

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2917**

**FISCAL  
NOTE**

**2015 Carryover**

(BY DELEGATES WALTERS AND SKINNER )

[Introduced January 13, 2016; referred to the  
Committee on Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5,  
 3 §11-13DD-6, §11-13DD-7, §11-13DD-8, §11-13DD-9 and §11-13DD-10, all relating to  
 4 establishing a Hotel and Restaurant Renovation Tax Credit; legislative findings; defining  
 5 terms; establishing credit amount; application for certification of project required;  
 6 application fee required; use of credit to offset sales tax generated by project in excess of  
 7 baseline sales tax amount; claiming the credit; authority to promulgate rules; and effective  
 8 date.

*Be it enacted by the Legislature of West Virginia:*

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5,  
 3 §11-13DD-6, §11-13DD-7, §11-13DD-8, §11-13DD-9 and §11-13DD-10, all to read as follows:

**ARTICLE 13DD. HOTEL AND RESTAURANT RENOVATION TAX CREDIT ACT.**

**§11-13DD-1. Short Title.**

1 This article may be cited as the "Hotel and Restaurant Renovation Tax Credit Ac

**§11-13DD-2. Legislative Findings.**

1 The Legislature finds that the growth and vibrancy of the West Virginia hospitality and  
 2 tourism industries are critical to our long-term economic health. Modernization and  
 3 improvements of physical restaurant and hotel assets drive economic growth, create jobs, spur  
 4 neighborhood revitalization and enhance the overall community experience for residents and  
 5 guests. The private sector is eager to renovate and modernize, but in the current economic  
 6 environment, business-owners are being forced to carefully prioritize spending. The Hotel and  
 7 Restaurant Renovation Tax Credit Act is a self-funded program to encourage capital investment  
 8 in hotels and restaurants in West Virginia which will allow West Virginia to be among the most

9 competitive in the nation for important economic development dollars.

**§11-13DD-3. Definitions.**

10 (a) General -- When used in this article or in the administration of this article, terms defined  
11 in subsection (b) of this section have the meanings ascribed to them by this section unless a  
12 different meaning is clearly required by either the context in which the term is used or by specific  
13 definition in this article.

14 (b) Terms defined --

15 (1) "Actual project costs" means costs attributable to a hotel renovation project or a  
16 restaurant renovation project that are incurred by a qualified applicant between the  
17 commencement and completion dates of the project as certified to the Tax Commissioner  
18 pursuant to section six of this article.

19 (2) "Baseline tax amount" means the average annual amount of consumers sales and  
20 service tax remitted by eligible taxpayer on sales made at the location of a hotel renovation project  
21 or a restaurant renovation project during the thirty-six month period immediately preceding  
22 commencement of the project. The baseline tax amount shall be calculated using information  
23 submitted to the Tax Commissioner in accordance with section seven of this article.

24 (3) "Commissioner" and "Tax Commissioner" are used interchangeably herein and mean  
25 the Tax Commissioner of the State of West Virginia or his or her delegate.

26 (4) "Consumers sales and service tax" means the tax imposed by section three, article  
27 fifteen, of this chapter.

28 (5) "Corporation" means any corporation, limited liability company, joint-stock company or  
29 association and any business conducted by a trustee or trustees wherein interest or ownership is  
30 evidenced by a certificate of interest or ownership or similar written instrument.

31 (6) "Delegate" in the phrase "or his or her delegate," when used in reference to the Tax

32 Commissioner, means any officer or employee of the State Tax Division of the Department of  
33 Revenue duly authorized by the Tax Commissioner directly, or indirectly by one or more  
34 redelegations of authority, to perform the functions mentioned or described in this article.

35 (7) "Eligible taxpayer" means any person that is subject to the tax imposed by article  
36 twenty-three or article twenty-four of this chapter that owns and operates a hotel or restaurant. In  
37 the case of a sole proprietorship subject to neither the tax imposed by article twenty-three nor the  
38 tax imposed by article twenty-four, the term "eligible taxpayer" means any sole proprietor who is  
39 subject to the tax imposed by article twenty-one of this chapter and who owns and operates a  
40 hotel or restaurant.

