

Form #3

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE



GASTON CAPERTON
GOVERNOR

State of West Virginia
Department of Tax and Revenue

TAX DIVISION

P. O. Box 2389
Charleston, WV 25328-2389

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
JAMES H. PAIGE III
SECRETARY

CONSENT TO FILE RULE

July 25, 1995

To Whom It May Concern:

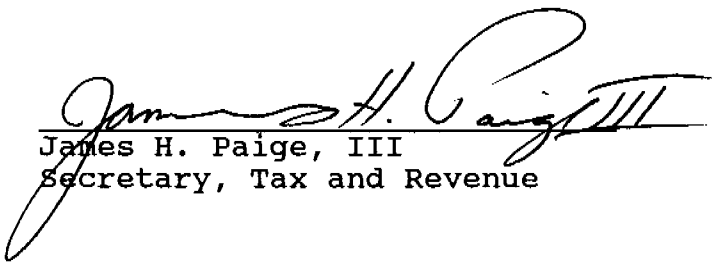
Title of Rule: Tax Credit for Employing Former Employees of
Colin Anderson Center.

Title Number: 110

Series Number: 13I

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned
hereby consents to the filing of the foregoing rule.

Signed this 25th day of July, 1995.


James H. Paige, III
Secretary, Tax and Revenue

FISCAL NOTE FOR AGENCY APPROVED RULES

Rule Title: Tax Credit for Employing Former Members of Colin Anderson Center.

Type of Rule: X Legislative Interpretive Procedural

Agency: State Tax Division

Address: W-300

State Capitol

Charleston, WV

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There should be no fiscal impact on Departmental expenses.

3. Objectives of these rules:

Provide clarification on the tax credit which is available to employers who hire certain former employees of Colin Anderson Center.

Rule Title: International Fuel Tax Agreement

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None anticipated beyond that envisioned when
H.B. 2829 was enacted.

B. Economic Impact on Political Subdivisions; Specific
Industries; Specific groups of Citizens.

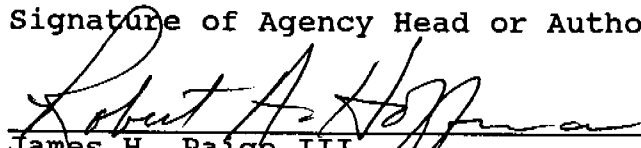
None anticipated beyond that envisioned when
H.B. 2829 was enacted.

C. Economic Impact on Citizens/Public at Large.

None anticipated beyond that envisioned when
H.B. 2829 was enacted.

Date: July 27, 1995

Signature of Agency Head or Authorized Representative


James H. Paige III
Secretary of Tax and Revenue,
State Tax Commissioner

SUMMARY OF AGENCY APPROVED RULE

This rule explains and clarifies the tax credit available to employers who hire certain former employees of Colin Anderson Center. The tax credit is available under the authority of recently enacted Article 13I, Chapter 11 of the West Virginia Code.

STATEMENT OF CIRCUMSTANCES

With the enactment of H.B. 2829 on March 10, 1995, the Legislature provided a tax credit for those employers who hire former employees of Colin Anderson Center, such employees having lost employment as a result of closing that Center. These regulations further explain the tax credit.

DATE: July 28, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Division

LEGISLATIVE RULE TITLE: Tax Credit for Employing Former Members
of Colin Anderson Center

1. Authorizing statute(s) citation: West Virginia Code §§

11-13I-3 and 11-10-5

2. a. Date filed in State Register with Notice of Comment
Period:

June 21, 1995

b. What other notice, including advertising, did you
give of the comment period?

N/A

c. Date of public comment period: June 21, 1995 - July

24, 1995

d. Attach list of persons who appeared at hearing,
comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing: (be
exact)

July 28, 1995

f. Name and phone number(s) of agency person(s) to
contact for additional information:

John Montgomery - 558-5330

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

d. Attach findings and detminations and reasons:

Attached _____

AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE REGULATIONS
TAX DEPARTMENT
TITLE 110
SERIES 13I
TAX CREDIT FOR EMPLOYING FORMER EMPLOYEES
OF COLIN ANDERSON CENTER

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§ 110-13I-1. General.

1.1 **Scope.** - These legislative regulations explain and clarify the Tax Credit for Employing Former Employees of Colin Anderson Center Who Lost Their Jobs Due to the Closure of the Center, which is established by W. Va. Code § 11-13I-1 et seq.

