

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3409

By Delegate Criss

[Originating in the Committee on Finance; February

16, 2023]

1 A BILL to amend and reenact §11-13S-4 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §11-13Y-5 of said code, all relating to authorizing application of the
3 manufacturing investment tax credit and the manufacturing property tax adjustment credit
4 against personal income tax; defining terms; deleting superannuated language; specifying
5 application of tax credit; specifying effective date; and making stylistic revisions.

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, definition, effective date.

1 (a) Credit allowed. —

2 (1) There is allowed to eligible taxpayers and to persons described in subdivision (4),
3 subsection (b) of this section a credit against the taxes imposed by §11-13A-1 *et seq.*, §11-21-1 *et*
4 *seq.* and §11-24-1 *et seq.* of this code: *Provided*, That a tax credit for any eligible taxpayer
5 operating a business activity classified as having a sector identifier, consisting of the six digit code
6 number 211112 such eligible taxpayer ~~must~~ shall comply with the provisions of subsection (e) of
7 this section for all construction related thereto in order to be eligible for any credit under this article.
8 The amount of credit shall be determined as hereinafter provided in this section.

9 (2) For tax years beginning on and after January 1, 2024, "eligible taxpayer" means any
10 manufacturing business that is subject to the tax imposed under §11-24-1 *et seq.* of this code, or
11 any manufacturing business that is a pass through entity, the owners or interest holders of which
12 are subject to the tax imposed under §11-24-1 *et seq.* of this code, on the conduit income thereof
13 directly attributable to the manufacturing activity, or the tax imposed under §11-21-1 *et seq.* of this
14 code, on the conduit income thereof directly attributable to the manufacturing activity, or any
15 manufacturing business that is a sole proprietorship, the net income of which is subject to the tax
16 imposed under §11-21-1 *et seq.* of this code, on income directly attributable to the manufacturing
17 activity: *Provided*, That taxpayers owning property assessed by the Board of Public Works are not

18 eligible taxpayers for purposes of this article. "Eligible taxpayer" includes those members of an
19 affiliated group of taxpayers engaged in a unitary business, in which one or more members of the
20 affiliated group is a person subject to the tax imposed under §11-24-1 et seq. of this code.
21 Application of credit under this article is subject to §11-24-13a(g) and §11-24-13c(b)(2) of this
22 code. Affiliates not engaged in the unitary business do not qualify as eligible taxpayers.

23 (b) Amount of credit allowable. — The amount of allowable credit under this article is equal
24 to five percent of the qualified manufacturing investment (as determined in §11-13S-5 of this
25 code): *Provided*, That the amount of allowable credit under this article is equal to 50 percent of the
26 qualified manufacturing investment (as determined in §11-13S-5. of this code) for any eligible
27 taxpayer operating a business that is or may be classified as having a sector identifier, consisting
28 of the six-digit code number 332992 or 332994, as defined on January 1, 2021. This credit shall
29 reduce the severance tax, imposed under §11-13A-1 et seq. of this code and the corporation net
30 income tax imposed under §11-24-1 et seq. of this code, and §11-21-1 et seq. of this code, in that
31 order, subject to the following conditions and limitations:

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

35 (2) Severance tax. — The credit is applied to reduce the severance tax imposed under
36 §11-13A-1 et seq. of this code (determined before application of the credit allowed by §11-12B-3 of
37 this code and before any other allowable credits against tax and before application of the annual
38 exemption allowed by §11-13A-10 of this code). The amount of annual credit allowed may not
39 reduce the severance tax, imposed under §11-13A-1 et seq. of this code, below 50 percent of the
40 amount which would be imposed for such taxable year in the absence of this credit against tax:
41 *Provided*, That for tax years beginning on and after January 1, 2009, the amount of annual credit
42 allowed may not reduce the severance tax, imposed under §11-13A-1 et seq. of this code, below
43 40 percent of the amount which would be imposed for such taxable year in the absence of this

44 credit against tax. When in any taxable year the taxpayer is entitled to claim credit under this article
45 and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year
46 may not reduce the amount of the severance tax, imposed under §11-13A-1 *et seq.* of this code,
47 below 50 percent of the amount which would be imposed for such taxable year (determined before
48 application of the credit allowed by §11-12B-3 of this code and before any other allowable credits
49 against tax and before application of the annual exemption allowed by §11-13A-10 of this code):
50 *Provided, however,* That when in any taxable year beginning on and after January 1, 2009, the
51 taxpayer is entitled to claim credit under this article and §11-13D-1 *et seq.* of this code, the total
52 amount of all credits allowable for the taxable year may not reduce the amount of the severance
53 tax imposed under §11-13A-1 *et seq.* of this code, below 40 percent of the amount which would be
54 imposed for such taxable year as determined before application of the credit allowed by §11-12B-3
55 of this code and before any other allowable credits against tax and before application of the annual
56 exemption allowed by §11-13A-10 of this code;

