

HB 4421

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2020 MAR 25 P 4:30

FILED

Committee Substitute

for

House Bill 4421

BY DELEGATES HOUSEHOLDER, J. KELLY, CRISS,
WESTFALL, ANDERSON, STORCH, GRAVES, ROWAN,
PACK, LINVILLE AND MAYNARD

[Passed March 5, 2020; 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 §5B-2J-1 and §5B-2J-2; and to amend said code by adding thereto a new
3 article, designated §11-13FF-1, §11-13FF-2, §11-13FF-3, §11-13FF-4, §11-13FF-5, §11-
4 13FF-6, §11-13FF-7, §11-13FF-8, §11-13FF-9, and §11-13FF-10, all relating to the
5 creation of the Natural Gas Liquids Economic Development Act and the West Virginia
6 Natural Gas Liquids Property Tax Adjustment Act; providing for short titles; making
7 legislative findings and declarations; defining terms; creating a tax credit for eligible
8 taxpayers who are in business for the transportation and storage of natural gas liquids;
9 establishing eligibility requirements; defining the amount of the tax credit as being the
10 amount paid yearly in West Virginia ad valorem property tax on inventory and equipment
11 by an eligible taxpayer; providing for the application of the tax credit against personal
12 income tax liability or the corporate net income tax liability; providing for the carrying
13 forward of the tax credits; defining the tax credits' relationship to other available tax credits;
14 providing for the expiration of unused tax credits; providing for annual schedules to be
15 filed to claim the tax credit; providing for successors and transfers of the tax credit under
16 certain conditions; providing for recapture of tax credits, interest, civil penalties, and
17 additional taxes under certain conditions when a tax payer improperly claims a tax credit;
18 providing a statute of limitations regarding tax filings with the tax credit; providing for
19 reporting to the Legislature on the tax credits applied; authorizing the Tax Commissioner
20 to promulgate rules; and providing for an effective date and an expiration date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2J. NATURAL GAS LIQUIDS ECONOMIC DEVELOPMENT ACT.

§5B-2J-1. Short Title.

1 This article shall be known and cited as the "Natural Gas Liquids Economic Development
2 Act."

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

1 (a) The Legislature finds that:

2 (1) The advent and advancement of new and existing technologies and drilling practices
3 have created the opportunity for the efficient development of natural gas, including natural gas
4 liquids such as ethane, propane, butane, isobutane and pentanes, contained in underground
5 shales and other geological formations.

6 (2) With the development of natural gas liquids from shales and other geological
7 formations comes the opportunity for economic development in related areas of the economy
8 including, but not limited to, manufacturing, transmission and storage of natural gas liquids and
9 related products, the use of such products in manufacturing, the consumption of such products,
10 and the transportation of manufactured products.

11 (3) Producers of natural gas liquids, transporters and storers of natural gas liquids, and
12 manufacturers of products using natural gas liquids face a significant number of regulatory
13 requirements, some of which may be redundant, inconsistent, or overlapping. Agencies should
14 work together, where practical, to avoid duplication, promote better coordination and reduce these
15 requirements, thus reducing costs, simplifying and harmonizing rules, and streamlining regulatory
16 oversight.

17 (4) In developing regulatory actions and identifying appropriate approaches, agencies
18 should attempt to promote coordination, simplification, and harmonization.

19 (5) Agencies should also seek to identify, as appropriate, means to achieve regulatory
20 goals that are designed to promote innovation.

21 (6) Agencies should review their existing significant legislative, interpretive and procedural
22 rules to determine whether any such rules should be modified, streamlined, expanded or repealed
23 so as to make the agency's regulatory program more effective and less burdensome in achieving
24 the regulatory objectives.

25 (7) The West Virginia Economic Development Authority established in §31-15-1 *et seq.* of
26 this code and the West Virginia Infrastructure and Jobs Development Council created in §31-15A-
27 1 *et seq.* of this code, should, where appropriate, provide assistance that grows or sustains the
28 natural gas liquids segment of the economy.

29 (b) The Legislature declares that facilitating the development of business activity directly
30 and indirectly related to development, transportation, storage and use of the natural gas liquids
31 serves the public interest of the citizens of this state by promoting economic development and
32 improving economic opportunities for the citizens of this state.

CHAPTER 11. TAXATION.

ARTICLE 13FF. THE WEST VIRGINIA NATURAL GAS LIQUIDS PROPERTY TAX ADJUSTMENT ACT.

§11-13FF-1. Short title.

1 This article shall be known and cited as the “West Virginia Natural Gas Liquids Property
2 Tax Adjustment Act.”

§11-13FF-2. Definitions.

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

4 (b) *Terms defined.* –

5 “Affiliate” means and includes:

6 (A) An individual, corporation, partnership, affiliate, association or trust or any combination
7 or group thereof controlled by the taxpayer;

8 (B) An individual, corporation, partnership, affiliate, association or trust or any combination
9 or group thereof that is in control of the taxpayer;

10 (C) An individual, corporation, partnership, affiliate, association or trust or any combination
11 or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust
12 or any combination or group thereof that is in control of the taxpayer; or

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

14 "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of
15 West Virginia or the Tax Commissioner's delegate.

