

Senate Bill No. 590

(By Senators Browning and Green)

[Introduced February 21, 2011; referred to the Committee on Economic Development; and then to the Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §5B-2E-7a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5B-2E-7b, all relating generally to tourism development projects; removing annual credit cap for expansion projects; providing rule for determining credit for multiyear, multiphase projects; and providing consumers sales and service tax presumption.

Be it enacted by the Legislature of West Virginia:

That §5B-2E-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5B-2E-7b, all to read as follows:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.

1 (a) Approved companies are allowed a credit against the West
2 Virginia consumers sales and service tax imposed by article
3 fifteen, chapter eleven of this code and collected by the approved
4 company on sales generated by or arising from the operations of the
5 tourism development expansion project: *Provided*, That the tourism
6 development expansion project tax credit allowed under this section
7 is separate and distinct from any credit allowed for a tourism
8 development project in accordance with the provisions of section
9 seven of this article: *Provided, however*, That if the consumers
10 sales and service tax collected by the approved company is not
11 solely attributable to sales resulting from the operation of the
12 tourism development expansion project, the credit shall only be
13 applied against that portion of the consumers sales and service tax
14 collected in excess of the base tax revenue amount. The amount of
15 this credit is determined and applied as provided in this article.

16 (b) The maximum amount of credit allowable in this article is
17 equal to twenty-five percent of the approved, if the tourism
18 development expansion project site is located within the permit
19 area or an adjacent area of a surface mining operation, as these
20 terms are defined in section three, article three, chapter twenty-
21 two of this code, from which all coal has been or will be extracted
22 prior to the commencement of the tourism development project, the
23 maximum amount of credit allowable is equal to thirty-five percent
24 of the approved company's approved costs as provided in the

1 agreement.

2 (c) The amount of credit allowable must be taken over a ten-
3 year period, at the rate of one tenth of the amount thereof per
4 taxable year, beginning with the taxable year in which the project
5 is opened to the public, unless the approved company elects to
6 delay the beginning of the ten-year period until the next
7 succeeding taxable year. This election shall be made in the first
8 consumers sales and service tax return filed by the approved
9 company following the date the project is opened to the public.
10 Once made, the election cannot be revoked.

11 (d) The amount determined under subsection (b) of this section
12 is allowed as a credit against the consumers sales and service tax
13 collected by the approved company on sales from the operation of
14 the tourism development expansion project. The amount determined
15 under said subsection may be used as a credit against taxes
16 required to be remitted on the approved company's monthly consumers
17 sales and service tax returns that are filed pursuant to section
18 sixteen, article fifteen, chapter eleven of this code. The
19 approved company shall claim the credit by reducing the amount of
20 consumers sales and service tax required to be remitted with its
21 monthly consumers sales and service tax returns by the amount of
22 its aggregate annual credit allowance until such time as the full
23 current year annual credit allowance has been claimed. Once the
24 total credit claimed for the tax year equals the approved company's

1 aggregate annual credit allowance no further reductions to its
2 monthly consumers sales and service tax returns will be permitted.

3 (e) If any credit remains after application of subsection (d)
4 of this section, the amount of credit is carried forward to each
5 ensuing tax year until used or until the expiration of the third
6 taxable year subsequent to the end of the initial ten-year credit
7 application period. If any unused credit remains after the
8 thirteenth year, that amount is forfeited. No carryback to a prior
9 taxable year is allowed for the amount of any unused portion of any
10 annual credit allowance.

11 (f) The total amount of tourism development expansion project
12 tax credits for all approved companies pursuant to this section may
13 not exceed \$1,500,000 each calendar year: Provided, That this cap
14 shall be eliminated for calendar years beginning on or after
15 January 1, 2012, for project applications approved by the
16 Development Office after June 30, 2011.

17 **§5B-2E-7b. Computation and allowance of credit for multiphase,**
18 **multiyear projects; sales tax presumption.**

19 (a) When an approved project, whether an original project or
20 an expansion project, will be completed in two or more phases over
21 a period of forty-eight months or less, with such period computed
22 beginning with the month in which construction first began, and the
23 phases have separate completion dates and separate dates on which
24 they will be open to the public, the baseline consumers sales and

1 service tax collections for that approved destination tourism began
2 development project shall be the taxes collected during the twelve
3 month period immediately preceding the month in which the first
4 phase of the approved project is open to the public. The amount of
5 the credit, allowed by this article shall be twenty-five percent of
6 the cost of the first phase applied in equal installments over a
7 ten-year period, and shall be applied against the additional
8 consumers sales and service taxes collected over the baseline
9 collections during the ten-year period that begins on the first day
10 of the calendar month in which the first phase of the project is
11 first open to the public. When each subsequent phase of the
12 approved project is completed and is opened to the public, twenty
13 five percent of the cost of that phase of the project shall
14 constitute the amount of credit that may be claimed over a ten-year
15 period that begins on the first day of the calendar month in which
16 that phase is open to the public. In determining the amount of
17 sales tax that the project may retain, the baseline sales tax
18 collections applicable to the first phase of the project shall be
19 used for all phases of the approved project.

20 (b) For purposes of this article, it shall be presumed that
21 the owners or lessees of the project collect and remit consumers
22 sales and service taxes on a calendar year basis, with the annual
23 return for the calendar year filed at the end of January following
24 the close of the sales tax year as required by section twenty-one,

1 article fifteen, chapter eleven of this code.

NOTE: The purpose of this bill is to remove the cap on the amount of annual credit that may be awarded for destination tourism expansion projects approved after June 30, 2011. It provides a rule for determining amount of allowable credit when approved project is a multiyear, multiphase project; and provides a presumption that consumers sales and service tax is collected on calendar year basis.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§5B-2E-7b is new; therefore, strike-throughs and underscoring have been omitted.