

# H. B. 3224

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[Introduced February 21, 2011; referred to the  
Committee on Energy, Industry and Labor, Economic  
Development and Small Business then Finance.]

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  
2     West Virginia consumers sales and service tax imposed by  
3     article fifteen, chapter eleven of this code and collected by  
4     the approved company on sales generated by or arising from  
5     the operations of the tourism development expansion project:  
6     *Provided*, That the tourism development expansion project  
7     tax credit allowed under this section is separate and distinct  
8     from any credit allowed for a tourism development project in  
9     accordance with the provisions of section seven of this  
10    article: *Provided, however*, That if the consumers sales and  
11    service tax collected by the approved company is not solely  
12    attributable to sales resulting from the operation of the

13 tourism development expansion project, the credit shall only  
14 be applied against that portion of the consumers sales and  
15 service tax collected in excess of the base tax revenue  
16 amount. The amount of this credit is determined and applied  
17 as provided in this article.

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

29 (c) The amount of credit allowable must be taken over a  
30 ten-year period, at the rate of one tenth of the amount thereof  
31 per taxable year, beginning with the taxable year in which the

32 project is opened to the public, unless the approved company  
33 elects to delay the beginning of the ten-year period until the  
34 next succeeding taxable year. This election shall be made in  
35 the first consumers sales and service tax return filed by the  
36 approved company following the date the project is opened  
37 to the public. Once made, the election cannot be revoked.

38 (d) The amount determined under subsection (b) of this  
39 section is allowed as a credit against the consumers sales and  
40 service tax collected by the approved company on sales from  
41 the operation of the tourism development expansion project.  
42 The amount determined under said subsection may be used  
43 as a credit against taxes required to be remitted on the  
44 approved company's monthly consumers sales and service  
45 tax returns that are filed pursuant to section sixteen, article  
46 fifteen, chapter eleven of this code. The approved company  
47 shall claim the credit by reducing the amount of consumers  
48 sales and service tax required to be remitted with its monthly  
49 consumers sales and service tax returns by the amount of its  
50 aggregate annual credit allowance until such time as the full

51 current year annual credit allowance has been claimed. Once  
52 the total credit claimed for the tax year equals the approved  
53 company's aggregate annual credit allowance no further  
54 reductions to its monthly consumers sales and service tax  
55 returns will be permitted.

56 (e) If any credit remains after application of subsection  
57 (d) of this section, the amount of credit is carried forward to  
58 each ensuing tax year until used or until the expiration of the  
59 third taxable year subsequent to the end of the initial ten-year  
60 credit application period. If any unused credit remains after  
61 the thirteenth year, that amount is forfeited. No carryback to  
62 a prior taxable year is allowed for the amount of any unused  
63 portion of any annual credit allowance.

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

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

1        (a) When an approved project, whether an original  
2        project or an expansion project, will be completed in two or  
3        more phases over a period of forty-eight months or less, with  
4        such period computed beginning with the month in which  
5        construction first began, and the phases have separate  
6        completion dates and separate dates on which they will be  
7        open to the public, the baseline consumers sales and service  
8        tax collections for that approved destination tourism began  
9        development project shall be the taxes collected during the  
10       twelve month period immediately preceding the month in  
11       which the first phase of the approved project is open to the  
12       public. The amount of the credit, allowed by this article shall  
13       be twenty-five percent of the cost of the first phase applied  
14       in equal installments over a ten-year period, and shall be  
15       applied against the additional consumers sales and service  
16       taxes collected over the baseline collections during the ten-

17 year period that begins on the first day of the calendar month  
18 in which the first phase of the project is first open to the  
19 public. When each subsequent phase of the approved project  
20 is completed and is opened to the public, twenty-five percent  
21 of the cost of that phase of the project shall constitute the  
22 amount of credit that may be claimed over a ten-year period  
23 that begins on the first day of the calendar month in which  
24 that phase is open to the public. In determining the amount of  
25 sales tax that the project may retain, the baseline sales tax  
26 collections applicable to the first phase of the project shall be  
27 used for all phases of the approved project.

28 (b) For purposes of this article, it shall be presumed that  
29 the owners or lessees of the project collect and remit  
30 consumers sales and service taxes on a calendar year basis,  
31 with the annual return for the calendar year filed at the end of  
32 January following the close of the sales tax year as required  
33 by section twenty-one, article fifteen, chapter eleven of this  
34 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, it has been completely underscored.