly used in coal production activity in this state for such two-year period, then
154 the current entity resulting from a business composition change through merger, acquisition, split-
155 up, spin-off or other ownership shall not constitute an eligible taxpayer.

156 (15) "Includes" and "including" when used in a definition contained in this article, shall not
157 be deemed to exclude other things otherwise within the generally understood meaning of the term
158 defined.

159 (16) "Original use" means the first use to which the property is put by anyone.

160 (17) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated
161 organization through or by means of which any business, operation or venture is carried on, which
162 is taxed under Subchapter K of the Internal Revenue Code, as defined in §11-24-3 of this code,
163 and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner"

164 includes a member in such a syndicate, group, pool, joint venture or other unincorporated
165 organization taxed under Subchapter K of the Internal Revenue Code.

166 (18) "Person" includes any natural person, corporation, partnership, limited liability
167 company or other business entity.

168 (19) "Production of coal" means the privilege of severing, extracting, reducing to
169 possession and producing coal for sale, profit or commercial use and includes the processing of
170 coal at the coal preparation and processing plant.

171 (20) "Property" means new machinery, equipment, or improvements to real property that
172 are depreciable or amortizable for federal income tax purposes and that have a useful life of five
173 or more years for federal income tax purposes.

174 (21) "Property purchased or leased for business expansion" means:

175 (A) *Included property*—Except as provided in subparagraph (B), the term "property
176 purchased or leased for business expansion" means tangible personal property, or improvements
177 to real property but only if the property was purchased, or leased and placed in service or use by
178 the taxpayer in West Virginia. This term includes only:

179 (i) Tangible personal property placed in service or use by the taxpayer on or after the
180 effective date of this article, with respect to which depreciation, or amortization in lieu of
181 depreciation, is allowable in determining the personal or corporation net income tax liability of the
182 business, or its equity owners, under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which
183 has a useful economic life at the time the property is placed in service or use in this state, of five
184 or more years.

185 (ii) Tangible personal property acquired by written lease having a primary term of 5 years
186 or more, that is depreciable or amortizable by the lessor, or lessee, for federal income tax
187 purposes and that has a useful life of five or more years for federal income purposes when it is
188 placed in service or use, and when the lease commences and was executed by the parties thereto

189 on or after the effective date of this article, if used as a component part of a new or expanded coal
190 mining operation in this state shall be included within this definition.

191 (iii) Improvements to real property having a useful life of five or more years, that are
192 depreciable or amortizable for federal income tax purposes, purchased on or after the effective
193 date of this article, if the original or first use of such improvements commences in this state on or
194 after the effective date of this article and the improvements are placed in service as a component
195 part of a new or expanded coal mining operation in this state.

196 (B) *Excluded property*—The term “property purchased or leased for business expansion”
197 shall not include:

198 (i) Machinery and equipment owned or leased by the taxpayer and improvements to real
199 property owned by a taxpayer for which credit was taken or is claimed under any other article of
200 this chapter;

201 (ii) Repair costs, including materials used in the repair, unless for federal income tax
202 purposes, must be capitalized and not expensed;

203 (iii) Motor vehicles licensed by the West Virginia Division of Motor Vehicles;

204 (iv) Airplanes;

205 (v) Off-premise transportation equipment;

206 (vi) Machinery, equipment, or improvements to real property that are primarily used
207 outside this state;

208 (vii) Machinery, equipment, or improvements to real property that are acquired incident to
209 the purchase of the stock or assets of the seller; and

210 (viii) Used machinery, equipment, or improvements to real property.

211 (C) *Purchase date*—New machinery, equipment, or improvements to real property shall
212 be deemed to have been purchased prior to a specified date only if:

213 (i) The machinery, equipment, or improvements to real property were owned by the
214 taxpayer prior to the effective date of this article or were acquired by the taxpayer pursuant to a
215 binding purchase contract which was in effect prior to the effective date of this article; or

216 (ii) In the case of leased machinery and equipment, there was a binding written lease or
217 contract to lease identifiable machinery or equipment in effect prior to the effective date of this
218 article.