1.2 **Authority.** - W. Va. Code §§ 11-10-5, 11-13I-3(c) and 29A-3-15.

1.3 **Filing Date.** -

1.4 **Effective Date.** -

§ 110-13I-2. Definitions.

When used in these regulations, the terms appearing in this Section shall be assigned the meanings provided herein unless the context in which a term is used clearly indicates a different meaning.

2.1 "The Credit" means the credit that is established by Article 13I, Chapter 11 of the West Virginia Code and is explained in these regulations.

2.2 "Employment" means the provision of services under a contract of employment, either express or implied.

2.3 "Month" and "months" refer to the twelve calendar months.

2.4 "Person" means any entity, including but not limited to a natural person, a partnership or a corporation, that is liable for one or more of the following taxes: the Business Franchise Tax imposed under Article 23, Chapter 11 of the West Virginia Code; the Personal Income Tax imposed under Article 21, Chapter 11 of the West Virginia Code; and the Corporation Net Income Tax imposed under Article 24, Chapter 11 of the West Virginia Code.

2.5 "Qualified Employee" means any natural person who, according to records maintained by the West Virginia Department of Administration, Division of Personnel: (i) on December 31, 1995 was employed by the State of West Virginia at the Colin Anderson Center, in a position that was included within the classified service; and (ii) whose employment in the aforementioned position was terminated by the State of West Virginia due to the closing of the Colin Anderson Center and for no other reason.

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2.6 "Taxable year" means a taxpayer's taxable year for federal income tax purposes.

2.7 "Work hour" means:

2.7.1 an hour during which an employee provides services to his or her employer that are taken into account in determining the employee's compensation or the fulfillment of his or her contract of employment; or

2.7.2 any other hour that for purposes of determining the employee's compensation or the fulfillment of his or her contract of employment is treated as an hour in which the employee provided services to his or her employer; or

2.7.3 an hour of paid leave taken by the employee; or

2.7.4 an hour of unpaid leave taken by the employee if: (i) the leave is taken at the request of the employee; (ii) at the conclusion of the leave, the employee is entitled to return to the position he or she held immediately before taking the leave, or to a substantially equivalent position; and (iii) had the employee not taken leave, he or she could have provided services to his or her employer during the hour in question, and the hour or the services provided therein would have been taken into account in determining the employee's compensation and/or the fulfillment of his or her contract of employment.

§ 110-13I-3. Availability.

3.1 **Eligible Taxpayers.** - Any person employing at least one qualified employee shall be eligible for the Credit.

3.2 **Credit Available Only for Taxable Year.** - The Credit shall be separately determined for each taxable year and may be applied only against the taxpayer's tax liabilities for that taxable year. No part of the Credit may be applied against tax liability for a prior or succeeding taxable year.

3.3 **Expiration of the Credit.** - The Credit may not be applied against tax liabilities for taxable years ending after December 31, 1998.

§ 110-13I-4. Amount.

4.1 **Maximum amount of credit.** - The Credit allowed a taxpayer in a given taxable year shall not exceed the lesser of the following: (i) the sum of the Adjusted Allowances as provided in Section 4.2 of

these regulations for the qualified employees employed by the taxpayer during that taxable year; or (ii) ten thousand dollars (\$10,000).

4.2 Adjusted Allowance.

4.2.1 If a qualified employee was employed by the taxpayer for all twelve months of the taxable year, the Adjusted Allowance for that qualified employee shall be equal to the Base Allowance as provided in Section 4.3 of these regulations.

4.2.2 If a qualified employee was employed by the taxpayer for less than twelve months of the taxable year, the Adjusted Allowance for that qualified employee shall be the Base Allowance reduced, but not below zero, by twenty percent (20%) of the Base Allowance for each month of the taxable year during which the qualified employee was not employed by the taxpayer.

<u>Months Employed</u>	<u>Adjusted Allowance</u>
11	80% of Base Allowance
10	60% of Base Allowance
9	40% of Base Allowance
8	20% of Base Allowance
7 or fewer	Zero

4.2.3 A taxpayer shall be regarded as employing a qualified employee for a given month of the taxable year if: (i) during the month, the employee accumulates at least one hundred and forty (140) work hours in the course of his or her employment with the taxpayer, and (ii) in compensating the employee, the taxpayer complies with all applicable federal and state laws. A taxpayer shall not be regarded as employing a qualified employee for any month in which the employee accumulates less than one hundred and forty (140) work hours in the course of his employment by taxpayer, regardless of the number of work hours accumulated by the employee in the course of his employment by any other employer.

