WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2499

BY DELEGATES HOWELL, HOUSEHOLDER, HORST, HAMRICK, B. WARD, STEELE, FOSTER, KESSINGER, LINEVILLE, ELLINGTON, AND HANSHAW (MR. SPEAKER)

[Originating in the Committee on Finance, March 15, 2020]

A BILL to amend and reenact §11-6F-2 and §11-13S-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §11-13KK-1, §11-13KK-2, §11-13KK-3, §11-13KK-4, §11-13KK-5, §11-13KK-6, §11-13KK-7, §11-13KK-8, §11-13KK-9, §11-13KK-10, §11-13KK-11, §11-13KK-12, §11-13KK-13, §11-13KK-14, §11-13KK-15, §11-13KK-16, §11-13KK-17, and adding thereto a new section designated §11-15-9t, all relating generally to taxation for the manufacturing, sale, and use of certain defined products to encourage economic growth; amending the definition of qualified capital addition to a manufacturing facility for purposes of special method for appraising qualified capital additions for property tax purposes; amending the formula for calculating the manufacturing investment tax credit amount allowed for manufacturing investment to include small arms ammunition manufacturing and small arms, ordinance and ordinance accessories manufacturing; increasing the amount of such allowable credit for said industries; creating the West Virginia Tax Credit For Federal Excise Tax Imposed Upon Small Arms And Ammunition Manufacturers; providing for administration and enforcement of the tax credit; making legislative findings; stating legislative purpose; defining terms; specifying an amount of credit allowable based upon the amount of federal excise tax paid, providing limitations based upon qualified investment amount; providing conditions for qualification and use; defining in service or use; providing for the application of the credit to the corporate net income tax and the personal income tax, as appropriate; providing for methods of calculation of the qualified investment; providing for carry over and forfeiture of unused tax credits; providing limitations for credits being carried over; allowing transfer of qualified investment property without forfeiture under certain circumstances; requiring identification of qualified investment property and record keeping; providing civil and criminal penalties for failure to keep required records; providing for interpretation and construction; requiring timely filing of application for credit; specifying burden of proof; requiring periodic tax credit review and accountability reports;

authorizing rulemaking; making credit subject to West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act; providing for severability; and exempting sales of certain defined small arms and small arms ammunition from state sales and use taxes and providing effective dates, and removing obsolete code concerning the business franchise tax.

Be it enacted by the Legislature of West Virginia:

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

§11-6F-2. Definitions.

As used in this article, the term:

"Certified capital addition property" means all real property and personal property included within or to be included within a qualified capital addition to a manufacturing facility that has been certified by the State Tax Commissioner in accordance with §11-6F-4 of this code: *Provided*, That airplanes and motor vehicles licensed by the Division of Motor Vehicles are not certified capital addition property.

"Manufacturing" means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of 31, 32, or 33. For purposes of this article, manufacturing also includes the processing of raw natural gas or oil to recover or extract liquid hydrocarbons, which activity is classified under North American Industry Classification System code number 211130. This definition does not mean or include any other processes or activities classified, categorized, grouped, or identified under North American Industry Classification System code number 211130.

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

"Personal property" means all property specified in §2-2-10(q) of this code and includes, but is not limited to, furniture, fixtures, machinery, and equipment, pollution control equipment, computers, and related data processing equipment, spare parts, and supplies.

"Qualified capital addition to a manufacturing facility" means either:

(1) All real property and personal property, the combined original cost of which exceeds $50 million to be constructed, located, or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least $100 million. If the capital addition is made in a steel, chemical, or polymer alliance zone as designated from time-to-time by executive order of the Governor, then the person making the capital addition may, for purposes of satisfying the requirements of this subsection, join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least $100 million if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility, consists of a facility used to store, handle, process, or produce raw materials for the manufacturing facility, consists of a facility used to store, handle, or process natural gas to produce fuel for the generation of steam or electricity for the manufacturing facility or consists of a facility that generates steam or electricity for the manufacturing facility, including, but not limited to, a facility that converts coal to a gas or liquid for the manufacturing facility's use in heating, manufacturing or generation of electricity. When the new capital addition is a facility that is or will be processing raw natural gas or oil to recover or extract liquid hydrocarbons, or is a manufacturing facility that uses product produced at a facility engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons, then wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted and where the term "50 million" is used, the term "10 million" shall be substituted; and where the