219 (22) "Purchase" means any acquisition of new machinery, equipment, or improvements to
220 real property, but only if:

221 (A) The property or the improvement to the property is not acquired from a person whose
222 relationship to the person acquiring it would result in the disallowance of deductions under Section
223 267 or 707 (b) of the United States Internal Revenue Code, as defined in §11-24-3 of this code;

224 (B) The property or the improvement to the property is not acquired by one component
225 member of a controlled group from another component member of the same controlled group;
226 and

227 (C) The basis of the property or improvements to property for federal income tax purposes,
228 in the hands of the person acquiring it, is not determined:

229 (i) In whole or in part by reference to the federal adjusted basis of the property or the
230 improvements to property in the hands of the person from whom it was acquired; or

231 (ii) Under Section 1014 (e) of the United States Internal Revenue Code.

232 (23) "Qualified coal mining activity" means any business or other activity subject to the tax
233 imposed by §11-13A-3 of this code on the privilege of severing, extracting, reducing to possession
234 and producing coal for sale, profit or commercial use including the treatment process described
235 as mining in §11-13A-4(a)(1) of this code.

236 (24) "Qualified investment" means capital investment in new machinery, equipment, or
237 improvements to real property directly used in the production of coal in this state that is

238 depreciable, or amortizable, for federal income tax purposes and has a useful life for federal
239 income tax purposes of five or more years when it is placed in service or use in this state.

240 (25) "Rebate" means the amount of rebate allowable under §11-13EE-3 of this code.

241 (26) "Related person" means:

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

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

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

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

248 For purposes of this subdivision, the term "control", with respect to a corporation, means
249 ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined
250 voting power of all classes of the stock of the corporation entitled to vote. "Control," with respect
251 to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest
252 in the principal or income of the trust. The ownership of stock in a corporation, of a capital or
253 profits interest in a partnership or association, or of a beneficial interest in a trust is determined in
254 accordance with the rules for constructive ownership of stock provided in section 267 (c) of the
255 United States Internal Revenue Code, other than paragraph (3) of that section.

256 (27) "State portion of severance taxes paid" means the portion of severance taxes due
257 under §11-13A-3 of this code when computed at the 4.65 percent rate of tax.

258 (28) "Tangible personal property" means, and is limited to, new machinery and equipment
259 that is depreciable, or amortizable, for federal income tax purposes and that has a useful life of
260 five or more years for federal income tax purposes when it is placed in service or use in this state.

261 (29) "Taxpayer" means any person exercising the privilege of severing, extracting,
262 reducing to possession, and producing coal for sale, profit, or commercial use coal, which
263 privilege is taxable under §11-13A-3 of this code.

264 (30) “This code” means the Code of West Virginia, 1931, as amended.

265 (31) “This state” means the State of West Virginia.

266 (32) “United States Internal Revenue Code” or “Internal Revenue Code” means the
267 Internal Revenue Code as defined in §11-24-3 of this code.

§11-13EE-3. Rebate allowable.

1 (a) *Rebate allowable*—Eligible taxpayers shall be allowed a rebate for a portion of state
2 severance taxes imposed by §11-13A-3 of this code on the privilege of severing, extracting,
3 reducing to possession and producing coal for sale, profit, or commercial use that is attributable
4 to the increase in the production of coal that is attributable to and the consequence of the
5 taxpayer’s capital investment in new machinery, equipment, or improvements to real property
6 used at the coal mine, or coal preparation and processing facility. The amount of this rebate shall
7 be determined and applied as hereinafter provided in this article.

8 (b) *Amount of rebate*—The amount of rebate allowable is determined by multiplying the
9 amount of the taxpayer’s capital investment in new machinery, equipment, or improvements to
10 real property directly used in the production of coal at a coal mining operation in this state by 35
11 percent. The product of this computation establishes the maximum amount of rebate allowable
12 under this article for the capital investment in new machinery, equipment, or improvements to real
13 property.

14 (c) *Application of rebate amount*—The amount of rebate allowable is determined by
15 applying the rebate amount determined in subsection (b) of this section against 80 percent of the
16 state portion of the severance tax paid on the privilege of severing, extracting, reducing to
17 possession, and producing coal for sale, profit, or commercial use that is directly attributable to
18 the increased production of coal at the mine due to taxpayer’s capital investment in new
19 machinery, equipment, or improvements to real property at the mine or coal processing and
20 preparation plant.