4.2.4 For the purpose of determining the number of months that a qualified employee was employed during the current taxable year, a taxpayer may regard as part of the current taxable year any month(s) in the immediately preceding taxable year that have not been considered in determining the taxpayer's Credit for that taxable year. No months of any taxable year other than the current taxable year or the immediately preceding taxable year may be regarded as part of the current taxable year. A given month may be regarded as part of only one taxable year.

4.2.5 (Example) Qualified Employee works for Taxpayer for the last four months of Taxable Year 1. In the first of these months, Qualified Employee accumulates 100 work hours in the course of his employment with Taxpayer. In each of the remaining three months, Qualified Employee accumulates 142 work hours. Qualified Employee also works for Taxpayer for the first six months of Taxable Year 2 and accumulates 142 work hours during each of those months. Taxpayer does not claim a Credit for Taxable Year 1. In determining its Credit for Taxable Year 2, Taxpayer may regard as part of Taxable Year 2 the last four months of Taxable Year 1, which have not been considered in determining Taxpayer's Credit for Taxable Year 1. Of these four months, the three months in which Qualified Employee accumulated more than 142 work hours per month (the second, third and fourth months) are regarded as months for which Qualified Employee is employed by Taxpayer. Qualified Employee did not accumulate at least 140 work hours in the first month; therefore Taxpayer is not regarded as employing Qualified Employee for that month. Taxpayer also is regarded as employing Qualified Employee for the six months of Taxable Year 2. In each of those months, Qualified Employee accumulated more than the minimum 140 work hours in the course of his employment with Taxpayer. Of all of the months that are regarded as a part of Taxable Year 2, Taxpayer employed Qualified Employee for a total of nine months. The Adjusted Allowance for Qualified Employee therefore is .40% of the Base Allowance.

4.3 **Base Allowance.** - The Base Allowance for a qualified employee shall equal fifty percent (50%) of the total amount of unemployment benefits that would be paid to an employee who receives a full sixteen (16) weeks of unemployment benefits based upon wages, during the base period used to compute the unemployment benefits, of twenty-one thousand dollars (\$21,000.00). The Base Allowance resulting from the foregoing is calculated to be \$2,160.00 for each qualified individual; the amount is based upon the unemployment benefits rates in effect July 1, 1995 and is subject to change if those rates change.

§ 110-13I-5. Application.

5.1 **Order of Application.** - The Credit allowed the taxpayer in a given taxable year shall be applied first to the taxpayer's liability for taxes imposed under Article 23, Chapter 11 of the West Virginia Code (Business Franchise Tax). The Credit remaining after it is applied to the taxpayer's Business Franchise Tax liability may be applied against the taxpayer's liability for taxes imposed under Article 21, Chapter 11 of the West Virginia Code (Personal Income Tax) or under Article 24, Chapter 11 of the West Virginia Code (Corporation Net Income Tax), as the case may be.

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5.2 **Credit Nonrefundable.** - The Credit may not be used to reduce below zero (\$0.00) the taxpayer's liability for any tax.

5.3 **Credit May Not Be Applied to Penalties or Interest.** - The Credit may be applied only against taxes imposed under the aforementioned articles of the West Virginia Code. The Credit may not be applied against penalties or interest imposed under any article of the West Virginia Code, notwithstanding that such penalties or interest may be characterized as taxes for certain purposes.

§ 110-13I-6. Documentation.

6.1 **Information Provided by the Taxpayer.** - The following information shall be provided by the taxpayer, either in the spaces provided for such information on a return form promulgated by the Tax Commissioner or in a separate attachment to the tax return for any tax to which the Credit is applied.

6.1.1 The name and social security number of each qualified employee employed by the taxpayer during the taxable year.

6.1.2 For each qualified employee, the number of work hours, as defined herein, accumulated in the course of his or her employment during the taxable year. Work hours for each qualified employee shall be separately stated for each month of the taxable year.

6.2 Should the aforementioned information be provided in an attachment to a tax return, the information shall nonetheless be regarded for all purposes as information provided on the tax return.

6.3 Should a taxpayer neglect to provide any of the aforementioned information, the Tax Commissioner at his discretion may deny the taxpayer the Credit or any part thereof.