term “50 million” is used, the term “10 million” shall be substituted; and that beginning on and after July 1, 2021, when the new capital addition is a facility that is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994, as defined on January 1, 2021, then wherever the term “100 million” is used in this subsection, the term “2 million” shall be substituted and where the term “50 million” is used, the term “1 million” shall be substituted; or

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

(i) Is or will be engaged in processing of raw natural gas or oil to recover or extract liquid hydrocarbons; or

(ii) Is a manufacturing facility that uses one or more products produced at a facility described in subparagraph (i) above; or

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

(B) All real property and personal property, the combined original cost of which exceeds $2 million to be constructed, located, or installed at a facility, or a combination of facilities by a single entity or combination of entities engaged in a unitary business, that is or may be classified under North American Industry Classification System with a six-digit code number 332992 or 332994 as defined on January 1, 2021.

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

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

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

(iii) Multiparty projects.

“Real property” means all property specified in §2-2-10(p) of this code and includes, but is not limited to, lands, buildings, and improvements on the land such as sewers, fences, roads, paving, and leasehold improvements: *Provided,* That for capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment.

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

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

(a) *Credit allowed*. — There is allowed to eligible taxpayers and to persons described in subdivision ~~(5)~~ (4), subsection (b) of this section a credit against the taxes imposed by §11-13A-1 *et seq.*, ~~§11-23-1 *et seq.*,~~ and §11-24-1-1 *et seq.* of this code: *Provided*, That a tax credit for any eligible taxpayer operating a business activity classified as having a sector identifier, consisting of the six digit code number 211112 such eligible taxpayer must comply with the provisions of subsection (e) of this section for all construction related thereto in order to be eligible for any credit under this article. The amount of credit shall be determined as hereinafter provided in this section.

(b) *Amount of credit allowable*. — The amount of allowable credit under this article is equal to five percent of the qualified manufacturing investment (as determined in section five of this article): *Provided*, That the amount of allowable credit under this article is equal to 50 percent of the qualified manufacturing investment (as determined in §11-13S-5. of this code) for any eligible taxpayer operating a business that is or may be classified as having a sector identifier, consisting of the six-digit code number 332992 or 332994, as defined on January 1, 2021. This credit shall reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code~~, the business franchise tax imposed under §11-23-1 *et seq.* of this code~~ and the corporation net income tax imposed under §11-24-1~~-1~~ *et seq.* of this code, in that order, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a 10-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the property purchased for manufacturing investment is first placed in service or use in this state;

(2) *Severance tax*. — The credit is applied to reduce the severance tax imposed under §11-13A-1 *et seq.* of this code (determined before application of the credit allowed by §11-12B-3 of this code and before any other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code). The amount of annual credit allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code~~ article thirteen-a of this chapter~~, below 50 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 40 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for such taxable year (determined before application of the credit allowed by §11-12B-3 of this code and before any other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the severance tax imposed under §11-13A-1 *et seq.* of this code, below 40 percent of the amount which would be imposed for such taxable year as determined before application of the credit allowed by §11-12B-3 of this code and before any

other allowable credits against tax and before application of the annual exemption allowed by §11-13A-10 of this code;

~~(3) *Business franchise tax.* —~~

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

~~(4)~~(3) *Corporation net income tax*. —

After application of subdivision ~~(3)~~ (2) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code (determined before application of any other allowable credits against tax). The amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax: *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed for such taxable year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed for the taxable year (determined before application of any other allowable credits against tax): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year may not reduce the amount of the corporation net income tax, imposed under article §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed for the taxable year as determined before application of any other allowable credits against tax;

~~(5)~~(4) *Pass-through entities.* —

(A) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit (after application of subdivisions (2)~~, (3)~~ and ~~(4)~~ (3) of this subsection) is allowed as a credit against the taxes imposed by §11-24-1 *et seq.* of this code on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-24-1 *et seq.* of this code that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes (determined before application of any other allowable credits against tax): *Provided,* That for tax years beginning on and after January 1, 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes as determined before application of any other allowable credits against tax.

