

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 4722

By Delegates Barnhart, Toney, Vance, Dean, and

Bridges

[Originating in the Committee on Finance; Reported

on February 23, 2024]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-13NN-1, §11-13NN-2, §11-13NN-3, §11-13NN-4, §11-13NN-5, §11-13NN-
3 6, §11-13NN-7, §11-13NN-8, §11-13NN-9 and §11-13NN-10, all relating to establishing a
4 road or highway infrastructure improvement projects tax credit for taxpayers subject to the
5 tax imposed by West Virginia code §11-13A-3; specifying a short title; specifying legislative
6 findings and purpose for new credit; defining terms; specifying the amount of the credit,
7 application of credit, and carry forward of unused credit; excluding application of any
8 credits against any portion of severance taxes dedicated to counties and municipalities;
9 requiring filing of application for road or highway infrastructure improvement project credit
10 as condition precedent to claiming credit, specifying procedure for application for
11 certification, contents of application and limitation on maximum amount of credits which
12 can be approved; allowing transfer of credits to successors; providing for forfeiture of
13 unused tax credits and redetermination of credit allowed; providing penalties for failure to
14 maintain records of qualified property; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13NN. TAX CREDIT FOR ROAD AND HIGHWAY INFRASTRUCTURE
IMPROVEMENTS.**

§11-13NN-1. Short title.

1 This article may be cited as the "West Virginia Road and Highways Infrastructure
2 Improvements Tax Credit Act."

§11-13NN-2. Legislative finding and purpose.

1 The Legislature finds that the establishment and maintenance of infrastructure projects,
2 including a system of good roads and highways in this state, and making of capital investments by
3 taxpayers subject to the tax imposed by §11-13A-1 et seq. of the code, is in the public interest,
4 encourages greater capital investment by other businesses in the coal producing areas of this

5 state, increases economic opportunity in this state and thereby promotes the general welfare of
6 the people of this state. In order to promote the private investment in infrastructure improvements
7 to roads and highways in this state, and capital investment by coal severance tax taxpayers there
8 is hereby enacted a road and highways infrastructure improvements tax credit.

§11-13NN-3.

Definitions.

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

5 (b) *Terms defined.* —

6 (1) *Corporation.* — The term "corporation" means any corporation, joint-stock company or
7 association, and any business conducted by a trustee or trustees wherein interest or ownership is
8 evidenced by a certificate of interest or ownership or similar written instrument.

9 (2) *Designee.* — The term "designee" in the phrase "or his or her designee," when used in
10 reference to the Transportation Secretary, means any officer or employee of the Department of
11 Transportation duly authorized by the Transportation Secretary directly, or indirectly by one or
12 more delegations of authority, to perform the functions mentioned or described in this article.

13 (3) *Eligible taxpayer.* — The term "eligible taxpayer" means any person who makes a
14 qualified expenditure in a certified road or highway infrastructure improvement project and who is
15 subject to the tax imposed by §11-13A-3 of this code. "Eligible taxpayer" shall also include an
16 affiliated group of taxpayers if the group elects to file a consolidated severance tax return under
17 §11-13A-1 *et seq.* of this code.

18 (4) *Expenditures for road or highway infrastructure improvement projects.*

19 (A) *Included expenditures for road or highway infrastructure improvement projects.* — The
20 term "expenditures for road or highway infrastructure improvement projects" includes payments
21 made by an eligible taxpayer for labor done, tangible personal property, materials, services or

22 supplies furnished in furtherance of a road or highway infrastructure improvement project. In
23 addition, the term "expenditures for road or highway infrastructure improvement projects" includes
24 the cost of the real property and improvements thereto, purchased by an eligible taxpayer and
25 donated to the state in furtherance of a road or highway infrastructure improvement project and the
26 fair market value of real property and improvements thereto owned by an eligible taxpayer and
27 donated to the state in furtherance of a road or highway infrastructure improvement project.

28 (C) Excluded expenditures. — The term "expenditures for road or highway infrastructure
29 improvement projects" exclude purchases of property and services acquired:

30 (i) From a person whose relationship to the person making the expenditure would result in
31 the disallowance of deductions under section 267 or 707 (b) of the United States Internal Revenue
32 Code of 1986, as amended, and in effect on the first day of January, 2004.

