WEST Virginia legislature

2022 regular session

**FISCAL NOTE**

Introduced

House Bill 4658

By Delegates Howell, Maynard, Paynter, Hamrick, Keaton, Hanshaw (Mr. Speaker), Zatezalo, Storch, Anderson, Ellington, and Foster

[Introduced February 11, 2022; Referred to the Select Committee on Tourism and Economic Diversification then Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13MM-1, §11-13MM-2, §11-13MM-3, §11-13MM-4, §11-13MM-5, and §11-13MM-6, all relating to the Critical Mineral Reinvestment Tax Credit; establishing a short title; providing for legislative findings, purpose, and definitions; providing for the amount of credit and limitations; defining the credit allowed for opening or relocating a manufacturing facility or corporate headquarters in this state who use rare earth elements or critical minerals in the manufacturing of their products; clarifying the credit allowable for certified projects; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13MM. critical mineral reinvestment TAX CREDIT.

§11-13MM-1. Short title.

This article may be cited as the “Critical Mineral Reinvestment Tax Credit Act.”

§11-13MM-2. Legislative findings; purpose; and definitions.

The Legislature finds that:

(a) West Virginia enjoys a relatively new competitive economic advantage among the states attributable to the extraction of rare earth elements and critical minerals, of which studies have shown possess great value previously unknown to many.

(b) As a consequence, companies that extract and process rare earth elements and critical minerals have already located or intend to locate to the state, and will jobs for its citizens and an increased tax base that contributes to the support of schools, other institutions, and programs that benefit all West Virginians.

(c) As the result of competitive disadvantages emanating from outside the state, some companies who use rare earth elements or critical minerals in their production could cease doing business in the state, or could decide to open their production elsewhere, without considering West Virginia as a viable option.

(d) Conversely, the extraction and processing of rare earth elements and critical minerals in the state is relatively new, on the rise, and may create an economic surge in West Virginia, particularly given the current supply shortage for microchips for the manufacturing of vehicles.

(e) It is in the public interest for the state to try and attract companies who use rare earth elements and critical minerals in their production to locate, to remain in operation, or to resume operation, in West Virginia on a long-term basis, by creating the Critical Mineral Reinvestment Tax Credit Act.

(f) Because companies are already moving to West Virginia to extract and process rare earth and critical minerals, it naturally follows that those companies who use these elements and minerals in their production should be based in West Virginia and should use those elements and minerals that came from West Virginia. This would cut down on supply chain issues, and would increase output for those companies who use the rare earth elements and critical minerals in the production of such things as microchips for automobile, touchscreens for cell phones, and other similar products.

(g) For the purposes of this article “rare earth elements and other critical minerals” are defined as scandium, yttrium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium and other resources that are essential to the economy, whose supply may be disrupted, including, without limitation, metals such as lithium, cobalt, manganese, indium, tellurium, gallium, and platinum group elements.

(h) For the purposes of this article, “rare earth elements” (also known as rare earth metals or rare earth oxides) are only yttrium, lanthanum, cerium, praseodymium, neodymium, promethium, samarium, europium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium, and scandium, and “critical minerals” are only aluminum, antimony, arsenic, barite, beryllium, bismuth, cesium, chromium, cobalt, fluorspar, gallium, germanium, graphite, hafnium, indium, iridium, lithium, magnesium, manganese, nickel, niobium, palladium, platinum, rhodium, rubidium, ruthenium, tantalum, tellurium, tin, titanium, tungsten, vanadium, zinc, and zirconium.

(i) For the purposes of this article, the term “qualified investment” means the taxpayer’s investment into a manufacturing facility who uses rare earth elements and critical minerals as a basis for their products. The qualified investment can also be into the corporate headquarters of such a facility, plus the cost of the reasonable and necessary expenses it incurred to open a manufacturing facility or headquarters in West Virginia, or to relocate its manufacturing facility or headquarters at a location in this state from its present location outside this state.

§11-13MM-3. Amounts of credit; limitations.

(a) Credit allowed. -- Eligible taxpayers shall be 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 business who produces products that use rare earth elements and critical minerals extracted and processed in this state, which results in the creation of new jobs. The credit is only applicable to those manufacturing facilities, businesses, or corporate headquarters who utilize rare earth elements or critical minerals that were extracted and/or processed in West Virginia. The amount of this credit shall be determined and applied as hereinafter provided in this article.

