

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.