57 (3) Corporation net income tax. —

58 After application of subdivision (2) of this subsection, any unused credit is next applied to
59 reduce the corporation net income tax imposed under §11-24-1 *et seq.* of this code (determined
60 before application of any other allowable credits against tax). The amount of annual credit allowed
61 will not reduce corporation net income tax, imposed under §11-24-1 *et seq.* of this code, below 50
62 percent of the amount which would be imposed for such taxable year in the absence of this credit
63 against tax: *Provided,* That for tax years beginning on and after January 1, 2009, the amount of
64 annual credit allowed will not reduce corporation net income tax, imposed under §11-24-1 *et seq.*
65 of this code, below 40 percent of the amount which would be imposed for such taxable year in the
66 absence of this credit against tax. When in any taxable year the taxpayer is entitled to claim credit
67 under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the
68 taxable year may not reduce the amount of the corporation net income tax, imposed under §11-24-
69 1 *et seq.* of this code, below 50 percent of the amount which would be imposed for the taxable year

70 (determined before application of any other allowable credits against tax): *Provided, however,*
71 That when in any taxable year beginning on and after January 1, 2009, the taxpayer is entitled to
72 claim credit under this article and §11-13D-1 *et seq.* of this code, the total amount of all credits
73 allowable for the taxable year may not reduce the amount of the corporation net income tax,
74 imposed under article §11-24-1 *et seq.* of this code, below 40 percent of the amount which would
75 be imposed for the taxable year as determined before application of any other allowable credits
76 against tax;

77 (4) Pass-through entities, personal income tax, proprietorships. —

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

84 (B) The amount of annual credit allowed will not reduce corporation net income tax,
85 imposed under §11-24-1 *et seq.* of this code, below 50 percent of the amount which would be
86 imposed on the conduit income directly derived from the eligible taxpayer by each owner for such
87 taxable year in the absence of this credit against the taxes (determined before application of any
88 other allowable credits against tax): *Provided,* That for tax years beginning on and after January 1,
89 2009, the amount of annual credit allowed will not reduce corporation net income tax, imposed
90 under §11-24-1 *et seq.* of this code, below 40 percent of the amount which would be imposed on
91 the conduit income directly derived from the eligible taxpayer by each owner for such taxable year
92 in the absence of this credit against the taxes as determined before application of any other
93 allowable credits against tax.

94 (C) When in any taxable year the taxpayer is entitled to claim credit under this article and
95 §11-13D-1 *et seq.* of this code, the total amount of all credits allowable for the taxable year will not

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

105 (D) For tax years beginning on and after January 1, 2024, if the eligible taxpayer is a
106 limited liability company, small business corporation or a partnership, then any unused credit (after
107 application of subdivisions (2) and (3) of this subsection) is allowed as a credit against the taxes
108 imposed by §11-21-1 *et seq.* of this code on owners of the eligible taxpayer on the conduit income
109 directly derived from manufacturing activity of the eligible taxpayer by its owners. Only those
110 portions of the tax imposed by §11-21-1 *et seq.* of this code on income of each owner directly
111 derived from manufacturing activity of the eligible taxpayer are subject to offset by this credit.

112 (E) The amount of annual credit allowed may not reduce personal income tax, imposed
113 under §11-21-1 *et seq.* of this code, below 40 percent of the amount which would be imposed on
114 the conduit income directly derived from manufacturing activity of the eligible taxpayer by each
115 owner for such taxable year in the absence of this credit against the taxes as determined before
116 application of any other allowable credits against tax.

117 (F) For tax years beginning on and after January 1, 2024, if the eligible taxpayer is a sole
118 proprietorship, then any unused credit (after application of subdivisions (2) and (3) of this
119 subsection) is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of this code on
120 income directly derived from manufacturing activity by the eligible taxpayer. Only those portions of

121 the tax imposed by §11-21-1 et seq. of this code on income of the owner directly derived from
122 manufacturing activity are subject to offset by this credit.

123 (G) The amount of annual credit allowed may not reduce personal income tax, imposed
124 under §11-21-1 et seq. of this code, below 40 percent of the amount which would be imposed on
125 the conduit income directly derived from manufacturing activity of the eligible taxpayer for such
126 taxable year in the absence of this credit against the taxes as determined before application of any
127 other allowable credits against tax.

128 (5) Small business corporations, limited liability companies, partnerships and other
129 unincorporated organizations shall allocate any unused credit after application of subdivisions (2)
130 ~~and (3), and (4)~~ of this subsection among their members in the same manner as profits and losses
131 are allocated for the taxable year. ~~and~~

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

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

137 (d) Application for credit required. —

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

147 21-1 *et seq.* or §11-24-1-1 *et seq.* of this code for the taxable year in which the property to which
148 the credit relates is placed in service or use.

