

Schedule CPITC-1

INSTRUCTIONS FOR COMMERCIAL PATENT INCENTIVES TAX CREDIT (FOR PERIODS AFTER JANUARY 1, 2015)

****The following information, instructions, and forms are not a substitute for tax laws and regulations.****

The purpose of the Commercial Patent Incentives Tax Credits is to encourage greater development and use in this state of commercial intellectual properties by West Virginia businesses and thereby increase economic opportunity in West Virginia.

A Commercial Patent Incentives Tax Credit is available for the following:

- The development, in West Virginia, of plant patent, design patent, or patents for direct use in a manufacturing process or product.
- The use of a patent in a manufacturing process or product in West Virginia when the patent was developed in West Virginia.

Available Commercial Patent Incentives Tax Credit may be applied against tax liability attributable to the Personal Income Tax (WV Code §11-21 et seq.), or Corporation Net Income Tax (WV Code §11-24 et seq.). No Commercial Patent Incentives Tax Credit is allowed for any activity, investment, assets, or expenditures for which any of the tax credits in the following Statutes has been authorized, taken or allowed:

- W. Va. Code §11-13D et seq. (Industrial Expansion and Revitalization Credit)
- W. Va. Code §11-13E et seq. (Coal Loading Facilities Credit)
- W. Va. Code §11-13Q et seq. (Economic Opportunity Tax Credit)
- W. Va. Code §11-13R et seq. (Strategic Research and Development Tax Credit)
- W. Va. Code §11-13S et seq. (Manufacturing Investment Tax Credit)
- W. Va. Code §11-13X et seq. (Film Industry Investment Tax Credit)

Also, no Commercial Patent Incentives Tax Credit is allowed for any activity, investment, assets, or expenditures for which any tax credit authorized under W.Va. Code §18B-13 et seq. has been taken or allowed.

The Commercial Patent Incentives Tax Credit is available for tax years beginning on or after January 1, 2011.

Commercial Patent Incentives Tax Credit Definitions

“Agreement” means any agreement or contractual relationship entered into after January 1, 2011 between a person developing patents in this state and either:

A. A corporation established under the laws of this state that meet the requirements of section three, article twelve, chapter eighteen-b of this code; or

B. A center for economic development and technological advancement created pursuant to section three, article twelve-a, chapter eighteen-b of this code.

“Business activity” means all activities engaged in or caused to be engaged in by a person with the object of gain or economic benefit, direct or indirect. For purposes of this definition, the term “gain or economic benefit, direct or indirect” does not include income realized by any person in the form of wages, salary or income that is reported on federal form W-2.

“Commercial use” means selling, licensing, leasing or otherwise making patents available to a third party for a price, fee, royalty, commission or other consideration called by whatever name. “Commercial use” also means, in the case of patents developed by the developer for the developer’s own commercial use, the first use of the patents in a manufacturing or other business activity of the developer. “Commercial use” does not include any selling, licensing, leasing or otherwise making patents available to a third party when done by a broker or by any person who does not own the patent sold, licensed, leased or otherwise made available.

“Copyright” means a copyright that is registered with the United States Copyright Office or with a similar office of a foreign country when the foreign copyright is recognized under federal law.

“Development of a patent,” “developing patents” or “development” means the act of inventing or discovering any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereto through significant investment of money, performance of research, or application of design or engineering expertise, which culminates in the issuance of a patent, as defined in West Virginia Code §11-13AA et seq.

“Developer” means a person engaged in this state in developing patents for direct use in a manufacturing process or product and who has an agreement, as defined in West Virginia Code §11-13AA et seq., with Marshall University or West Virginia University.

Directly used in manufacturing process or product, “and “direct use in manufacturing process or product” with reference to patents means application or incorporation

of a patented process, machine, article of manufacture or composition of matter, in manufacturing operations or processes, or in manufactured products, in circumstances where United States or foreign patent laws require that the specific patent for the process, machine, article of manufacture or composition of matter be owned by the manufacturer, or purchased, leased, licensed or authorized by contract to be applied or incorporated in the manufacturing operation, processes or product, and where such lawful ownership, purchase, lease, licensure or contractual authorization is in effect.

“Manufacturing” means any business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number of thirty-one, thirty-two or thirty-three.

