WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

6/29/2026 9:30:39 AM

Office of West Virginia Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Tax

TITLE-SERIES: 110-13Y

RULE TYPE: Legislative

Amendment to Existing Rule: No

Repeal of existing rule: No

RULE NAME: DISASTER REPAIR AND RECOVERY TAX CREDIT

CITE STATUTORY AUTHORITY: W. Va. Code §11-13OO-8

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/29/2026 9:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This legislative rule establishes the procedures to qualify for and claim the Disaster Repair and Recovery Tax Credit.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Senate Bill 243 in the 2026 Regular Session of the Legislature created the West Virginia Disaster Repair and Recovery Tax Credit Act and directed both the Tax Commissioner and the Secretary of the Department of Environmental Protection to draft rules to implement the Acts provisions. This new rule is in response to that Legislative direction.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Passage of this bill would reduce General Revenue Fund collections by up to the $5 million cap in the event of a qualifying emergency.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Additional administrative costs incurred by the State Tax Department would be $23,650 in FY2026 and $22,500 per year in FY2027 and thereafter.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

the proposed credit is equivalent to 100 percent of expenditures for repair or recovery efforts by a qualified taxpayer with a maximum program cap of $5 million. This credit may be taken in the year the repair and recovery efforts are completed, as certified by the Department of Environmental Protection. The credit may offset up to 20 percent of a taxpayers annual Severance Tax liability with credit remaining after the tenth year forfeited.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	**2027 Increase/Decrease (use "-")**	**Fiscal Year (Upon Full Implementation)**
1. Estimated Total Cost	23650	22500	22500
Personal Services	0	22500	22500
Current Expenses	1650	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	22000	0	0
2. Estimated Total Revenues	0	-5000000	-5000000

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

According to our interpretation of this bill, the proposed credit is equivalent to 100 percent of expenditures for repair or recovery efforts by a qualified taxpayer with a maximum program cap of $5 million. This credit may be taken in the year the repair and recovery efforts are completed, as certified by the Department of Environmental Protection. The credit may offset up to 20 percent of a taxpayers annual Severance Tax liability with credit remaining after the tenth year forfeited. Passage of this bill would reduce General Revenue Fund collections by up to the $5 million cap in the event of a qualifying emergency. Additional administrative costs incurred by the State Tax Department would be $23,650 in FY2026 and $22,500 per year in FY2027 and thereafter.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 110
LEGISLATIVE RULE
TAX DIVISION

SERIES 13Y
DISASTER REPAIR AND RECOVERY TAX CREDIT

§110-13Y-1. General.

1.1. Scope. -- This legislative rule establishes the procedures to qualify for and claim the Disaster Repair and Recovery Tax Credit.

1.2. Authority. -- W. Va. Code §11-13OO-8.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2032.

§110-13Y-2. Definitions.

2.1. General Rule. -- Unless a specific definition is provided in subsection 2.2 of this section, or the context in which the term is used clearly requires a different meaning, the terms used in this rule have the definitions provided under W. Va. Code §11-13OO-3.

2.2. Terms defined.

2.2.1. "Certified project" means disaster repair and recovery efforts certified by the Department of Environmental Protection pursuant to W. Va. Code §11-13OO-5.

2.2.2. "Credit" or "the credit" means, for the purposes of this rule, the disaster repair and recovery tax credit established by W. Va. Code §11-13OO-1 *et seq.*

2.2.3. "Department of Environmental Protection" or "DEP" means the West Virginia Department of Environmental Protection.

2.2.4. "Severance tax liability" means the liability for severance tax imposed pursuant to W. Va. Code §11-13A-1 *et seq.*, except that the term does not include any liability imposed pursuant to W. Va. Code §11-13A-5a, §11-13A-6, or §11-13A-6a.

§110-13Y-3. Tax Credit Authorized; Effective Date; Administration.