(b) Amount of credit. -- The amount of credit allowable is determined by multiplying the amount of the taxpayer’s “qualified investment” in property purchased for business expansion by the taxpayer’s new jobs percentage. 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 must be taken over a 10-year period, at the rate of one tenth of the amount thereof per taxable year, 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 for the taxable year in which credit is first taken on the qualified investment placed into service or use by the taxpayer. Once made, the election cannot be revoked. The annual credit allowance shall be taken in the manner prescribed in section four of this article.

(d) Placed in service or use. -- For purposes of the credit allowed by this section, property shall be 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 such 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.

§11-13MM-4. Credit allowed for opening or relocating a manufacturing facility or corporate headquarters in this state who utilize rare earth elements or critical minerals in their production.

(a) Credit allowed – *new*. – A manufacturing facility, or a corporation that opens a new manufacturing facility or corporate headquarters in this state and employs, on a full-time basis, at at least fifty people, who are domiciled in this state, shall be allowed credit under this article, the amount of which shall be determined as provided in subsection (c).

(b) Credit allowed – *relocation* . – A manufacturing facility, or a corporation that presently has its corporate headquarters located outside this state that relocates its manufacturing facility or corporate headquarters in this state and employs, on a full-time basis, at its new corporate headquarters location, at least 50 people, who are domiciled in this state, shall be allowed credit under this article, the amount of which shall be determined as provided in subsection (c).

(c) Determination of credit. -- The amount of credit allowed by subsection (a) shall be determined at the election of the taxpayer:

(1) By multiplying its adjusted qualified investment by its new jobs percentage (as determined under section seven of this article); or

(2) By multiplying its adjusted qualified investment by 10 percent.

(d) Application of credit. -- The credit allowed by this section shall be applied in the manner prescribed in section five of this article: *Provided*, That the amount of corporation net income taxes against which the credit allowed by this section may be applied shall be the sum of the corporation net income tax due on adjusted federal taxable income allocated to this state in §11-24-7 of this code, plus that portion of the corporation net income tax due on adjusted federal taxable income apportioned to this state under §11-24-7 of this code, that is further apportioned to the qualified investment using the payroll factor provided in paragraph (1), subsection (h) of said section five or an alternative means of apportionment as prescribed by the Tax Commissioner under said section five. For all other purposes, the credit allowed by this section shall be treated as credit allowed by section four of this article.

(e) Definitions. -- For purposes of this section:

(1) Adjusted qualified investment. -- The term “adjusted qualified investment” means the taxpayer’s qualified investment in the manufacturing facility or corporate headquarters as determined under section six of this article and rules of the Tax Commissioner, plus the cost of the reasonable and necessary expenses it incurred to open a new manufacturing facility or corporate headquarters, or relocate its manufacturing facility or corporate headquarters at a location in this state from its present location outside this state.

(2) Corporate headquarters. -- The term “corporate headquarters” means the place at which the corporation has its commercial domicile and from which the business of the corporation is primarily conducted, who uses rare earth elements or critical minerals in their production.

(3) Manufacturing facility. – The term “manufacturing facility’ means a facility who uses rare earth elements or critical minerals in their production.

(3) Reasonable and necessary expenses incurred to relocate corporate headquarters. -- The phrase “reasonable and necessary expenses incurred to relocate corporate headquarters” means only those expenses incurred and paid by the corporation, to unrelated third parties, to move its corporate headquarters and its corporate headquarters employees to this state that are, upon application by the corporation, determined by the Tax Commissioner to have been both reasonable and necessary to effectuate the move.

(4) The corporation. -- For purposes of this section, the term “the corporation” means the corporation for which the corporate headquarters is relocated.

(f) Manufacturing facilities, business, or corporate headquarters must use rare earth elements and/or critical minerals that were extracted or processed in this state.

§11-13MM-5. Credit allowable for certified projects.

(a) In general. -- A project certified by the Tax Commissioner shall be eligible for the credit allowable by this article. A project eligible for certification under this section is one where:

(1) The qualified investment under this article creates at least 50 new jobs but such qualified investment is placed in service or use over a period of three successive tax years: *Provided*, That such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer’s application for project certification and approved by the Tax Commissioner, and the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years;

(2) The qualified investment is made by one or more persons, but some or all of the new jobs created at each new or expanded business facility as a result of the qualified investment are created by one or more other persons: *Provided,* That at least 50 new jobs are created at the new or expanded business facility or facilities in which the qualified investment is made, and such jobs are, upon application, certified by the Tax Commissioner as new jobs created as a direct result of the qualified investment, and that such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer’s application for project certification and approved by the Tax Commissioner;

(3) The qualified investment is made by one or more persons but some or all of the new jobs created as a direct result of the qualified investment are created by one or more other persons: *Provided*, That at least 50 new jobs are created within a 50 mile radius of each new or expanded business facility in which the qualified investment is made, and such jobs are, upon application, certified by the Tax Commissioner as being new jobs created as a direct result of the qualified investment, and that such qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer’s application for project certification and approved by the Tax Commissioner.