“Mask work” means a series of related images, however fixed or encoded:

- A. Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
- B. In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

“Net profits” means West Virginia taxable income as determined for purposes of West Virginia Code §11-24 et seq. before application of this credit and after application of all credits allowable under Chapter 11 of the West Virginia Code except this credit. In the case of taxpayers that are not subject to the tax imposed by article twenty-four, “net profits” means West Virginia taxable income as determined for purposes of article twenty-one of Chapter 11 of the West Virginia Code, before application of this credit and after application of all credits allowable under this Chapter 11 except this credit. In circumstances where net profit is not solely attributable to and the exclusive result of the direct use of a patent in a manufacturing process or product in this state, the taxpayer shall determine net profit solely attributable to and the exclusive result of the direct use of a patent in a manufacturing process or product in this state, and net profit for purposes of determining the amount of credit allowable under this article shall be the net profit solely attributable to and the exclusive result of the direct use of a patent in a manufacturing process or product in this state.

“Owner”, when used in reference to a pass-through entity, means a person who owns an equity interest in the pass-through entity.

“Partnership” 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 not a sole proprietorship, trust or estate,

and which is treated as a partnership for federal income tax purposes for the taxable year.

“Pass-through entity” means a partnership, limited liability company, small business corporation (S corporation) or other entity treated as a partnership for federal income tax purposes for the taxable year.

“Patent” means a United States patent issued pursuant to 35 U.S.C. §101, et seq. or the Patent Cooperation Treaty done at Washington, on June 19, 1970 and is limited to plant patents, design patents and patents developed in this state for direct use in a manufacturing process or product, or both developed for use and directly used in a manufacturing process or product in this state. For purposes of this article, patents do not include copyrights, trademarks, mask works, trade secrets or any intellectual property that is not a patent.

“Person” includes a natural person, corporation, limited liability company or partnership. A single member liability company that is treated as a disregarded entity for federal income tax purposes is be treated as a disregarded entity for purposes of this article.

“Purchase” means a transaction under which title to an item is transferred for consideration, or a license or lease contract for at least three years is executed, regardless of whether title to the item is transferred at the end of the lease or license period.

“Taxpayer” means any person subject to the tax imposed by article twenty-three or twenty-four of Chapter 11 of the West Virginia Code or to both taxes. In the case of a sole proprietorship that is not subject to either the tax imposed by article twenty-three or twenty-four, the term “taxpayer” means a natural person who owns a disregarded entity and who is subject to the tax imposed by article twenty-one of Chapter 11 on his or her income from business activity in this state, or any sole proprietor who is subject to the tax imposed by article twenty-one.

“Trademark” means any trademark, trade name, service mark or other identifying symbol or name that is registered with the United States Patent and Trademark Office or with a similar office of a foreign country when the foreign registration is recognized under federal law.

“Trade secret” means information, including a formula, pattern, compilation, program device, method, technique or process, that:

- A. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and

B. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

CPITC-1 Instructions

Taxpayers desiring to claim the Commercial Patent Incentives Tax Credit for Developing Patents in West Virginia for Direct Use in a Manufacturing Process or Product must complete Parts A and B of Schedule WV/CPITC-1. No credit is allowed for patents developed before January 1, 2011. For purposes of the tax credit, a patent was developed for direct use in a manufacturing process or product before January 1, 2011, if it was sold, leased or licensed to a third party prior to January 1, 2011, or before January 1, 2011 it was reduced to practice for purely commercial purposes by the developer or a person related to the developer, as defined in subsection (b) Section 267 of the Internal revenue Code of 1986, as amended.

Taxpayers desiring to claim the Commercial Patent Incentives Tax Credit for Use of a Patent in a Manufacturing Process or Product in West Virginia must complete Parts A and C of Schedule WV/CPITC-1. No credit is allowed for using a patent in West Virginia when the person began using the patent before January 1, 2011. No credit is allowed for any patent acquired from, by or between, leased from, by or between, licensed from, by or between, or otherwise authorized to be used from by or between related person, as defined in subsection (b) Section 267 of the Internal revenue Code of 1986, as amended.