21 (d) The amount of severance tax attributable to the increase in coal production at a mine
22 due to the capital investment in new machinery, equipment, or improvements to real property shall
23 be determined by comparing (1) the state portion of the severance tax due under §11-13A-3 of
24 this code on coal produced from the mine during calendar year 2018, or if the taxpayer has
25 produced coal for five years at the mine at which its capital investment in new machinery,
26 equipment, or improvements to real property are placed in service or use the average of the state
27 portion of the severance tax due under §11-13A-3 of this code on coal produced from the mine
28 during the five year period ending on December 31, 2018, whichever is less, before allowance of
29 any tax credits, except as provided in subsection (e) of §11-13EE-3 of this code (2) with the state
30 severance tax due on coal produced at the mine during the then current calendar year in which
31 the rebate amount is claimed, before allowance for any tax credits. When the amount in (2) of this
32 section is greater than the amount in (1) of this section, the difference is the amount of state
33 severance tax due to the increase in coal production at the mine that is attributable to the capital
34 investment in new machinery, equipment, or improvements to real property: *Provided*, That when
35 the producer of the coal operates more than one mine in this state, or is a member of a controlled
36 or affiliated group that operates one or more coal mines in this state, no credit shall be allowed
37 unless the total coal production from all mines operated by the taxpayer or by members of the
38 affiliated or controlled group in this state has increased: *Provided, however*, That in no case shall
39 the severance tax attributable to any mine other than the specific mine at which capital investment
40 in new machinery, equipment, or improvements to real property is directly used in a coal mining
41 operation has been placed in service or use be offset by this rebate.

42 (e) When the eligible taxpayer is a new business that has produced coal in this state for
43 two years before making the capital investment in new machinery, equipment, or improvements
44 to real property then, for purposes of subdivision (1) in subsection (d) of this section, the base
45 shall be the average amount of state severance tax due under §11-13A-3 of this code on coal
46 produced in this state during this two-year period.

47 (f) No rebate shall be allowed under this article when credit is claimed under any other
48 article of this chapter for capital investment in the new machinery, equipment, or improvements
49 to real property. No credit shall be allowed under any other article of this chapter when rebate is
50 allowed under this article for the capital investment in new machinery, equipment, or
51 improvements to real property.

§11-13EE-4. Information required to determine amount of rebate allowable.

1 (a) A taxpayer claiming rebate under this article who operates more than one coal mine in
2 this state shall provide a schedule with the annual severance tax return filed under §11-13A-1 *et*
3 *seq.* of this code that shows, for each coal mine, the number of tons of coal produced and the
4 gross value of the coal produced at each mine during the taxable year.

5 (b) When a taxpayer claiming rebate under this article is a member of an affiliated or
6 controlled group, as the case may be, that operates more than one coal mine in this state the
7 group shall provide a schedule with its annual severance tax return filed under §11-13A-1 *et seq.*
8 of this code for the taxable year that shows for each coal mine operated in this state by the
9 affiliated or controlled group, as the case may be, the number of tons of coal produced at each
10 mine and the gross value of the coal produced at each mine during the taxable year.

§11-13EE-5. Claim for rebate.

1 (a) After the severance taxes due for the taxable year are paid, a taxpayer may file a claim
2 under this article for rebate of up to 80 percent of the state portion of the additional severance
3 taxes paid under §11-13A-3 of this code that are directly attributable to the taxpayer's capital
4 investment in new machinery, equipment, or improvements on real property placed in service or
5 use during that taxable year as set forth in §11-13EE-3 of this code.

6 (b) When the amount of rebate claimed exceeds 80 percent of the additional state
7 severance tax paid as provided in subsection (a) of this section, the unused portion of the rebate
8 amount may be carried forward and rebated by the Tax Commissioner after severance taxes due
9 in subsequent years are paid: *Provided*, That the carryforward period may not exceed 10 years

10 from the date the capital investment in new machinery, equipment, or improvements to real
11 property is placed in service or use in this state.

§11-13EE-6. Suspension of payment of rebate.

1 (a) No rebate may be paid under this article when the taxpayer, or any member of the
2 taxpayer's combined or affiliated group, as the case may be, is delinquent in the payment of
3 severance taxes imposed pursuant to §11-13A-3 of this code and any local, state, or federal tax
4 or fee until such time as the delinquency is cured.

5 (b) For purposes of this section, a taxpayer is not delinquent if the taxpayer is contesting
6 an assessment in the Office of Tax Appeals or in any court of this state or of the appropriate
7 federal agency or court, or is complying with the terms of any payment plan agreement.