(C) When in any taxable year the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below 50 percent of the amount that would be imposed for such taxable year on the conduit income (determined before application of any other allowable credits against tax): *Provided,* That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will not reduce the corporation net income tax imposed on the conduit income directly derived from the eligible taxpayer by each owner below 40 percent of the amount that would be imposed for such taxable year on the conduit income as determined before application of any other allowable credits against tax;

~~(6)~~(5) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit after application of subdivisions (2)~~,~~

~~(3) and (4)~~ and (3) of this subsection among their members in the same manner as profits and losses are allocated for the taxable year; and

~~(7)~~(6) No credit is allowed under this article against any tax imposed by §11-21-1 *et seq.* of this code.

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

(d) *Application for credit required.* —

(1) *Application required*. — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under this article for any qualified investment property placed in service or use until the person claiming the credit makes written application to the Tax Commissioner for allowance of credit as provided in this section. This application shall be in the form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if any, by the manufacturing investment, the average wage rates and benefits paid to employees filling the new jobs and any other information the Tax Commissioner may require. This application shall be filed with the Tax Commissioner no later than the last day for filing the annual return, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq.* or §11-24-1-1 *et seq.* of this code for the taxable year in which the property to which the credit relates is placed in service or use.

(2) *Failure to file*. — The failure to timely apply the application for credit under this section results in forfeiture of 50 percent of the annual credit allowance otherwise allowable under this article. This penalty applies annually until the application is filed.

(e) (1) Any person or entity undertaking any construction related to any business activity included within North American Industrial Code six-digit code number 211112, the value of which is an amount equal to or greater than $500,000, shall hire at least 75 percent of employees for said construction from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project, “the local labor market” being defined as every county in West Virginia and any county outside of West Virginia if any portion of that county is within 50 miles of the border of West Virginia.

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

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

ARTICLE 13KK. WEST VIRGINIA TAX CREDIT FOR FEDERAL EXCISE TAX IMPOSED UPON SMALL ARMS AND AMMUNITION MANUFACTURERS.

§11-13KK-1. Legislative finding and purpose.

The Legislature finds that the encouragement of small arms and ammunition manufacturing in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in the manufacturing of small arms and ammunition in this state and thereby increase economic opportunity for its citizens there is hereby enacted the tax credit for the benefit of small arms and ammunition manufacturing.

§11-13KK-2. Definitions.

(a) *General*. — When used in this article, or in the administration of §11-13KK-1 *et seq.* of this code, terms defined in subsection (b) have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in §11-13KK-1 *et seq.* of this code.

(b) *Terms defined*. —

(1) "Affiliated group" means any affiliated group within the meaning section 1504(a) of the Internal Revenue Code, or any similar group defined under a similar provision of state, local, or foreign law, except that section 1504 of Internal Revenue Code shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears in that section.

(2) "Business" means small arms or ammunition manufacturing business activity, which is or may be classified under the North American Industry Classification System with a six-digit code for a product produced at a facility under code numbers 332992 or 332994 as they are defined on January 1, 2021, which is engaged in by any person in this state which is taxable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(3) "Business expansion" means capital investment in a new or expanded small arms or ammunition manufacturing facility in this state, which is or may be classified under the North American Industry Classification System with a six-digit code for a product produced at a facility under code numbers 332992 or 332994 as they are defined on January 1, 2021.

(4) "Commissioner" or "Tax Commissioner" are used interchangeably in this article and mean the Tax Commissioner of the State of West Virginia, or his or her designee.

(5) "Controlled group of corporations" means a controlled group of corporations as defined in section 1563(a) of the Internal Revenue Code.

(6) "Corporation" means any corporation, joint-stock company, association, or other entity treated as a corporation for federal income tax purposes, and any business conducted by a trustee

or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

(7) "Designee" in the phrase "or his or her designee," when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

(8) "Small arms and ammunition manufacturing" refers to a facility which is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994 as they are defined on January 1, 2021.