An owner Taxpayer desiring to claim Commercial Patent Incentives Tax Credit allocated by a Pass-Through Entity subsidiary must complete Parts A and D of Schedule WV/CPITC-1.

CPITC-1 Part A - Commercial Patent Incentives Tax Credit Summary

- Line 1** Enter the total Commercial Patent Incentives Tax Credit for Developing Patents in West Virginia for Direct Use in a Manufacturing Process or Product as shown on Part B Line 9. A completed Part B must be attached for each qualifying patent. Amounts not supported by completed Part B information will be denied.
- Line 2** Enter the total Commercial Patent Incentives Tax Credit for Use of a Patent in a Manufacturing Process or Product in West Virginia as shown on Part C Line 5. Amounts not supported by completed Part C information will be denied.
- Line 3** Enter the amount of Commercial Patent Incentives Tax Credit as shown in Part D, allocated to you as an owner of a Pass-Through Entity that earned the credit. A completed Part D must be attached. Amounts not supported by completed Part D information will be denied.

Line 4 Enter any Commercial Patent Incentives Tax Credit earned or allocated in a previous year that was not used or allocated from the total on Part E. Amounts not supported by completed Part E information will be denied.

Line 5 Add the amounts on lines 1 through 4. This is the total Commercial Patent Incentives Tax Credit available to you for the current tax period.

Line 6 Adjusted Personal Income Tax. Compute the amount of Personal Income Tax against which the Commercial Patent Incentives Tax Credit can be applied by subtracting any other tax credit amounts applied from the Personal Income Tax as calculated before application of the other tax credits. If the Adjusted Personal Income Tax is less than zero, enter \$0.

Line 7 Compute the Commercial Patent Incentives Tax Credit for application against the Personal Income Tax as the smaller of the amount on Line 5 and the amount on Line 6c.

Line 8 Compute the remaining Commercial Patent Incentives Tax Credit by subtracting the amount on Line 7 from the amount on Line 5.

Line 9 Adjusted Corporation Net Income Tax. Compute the amount of Corporation Net Income Tax against which the Commercial Patent Incentives Tax Credit can be applied by subtracting any other tax credit amounts applied from the Corporation Net Income Tax as calculated before application of the other tax credits. If the Adjusted Corporation Net Income Tax is less than zero, enter \$0.

Line 10 Compute the Commercial Patent Incentives Tax Credit for application against the Corporation Net Income Tax as the smaller of the amount on Line 8 and the amount on Line 9c.

Line 11 Compute the remaining Commercial Patent Incentives Tax Credit by subtracting the amount on Line 10 from the amount on Line 8.

Line 12 If you are a Pass-Through Entity and any of the amount on Line 11 is to be allocated to the owners of the Pass-Through Entity complete Part F and enter the total amount of credit to be allocated.

Line 13 Enter the amount of unused, unallocated Commercial Patent Incentives Tax Credit for carry forward to subsequent years. Subtract the amount on Line 12 from the amount on Line 11.

CPITC-1 Part B

Commercial Patent Incentives Tax Credit for Developing Patents in West Virginia for Direct Use in a Manufacturing Process or Product

- Line 1** Enter the indicated information for the patent developed in West Virginia for which the Commercial Patent Incentives Tax Credit for Developing Patents in West Virginia for Direct Use in a Manufacturing Process or Product is to be claimed. (A separate Part B must be completed for each patent for which credit is to be claimed).
- Line 2** Enter the total amount of royalties, license fees, or other consideration from sale, lease or licensing of the patent described on Line 1.
- Line 3** Enter the direct costs of developing the patent described on Line 1 that were incurred in West Virginia.
- Line 4** Enter the direct costs of developing the patent described on Line 1 that were incurred at all locations.
- Line 5** Compute the West Virginia development cost ratio by dividing the amount on Line 3 by the amount on Line 4.
- Line 6** Compute the West Virginia allocation of patent royalties, license fees, and other consideration by multiplying the amount on Line 1 by the decimal value from Line 5.
- Line 7** Compute the portion of previous tax year Commercial Patent Incentives Tax Credit for Developing Patents in West Virginia for Direct Use in a Manufacturing Process or Product that was reinvested in the current tax year.
- Line 8** Enter the credit percentage.
- Line 9** Compute the amount of Commercial Patent Incentives Tax Credit for Developing Patents in West Virginia for Direct Use in a Manufacturing Process or Product for the current tax year by multiplying the amount on Line 6 by the decimal value from Line 8. Also enter the amount on Part A Line 1.

