

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 25 2 47 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110
RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code § 11-13M-7,8 and 9

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

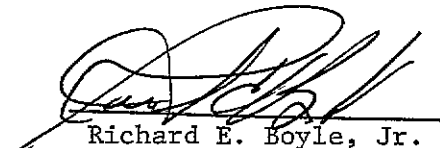
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13M

TITLE OF RULE BEING PROPOSED: Tax Credit For New Value - Added Wood
Manufacturing Operations

This rule may be accessed on the Internet through wvweb.net/taxdiv
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON July 25, 1997 AT 5:00 p.m.
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING
ADDRESS.

Legal Division
State Tax Division
P.O. Box 1005
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Richard E. Boyle, Jr.
State Tax Commissioner

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



FILED

JUN 25 2 47 PM '97

CECIL H. UNDERWOOD
GOVERNOR

STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE

TAX DIVISION

P. O. Box 2389

Charleston, West Virginia 25328-2389

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
ROBIN C. CAPEHART
SECRETARY

CONSENT TO FILE RULE

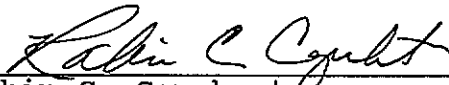
June 25, 1997

To Whom It May Concern:

Title of Rule: Tax Credit For New Value - Added Wood Manufacturing Operations.
Title Number: 110
Series Number: 13M

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 June, 1997.


Robin C. Capehart
Secretary, Tax and Revenue



**STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE**

CECIL H. UNDERWOOD
GOVERNOR

**TAX DIVISION
P. O. Box 2389
Charleston, West Virginia 25328-2389**

ROBIN C. CAPEHART
SECRETARY

STATEMENT OF CIRCUMSTANCES

110 C.S.R. 13M

Tax Credit For New Value - Added Wood Manufacturing Operations

This rule supplements West Virginia Code § 11-13M-1 et seq. As the tax credit authorized therein becomes effective January 1, 1998, this rule explains apportionment of the credit under circumstances.



**STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE**

**CECIL H. UNDERWOOD
GOVERNOR**

**TAX DIVISION
P. O. Box 2389
Charleston, West Virginia 25328-2389**

**ROBIN C. CAPEHART
SECRETARY**

SUMMARY OF RULE

11. C.S.R. 13M

Tax Credit For New Value - Added Wood Manufacturing Operations

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Tax Credit For New Value - Added Wood Manufacturing Operations.

Type of Rule: X Legislative Interpretive Procedural

Agency: State Tax Division

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 Division operating expenses as a result of this rule.

3. Objectives of these rules:

This rule supplements W. Va. Code § 11-13M-1 et seq. in prescribing a method of apportioning the tax credit authorized by Article 13M, Chapter 11 of the West Virginia Code.

Rule Title: Tax Credit For New Value - Added Wood Manufacturing Operations.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

This rule provides a tax credit for new wood manufacturing operations; therefore, revenues will have a slight decrease.

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

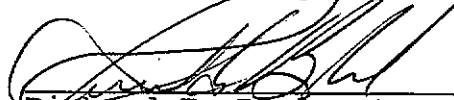
This tax credit may attract new wood manufacturing operations to this State.

C. Economic Impact on Citizens/Public at Large.

This tax credit may increase employment.

Date: June 25, 1997

Signature of Agency Head or Authorized Representative



Richard E. Boyle, Jr.
State Tax Commissioner

FILED

PROPOSED

WEST VIRGINIA LEGISLATIVE RULE

JUN 25 2 47 PM '97

DEPARTMENT OF TAX AND REVENUE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

STATE TAX DIVISION

TITLE 110

SERIES 13M

1997

TAX CREDIT FOR NEW VALUE-ADDED WOOD MANUFACTURING OPERATIONS

§ 110-13M-1. General.

1.1 **Scope.** -- This legislative rule supplements W. Va. Code § 11-13M-1 et seq., which requires 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 authorizes the Tax Commissioner to prescribe any other rules necessary to claim the credit.