8 (c) In the case of a taxpayer that files a combined tax return as a member of a unitary
9 group, no rebate under this article that is earned by one member of the combined group, but not
10 fully used by or allowed to that member, may be claimed, in whole or in part, by another member
11 of the group.

§11-13EE-7. Burden of proof; application required; failure to make timely application.

1 (a) *Burden of proof*—The burden of proof is on the taxpayer to establish by clear and
2 convincing evidence that the taxpayer is entitled to the benefits allowed by this article.

3 (b) *Application for rebate required*—

4 (1) Notwithstanding any provision of this article to the contrary, no rebate shall be paid
5 under this article for any capital investment in new machinery, equipment, or improvements to
6 real property placed in service or use until the person asserting a claim for the allowance of rebate
7 under this article makes written application to the Tax Commissioner for allowance of rebate as
8 provided in this section.

9 (2) An application for rebate shall be filed, in the form prescribed by the Tax Commissioner,
10 no later than the last day for filing the severance tax return, determined by including any
11 authorized extension of time for filing the return, for the taxable year in which the machinery,

12 equipment, or improvements to which the rebate relates is placed in service or use and all
13 information required by the form is provided.

14 (3) A separate application for rebate is required for each taxable year during which the
15 taxpayer places new machinery, equipment, or improvements in service or use in a mine or coal
16 preparation and processing facility in this state.

17 (c) *Failure to make timely application.* — The failure to timely apply for the rebate results
18 in the forfeiture of 25 percent of the rebate amount otherwise allowable under this article. This
19 penalty applies annually until the application is filed.

§11-13EE-8. Identification of capital investment property.

1 Every taxpayer who claims a rebate pursuant to the provisions of this article shall maintain
2 sufficient records to establish the following facts for each item of qualified investment property:

- 3 (1) Its identity;
- 4 (2) Its actual or reasonably determined cost;
- 5 (3) Its useful life for federal income tax purposes;
- 6 (4) The month and taxable year in which it was placed in service;
- 7 (5) The amount of rebate claimed; and
- 8 (6) The date it was disposed of or otherwise ceased to be qualified capital investment
9 property.

§11-13EE-9. Failure to keep records of capital investment property.

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

3 (1) A taxpayer is treated as having disposed of, during the taxable year, any machinery,
4 equipment or improvements to real property that the taxpayer cannot establish was still on hand,
5 in this state, at the end of that year.

6 (2) If a taxpayer cannot establish when capital investment in new machinery, equipment,
7 or improvements to real property was reported for purposes of claiming this credit during the

8 taxable year, or the machinery, equipment, or improvements to real property were placed in
9 service or use, the taxpayer is treated as having placed it in service or use in the most recent prior
10 taxable year in which similar machinery, equipment, or improvements to real property were placed
11 in service or use, unless the taxpayer can establish that the machinery, equipment, or
12 improvements to real property were placed in service or use in the most recent taxable year is
13 still on hand. In that event, the taxpayer will be treated as having placed the returned machinery,
14 equipment, or improvements to real property in service or use in the next most recent taxable
15 year.

§11-13EE-10. Transfer of qualified investment property to successors.

1 (a) *Mere change in form of business*—Machinery, equipment, or improvements to real
2 property may not be treated as disposed of under §11-13EE-9 of this code, by reason of a mere
3 change in the form of conducting the business as long as the machinery, equipment, or
4 improvements to real property is retained in the successor business in this state, and the
5 transferor business retains a controlling interest in the successor business. In this event, the
6 successor business is allowed to claim the rebate amount of credit still available with respect to
7 the machinery and equipment transferred, and the transferor business may not be required to
8 redetermine the amount of rebate allowed in earlier years.

9 (b) *Transfer or sale to successor*—Machinery, equipment, or improvements to real
10 property is not treated as disposed of under §11-13EE-11 of this code by reason of any transfer
11 or sale to a successor business which continues to operate machinery, equipment, or
12 improvements to real property at the mine in this state at which the machinery, equipment, or
13 improvements to real property were first placed in service or use. Upon transfer or sale, the
14 successor shall acquire the amount of rebate, if any, that remains available under this article, and
15 the transferor business is not required to redetermine the amount of rebate allowed in earlier
16 years.

§11-13EE-11. Recapture of rebate; recapture tax imposed.