(9) "Small arms and ammunition manufacturing business" means a business primarily engaged in this state in small arms or ammunition manufacturing which is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994 as they are defined on January 1, 2021.

(10) "Small arms and ammunition manufacturing facility" means any factory, mill, plant, warehouse, building, or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment, and other real and personal property located at or within the facility, used in connection with the operation of the facility, and all site preparation and start-up costs of the taxpayer for the small arms and ammunition manufacturing facility, which is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994 as they are defined on January 1, 2021, and which it capitalizes for federal income tax purposes in a business that is taxable in this state.

(11) “Eligible taxpayer” means any person who makes a qualified investment in a new or expanded small arms and ammunition manufacturing facility located in this state and who is subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(12) “Expanded facility” means any small arms and ammunition manufacturing facility, other than a new or replacement business facility, resulting from the acquisition, construction, reconstruction, installation, or erection of improvements or additions to existing property if the improvements or additions are purchased on or after July 1, 2021, but only to the extent of the taxpayer’s qualified investment in the improvements or additions.

(13) “Includes” and “including” when used in a definition contained in this article, may not be considered to exclude other things otherwise within the meaning of the term defined.

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

(15) “New small arms and ammunition manufacturing facility” means a business facility which satisfies all the requirements of paragraphs (A), (B), (C), and (D) of this subsection:

(A) The facility is employed by the taxpayer in the conduct of a small arms and ammunition manufacturing activity the net income of which is or would be taxable under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code. The facility is not considered a new, small arms and ammunition manufacturing facility in the hands of the taxpayer if the taxpayer’s only activity with respect to the facility is to lease it to another person or persons.

(B) The facility is purchased by, or leased to, the taxpayer on or after July 1, 2021.

(C) The facility was not purchased or leased by the taxpayer from a related person. The commissioner may waive this requirement if the facility was acquired from a related party for its fair market value and the acquisition was not tax motivated.

(D) The facility was not in service or use during the 90 days immediately prior to transfer of the title to the facility, or prior to the commencement of the term of the lease of the facility.

(16) “New property” means:

(A) Property, the construction, reconstruction, or erection of which is completed on or after July 1, 2021, and placed in service or use after that date; and

(B) Property leased or acquired by the taxpayer that is placed in service or use in this state on or after July 1, 2021, if the original use of the property commences with the taxpayer and commences after that date.

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

(18) “Partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, which is treated as a partnership for federal income tax purposes, and which is not a trust or estate, a corporation, or a sole proprietorship.

(19) “Partner” includes a member in such a syndicate, group, pool, joint venture, or other organization.

(20) “Person” includes any natural person, corporation, or partnership.

(21) “Property purchased or leased for business expansion” —

(A) *Included property*. — Except as provided in paragraph (B) of this subdivision, the term “property purchased or leased for business expansion” means real property and improvements thereto, and tangible personal property, but only if the real or personal property was constructed, purchased, or leased and placed in service or use by the taxpayer, for use as a component part of a new or expanded small arms and ammunition manufacturing facility as defined in this section, which is located within the State of West Virginia. This term includes only:

(i) Real property and improvements thereto having a useful life of four or more years, placed in service or use on or after July 1, 2021, by the taxpayer.

(ii) Real property and improvements thereto, acquired by written lease having a primary term of 10 or more years and placed in service or use by the taxpayer on or after July 1, 2021.

(iii) Tangible personal property placed in service or use by the taxpayer on or after July 1, 2021, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal or corporation net income tax liability of the business taxpayer under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, and which has a useful life, at the time the property is placed in service or use in this state, of four or more years.

(iv) Tangible personal property acquired by written lease having a primary term of four years or longer, that commenced and was executed by the parties thereto on or after July 1, 2021, if used as a component part of a new or expanded small arms and ammunition manufacturing business facility, shall be included within this definition.