41 (8) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated  
42 organization through or by means of which any business, financial operation or venture is carried  
43 on, and which is not a trust or estate, a corporation or a sole proprietorship. The term "partner"  
44 includes a member in such a syndicate, group, pool, joint venture or other organization.

45 (9) "Person" includes any natural person, corporation, limited liability company or  
46 partnership.

47 (10) "Hotel" means any privately-owned facility, building or buildings, in which the public  
48 may, for a consideration, obtain sleeping accommodations. The term shall include, but not be  
49 limited to, hotels, motels, inns, courts, boarding houses, condominiums, resorts, lodges, cabins  
50 and tourist homes. The term "hotel" shall not be construed to include state, county and city parks  
51 offering accommodations, any hospital, sanitarium, extended care facility, nursing home or  
52 university or college housing unit.

53 (11) "Hotel renovation project" means the renovation, improvement, repair, or upgrade of  
54 guest rooms, suites, or common areas of an existing hotel, including exterior upgrades to signage,  
55 landscaping and facades, with a minimum cost of \$10,000 in expenditures for each guest room

56 or suite renovated and total project expenditures of at least \$2 million.

57 (12) "Project" means the renovation, improvement, repair, or upgrade of an existing hotel  
58 or restaurant. The term does not include the construction of a new hotel or restaurant.

59 (13) "Qualified taxpayer" means an eligible taxpayer that has been issued a certification  
60 of a hotel renovation project or a restaurant renovation project by the Tax Commissioner under  
61 section six of this article.

62 (14) "Restaurant" means a public food service establishment, cafeteria, or snack bar, for  
63 the purchase and consumption on the premises of food, beverages, or other products for human  
64 consumption, and other similar facilities for the sale or providing of goods and services for the  
65 purposes customarily offered in connection with the operation of any of the foregoing.

66 (15) "Restaurant renovation project" means the renovation, improvement, repair, or  
67 upgrade of dining areas, restrooms, kitchens, or common areas of a restaurant, including  
68 upgrades to signage, landscaping, and façades, with a minimum cost of \$10,000 in expenditures  
69 for renovation, improvement, repair or upgrade to one or more areas used primarily for food  
70 preparation and total project expenditures of at least \$100,000.

**§11-13DD-4. Amount of credit allowed.**

1 (a) A qualified taxpayer that completes a hotel renovation project or a restaurant  
2 renovation project and otherwise meets the requirements of this article shall be allowed a tax  
3 credit equal to twenty percent of its actual project costs as determined in section six of this article.

4 (b) The aggregate amount of tax credit that a qualified taxpayer receives under this article  
5 may not exceed the amount determined in subsection (a) of this section. Expansions,  
6 enlargements, or additional investments made by a qualified taxpayer that are outside the scope  
7 of the project certified pursuant to section five of this article shall not increase the tax credit.

**§11-13DD-5. Application for certification of project.**

1           (a) Application for certification required. -- An eligible taxpayer seeking a tax credit under  
2 this article must submit a written application for certification of its proposed hotel renovation  
3 project or proposed restaurant renovation project to the Tax Commissioner before  
4 commencement of the project.

5           (b) Form of application. -- The application for certification must be filed in such form as the  
6 Tax Commissioner prescribes and shall contain such information as the commissioner requires  
7 to determine whether the project should be certified as eligible for credit under this article,  
8 including, but not limited to:

9           (1) Plans for the proposed project and estimated project costs; and

10           (2) A detailed description of the proposed project, including estimated commencement  
11 and completion dates.

12           (c) Application fee. -- A nonrefundable fee of \$250 shall be paid at the time the application  
13 is filed which shall be used by the Tax Commissioner to toward the cost of administration of the  
14 credit provided by this article.

15           (d) Project certification. -- The Tax Commissioner shall review each submitted application  
16 for completeness and provide preliminary approval or disapproval within sixty days after receiving  
17 the application. The Tax Commissioner shall issue a certification to each preliminarily approved  
18 project that:

19           (1) Designates the applicant as a qualified taxpayer eligible to receive tax credits earned  
20 pursuant to this article; and

21           (2) Specifies the project commencement date and completion date. The period between  
22 the commencement date and completion date specified by the Tax Commissioner in the  
23 certification may not exceed thirty-six months for a proposed hotel renovation project or twelve  
24 months for a proposed restaurant renovation project.

