

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2163

FISCAL
NOTE

By Delegate Keaton

[Introduced January 11, 2023; Referred to the
Committee on Energy and Manufacturing then
Finance]

1 A BILL to amend and reenact §11-13S-4 of the Code of West Virginia, 1931, as amended, relating
2 to the amount of tax credit allowed for manufacturing investment; and reducing the 40
3 percent limitation to 25 percent.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13S. MANUFACTURING INVESTMENT TAX CREDIT.

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

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

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

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

20 (2) *Severance tax.* — The credit is applied to reduce the severance tax imposed under

21 §11-13A-1 *et seq.* of this code (determined before application of the credit allowed by §11-12B-3 of
22 this code and before any other allowable credits against tax and before application of the annual
23 exemption allowed by §11-13A-10 of this code). The amount of annual credit allowed may not
24 reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code, below 50 percent of the
25 amount which would be imposed for such taxable year in the absence of this credit against tax:
26 Provided, That for tax years beginning on and after January 1, ~~2009~~ 2023, the amount of annual
27 credit allowed may not reduce the severance tax, imposed under §11-13A-1 *et seq.* of this code,
28 below ~~40~~ 25 percent of the amount which would be imposed for such taxable year in the absence
29 of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this
30 article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable
31 year may not reduce the amount of the severance tax, imposed under §11-13A-1 *et seq.* of this
32 code, below 50 percent of the amount which would be imposed for such taxable year (determined
33 before application of the credit allowed by §11-12B-3 of this code and before any other allowable
34 credits against tax and before application of the annual exemption allowed by §11-13A-10 of this
35 code): *Provided, however,* That when in any taxable year beginning on and after January 1, 2009,
36 the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total
37 amount of all credits allowable for the taxable year may not reduce the amount of the severance
38 tax imposed under §11-13A-1 *et seq.* of this code, below ~~40~~ 25 percent of the amount which would
39 be imposed for such taxable year as determined before application of the credit allowed by §11-
40 12B-3 of this code and before any other allowable credits against tax and before application of the
41 annual exemption allowed by §11-13A-10 of this code;

42 (3) *Corporation net income tax.* —

43 After application of subdivision (2) of this subsection, any unused credit is next applied to
44 reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code (determined
45 before application of any other allowable credits against tax). The amount of annual credit allowed
46 will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 50

47 percent of the amount which would be imposed for such taxable year in the absence of this credit
48 against tax: *Provided*, That for tax years beginning on and after January 1, ~~2009~~ 2023, the amount
49 of annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et*
50 *seq.* of this code, below 40 25 percent of the amount which would be imposed for such taxable
51 year in the absence of this credit against tax. When in any taxable year the taxpayer is entitled to
52 claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits
53 allowable for the taxable year may not reduce the amount of the corporation net income tax,
54 imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be
55 imposed for the taxable year (determined before application of any other allowable credits against
56 tax): *Provided, however*, That when in any taxable year beginning on and after January 1, ~~2009~~
57 2023, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code,
58 the total amount of all credits allowable for the taxable year may not reduce the amount of the
59 corporation net income tax, imposed under article §11-24-1 *et seq.* of this code, below 40 25
60 percent of the amount which would be imposed for the taxable year as determined before
61 application of any other allowable credits against tax;

62 (4) *Pass-through entities.* —

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

69 (B) The amount of annual credit allowed will not reduce corporation net income tax,
70 imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be
71 imposed on the conduit income directly derived from the eligible taxpayer by each owner for such
72 taxable year in the absence of this credit against the taxes (determined before application of any

73 other allowable credits against tax): *Provided*, That for tax years beginning on and after January 1,
74 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed
75 under §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed on
76 the conduit income directly derived from the eligible taxpayer by each owner for such taxable year
77 in the absence of this credit against the taxes as determined before application of any other
78 allowable credits against tax.

79 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and
80 §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will not
81 reduce the corporation net income tax imposed on the conduit income directly derived from the
82 eligible taxpayer by each owner below 50 percent of the amount that would be imposed for such
83 taxable year on the conduit income (determined before application of any other allowable credits
84 against tax): *Provided*, That when in any taxable year beginning on and after January 1, ~~2009~~
85 2023, the taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code,
86 the total amount of all credits allowable for the taxable year will not reduce the corporation net
87 income tax imposed on the conduit income directly derived from the eligible taxpayer by each
88 owner below ~~40~~ 25 percent of the amount that would be imposed for such taxable year on the
89 conduit income as determined before application of any other allowable credits against tax;

90 (5) Small business corporations, limited liability companies, partnerships and other
91 unincorporated organizations shall allocate any unused credit after application of subdivisions (2)
92 and (3) of this subsection among their members in the same manner as profits and losses are
93 allocated for the taxable year; and

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

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

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

100 (1) *Application required.* — Notwithstanding any provision of this article to the contrary, no
101 credit is allowed or may be applied under this article for any qualified investment property placed in
102 service or use until the person claiming the credit makes written application to the Tax
103 Commissioner for allowance of credit as provided in this section. This application shall be in the
104 form prescribed by the Tax Commissioner and shall provide the number and type of jobs created, if
105 any, by the manufacturing investment, the average wage rates and benefits paid to employees
106 filling the new jobs and any other information the Tax Commissioner may require. This application
107 shall be filed with the Tax Commissioner no later than the last day for filing the annual return,
108 determined by including any authorized extension of time for filing the return, required under §11-
109 21-1 *et seq.* or §11-24-1-1 *et seq.* of this code for the taxable year in which the property to which
110 the credit relates is placed in service or use.

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

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

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

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

NOTE: The purpose of this bill is to reduce the 40 percent limitation of tax credit allowed for manufacturing investment to 25 percent.

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