(v) Tangible personal property owned or leased, and used by the taxpayer at a business location outside this state which is moved into the State of West Virginia on or after July 1, 2021, for use as a component part of a new or expanded small arms and ammunition manufacturing facility located in this state: *Provided,* That if the property is owned, it must be depreciable or amortizable personal property for income tax purposes, and have a useful life of four or more years remaining at the time it is placed in service or use in this state, and if the property is leased, the primary term of the lease remaining at the time the leased property is placed in service or use in this state, must be four or more years.

(B) *Excluded property*. — The term property purchased or leased for business expansion does not include:

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

(ii) Airplanes and helicopters.

(iii) Property, which is primarily used outside this state, with use being determined based upon the amount of time the property is actually used both within and outside this state.

(iv) Property which is acquired incident to the purchase of the stock or assets of the seller, unless for good cause shown, the Tax Commissioner consents to waiving this requirement.

(v) Purchased or leased property, the cost or consideration for which cannot be quantified with any reasonable degree of accuracy at the time the property is placed in service or use: *Provided,* That when the contract of purchase or lease specifies a minimum purchase price or minimum annual rent the amount thereof shall be used to determine the qualified investment in the property under §11-13KK-6 of this code if the property otherwise qualifies as property purchased or leased for expansion of a small arms and ammunition manufacturing facility.

(22) “Purchase” means any acquisition of property, but only if:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under section 267 or 707 (b) of the United States Internal Revenue Code.

(B) The property is not acquired by one component member of an affiliated or controlled group from another component member of the same affiliated or controlled group, as applicable. The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

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

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

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

(23) “Qualified activity” means any small arms and ammunition manufacturing business activity subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code which is or may be classified under the North American Industry Classification System with a six-digit North American Industry Classification System code for a product produced at a facility with code numbers 332992 or 332994 as they are defined on January 1, 2021.

(24) “Related person” means:

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

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

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

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

For purposes of this subdivision, control, with respect to a corporation, means ownership, directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote.

Control, with respect to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest in a trust is determined in accordance with the rules for constructive ownership of stock provided in section 267(c) of the United States Internal Revenue Code, other than paragraph (3) of that section.

(25) “Replacement small arms and ammunition manufacturing facility” means any property (other than an expanded small arms and ammunition manufacturing facility) that replaces or supersedes any other property located within this state that:

(A) The taxpayer or a related person used in or in connection with any small arms and ammunition manufacturing facility for more than two years during the period of five consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer; or

(B) Is not used by the taxpayer or a related person in or in connection with any small arms and ammunition manufacturing facility for a continuous period of one year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(26) "Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(27) "This code" means the Code of West Virginia, 1931, as amended.

(28) "This state" means the State of West Virginia.

(29) "United States Internal Revenue Code" or "I.R.C." means the Internal Revenue Code as defined in §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(30) "Used property" means property acquired after June 30, 2021, that is not "new property".

(31) "Federal excise tax" means all excise taxes paid to the government of the United States under section 4181 of Title 26 of the Internal Revenue Code imposed upon manufacturers, producers, or importers by the sale of pistols, revolvers, firearms (other than pistols and revolvers), shells and cartridges.

§11-13KK-3. Amount of credit allowed.

(a) *Credit allowed*. — Notwithstanding any other provision of this code, eligible taxpayers are allowed a credit against the portion of taxes imposed by this state that are attributable to and the consequence of the taxpayer's qualified investment in a new or expanded small arms and ammunition manufacturing facility in this state: *Provided,* That such qualified investment is equal to or greater than $2 million. The amount of this credit is determined and applied as provided in this article.

(b) *Amount of credit*. — The amount of credit allowable is 100 percent of amount of federal excise tax paid in a tax year under section 4181, Title 26 of the Internal Revenue Code, which are attributable to and the consequence of the taxpayer's qualified investment. The product of this calculation establishes the maximum amount of credit allowable under this article due to the qualified investment.

