

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Tax Commission TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-13N-7, 8 and 10 and 11-13O-7, 8 and 10

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13N

TITLE OF RULE BEING PROPOSED: Tax Credits for New Steel, Aluminum and Polymer

Manufacturing Operations

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Robin C. Capehart, Cabinet Secretary

\$3.20



STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
TAX DIVISION

CECIL H. UNDERWOOD
Governor

ROBIN C. CAPEHART
Cabinet Secretary

RICHARD E. BOYLE, JR.
State Tax Commissioner

SUMMARY OF RULE

110 C.S.R. 13N

Tax Credits for New Steel, Aluminum or Polymer Manufacturing Operations

This rule supplements West Virginia Code §§ 11-13N-1 et seq. and 11-13O-1 et seq. It prescribes the method for apportionment of the available tax credit between the predecessor and a successor taxpayer.



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STATEMENT OF CIRCUMSTANCE

110 C.S.R. 13N

Tax Credits for New Steel, Aluminum or Polymer Manufacturing Operations

This rule supplements West Virginia Code §§ 11-13N-1 et seq. and 11-13O-1 et seq. The tax credit authorized by those Articles requires that apportionment be made in accordance with rules prescribed by the Tax Commissioner. This rule explains the method of apportionment of the credit under various circumstances.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Tax Credit for New Steel, Aluminum or Polymer Manufacturing Operations

Type of Rule: X Legislative Interpretive Procedural

Agency: State Tax Commission
Address: P.O. Box 1005
Charleston, WV 25324-1005

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 appreciable increase in State Tax Commission operating expenses as a result of this rule.

3. Objectives of these rules:

The rule supplements W. Va. Code §§ 11-13N-1 et seq. and 11-13O-1 et seq. in prescribing a method of apportioning the tax credits authorized therein.

Rule Title: Tax Credit for New Steel, Aluminum or Polymer Manufacturing Operations

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The rule provides a tax credit for new steel, aluminum or polymer manufacturing operations; therefore, there may be a slight decrease in revenues.

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

This tax credit, as clarified in this rule, may attract new steel, aluminum or polymer manufacturing operations to this State.

C. Economic Impact on Citizens/Public at Large.

This tax credit, as clarified in this rule, may increase employment.

Date: 7-21-98

Signature of Agency Head or Authorized Representative



Richard E. Boyle, Jr.
State Tax Commissioner

DATE: July 21, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Commission

LEGISLATIVE RULE TITLE: Tax Credits for New Steel, Aluminum, or Polymer
Manufacturing Operations

1. Authorizing statute(s) citation W. Va. Code §§ 11-13N-7, 8 and 10 &
11-13O-7, 8 and 10

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

June 2, 1998

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

None

c. Date of Public Comment Period: June 2, 1998 – July 2, 1998

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

Attached _____ No comments received X

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

July 21, 1998

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

Keith Larson 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 therefor?

d. Attach findings and determinations and reasons:

Attached: _____

TITLE 110
AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE
STATE TAX COMMISSION

FILED

JUL 21 1 49 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 13N
TAX CREDITS FOR NEW STEEL, ALUMINUM
OR POLYMER MANUFACTURING OPERATIONS

§ 110-13N-1. General.

1.1 **Scope.** -- This legislative rule supplements W. Va. Code §§ 11-13N-1 et seq., (Tax Credit for New Steel Manufacturing Operations) and 11-13O-1 et seq. (Tax Credit for New Aluminum or Polymer Manufacturing Operations) which require the Tax Commissioner to prescribe a method for apportionment of the credit available between a predecessor and a successor taxpayer with different taxable years upon occurrence of a merger and which authorize the Tax Commissioner to prescribe any other rules necessary to claim the credit.

1.2 **Authority.** -- W. Va. Code §§ 11-13N-7, 8 and 10, and W. Va. Code § 11-13O-7, 8 and 10.

1.3 **Filing Date.** --

1.4 **Effective Date.** --

§ 110-13N-2. Definitions.

The following terms defined in section two of W. Va. Code §§ 11-13N and 13O are explained, illustrated or clarified by the subsections immediately below them:

2.1 **"Affiliate"** means and includes all persons, as defined in this section, which are affiliates of each other, when either directly or indirectly:

(A) One person controls or has the power to control the other, or

(B) A third party or third parties control or have the power to control two persons, the two thus being affiliates. In determining whether concerns are independently owned and operated and whether or not an affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management and contractual relationships.

2.1.1 The term "affiliate" includes a member of an affiliated group.

2.2 **"Corporation"** includes any corporation, a joint-stock company and any association or other organization which is classified as a corporation under federal income tax law.