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

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

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

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

**ARTICLE 13Y. WEST VIRGINIA MANUFACTURING PROPERTY TAX ADJUSTMENT
CREDIT.**

§11-13Y-5. Application of annual credit allowance, definition, effective date.

1 ~~(a) Application of credit against business franchise tax. — The amount of credit allowed~~
2 ~~shall first be taken against the tax liabilities of the eligible taxpayer for the current taxable year~~
3 ~~imposed by article twenty three of this chapter~~

4 (a) For tax years beginning on and after January 1, 2024, "eligible taxpayer" means a
5 manufacturing business that is subject to the tax imposed under §11-24-1 et seq. of this code on
6 income directly attributable to manufacturing activity in this state, or any manufacturing business
7 that is a pass through entity, the owners or interest holders of which are subject to the tax imposed
8 under §11-24-1 et seq. of this code, on the conduit income thereof directly attributable to
9 manufacturing activity in this State, or the tax imposed under §11-21-1 et seq. of this code, on the
10 conduit income thereof directly attributable to manufacturing activity in this state, or a
11 manufacturing business that is a sole proprietorship, the net income of which is subject to the tax
12 imposed under §11-21-1 et seq. of this code, on income directly attributable to manufacturing
13 activity in this State: *Provided*, That taxpayers owning property assessed by the Board of Public
14 Works are not eligible taxpayers for purposes of this article. "Eligible taxpayer" includes those
15 members of an affiliated group of taxpayers engaged in a unitary business, in which one or more
16 members of the affiliated group is a person subject to the tax imposed under §11-24-1 et seq. of
17 this code. Application of credit under this article is subject to the provisions of §11-24-13a(g) and
18 §11-24-13c(b)(2) of this code. Affiliates not engaged in the unitary business do not qualify as
19 eligible taxpayers.

20 ~~(b) Application of credit against corporate net income tax. — Any credit remaining after~~
21 ~~application of the credit against the tax liabilities of the eligible taxpayer for the current taxable year~~
22 ~~imposed by article twenty three [§11-23-1 et seq.] of this code shall next The amount of credit~~

23 allowed under this article shall first be taken against the tax liabilities of the eligible taxpayer for the
24 current taxable year imposed by ~~article twenty-four~~ §11-24-1 *et seq.* of this code and directly
25 derived from manufacturing activity in this state.

26 (c) Application of Credit, pass-through entities, personal income tax, proprietorships. —

27 (1) For corporation net income tax payers — For tax years beginning on and after January
28 1, 2024, if the eligible taxpayer is a limited liability company, small business corporation or a
29 partnership, then the credit authorized under this article shall be taken against the tax liabilities
30 imposed by §11-24-1 *et seq.* of this code on owners of the eligible taxpayer on conduit income
31 directly derived from the eligible taxpayer and attributable to the manufacturing activity in this
32 state.

33 (2) For personal income tax payers —

34 (A) For tax years beginning on and after January 1, 2024, if the eligible taxpayer is a limited
35 liability company, small business corporation or a partnership, then the credit authorized under this
36 article shall be taken against the tax liabilities imposed by §11-21-1 *et seq.* of this code on owners
37 of the eligible taxpayer on conduit income directly derived from the eligible taxpayer and
38 attributable to the manufacturing activity in this state.

39 (B) For tax years beginning on and after January 1, 2024, if the eligible taxpayer is a sole
40 proprietorship, then credit authorized under this article shall be taken against the tax liabilities
41 imposed by §11-21-1 *et seq.* of this code on income of the eligible taxpayer directly derived from
42 manufacturing activity in this state. Only those portions of the tax imposed by §11-21-1 *et seq.* of
43 this code on income of the owner directly derived from manufacturing activity are subject to offset
44 by this credit.

45 (e) ~~(d)~~ Carryover credit disallowed. — Any credit remaining after application of the credit
46 against the tax liabilities specified in ~~subsections (a) and (b)~~ of this section for the current taxable
47 year is forfeited and ~~shall~~ may not carry back to any prior taxable year and ~~shall~~ may not carry
48 forward to any subsequent taxable year. The credit allowed under this article shall be applied after

49 application of all other applicable tax credits allowed for the taxable year against the taxes
50 imposed by ~~article twenty-three of this chapter and after application of all other applicable tax~~
51 ~~credits allowed for the taxable year against the taxes imposed by article twenty-four §11-24-1 et~~
52 ~~seq. of this code and after application of all other applicable tax credits allowed for the taxable year~~
53 against the taxes imposed by §11-21-1 et seq. of this code.

54 (d) (e) Annual schedule. — For purposes of asserting the credit against tax, the taxpayer
55 shall prepare and file an annual schedule showing the amount of tax paid for the taxable year and
56 the amount of credit allowed under this article. The annual schedule shall set forth the information
57 and be in the form prescribed by the Tax Commissioner.