1 (a) *When recapture tax applies*—

2 (1) Any person who places machinery, equipment, or improvements to real property in
3 service or use for purposes of this credit and who fails to use the machinery, equipment, or
4 improvements to real property for at least five years in the production of coal in this state shall
5 pay the recapture tax imposed by subsection (b) of this section.

6 (2) This section does not apply when §11-13EE-10 of this code applies: *Provided, That,*
7 the successor, or the successors, and the person, or persons, who previously claimed credit
8 under this article with respect to the machinery, equipment, or improvements to real property, are
9 jointly and severally liable for payment of any recapture tax subsequently imposed under this
10 section with respect to the machinery, equipment, or improvements to real property used to qualify
11 for rebate under this article.

12 (b) *Recapture tax imposed*—The recapture tax imposed by this subsection is the amount
13 determined as follows. If the taxpayer prematurely removes machinery, equipment, or
14 improvements to real property placed in service when considered as a class from economic
15 service in the taxpayer's coal production activity in this state, the taxpayer shall recapture the
16 amount of rebate claimed under this article for the taxable year, and all preceding taxable years,
17 attributable to the machinery, equipment, or improvements to real property which has been
18 prematurely removed from service. The amount of tax due under this subsection is an amount
19 equal to the amount of rebate that is recaptured pursuant to this subsection.

20 (c) *Payment of recapture tax*—The amount of tax recaptured under this section is due and
21 payable on the day the person's annual return is due for the taxable year, in which this section
22 applies, under §11-13A-1 *et seq.* of this code. When the employer is a partnership, limited liability
23 company or an S corporation for federal income tax purposes, the recapture tax shall be paid by
24 those persons who are partners in the partnership, members in the company, or shareholders in
25 the S corporation, in the taxable year in which recapture tax is imposed under this section.

§11-13EE-12. Interpretation and construction.

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

5 (b) The provisions of this article shall be reasonably construed in order to effectuate the
6 legislative intent recited in §11-13EE-1 of this code.

§11-13EE-13. Rebate report.

1 (a) The Tax Commissioner shall provide to the Joint Committee on Government and
2 Finance by July 1, 2022, and on the first day of July of each year thereafter, a report detailing the
3 amount of rebate claimed pursuant to this article. The report is to include the amount of rebate
4 claimed against the severance tax imposed pursuant to §11-13A-2 of this code.

5 (b) Taxpayers claiming the rebate shall provide the information the Tax Commissioner
6 may require to prepare the report: *Provided*, That the information provided is subject to the
7 confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code.

8 (c) The Tax Commissioner shall identify any issues he or she has in the administration
9 and enforcement of this rebate and make any suggestions the Commissioner may have for
10 improving the credit or the administration of the rebate.

§11-13EE-14. Rules.

1 The Tax Commissioner may promulgate such interpretive, legislative, and procedural
2 rules as the commissioner deems to be useful or necessary to carry out the purpose of this article
3 and to implement the intent of the Legislature. The Tax Commissioner may promulgate
4 emergency rules if they are filed in the West Virginia Register before January 1, 2020. All rules
5 shall be promulgated in accordance with the provisions of §29A-3-1 *et seq.* of this code.

§11-13EE-15. Severability.

1 (a) If any provision of this article or the application thereof is for any reason adjudged by
2 any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate

3 the remainder of the article, but shall be confined in its operation to the provision thereof directly
4 involved in the controversy in which the judgment shall have been rendered, and the applicability
5 of the provision to other persons or circumstances may not be affected thereby.

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

§11-13EE-17. Effective date.

1 The rebate allowed by this article is allowed for capital investment in new machinery,
2 equipment, or improvements to real property placed in service or use in this state on or after the
3 effective date of this article.

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

FILED

2019 MAR 27 P 3:34

Robert Caputo
.....
Chairman, House Committee

OFFICE WEST VIRGINIA
SECRETARY OF STATE

C. S. T.
.....
Member - Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Steve Harris
.....
Clerk of the House of Delegates

Joe Lavin
.....
Clerk of the Senate

Earl H. Funderburk
.....
Speaker of the House of Delegates

Matthew G. Conaway
.....
President of the Senate

The within *is approved* this the *27th*
day of *March* 2019.

James E. Cantor
.....
Governor

PRESENTED TO THE GOVERNOR

1951

Time 2:40 pm