2.2.1 The term "corporation" includes a limited liability company if it is taxable as a corporation under federal income tax law.

2.3 **"Full-time employee"** means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a new consumer-ready wood product manufacturing facility in this State, or in a new consumer-ready wood product line of an existing manufacturing facility in this State, more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the eligible employer, whether these hours are hours worked at the manufacturing facility, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.

2.3.1 No combination of part-time, seasonal or temporary employees may be considered equivalent to a full-time employee.

2.3.2 No person who is not an employee (such as an independent contractor) may be considered a full-time employee.

2.3.3 An employee who moves to West Virginia in order to become a West Virginia domiciled resident in order to fill a new job may be counted as a full-time employee if he or she otherwise qualifies as a full-time employee.

2.4 **"Partnership"** means and includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, which is classified as a partnership for federal income tax purposes for the taxable year.

2.4.1 The term "partnership" may include a limited liability company if it is not taxable as a corporation under federal income tax law.

2.5 **"Tax year or taxable year"** means the tax year of the taxpayer for federal income tax purposes.

2.5.1 The term "tax year" includes a short tax year by an eligible taxpayer during its first year of operation.

§ 110-13M-3. Overview of the credits.

3.1 The purpose of the credits is to encourage capital investment in the manufacturing of steel, aluminum or polymer value added products ("value added products") in this State. This rule applies only to manufacturing those products.

3.2 The credits are available to eligible taxpayers to claim against that portion of their Business Franchise Tax and Personal Income Tax or Corporation Net Income Tax for tax years beginning on or after July 1, 1999, which is directly attributable to a new product manufacturing facility located in this State and to a new production line at an existing manufacturing facility located in this State, which first begins manufacturing value added products after June 30, 1999.

3.3 The credit for steel manufacturing is scheduled to expire July 1, 2005. The credit for aluminum and polymer manufacturing is scheduled to expire July 1, 2002.

3.4 The total amount of credit allowable is two hundred fifty dollars (\$250) for each new full-time job created in a product manufacturing facility or in a new product line of an existing manufacturing facility.

3.4.1 The full \$250 per new job is available only when the new job exists for the entire taxable year. Otherwise, the amount of credit allowed is prorated as provided by W. Va. Code §§ 11-13N-4 or 11-13O-4.

§ 110-13N-4. Application of the credit.

4.1 This credit may be applied only after all other allowable credits are applied.

4.2 This credit must be applied against an eligible taxpayer's Business Franchise Tax liability before any remaining credit may be applied against that taxpayer's Personal Income Tax or Corporation Net Income Tax liability.

4.2.1 In no event may any remaining credit be applied against both Personal Income Tax liability and Corporation Net Income Tax liability.

4.2.2 In no event may the credit applied exceed the eligible taxpayer's liability for Business Franchise Tax and Personal Income Tax or Corporation Net Income Tax for the tax year.

4.3 Any amount of credit allowed which remains after being applied against eligible taxes for the tax year in which the new full-time jobs were created is forfeited and may not be used in any prior tax year.

4.3.1 However, any amount of steel manufacturing credit which remains after being applied for the tax year in which new full-time jobs were created may be carried over and used in the next tax year, for each of the next five tax years or until no credit remains because it has all been used or because the credit has expired.

4.4 If a taxpayer does not claim the credit in the first tax year when it is available to be used, it is forfeited and may not be used in any other tax year. However, the unclaimed credit is not forfeited if it is subsequently claimed for that first year on a timely filed amended return.

4.5 The credit may be claimed only by one taxpayer for a given period of time, and may not be assigned to any other taxpayer. However, a husband and wife filing a joint personal income tax return may both claim the credit if either or both of them is an eligible taxpayer, to the extent provided for in Subsection 3.2 of this rule.

4.5.1 If an eligible taxpayer is a member of an affiliated group that files its Business Franchise Tax return on a consolidated basis, the affiliated group may claim the credit to the extent provided for in Subsection 3.2 of this rule. However, each affiliate must file a pro forma federal income tax return and an information return for each tax against which this tax credit is claimed, unless the Tax Commissioner requires filing on a separate basis based on a finding that a deconsolidated filing would be more appropriate for ascertaining an accurate and realistic determination of the new jobs created.

§ 110-13N-5. Annual computation of new jobs held by full-time employees.

5.1 Because all eligible taxpayers are to be treated equally and uniformly, the Tax Commissioner finds that all eligible taxpayers in the business of manufacturing value-added products shall use the same method prescribed by W. Va. Code § 11-13M-7 for determining the number of jobs held by full-time employees in the taxable year. However, the number of new jobs filled during the taxable year by full-time employees of the eligible taxpayer shall be reflective of actual new jobs in this State; that is, that number may not exceed the net increase in this State of full-time jobs held by all employees in all types of business activities of the taxpayer.

