

ARTICLE 6D. ALTERNATIVE-FUEL MOTOR VEHICLES TAX CREDIT.

§11-6D-1. Legislative findings and purpose.

Consistent with the public policy as stated in section one, article two-d, chapter twenty-four of this code, the Legislature hereby finds that the use of alternative fuels is in the public interest and promotes the general welfare of the people of this state insofar as it addresses serious concerns for our environment and our state's and nation's dependence on foreign oil as a source of energy. The Legislature further finds that this state has an abundant supply of alternative fuels and an extensive supply network and that, by encouraging the use of alternatively-fueled motor vehicles, the state will be reducing its dependence on foreign oil and attempting to improve its air quality. The Legislature further finds that the wholesale cost of fuel for certain alternatively-fueled motor vehicles is significantly lower than the cost of fueling traditional motor vehicles with oil based fuels.

However, because the cost of motor vehicles which utilize alternative-fuel technologies remains high in relation to motor vehicles that employ more traditional technologies, citizens of this state who might otherwise choose an alternatively-fueled motor vehicle are forced by economic necessity to continue using motor vehicles that are fueled by more conventional means. Additionally, the availability of commercial and residential infrastructure to support alternatively fueled vehicles available to the public is inadequate to encourage the use of alternatively-fueled motor vehicles. It is the intent of the Legislature that the alternative fuel motor vehicle tax credit previously expired in 2006 be hereby reinstated with changes and amendments as set forth herein. Therefore, in order to encourage the use of alternatively-fueled motor vehicles and possibly reduce unnecessary pollution of our environment and reduce our dependence on foreign sources of energy, there is hereby created an alternative-fuel motor vehicles tax credit and an alternative-fuel infrastructure tax credit.

§11-6D-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them in this section:

- (a) "Alternative fuel" includes:
 - (1) Compressed natural gas;
 - (2) Liquified natural gas;
 - (3) Liquified petroleum gas;
 - (4) Ethanol;

(5) Fuel mixtures that contain eighty-five percent or more by volume, when combined with gasoline or other fuels, of the following:

- (A) Methanol;
- (B) Ethanol; or
- (C) Other alcohols;
- (6) Natural gas hydrocarbons and derivatives;
- (7) Hydrogen;
- (8) Coal-derived liquid fuels; and
- (9) Electricity, including electricity from solar energy.

(b) "Alternative-fuel motor vehicle" means a motor vehicle that as a new or retrofitted or converted fuel vehicle:

- (1) Operates solely on one alternative fuel;
- (2) Is capable of operating on one or more alternative fuels, singly or in combination;
or
- (3) Is capable of operating on an alternative fuel and is also capable of operating on gasoline or diesel fuel.

(c) "Bi-fueled" means the ability of an alternative-fuel motor vehicle to operate on an alternative fuel and another form of fuel.

(d) "Plug-in hybrid electric vehicle" means:

(1) A plug-in hybrid electric vehicle manufactured by an established motor vehicle manufacturer of plug-in hybrid electric vehicles that can operate solely on electric power and that is capable of recharging its battery from an on-board generation source and an off-board electricity source; and

(2) A plug-in hybrid electric vehicle conversion that provides an increase in city fuel economy of seventy-five percent or more as compared to a comparable nonhybrid version vehicle for a minimum of twenty miles and that is capable of recharging its battery from an on-board generation source and an off-board electricity source. A vehicle is comparable if it is the same model year and the same vehicle class as established by the United States Environmental Protection Agency and is comparable in weight, size and use. Fuel economy comparisons shall be made using city fuel economy standards in a manner that is substantially similar to the manner in which city

fuel economy is measured in accordance with procedures set forth in 40 C.F.R. 600 as in effect on January 1, 2011.

(e) "Qualified alternative fuel vehicle refueling infrastructure" means property owned by the applicant for the tax credit and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including, but not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered: *Provided*, That the property is installed and located in this state and is not located on a private residence or private home.