16 "Control", with respect to a corporation, means ownership, directly or indirectly, of stock
17 possessing 50 percent or more of the total combined voting power of all classes of the stock of
18 the corporation which entitles its owner to vote. "Control," with respect to a trust, means
19 ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or
20 income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a
21 partnership or association or of a beneficial interest in a trust shall be determined in accordance
22 with the rules for constructive ownership of stock provided in Section 267(c) of the United States
23 Internal Revenue Code: *Provided*, That paragraph (3), Section 267(c) of the United States Internal
24 Revenue Code does not apply.

25 "Corporation" means any corporation, joint-stock company or association and any
26 business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
27 certificate of interest or ownership or similar written instrument.

28 "Delegate" means, when used in reference to the Tax Commissioner, any officer or
29 employee of the Tax Division of the Department of Revenue duly authorized by the commissioner
30 directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned
31 or described in this article.

32 "Eligible taxpayer" means any natural gas liquids storer or natural gas liquids transporter
33 that is subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.
34 "Eligible taxpayer" also means and includes those members of an affiliated group of taxpayers
35 engaged in a unitary business, in which one or more members of the affiliated group is a person

36 subject to the tax imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code. Application of
37 the credit against the taxes is limited to the single entity, from among the affiliated group of
38 taxpayers, that earned the credit. Application of the credit against tax is limited to that single
39 entity's proportionate share of taxable income. No tax credit earned by one member of the
40 affiliated group, may be used, in whole or in part, by any other member of the affiliated group or
41 applied, in whole or in part, against the total income of the combined group.

42 "Natural gas liquids" or "NGLs" means hydrocarbons removed from a hydrocarbon stream
43 consisting primarily of natural gas (methane) by condensation, cryogenic cooling or other method
44 and maintained in a liquid state for storage, transportation, use in manufacturing or consumption,
45 including, but not limited to, ethane, propane, butane, isobutane and pentanes, and derivatives
46 thereof including, but not limited to, ethylene and propylene, but do not include natural gas which
47 may include some NGLs as part of the gas stream.

48 "Natural gas liquids inventory and equipment" means, and is limited to, natural gas liquids
49 equipment used in the transport or storage of NGLs by a natural gas liquids transporter or natural
50 gas liquids storer.

51 "Natural gas liquids transporter" means a person who owns or operates pipeline facilities
52 used for the transportation and delivery of NGLs for storage, use in manufacturing or
53 consumption, but does not include pipelines used for the transportation of natural gas that may
54 include some NGLs as part of the gas stream.

55 "Natural gas liquids storer" means a person who owns or operates one or more
56 underground facilities designed and developed for the receipt, storage and subsequent delivery
57 of NGLs for use in manufacturing or consumption.

58 "Natural person" or "individual" means a human being.

59 "Partnership" and "partner" means and includes a syndicate, group, pool, joint venture or
60 other unincorporated organization through or by means of which any business, financial operation

61 or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship.

62 The term “partner” includes a member in a syndicate, group, pool, joint venture or organization.

63 “Person” means and includes any natural person, corporation, limited liability company or
64 partnership.

65 “Taxpayer” means any person subject to the taxes imposed under §11-21-1 *et seq.* or
66 §11-24-1 *et seq.* of this code.

67 “Tax year” or “taxable year” means the tax year of the taxpayer for federal income tax
68 purposes.

69 “Unitary business” means a unitary business as defined in §11-24-3a of this code.

§11-13FF-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a credit against the taxes imposed under
2 §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, as determined under this article.

§11-13FF-4. Amount of credit allowed.

1 (a) *Credit allowed.* – Eligible taxpayers are allowed a credit against the tax imposed under
2 §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, the application of which and the amount of
3 which shall be determined as provided in this article.

4 (b) *Amount of credit.* – The amount of credit allowed to the eligible taxpayer is the amount
5 of West Virginia *ad valorem* property tax paid on the value of inventory and equipment of the
6 eligible taxpayer during the personal income tax year and corporate net income tax year, as
7 applicable.

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

1 (a) *Application of credit against personal income tax or corporate net income tax.* – The
2 amount of the credit shall be taken against the tax liabilities of the eligible taxpayer for the current
3 taxable year imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

4 (b) *Carry forward credit allowed.* – Any credit remaining after application of the credit
5 against the tax liabilities specified in subsection (a) of this section for the current taxable year

6 does not carry back to any prior taxable year, but is carried forward to a subsequent taxable year
7 for up to three taxable years. The credit allowed under this article shall be applied after application
8 of all other applicable tax credits allowed for the taxable year against the taxes imposed by §11-
9 21-1 *et seq.* of this code and after application of all other applicable tax credits allowed for the
10 taxable year against the taxes imposed by §11-24-1 *et seq.* of this code.