5.2 Individuals holding new jobs may be replaced by other individuals, the job title applicable to those new jobs may be changed, and even the job functions may change without adversely affecting the determination of new jobs, as long as adequate documentation is maintained by the eligible taxpayer so that the validity of changes are traceable and verifiable.

§ 110-13N-6. Availability of credit between eligible predecessor and successor taxpayers.

6.1 When an eligible taxpayer merges with another entity and the resulting entity remains an eligible taxpayer, but the taxable year of the predecessor eligible taxpayer and the taxable year of the successor eligible taxpayer are different, the amount of credit available to the predecessor shall be the amount available if the tax years were not different. However, the amount of credit apportioned to the successor shall be

limited to that portion of the predecessor's credit which remains, multiplied by a fraction the numerator of which is the number of days during the same tax year of the successor which coincide with the calendar days remaining in the tax year of the predecessor if it had not merged, and the denominator of which is the number of days remaining in the same tax year of the predecessor if it had not merged. If any of the predecessor's credit which remains cannot be used by the successor in the same tax year, it is forfeited and may not be carried over or carried back to any other tax year.

6.2 No recapture or loss of credit shall occur merely as a result of a change in the form of conducting the business as long as the successor entity is also an eligible taxpayer, and the successor is entitled to all of the credit for the tax year in which the change occurred.

6.2.1 A change in the form of conducting business is a change in the type of business entity, such as a change from a C corporation to an S corporation or a limited liability company, or from a sole proprietorship to a C or S corporation, limited liability company or partnership.

§ 110-13N-7. Credit recapture for improperly claiming the credit or for excessive jobs loss.

7.1 If an eligible taxpayer permanently or indefinitely ceases operation of its new consumer-ready wood product line or manufacturing facility, the credit is subject to recapture because the number of individuals employed in full-time jobs by the employer will have decreased by more than ten percent (10%). See W. Va. Code § 11-13M-9.

7.2 When the eligible taxpayer is a partnership, limited liability company or S corporation, the recapture tax shall be paid by the partners, members or shareholders in the same proportion that they claimed the credit during the tax year in which recapture occurs, but any recapture tax liability not satisfied by one or more partners, members or shareholders becomes the joint and several liability of them all.

7.3 Penalties and additions to tax caused by a decrease of more than ten percent (10%) in the number of individuals employed in full-time positions may be waived by the Tax Commissioner, in whole or in part, at the discretion of the Tax Commissioner, only when the taxpayer demonstrates that the decrease is due to reasonable cause.

7.3.1 Reasonable cause includes loss of new jobs as a result of fire, flood, storm or other casualty; theft or embezzlement; an economic recession or depression which adversely decreases the demand for new consumer-ready wood products; or any other cause approved by the Tax Commissioner.

7.3.2 Reasonable cause does not include loss of new jobs as a result of transferring jobs to another kind of manufacturing facility or another product line or to another location outside this State.

§ 110-13M-8. General Procedure and Administration.

8.1 To claim this credit, a taxpayer shall comply with the provisions of W. Va. Code § 11-13M-1 et seq. and this rule, and shall timely provide complete and accurate forms, schedules and other information required by the Tax Commissioner.

8.1.1 The taxpayer shall file required forms, schedules and information requested by the Tax Commissioner by the due date of the return for the taxes against which the credit is to be applied, with regard to any extension of time for filing but without regard to any extension of time for payment.

8.2 When applying for this credit, a taxpayer is also subject to the provisions of W. Va. Code § 11-21-1 et seq. (Personal Income Tax), W. Va. Code § 11-23-1 et seq. (Business Franchise Tax) and W. Va. Code § 11-24-1 et seq. (Corporation Net Income Tax) and rules issued pursuant to those statutes, as well as to the provisions of W. Va. Code § 11-10-1 et seq. (Procedure and Administration) which provide for administration of those taxes.

8.3 A taxpayer which does not maintain the records required to verify the validity of its eligibility for the credit and the accuracy of the amount of credit claimed may be denied credit or be subject to recapture to the extent the eligibility and accuracy are not substantiated by its records.

8.4 A taxpayer filing on a short tax year basis for its first tax year shall calculate its new jobs filled during the tax year by full-time employees by calculating the average number of new jobs held by full-time employees for each month of the short tax year by averaging the beginning and ending monthly employment of full-time employees holding new jobs, then totaling the monthly averages and dividing that total by the number of months in the short tax year.

§ 110-13N-9. Severability.

9.1 If any provision of this rule or the application of this rule to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected by the holding.