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

1.3 **Filing Date.** --

1.4 **Effective Date.** --

§ 110-13M-2. Definitions.

The terms in subsections 2.1 through 2.23 are defined in W. Va. Code § 11-13M-2, and are applicable as if defined in this rule.

2.1 Affiliate.

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

2.2 Commissioner or Tax Commissioner.

2.3 Consumer-ready wood products.

2.3.1 Consumer-ready wood products are considered to be manufactured if they are produced by employees in a factory on an assembly line basis, as opposed craftsmen or artisans who only make customized and/or to unique wood products. The manufacturing process does not begin until after lumber arrives at the factory for converting it into a wood product ready to be used or consumed by a purchaser of the product.

2.3.2 Consumer-ready wood products are considered to be manufactured primarily from wood if more than half of the final product consists of wood and if the cost of the wood constitutes more than half of the cost of all materials included in the final product.

2.3.3 Consumer-ready wood products are considered ready for sale to consumers even though the products are sold to wholesalers or retailers for resale, and even though the ultimate consumer may be required to assemble them or would normally be expected to put finishing touches on them after purchase.

2.4 Corporation.

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

2.5 Delegate.

2.6 Eligible taxpayer.

2.7 Employer.

2.8 Existing manufacturing facility.

2.9 Full-time employee.

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

2.9.2 No person who is not an employee may be considered a full-time employee.

2.9.3 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.

2.10 Internal Revenue Code.

2.11 Manufacturing facility.

2.12 New consumer-ready wood product line.

2.13 New consumer-ready wood product manufacturing facility.

2.14 New job.

2.14.1 A job which is transferred to West Virginia is a new job if it meets the definition of a new job.

2.15 Partnership.

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

2.16 Partner.

2.17 Part-time employee.

2.18 Seasonal employee.

2.19 Temporary employee.

2.20 Person.

2.21 Related entity, related person, entity related to, or person related to.

2.22 Tax year or taxable year.

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

2.23 Taxpayer.

§ 110-13M-3. Overview of the credit.

3.1 The purpose of the credit is to encourage capital investment in manufacturing of consumer-ready wood products in this State.

3.2 The credit is 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, 1997, which is directly attributable to a new consumer - ready wood product facility located in this State and to a new consumer - ready wood product production line at an existing manufacturing facility located in this State, which first begins operation after July 30, 1997.

3.3 The credit 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 new consumer-ready wood product manufacturing facility or in a new consumer-ready wood 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 § 11-13M-4.

§ 110-13M-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 allowable which remains after being applied against eligible taxes for the tax year in which the new full-time job(s) were created is forfeited and may not be used in any other tax year.

4.4 If a taxpayer does not claim the credit in the tax year when it is allowable, it is forfeited and may not be used in any other tax year. However, the unclaimed credit is not forfeited if subsequently claimed for that 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 indicated in Subsection 3.2.

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 indicated in Subsection 3.2, but the 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 deconsolidated filing would be more appropriate for ascertaining an accurate and realistic determination of new jobs created.

§ 110-13M-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 same 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 must 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.

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

6.1 When an eligible taxpayer merges with another entity and the resulting entity becomes 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 new entity is also an eligible taxpayer, and the successor entity 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.

6.3 If an eligible taxpayer permanently or indefinitely ceases operation of its new consumer-ready wood product line or manufacturing facility, it shall be 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%).

6.4 When the eligible taxpayer is a partnership, limited liability company or S corporation, the recapture tax shall be paid by the partners, member or shareholders in the same proportion 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.

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

7.1 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.

7.1.1 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.

7.2 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 must comply with the provisions of W. Va. Code § 11-13M-1 et seq. and this rule, and must timely provide complete and accurate forms, schedules and other information required by the Tax Commissioner.

8.1.1 Required forms, schedules and information requested by the Tax Commissioner must be filed by the due date of the return for the tax(es) 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), and W. Va. Code § 11-23-1 et seq. (Business Franchise Tax) or 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. (Procedures 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 credit claimed may be denied credit or subject to recapture to the extent 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.