3.1. Effective for tax years beginning on or after January 1, 2026, W. Va. Code §11-13OO-1 *et seq.* authorizes a tax credit for persons subject to the severance tax who make qualified expenditures for disaster repair and recovery efforts in West Virginia.

3.2. Eligible taxpayers must apply to the West Virginia Department of Environmental Protection for certification of a repair and recovery effort project, and that certification is not within the purview of the Tax Division's responsibilities under the terms of the statute. The Tax Division plays no part in certifying which projects qualify for the credit. The DEP is responsible for determining how and when any cap on the aggregate amount of credit is reached.

3.3. After the Department of Environmental Protection has determined a taxpayer's eligibility for the credit, and the amount of eligible expenditures incurred by the eligible taxpayer, the Tax Division will administer the credit. Expenditures that are claimed for purposes of calculating any other credit available to the eligible taxpayer under Chapter 11 of the West Virginia Code shall not be eligible to be included as eligible expenditures for purposes of the disaster repair and recovery tax credit. Likewise, expenditures that are included in the calculation of the amount available for the disaster repair and recovery tax credit shall not be also included in expenditures for calculating any other tax credit available to the taxpayer under Chapter 11 of the West Virginia Code.

§110-13Y-4. Application for and Amount of Credit.

4.1. The credit may be taken against an eligible taxpayer's severance tax liability imposed by W. Va. Code §11-13A-1 *et seq.*

4.2. The amount of credit attributable to any one disaster repair and recovery effort certified by the DEP is limited to $500,000.

4.3. The amount of credit allowable may be taken against up to 20 percent of the eligible taxpayer's annual severance tax liability; provided that no liability imposed under W. Va. Code §11-13A-5a, §11-13A-6, or §11-13A-6a may be included in the determination of severance tax liability. If the eligible taxpayer pays the severance tax on a monthly basis, then it may claim the credit against the severance tax liability shown on its monthly tax returns at the rate of one twelfth of the annual credit allowance per month.

4.4. The credit may first be taken in the year in which the repair and recovery efforts are completed and certified by the DEP. If any credit remains after the first year of claiming the credit, then the remaining amount of credit may be carried forward until the remainder is entirely used or until the expiration of nine taxable years after the first year the credit was claimed. Any unused credit at the end of ten years from the date of certification by the DEP is forfeited.

4.5. No carry back of the credit is allowed.

§110-13Y-5. Transfer of Credit.

5.1. The tax credit allowed pursuant to W. Va. Code §11-13OO-1 *et seq.* cannot be separately sold or transferred by the eligible taxpayer to another taxpayer.

5.2. A mere change in form of the eligible taxpayer, where the transferor business retains a controlling interest in the successor business, does not result in loss of the credit. In such an event, the successor business retains the right to claim the amount of credit still available with respect to the certified project.

5.3. Upon the sale of the entire stock or assets of an eligible taxpayer to a taxpayer that continues operations in West Virginia, the successor taxpayer will be eligible to claim the amount of credit still available with respect to the certified project.

§110-13Y-6. General Procedure and Administration.

6.1. Requirements to Claim the Tax Credit. To claim a tax credit, the eligible taxpayer shall comply with the provisions of W. Va. Code §11-13OO-1 *et seq.*, this rule, and any rule promulgated by the DEP with regard to this credit, and shall timely provide complete and accurate forms, returns, schedules and other information required or requested by the DEP or Tax Commissioner.

6.2. Applicability of Other Laws. Application of this credit and eligibility for this credit shall not affect or abrogate application of the provisions of any portion of Chapter 11, or any other section, of the West Virginia Code.

6.3. Maintenance of Records. An eligible taxpayer claiming the credit shall maintain records required to verify the validity of its eligibility for the tax credit and the accuracy of the amount of tax credit claimed. The certification issued to the eligible taxpayer by the DEP shall be considered persuasive evidence of eligibility for this credit.

6.4. An eligible taxpayer that claims the disaster repair and recovery tax credit remains subject to audit by the Tax Commissioner.