(4) The investment must be into a manufacturing facility or corporate headquarters whose products use rare earth elements and critical minerals, and who shall use those rare earth elements and critical minerals extracted and processed in West Virginia.

(b) Application for certification. -- The application for certification of a project under this section shall be filed with and approved by the Tax Commissioner prior to any credit being claimed or allowed for the project’s qualified investment and new jobs created as a direct result of the qualified investment. This application shall be approved in writing by all the participants in the project and shall contain such information as the Tax Commissioner may require to determine whether the project should be certified as eligible for credit under this article.

(c) Taking of credit.

(1) If the certified project for which qualified investment is made involves one or more persons making the capital investment and one or more persons, or a combination thereof, creating at least 50 new jobs at the site of the new or expanded business facility or facilities, then credit shall be allowed under this article for the certified project based upon the qualified investment in the certified project multiplied by the project's new jobs percentage.

(2) If the certified project for which qualified investment is made involves one or more persons making the capital investment and one or more persons, or a combination thereof, creating at least 50 new jobs located within a 50 mile radius of each new or expanded business facility in which the qualified investment is made, then credit shall be allowed under this article for the certified project based upon the qualified investment in the certified project multiplied by 50 percent.

(3) The amount of credit allowable, as determined under subdivision (1) or (2), above, shall be applied as provided in section five, and shall be claimed in the manner specified in the project's application to the Tax Commissioner for certification under this section, by one participant in the project or divided among the several participants in the project, and for this purpose the numerator of the payroll factor shall be the total compensation paid in this state during the taxable year by all project participants to all new employees filling the new jobs created and the denominator shall be the total compensation paid in this state during the taxable year by all project participants to their employees. Such allocation, if approved by the Tax Commissioner, shall constitute a binding election by the participants in the project for the entire term during which the credit attributable to the qualified investment in the certified project may be applied to reduce tax liabilities. The participant or participants claiming the credit for qualified investments in a certified project shall annually file with their income tax returns filed under this chapter:

(A) Certification that the participant’s qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(B) Certification that the new jobs created by the project’s qualified investment continue to exist and are filled by persons who are residents of this state; and

(C) Such other information as the Tax Commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project's qualified investment.

(d) Terms defined. -- For purposes of this section:

(1) New employee. -- The term “new employee” means a person residing and domiciled in this state, hired by a participant to fill a position for a job which previously did not exist in this state prior to the date on which the project’s qualified investment is placed in service or use in this state. In no case shall the new employees allowed for purposes of this credit exceed the total increases in the number of persons employed by the project’s participants (considered as a group) in this state. A person shall be deemed to be a “new employee” if such person’s duties in connection with the operation of the certified project are on a regular, full-time and permanent basis.

(2) “Full-time employment” means employment for at least 120 hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

(3) “Permanent employment” does not include employment that is temporary or seasonal.

(4) A part-time basis, provided such person is customarily performing such duties at least 20 hours per week for at least six months during the taxable year.

(e) New job. -- The term “new job” means a job which did not exist in this state prior to the project’s qualified investment being made, and which is filled by a new employee.

(f) Participant. -- The term “participant” means any person who directly makes a qualified investment in a certified project, or who employs persons filling the jobs certified by the Tax Commissioner as being new jobs created as a direct result of the project’s qualified investment.

§11-13MM-6. Effective date.

The provisions of this article shall be effective for tax years beginning on or after January 1, 2022.

NOTE: The purpose of this bill is to create the Critical Mineral Reinvestment Tax Credit. The bill establishes a short title. The bill provides for legislative findings, purpose, and definitions. The bill provides for the amount of credit and limitations. The bill defines the credit allowed for opening or relocating a manufacturing facility or corporate headquarters in this state who use rare earth elements and critical minerals in the manufacturing of their products. The bill clarifies the credit allowable for certified projects. Finally, the bill provides for an effective date.

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