CPITC-1 Part C – Commercial Patent Incentives Tax Credit for Use of a Patent in a Manufacturing Process or Product in West Virginia

- Line 1** Enter the indicated information for the patent used in a Manufacturing Process or Product in West Virginia for which the tax credit is to be claimed. (A separate Part C must be completed for each patent for which credit is to be claimed).

Line 2 Enter the net profit attributable to the use of the patent described on Line 1.

Line 3 Compute the portion of previous tax year Commercial Patent Incentives Tax Credit for Use of a Patent in a Manufacturing Process or Product in West Virginia that was reinvested in the current tax year.

Line 4 Enter the credit percentage.

Line 5 Compute the amount of Commercial Patent Incentives Tax Credit for Use of a Patent in a Manufacturing Process or Product in West Virginia for the current year by multiplying the amount on Line 2 by the decimal value on line 4. Also, enter the value on part A Line 2.

CPITC-1 Part D – Commercial Patent Incentives Tax Credit from Pass-Through Entity.

Enter the name and Employer Identification Number (EIN) of the Pass-Through Entity and the amount of Commercial Patent Incentives Tax Credit allocated to you as an owner of the Pass-Through Entity. The Pass-Through Entity must establish original entitlement to Commercial Patent Incentives Tax Credit through the filing of their own form WV/CPITC-1.

Enter the total of credit allocated on Part A Line 3.

CPITC-1 Part E – Unused Commercial Patent Incentives Tax Credit from Prior Years.

Unused credit may be carried forward until the earlier of the tax year when the credit is used up or the ninth consecutive tax year after the first tax year in which the taxpayer is eligible to claim the credit.

Complete the table in Part E to determine the amount of any prior year credit that is unused in the current tax year.

Enter the total on Part A Line 4.

WV/CPITC-1 Part F – Unused Commercial Patent Incentives Tax Credit Allocation to Owners.

When the Taxpayer that earns original entitlement to Commercial Patent Incentives Tax Credit is a pass-through entity, any credit unused to offset the tax liability of the pass-through entity is to be allocated to the owners of the pass-through entity in the same manner that distributive share flows through to the equity owners.

Enter the name, identification number (EIN/SSN), ownership percentage, and amount of unused credit allocated for each equity owner.

Enter the total allocated credit on Part A Line 12.

Required Records

Every developer of a patent in this state for direct use in a manufacturing process or product and every person who uses a patent directly in a manufacturing process or product in this state who claims a credit under this article shall maintain sufficient records to establish the following facts for each item of a patent for which a credit is allowed under this article:

1. Its identity;
2. The amount of net profit attributable to the patent;
3. The month and taxable year in which the patent was first used, placed in service or directly used in the person's manufacturing process or product in this state;
4. The amount of credit taken; and
5. The date the patent was disposed of or otherwise ceased to be directly used in the person's manufacturing process or product in this state.

Enhanced credit. -- Any person who claims the enhanced credit for reinvestment of prior year tax credit shall maintain sufficient records to clearly establish entitlement to claim the amount of the enhanced credit. At a minimum those records shall identify:

1. Each and every item of depreciable property purchased for purposes of claiming the enhanced credit;
2. The date the depreciable property identified in subdivision (1) of this subsection was purchased, its cost and its estimated useful life determined using straight-line method of depreciation;
3. The date the depreciable property identified in subdivision (1) of this subsection was placed in service or used in the person's business activity in this state;
4. The date the depreciable property identified in subdivision (1) of this subsection was taken out of service or use in the person's business activity in this state and the reason why the property was taken out of service or use; and
5. Other information that the Tax Commissioner may reasonably require by rule promulgated as provided in section eleven of this article.

New jobs. -- Every person who claims a Commercial Patent Incentives Tax credit shall also maintain sufficient records to establish the number and types of new jobs, if any created, the wages and benefits paid to employees filling the new jobs and the duration of each job.

Exception. -- The records requirements section do not apply to an owner of a pass-through entity that develops or uses a patent for which a credit is earned.