(c) *Application of credit over 10 years*. — The amount of credit allowable shall be taken over a 10-year period, beginning with the taxable year in which the taxpayer places the qualified investment in service or use in this state, unless the taxpayer elected to delay the beginning of the 10-year period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter for the taxable year in which qualified investment is first placed into service or use by the taxpayer. Once made, the election cannot be revoked. The annual credit allowance is taken in the manner prescribed in §11-13KK-4 of this code.

(d) *Placed in service or use*. — For purposes of the credit allowed by this section, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

§11-13KK-4. Application of annual credit allowance.

(a) The amount determined under §11-13KK-3 is allowed as a credit against 100 percent of that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment and applied as provided in subsections (b) and (c), both inclusive of this section, and in that order.

(b) *Corporation net income taxes*. —

(1) That portion of the allowable credit attributable to qualified investment in a small arms and ammunition manufacturing facility may be applied to reduce the taxes imposed by §11-24-1 *et seq.* of this code for the taxable year as determined before application of allowable credits against tax.

(2) If the taxes due under §11-24-1 *et seq.* of this code, as determined before application of allowable credits against tax, are not solely attributable to and the direct result of the taxpayer's qualified investment in a small arms and ammunition manufacturing business, the amount of the taxes that is attributable are determined by multiplying the amount of taxes due under §11-24-1 *et seq.* of this code for the taxable year, as determined before application of allowable credits

against tax, by a fraction, the numerator of which is all wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer employed in this state whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer employed in this state.

(c) *Personal income taxes.* —

(1) If the person making the qualified investment in a small arms and ammunition manufacturing facility is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code, a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of this code on the income from small arms and ammunition manufacturing facility, or on income of a sole proprietor attributable to the small arms and ammunition manufacturing facility.

(2) Electing small business corporations, limited liability companies treated as partnerships for federal income tax purposes, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(3) If the amount of taxes due under §11-21-1 *et seq.* of this code, as determined before application of allowable credits against tax, that is attributable to business, is not solely attributable to and the direct result of the qualified investment of the electing small business corporation, limited liability company treated as a partnership for federal income tax purposes, other unincorporated organization, or sole proprietorship, the amount of the taxes that are so attributable are determined by multiplying the amount of taxes due under §11-21-1 *et seq.* of this code, as determined before application of allowable credits against tax that is attributable to business by a fraction, the numerator of which is all wages, salaries, and other compensation paid during the taxable year to all employees of the electing small business corporation, limited liability

company, partnership, other unincorporated organization, or sole proprietorship employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction is the wages, salaries, and other compensation paid during the taxable year to all employees of the taxpayer.

(4) No credit is allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq.* of this code.

(d) If the wages, salaries, and other compensation fraction formula provisions of subsections (b) and (c) of this section, inclusive, do not fairly represent the taxes solely attributable to and the direct result of qualified investment of the taxpayer the Tax Commissioner may require, in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

(1) Separate accounting or identification;

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

(3) The inclusion of one or more additional factors that will fairly represent the taxes solely attributable to and the direct result of the qualified investment of the taxpayer and all other project participants in the businesses or other activities subject to tax; or

(4) The employment of any other method to effectuate an equitable attribution of the taxes. In order to effectuate the purposes of this subsection, the Tax Commissioner may propose for promulgation rules, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

(e) *Unused credit*. — If any credit remains after application of subsection (a) of this section, the amount thereof is carried forward to each ensuing tax year until used or until the expiration of the tenth taxable year subsequent to the end of the initial 10-year credit application period. If any unused credit remains after the 20th year, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

§11-13KK-5. Qualified investment.

(a) *General*. — The qualified investment in property purchased or leased for a new, or expansion of an existing, small arms and ammunition manufacturing facility is the applicable percentage of the cost of each property purchased or leased for the purpose of the new, or expansion of an existing, small arms and ammunition manufacturing facility which is placed in service or use in this state by the taxpayer during the taxable year.

(b) *Cost*. — For purposes of subsection (a) of this section, the cost of each property purchased for a new, or expansion of an existing, small arms and ammunition manufacturing facility is determined under the following rules:

(1) *Trade-ins*. — Cost does not include the value of property given in trade or exchange for the property purchased for a new, or for expansion of an existing, small arms and ammunition manufacturing facility.