33 (ii) By one component member of a controlled group from another component member of
34 the same controlled group. The Tax Commissioner can waive this requirement if the expenditure is
35 for property or services acquired from a related person for fair market value.

36 (D) Related person. — The term "related person" means:

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

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

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

42 (iv) A member of the same controlled group as the taxpayer.

43 For purposes of this subdivision, "control", with respect to a corporation, means ownership,
44 directly or indirectly, of stock possessing 50 percent or more of the total combined voting power of
45 all classes of the stock of the corporation entitled to vote. "Control", with respect to a trust, means
46 ownership, directly or indirectly, of 50 percent or more of the beneficial interest in the principal or
47 income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a

48 partnership or association or of a beneficial interest in a trust shall be determined in accordance
49 with the rules for constructive ownership of stock provided in section 267(c) of the United States
50 Internal Revenue Code of 1986, as amended, other than paragraph (3) of that section.

51 (c) *Includes and including.* — The terms "includes" and "including", when used in a
52 definition contained in this article, shall not be deemed to exclude other things otherwise within the
53 meaning of the term defined.

54 (d) *Partnership and partner.* — The term "partnership" includes a syndicate, group, pool,
55 joint venture, or other unincorporated organization through or by means of which any business,
56 financial operation, or venture is carried on, and which is not a trust or estate, a corporation or a
57 sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint
58 venture, or organization.

59 (e) *Person.* — The term "person" includes any natural person, corporation, or partnership.

60 (f) *Road or highway.* — The terms "road" and "highway" are used interchangeably herein
61 and for purposes of this article shall have the same meaning as the terms "road", "public road",
62 and "highway", as defined in §17-1-3 of the code.

63 (g) *Road or highway infrastructure improvement.* — The term "road or highway
64 infrastructure improvement" means the construction, improvement, repair, upgrade, and
65 modernization of roads, public roads and highways in this state for the purpose of widening,
66 increasing weight limits, enhancing safety, improving traffic flow, or otherwise facilitating the
67 commercial transportation of goods or passengers within this state or the ingress and egress of
68 vehicles to commercial and industrial sites, consistent with the purposes for which this article was
69 enacted.

70 (h) *Tax Commissioner.* — The term "Tax Commissioner" means the Commissioner of the
71 West Virginia State Tax Department.

72 (i) *Taxpayer.* — The term "taxpayer" means any person subject to the tax imposed by §11-
73 13A-3 of this code.

74 (j) *Transportation Secretary or Secretary of Transportation.* — The terms "Transportation
75 Secretary" and "Secretary of Transportation" are used interchangeably herein and mean the
76 Secretary of the Department of Transportation of the State of West Virginia.

§11-13NN-4. Credit allowed; amount of credit; application of credit; carry forward of unused
credit for 10 years.

1 (a) *Credit allowed.* — An eligible taxpayer shall be allowed a credit against a portion of its
2 annual severance tax liability. The amount of this credit shall be determined and applied as
3 hereinafter provided in this article.

4 (b) *Amount of credit.* — The amount of credit allowable is determined by multiplying the
5 amount of the taxpayer's expenditures for road or highway infrastructure improvement projects
6 (as determined and certified by the Secretary of Transportation) by 50 percent. The product of this
7 calculation establishes the maximum amount of credit allowable under this article.

8 (c) *Application of credit.* — The amount of credit allowable may be taken against up to 20
9 percent of taxpayer's annual severance tax liability imposed by §11-13A-3 of this code: *Provided,*
10 That the gross amount of tax on coal collected, reallocated and dedicated under §11-13A-6 of this
11 code and the gross amount of tax on coal collected, reallocated and dedicated under §11-13A-6a
12 of this code shall be paid over and distributed as provided in those sections without the application
13 of any credits against the tax allowed by this section. Where taxpayer's expenditure involves a
14 road or highway infrastructure improvement the credit may be taken in the year the improvement is
15 completed, as certified by the Transportation Secretary. The aggregate annual credit allowance
16 may be claimed by taxpayer against its severance tax liability shown on its monthly tax returns at
17 the rate of one-twelfth of the annual credit allowance per month.

18 (d) *Unused credit.* — If any credit remains after application of subsection (c) of this section,
19 the amount thereof may be carried forward to each ensuing tax year until used or until the
20 expiration of the ninth taxable year subsequent to the year in which the credit was first available. If

21 any unused credit remains after the 10th year, the amount thereof is forfeited. No carryback to a
22 prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

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

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

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

§11-13NN-5. Application for road or highway infrastructure improvement project; contents
of application; review of credit application; limitation on total credits authorized;
taking _____ of _____ credit.

