

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2160

**FISCAL
NOTE**

By Delegates Criss and Heckert

[Introduced on February 12, 2025; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-13S-4 and §11-13Y-5 of the Code of West Virginia, 1931, as
2 amended, relating to authorizing application of the manufacturing investment tax credit
3 and the manufacturing property tax adjustment credit against personal income tax;
4 defining terms; deleting superannuated language; specifying application of tax credit;
5 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, 2025, "eligible taxpayer" means any
10 manufacturing business that is subject to the tax imposed under §11-24-1 *et seq.*, or any
11 manufacturing business that is a pass through entity, the owners or interest holders of which are
12 subject to the tax imposed under §11-24-1 *et seq.*, on the conduit income thereof directly
13 attributable to the manufacturing activity, or the tax imposed under §11-21-1 *et seq.*, on the conduit
14 income thereof directly attributable to the manufacturing activity, or any manufacturing business
15 that is a sole proprietorship, the net income of which is subject to the tax imposed under §11-21-1
16 *et seq.*, on income directly attributable to the manufacturing activity: *Provided*, That taxpayers
17 owning property assessed by the Board of Public Works are not eligible taxpayers for purposes of

18 this article. "Eligible taxpayer" includes those members of an affiliated group of taxpayers engaged
19 in a unitary business, in which one or more members of the affiliated group is a person subject to
20 the tax imposed under §11-24-1 et seq. Application of credit under this article is subject to §11-24-
21 13a(g) and §11-24-13c(b)(2). Affiliates not engaged in the unitary business do not qualify as
22 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., in that order,
31 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

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) Corporation net income tax. —

After application of subdivision (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;

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

(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) and (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

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, 2025, 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.* on owners of the eligible taxpayer on the conduit income directly
109 derived from manufacturing activity of the eligible taxpayer by its owners. Only those portions of
110 the tax imposed by §11-21-1 *et seq.* on income of each owner directly derived from manufacturing
111 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.*, below 40 percent of the amount which would be imposed on the conduit
114 income directly derived from manufacturing activity of the eligible taxpayer by each owner for such
115 taxable year in the absence of this credit against the taxes as determined before application of any
116 other allowable credits against tax.

117 (F) For tax years beginning on and after January 1, 2025, 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.* on income
120 directly derived from manufacturing activity by the eligible taxpayer. Only those portions of the tax

121 imposed by §11-21-1 et seq. on income of the owner directly derived from manufacturing activity
122 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., below 40 percent of the amount which would be imposed on the conduit
125 income directly derived from manufacturing activity of the eligible taxpayer for such taxable year in
126 the absence of this credit against the taxes as determined before application of any other
127 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-

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'~~ Workforce West Virginia division of employment ~~services~~ service 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 13Y. WEST VIRGINIA MANUFACTURING PROPERTY TAX ADJUSTMENT
CREDIT.**

§11-13Y-5. Application of annual credit allowance.

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

(b) ~~Application of credit against corporate net income tax. — Any credit remaining after application of the credit against the tax liabilities of the eligible taxpayer for the current taxable year imposed by article twenty-three [§11-23-1 et seq.] of this code shall next~~ The amount of credit allowed under this article shall first be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by ~~article twenty-four~~ §11-24-1 et seq. of this code and directly derived from manufacturing activity in this state.

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

(1) For corporation net income tax payers — For tax years beginning on and after January 1, 2025, if the eligible taxpayer is a limited liability company, small business corporation or a partnership, then the credit authorized under this article shall be taken against the tax liabilities imposed by §11-24-1 et seq. on owners of the eligible taxpayer on conduit income directly derived from the eligible taxpayer and attributable to the manufacturing activity in this state.

(2) For personal income tax payers —

(A) For tax years beginning on and after January 1, 2025, if the eligible taxpayer is a limited liability company, small business corporation or a partnership, then the credit authorized under this article shall be taken against the tax liabilities imposed by §11-21-1 et seq. on owners of the eligible taxpayer on conduit income directly derived from the eligible taxpayer and attributable to the manufacturing activity in this state.

22 (B) For tax years beginning on and after January 1, 2025, if the eligible taxpayer is a sole
23 proprietorship, then credit authorized under this article shall be taken against the tax liabilities
24 imposed by §11-21-1 et seq. on income of the eligible taxpayer directly derived from
25 manufacturing activity in this state. Only those portions of the tax imposed by §11-21-1 et seq. on
26 income of the owner directly derived from manufacturing activity are subject to offset by this credit.

27 (c) Carryover credit disallowed. — Any credit remaining after application of the credit
28 against the tax liabilities specified in ~~subsections (a) and (b)~~ of this section for the current taxable
29 year is forfeited and shall may not carry back to any prior taxable year and shall may not carry
30 forward to any subsequent taxable year. The credit allowed under this article shall be applied after
31 application of all other applicable tax credits allowed for the taxable year against the taxes
32 imposed by ~~article twenty-three of this chapter and after application of all other applicable tax~~
33 ~~credits allowed for the taxable year against the taxes imposed by article twenty-four~~ §11-24-1 *et*
34 *seq.* of this code and after application of all other applicable tax credits allowed for the taxable year
35 against the taxes imposed by §11-21-1 et seq.

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

NOTE: The purpose of this bill is to authorize application of the manufacturing investment tax credit and the manufacturing property tax adjustment credit against personal income 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.