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

(3) *Rental property*. —

(A) The cost of real property acquired by written lease for a primary term of 10 years or longer is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20 years.

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

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

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

(iii) Eight years, or longer, is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20 years: *Provided,* That in no event may rent reserved include rent for any year subsequent to expiration of the book life of the equipment, determined using the straight-line method of depreciation.

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

(5) *Transferred property*. — The cost of property used by the taxpayer out-of-state and then brought into this state, is determined based on the remaining useful life of the property at the time it is placed in service or use in this state, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this state. In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this state for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the remaining period of the primary term of the lease, not to exceed 20 years, or the remaining useful life of the property, as determined as aforesaid, whichever is less.

§11-13KK-6. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) *Disposition of property or cessation of use*. — If during any taxable year, property with respect to which a tax credit has been allowed under §11-13KK-1 *et seq.* of this code is disposed of or ceases to be used in a small arms and ammunition manufacturing facility of the taxpayer in this state, then the unused portion of the credit allowed for the property is forfeited for the taxable year and all ensuing years, except when the property is damaged or destroyed by fire, flood, storm, or other casualty, or is stolen.

(b) *Cessation of operation of small arms and ammunition manufacturing facility*. — If during any taxable year the taxpayer ceases operation of a small arms and ammunition manufacturing facility in this state for which credit was allowed under this article, then the unused portion of the allowed credit is forfeited for the taxable year and for all ensuing years, except when the cessation is due to fire, flood, storm, or other casualty.

§11-13KK-7. Transfer of qualified investment to successors.

(a) *Mere change in form of business*. — Property may not be treated as disposed of under §11-13KK-8 of this code, by reason of a mere change in the form of conducting the business as long as the property is retained in the successor's small arms and ammunition manufacturing facility in this state, and the transferor business retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the business facility or facilities transferred.

(b) *Transfer or sale to successor.* — Property is not treated as disposed of under §11-13KK-10 of this code by reason of any transfer or sale to a successor business which continues to operate the small arms and ammunition manufacturing facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year.

§11-13KK-8. Identification of investment credit property.

Every taxpayer who claims credit under §11-13KK-1 *et seq.* of this code shall maintain sufficient records to establish the following facts for each item of qualified property:

(1) Its identity;

(2) Its actual or reasonably determined cost;

(3) Its straight-line depreciation life;

(4) The month and taxable year in which it was placed in service;

(5) The amount of credit taken;

(6) The date it was disposed of or otherwise ceased to be used as qualified property in the small arms and ammunition manufacturing facility of the taxpayer; and

(7) Amounts and dates of federal excise tax paid.

§11-13KK-9. Failure to keep records of investment credit property.

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

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

(2) If a taxpayer cannot establish when investment credit property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is

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

§11-13KK-10. Interpretation and construction.

(a) No inference, implication, or presumption of legislative construction or intent may be drawn or made by reason of the location or grouping of any particular section, provision, or portion of §11-13KK-1 *et seq.* of this code; and no legal effect may be given to any descriptive matter or heading relating to any section, subsection, or paragraph of this article.

(b) The provisions of §11-13KK-1 *et seq.* of this code shall be reasonably construed in order to effectuate the legislative intent recited in §11-13KK-1 of this code.

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

(a) *Burden of proof*. — The burden of proof is on the taxpayer to establish by clear and convincing evidence that the taxpayer is entitled to the benefits allowed by §11-13KK-1 *et seq.* of this code.

(b) *Application for credit required*. —

(1) *Application required*. — Notwithstanding any provision of this article to the contrary, no credit is allowed or may be applied under §11-13KK-1 *et seq.* of this code for any qualified investment property placed in service or use until the person asserting a claim for the allowance of credit under this article makes written application to the commissioner for allowance of credit as provided in this subsection. An application for credit shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code for the taxable year in which the property to which the credit relates is placed in service or use and all information required by the form shall be provided.

(2) *Failure to make timely application*. — The failure to timely apply for the credit results in the forfeiture of 50 percent of the annual credit allowance otherwise allowable under §11-13KK-1 *et seq.* of this code. This penalty applies annually until the application is filed.