(f) "Qualified alternative fuel vehicle home refueling infrastructure" means property owned by the applicant for the tax credit located on a private residence or private home and used for storing alternative fuels and for dispensing such alternative fuels into fuel tanks of motor vehicles, including, but not limited to, compression equipment, storage tanks and dispensing units for alternative fuel at the point where the fuel is delivered or for providing electricity to plug-in hybrid electric vehicles or electric vehicles: *Provided*, That the property is installed and located in this state.

(g) "Taxpayer" means any natural person, corporation, limited liability company or partnership subject to the tax imposed under article twenty-one, article twenty-three or article twenty-four of this chapter or any combination thereof.

§11-6D-3. Credit allowed for alternative-fuel motor vehicles and qualified alternative fuel vehicle refueling infrastructure; application against personal income tax, business franchise tax or corporate net income tax; effective date.

The tax credits for the purchase of alternative-fuel motor vehicles or conversion to alternative-fuel motor vehicles, qualified alternative fuel vehicle refueling infrastructure and qualified alternative fuel vehicle home refueling infrastructure provided in this article may be applied against the tax liability of a taxpayer imposed by the provisions of either article twenty-one, article twenty-three or article twenty-four of this chapter but in no case may more than one credit be granted for the same alternative-fuel motor vehicle as defined in subdivision (b), section two of this article. This credit shall be available for those tax years beginning on or after January 1, 2011.

§11-6D-4. Eligibility for credit.

A taxpayer is eligible to claim the credit against tax provided in this article if he or she:

(a) Converts a motor vehicle that is presently registered in West Virginia to operate exclusively on an alternative fuel as defined in subdivision (a), section two of this article; or

(b) Purchases from an original equipment manufacturer or an after-market conversion facility or any other automobile retailer, a new dedicated or bi-fueled alternative-fuel motor vehicle for which the taxpayer then obtains a valid West Virginia registration; or

(c) Constructs or purchases and installs qualified alternative fuel vehicle refueling infrastructure or qualified alternative fuel vehicle home refueling infrastructure that is capable of dispensing alternative fuel for alternative-fuel motor vehicles.

(d) The credit provided in this article is not available to and may not be claimed by any taxpayer under any obligation pursuant to any federal or state law, policy or regulation to convert to the use of alternative fuels for any motor vehicle.

§11-6D-5. Amount of credit for alternative fuel motor vehicles.

(a) For taxable years beginning on and after January 1, 2011, the amount of the credit allowed under this article for an alternative-fuel motor vehicle that weighs less than twenty-six thousand pounds is thirty-five percent of the purchase price of the alternative-fuel motor vehicle up to a maximum amount of \$7,500 or fifty percent of the actual cost of converting from a traditionally fueled motor vehicle to an alternative fuel motor vehicle up to a maximum amount of \$7,500.

(b) For taxable years beginning on and after January 1, 2011, the amount of the credit allowed under this article for an alternative-fuel motor vehicle that weighs more than twenty-six thousand pounds is thirty-five percent of the purchase price of the alternative-fuel motor vehicle up to a maximum amount of \$25,000 or fifty percent of the actual cost of converting from a traditionally fueled motor vehicle to an alternative fuel motor vehicle up to a maximum amount of \$25,000.

§11-6D-6. Amount of credit for qualified alternative fuel vehicle refueling infrastructure and qualified alternative fuel vehicle home refueling infrastructure.

(a) For taxable years beginning on and after January 1, 2011, but prior to January 1, 2014, the amount of the credit allowed under this article for qualified alternative fuel vehicle refueling infrastructure is equal to an amount of fifty percent of the total costs directly associated with the construction or purchase and installation of the alternative fuel vehicle refueling infrastructure up to a maximum of \$250,000: *Provided*, That if the qualified alternative fuel vehicle refueling infrastructure is generally accessible for public use, the amount of the credit allowed will be multiplied by 1.25 and the maximum amount allowable will be \$312,500. The amount of credit allowed may not exceed the cost of construction of the alternative fuel vehicle refueling infrastructure.