11 (c) *Annual schedule.* – For purposes of asserting the credit against tax, the taxpayer must
12 prepare and file an annual schedule showing the amount of tax paid for the taxable year and the
13 amount of credit allowed under this article. The annual schedule shall set forth the information
14 and be in the form prescribed by the Tax Commissioner.

§11-13FF-6. Availability of credit to successors.

1 (a) *Transfer or sale of assets.* –

2 (1) Where there has been a transfer or sale of the business assets of an eligible taxpayer
3 to a successor which subsequent to the transfer constitutes an eligible taxpayer as defined in this
4 article and which remains subject to the taxes prescribed under §11-21-1 *et seq.* or §11-24-1 *et*
5 *seq.* of this code, the successor eligible taxpayer is entitled to the credit allowed under this article:
6 *Provided,* That the successor taxpayer otherwise remains in compliance with the requirements of
7 this article for entitlement to the credit.

8 (2) For any taxable year during which a transfer, or sale of the business assets of an
9 eligible taxpayer to a successor eligible taxpayer under this section occurs, or a merger occurs
10 pursuant to which credit is allowed under this article, the credit allowed under this article shall be
11 apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based
12 on the number of days during the taxable year that each taxpayer owned the transferred business
13 assets.

14 (b) *Stock purchases.* – Where a corporation which is an eligible taxpayer entitled to the
15 credit allowed under this article is purchased through a stock purchase by a new owner and
16 remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to

17 the credit allowed under this article will not be affected by the ownership change: *Provided*, That
18 the corporation otherwise remains in compliance with the requirements of this article for
19 entitlement to the credit.

20 (c) *Mergers.* –

21 (1) Where a corporation or other entity which is an eligible taxpayer entitled to the credit
22 allowed under this article is merged with another corporation or entity, the surviving corporation
23 or entity is entitled to the credit to which the predecessor eligible taxpayer was originally entitled:
24 *Provided*, That the surviving corporation or entity otherwise complies with the provisions of this
25 article.

26 (2) The amount of credit available in any taxable year during which a merger occurs shall
27 be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer
28 based on the number of days during the taxable year that each owned the transferred business
29 assets.

30 (d) No provision of this section or of this article may be construed to allow sales or other
31 transfers of the tax credit allowed under this article. The credit allowed under this article can be
32 transferred only in circumstances where there is a valid successorship as described under this
33 section.

§11-13FF-7. Credit recapture; interest; penalties; additions to tax; statute of limitations.

1 (a) If it appears upon audit or otherwise that any person or entity has taken the credit
2 against tax allowed under this article and was not entitled to take the credit, then the credit
3 improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax
4 year for which the credit was improperly taken. Any additional taxes due under this chapter shall
5 be remitted with the amended return or returns filed with the Tax Commissioner, along with
6 interest, as provided in §11-10-17 of this code and such other penalties and additions to tax as
7 may be applicable pursuant to the provisions of §11-10-1 *et seq.* of this code.

8 (b) Notwithstanding the provisions of §11-10-1 *et seq.* of this code to the contrary,
9 penalties and additions to tax imposed under that article may be waived at the discretion of the
10 Tax Commissioner: *Provided*, That interest is not subject to waiver.

11 (c) Notwithstanding the provisions of §11-10-1 *et seq.* of this code to the contrary, the
12 statute of limitations for the issuance of an assessment of tax by the Tax Commissioner is five
13 years from the date of filing of any tax return on which this credit was taken or five years from the
14 date of payment of any tax liability calculated pursuant to the assertion of the credit allowed under
15 this article, whichever is later.

§11-13FF-8. Report on credit.

1 (a) The Tax Commissioner shall provide to the Joint Committee on Government and
2 Finance by July 1, 2022, and on July 1, of each year thereafter, a report detailing the amount of
3 credit claimed pursuant to this article. The report is to include the amount of credit claimed against
4 the personal income tax and the amount of credit claimed against the corporate net income tax.

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

§11-13FF-9. Effective date and expiration date.

1 (a) This article shall be effective for corporate net income tax years and personal income
2 tax years beginning on or after July 1, 2020.

3 (b) This article shall expire and have no further force or effect for all tax years which begin
4 on or after July 1, 2030, and all accrued but unused credits shall be forfeited upon expiration of
5 this article.

§11-13FF-10. Rule-making.

1 In order to effectuate the purposes of this article, the Tax Commissioner may promulgate
2 legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

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

Noel Caputo
.....
Chairman, House Committee

Mark R. Warner
.....
Chairman, Senate Committee

FILED
2020 MAR 25 P 4:30
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Originating in the House.

In effect ninety days from passage.

Steve Anderson
.....
Clerk of the House of Delegates

Jae Linn
.....
Clerk of the Senate

Raymond H. Kanawha
.....
Speaker of the House of Delegates

MITCHELL B. LAMMIE
.....
President of the Senate

The within *is approved* this the *25th*
day of *March*, 2020.

James E. Cantor
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 19 2020

Time 11:27am