25 (e) No credit is allowed under this article until the eligible taxpayer seeking the credit has  
 26 filed and has received certification of the proposed hotel renovation project or proposed restaurant  
 27 renovation project from the Tax Commissioner as provided in this section.

**§11-13dd-6. Documentation Of Actual Project Costs; Certification By Certified Public Accountant.**

1 (a) Each qualified taxpayer shall, upon completion of a project, provide documentation to  
 2 the Tax Commissioner of the amount of actual project costs expended to complete the project.  
 3 The costs shall be certified by an independent certified public accountant licensed in this state at  
 4 the expense of the qualified applicant.

5 (b) The Tax Commissioner shall determine whether the actual project costs meet the  
 6 expenditure requirements of a hotel renovation project or of a restaurant renovation project as  
 7 defined in section three of this article. A qualified taxpayer that fails to meet the applicable  
 8 expenditure requirements provided shall not be entitled to receive the tax credit under this article.

**§11-13DD-7. Determination of baseline tax amount.**

1 Each qualified taxpayer shall, within sixty days after commencement of a hotel renovation  
 2 project or restaurant renovation project, submit documentation to the Tax Commissioner of the  
 3 amount of consumers sales and service taxes remitted to the State Tax Division of the West  
 4 Virginia Department of Revenue on sales made by taxpayer at the location of the project for the  
 5 thirty-six months immediately preceding commencement of the project. The information is  
 6 subject to verification by the Tax Commissioner.

**§11-13DD-8. Application of annual credit allowance.**

1 (a) In general. -- The maximum amount of credit allowable by this article shall not exceed  
 2 twenty percent of the actual project costs of qualified taxpayer's hotel renovation project or  
 3 restaurant renovation project.

4           (b) Annual credit allowance. -- Subject to the limitations set forth in subsection (a) of this  
5 section, the amount of tax credit that may be used by a qualified taxpayer in any tax year shall  
6 not exceed twenty-five percent of the amount by which taxpayer's consumers sales and service  
7 tax imposed on sales at the location of the project, exceeds the baseline tax amount.

8           (c) Use of annual credit allowance. -- The qualified taxpayer may, beginning with the  
9 twelve month tax period immediately following completion of a its project, use the amount  
10 determined under subsection (b) of this section as a credit against consumers sales and services  
11 taxes required to be remitted on taxpayer's monthly consumers sales and service tax returns, filed  
12 pursuant to section sixteen, article fifteen, chapter eleven of this code. The tax credit may be  
13 used to offset twenty-five percent of the tax required to be remitted with taxpayer's monthly  
14 consumers sales and service tax returns on sales at the location of the completed project until  
15 such time as the full current year's annual credit allowance has been claimed: *Provided, That,*  
16 no credit may be claimed for the tax year until taxpayer's consumers sales and service tax on  
17 sales at the location of the completed project, exceeds the baseline tax amount. Once the total  
18 credit claimed for the tax year equals taxpayer's annual credit allowance as determined under  
19 subsection (b) of this section, no further reductions to taxpayer's monthly consumers sales and  
20 service tax returns will be permitted for the tax year.

21           (d) Unused credit carryforward. -- If the credit allowed under this article in any taxable year  
22 exceeds the sum of the taxes enumerated in subsection (c) of this section for that taxable year,  
23 the qualified taxpayer may apply the excess as a credit against those taxes, for succeeding  
24 taxable years until the earlier of the following:

25           (1) The full amount of the excess credit is used; or

26           (2) The expiration of the tenth taxable year after the taxable year in which the credit of the  
27 project was first used.



**§11-13DD-9. Rules.**

1           The Tax Commissioner may promulgate such rules in accordance with article three,  
2 chapter twenty-nine-a of this code as may be necessary or desirable to carry out the policy and  
3 purposes of this article and to provide for the general administration of this article.

**§11-13DD-10. Effective date.**

1           The provisions of this article become effective on July 1, 2015, and apply only to  
2 applications for certification filed on or after that date.

NOTE: The purpose of this bill is to create a hotel and restaurant renovation tax credit.

This article is new; therefore it has been completely underscored.