(b) For taxable years beginning on and after January 1, 2014, but prior to January 1, 2016, the amount of the credit allowed under this article for qualified alternative fuel vehicle refueling infrastructure is equal to an amount of fifty percent of the total costs directly associated with the construction or purchase and installation of the alternative

fuel vehicle refueling infrastructure up to a maximum of \$200,000: *Provided*, That if the qualified alternative fuel vehicle refueling infrastructure is generally accessible for public use, the amount of the credit allowed will be multiplied by 1.25 and the maximum amount allowable will be \$250,000. The amount of credit allowed may not exceed the cost of construction of the alternative fuel vehicle refueling infrastructure.

(c) For taxable years beginning on and after January 1, 2016, but prior to January 1, 2022, the amount of the credit allowed under this article for qualified alternative fuel vehicle refueling infrastructure is equal to an amount of fifty percent of the total costs directly associated with the construction or purchase and installation of the alternative fuel vehicle refueling infrastructure up to a maximum of \$150,000: *Provided*, That if the qualified alternative fuel vehicle refueling infrastructure is generally accessible for public use, the amount of the credit allowed will be multiplied by 1.25 and the maximum amount allowable will be \$187,500. The amount of credit allowed may not exceed the cost of construction of the alternative fuel vehicle refueling infrastructure.

(d) For taxable years beginning on and after January 1, 2011, the amount of the credit allowed under this article for qualified alternative fuel vehicle home refueling infrastructure is equal to an amount of fifty percent of the total costs directly associated with the construction or purchase and installation of the alternative fuel vehicle home refueling infrastructure up to a maximum of \$10,000.

(e) The cost of construction of the alternative fuel vehicle refueling infrastructure or alternative fuel vehicle home refueling infrastructure eligible for a tax credit under this section does not include costs associated with exploration, development or production activities necessary for severing natural resources from the soil or ground.(f) When the taxpayer is a pass-through entity treated like a partnership for federal and state income tax purposes, the credit allowed under this article for the year shall flow through to the equity owners of the pass-through entity in the same manner that distributive share flows through to the equity owners and in accordance with any legislative rule the Tax Commissioner may propose for legislative approval in accordance with article three, chapter twenty-nine-a of this code to administer this section.

(g) No credit allowed by this article may be applied against employer withholding taxes imposed by article twenty-one of this chapter.

§11-6D-7. Duration of availability of credit.

No person is eligible to receive a tax credit under this article for: (1) An alternative-fuel motor vehicle purchased after December 31, 2021; (2) a vehicle converted to an alternative-fuel motor vehicle after December 31, 2021; or (3) the construction or purchase and installation of qualified alternative fuel vehicle refueling infrastructure or qualified alternative fuel vehicle home refueling infrastructure occurring after December 31, 2021.

§11-6D-8. Commissioner to design forms and schedules; promulgation of rules.

(a) The Tax Commissioner shall design and provide to the public simplified forms and schedules to implement and effectuate the provisions of this article.

(b) The Tax Commissioner shall promulgate new rules for the administration of this article consistent with its provisions and in accordance with article three, chapter twenty-nine-a of this code as the Commissioner deems necessary after the effective date of the amendments to this article. Such rules shall include rules relating to the necessary documentation required to be filed in order to take the tax credits allowed in this article.

(c) Within one year prior to the expiration of the credit established in this article, the State Tax Commissioner shall provide a written report to the Legislature setting forth the utilization of the credit, the benefit of the credit and the overall cost of the credit.

§11-6D-9. Carryover credit allowed; recapture of credit.

(a) If the tax credit allowed under this article in any taxable year exceeds the taxpayer's tax liability as determined in accordance with article twenty-one, article twenty-three or article twenty-four of this chapter for that taxable year, the excess may be applied for succeeding taxable years until the full amount of the excess tax credit is used.

(b) No carry back to a prior taxable year is allowed for the amount of any unused credit in any taxable year.

(c) A tax credit is subject to recapture, elimination or reduction if it is determined by the State Tax Commissioner that a taxpayer was not entitled to the credit, in whole or in part, in the tax year in which it was claimed by the taxpayer. The amount of credit that flows through to equity owners of a passthrough entity may be recaptured or recovered from either the taxpayer or the equity owners in the discretion of the Tax Commissioner.