§11-13KK-12. Tax credit review and accountability.

(a) Beginning on February 1, 2026, and every fifth year thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of this credit during the most recent five-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the five-year period:

(1) The numbers of taxpayers claiming the credit;

(2) The moneys invested, and net number of new jobs created by all taxpayers claiming the credit;

(3) The cost of the credit;

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

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

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

(c) On or before February 1, 2026, the Department of Commerce, in consultation with the Tax Commissioner, the Department of Transportation, and the Department of Environmental Protection shall submit to the Governor, the President of the Senate, and the Speaker of the House of Delegates a report of the impact of all the tax credits and other economic incentives provided in §11-13KK-1 *et seq.* of this code upon; (1) Economic development in this state, including, but not limited to, the moneys invested and jobs created in this state; (2) the state's infrastructure, including, but not limited to, the need for construction or maintenance of the roads and highways of the state; (3) the natural resources of the state; and (4) upon public and private property interests in the state.

§11-13KK-13. Rules.

The Tax Commissioner may promulgate such interpretive, legislative, and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13KK-1 *et seq.* of this code and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2022. All rules shall be promulgated in accordance with §29A-3-1 *et seq.* of this code.

§11-13KK-14. General procedure and administration.

Each provision of the "West Virginia Tax Procedure and Administration Act" set forth in §11-10-1 *et seq.* of this code applies to the tax credit allowed under §11-13KK-1 *et seq.* of this code, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the tax credit allowed by §11-13KK-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13KK-15. Crimes and penalties.

Each provision of the "West Virginia Tax Crimes and Penalties Act" set forth in §11-9-1 *et seq.* of this code applies to the tax credit allowed by §11-13KK-1 *et seq.* of this code with like effect as if that act were applicable only to the tax credit §11-13KK-1 *et seq.* of this code and were set forth *in extenso* in this article.

§11-13KK-16. Severability.

(a) If any provision of §11-13KK-1 *et seq.* of this code, or the application thereof, is for any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not affect, impair, or invalidate the remainder of §11-13KK-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved in the controversy in which the judgment shall have been rendered, and the applicability of the provision to other persons or circumstances may not be affected thereby.

(b) If any provision of §11-13KK-1 *et seq.* of this code, or the application thereof, is made invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate the remainder of §11-13KK-1 *et seq.* of this code, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and the application of the provision with regard to other statutes or in other instances not affected by any such repealed or invalid statute may not be abrogated or diminished in any way.

§11-13KK-17. Effective date.

The credit allowed by this article is allowable for qualified investment property placed in service or use on or after July 1, 2021, subject to the rules contained in §11-13KK-1 *et seq.* of this code and rules promulgated by the Tax Commissioner pursuant to §29A-3-1 *et seq.* of this code.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9t. Exemption for sales of small arms and ammunitions.

(a) Notwithstanding any provision of this code to the contrary, the sale of small arms and small arms ammunition, as those terms are defined in subsections (b) and (c) of this section, are exempted from the taxes imposed by this article and by §11-15A-1 *et seq.* of this code.

(b) “Small arms” means any portable firearm, designed to be carried and operated by a single person, including, but not limited to, rifles, shotguns, pistols, and revolvers, with no barrel greater than an internal diameter of .50 caliber or a shotgun of 10 gauge or smaller.

(c) “Small arms ammunition” means firearm ammunition designed for use in small arms.

NOTE: The purpose of this bill is to stimulate economic growth in manufacturing industries by amending the definition of manufacturing for purposes of special method for appraising qualified capital additions to manufacturing facilities for property tax purposes; by amending the formula for calculating credit allowed for manufacturing investment to include small arms ammunition manufacturing and small arms, ordinance and ordinance accessories manufacturing; by creating the West Virginia Tax Credit For Federal Excise Tax Imposed Upon Small Arms And Ammunition Manufacturers and providing for its administration and enforcement of the tax credit; and by exempting sales of small arms and small arms ammunition from state sales and use tax.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.