1 (a) *Application for credit required.* — Notwithstanding any provision of this article to the
2 contrary, no credit shall be allowed or applied under this article for any expenditure for road or
3 highway infrastructure improvements until the person asserting a claim for the allowance of credit
4 receives certification of the project from the Transportation Secretary, as provided in this section.
5 Applications for certification of a road or highway infrastructure improvement project shall be filed
6 with the Transportation Secretary and approved prior to the commencement of any project
7 construction.

8 (b) *Contents of application for certification.* — Applications for certification of a road or
9 highway infrastructure improvement project shall contain a detailed description of the project, all
10 engineering drawings required to construct the infrastructure improvements contemplated by the
11 project application, a list of contractors who will work on the project, a description of the work each
12 contractor will perform, the project timetable, a detailed breakdown of the cost of the project, the
13 amount of credit requested and any other information which the Transportation Secretary or his or
14 her designee require.

15 (c) Review of application. — Once a project application is filed, the Transportation
16 Secretary shall work with taxpayer to ensure that the application contains all of the information
17 required by this section. Applications for credit may be supplemented or amended at any time after
18 filing until all of the information required by subsection (b) of this section has been provided. Once
19 a complete application has been filed, the Transportation Secretary shall review it to determine
20 whether the project should be certified as eligible for credit under this article.

21 (d) Limitation on total credits authorized. — The Secretary is authorized to certify no more
22 than \$100,000 of expenditures for each road or highway infrastructure improvements project as
23 eligible for the credit provided in this article. The Secretary shall keep track of the total
24 expenditures approved and will cease accepting applications once the expenditure limit has been
25 reached.

26 (e) Taking of credit. — The eligible taxpayer claiming the credit for certified expenditures
27 for road or highway infrastructure improvements shall include information supporting the
28 computation of the credit and any other information the Transportation Secretary requires with its
29 severance tax returns filed under this chapter.

§11-13NN-6. Transfer of tax credit to successors.

1 (a) Mere change in form of business. — The tax credit allowed in this article shall not be
2 lost by reason of a mere change in the form of conducting the business in this state, if the
3 transferor business retains a controlling interest in the successor business. In this event, the
4 successor business shall be allowed to claim the amount of credit still available with respect to the
5 project.

6 (b) Transfer or sale to successor. — The tax credit allowed in this article shall not be lost by
7 reason of any transfer or sale of the stock or assets of the eligible taxpayer to a successor
8 business which continues to operate in this state. Upon transfer or sale, the successor shall
9 acquire the amount of credit that remains available under this article for each subsequent taxable
10 year.

§11-13NN-7. Forfeiture of unused tax credits; redetermination of credit allowed.

1 Disposition of property or cessation of use. — If during any taxable year, property with
2 respect to which a tax credit has been allowed under this article:

- 3 (1) Is disposed of prior to the end of its useful life, as determined under this section; or
4 (2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end of
5 its useful life, then the unused portion of the credit allowed for the property is forfeited for the
6 taxable year and all ensuing years.

§11-13NN-8. Identification of qualified property.

1 Every taxpayer who claims credit under this article shall maintain sufficient records to
2 establish the following facts for each item of qualified property:

- 3 Its identity;
4 Its actual or reasonably determined cost;
5 Its straight-line depreciation life;
6 The month and taxable year in which it was placed in service;
7 The amount of credit taken; and
8 The date it was disposed of or otherwise ceased to be qualified property.

§11-13NN-9. Failure to keep records of qualified property.

1 A taxpayer who does not keep the records required for identification of qualified property is
2 subject to the following rules:

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

5 (b) If a taxpayer cannot establish when qualified property on which the credit was claimed
6 was placed in service, the taxpayer is treated as having placed it in service in the most recent prior
7 year in which similar property was placed in service, unless the taxpayer can establish that the
8 property placed in service in the most recent year is still on hand. In that event, the taxpayer will be
9 treated as having placed the property in service in the next most recent year.

§11-13NN-10. Effective _____ date.

- 1 The credit allowed by this article shall be allowed for tax years beginning on or after the first
- 2 day of January 2024.