

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 38

FISCAL
NOTE

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[Introduced February 8, 2017; referred
to the Committee on Economic Development; and then 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 §11-28-1, §11-28-2 and §11-28-3, all relating to creating five-year tax credit
 3 for new businesses locating on post-mine sites; defining terms; setting eligibility
 4 requirements for credit; establishing amount of tax credit allowed; and establishing how
 5 credit may be applied.

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 §11-28-1, §11-28-2 and §11-28-3, all to read as follows:

ARTICLE 28. POST-MINE BUSINESS SITE CREDIT.

§11-28-1. Definitions.

1 (a) "Post-mine site" means property that has remained undeveloped for business
 2 purposes, subsequent to mining operations on the property.

3 (b) "Principal place of business" means the physical location from which the entity's
 4 direction, control, and coordination of the operations of the business as a whole are primarily
 5 exercised, with consideration given, but not limited to:

6 (1) The physical location at which the primary executive and administrative headquarters
 7 of the entity is located; and

8 (2) From which the management of overall operations of the entity is directed.

§11-28-2. Eligibility for credit.

1 For those tax years beginning on or after January 1, 2018, a new business entity will be
 2 allowed a credit against certain taxes imposed by this chapter, as described in section three of
 3 this article, if the new business entity meets the following requirements:

4 (1) The entity is a corporation, small business corporation, limited liability company,
 5 partnership or unincorporated business entity with a principal place of business in the state;

6 (2) The entity registers its business or new organizational affiliate with the West Virginia
 7 Secretary of State's office on or after January 1, 2017;

8 (3) The entity employs a minimum of ten full-time (thirty-two hours a week or more)
9 employees; and

10 (4) The entity's principal place of business is located on a post-mine site within this state.

§11-28-3. Application of credit.

1 (a) Amount of credit. — For those tax years beginning on or after January 1, 2017, an
2 eligible new business entity will be allowed a tax credit in the amount of fifty percent of that entity's
3 net income tax due, as defined in article twenty-four of this chapter, for the first five taxable years
4 during which the entity's principal place of business is located on a post-mine site within this state:
5 Provided, That the dollar amount of the credit claimed by an eligible new business entity may not
6 exceed the amount of the investment the entity made on the post-mine site.

7 (b) Application of annual credit allowance. — The credit created by this article is allowed
8 as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) through
9 (2), inclusive, of this subsection, and in that order.

10 (1) Corporation net income taxes. — After application of subdivision (1) of this subsection,
11 any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter
12 for the taxable year.

13 (2) Personal income taxes. —

14 (A) If the person making the qualified investment is an electing small business corporation
15 (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended),
16 a partnership, a limited liability company that is treated as a partnership for federal income tax
17 purposes, then any unused credit (after application of subdivisions (1) and (2) of this subsection)
18 is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the
19 income from business or other activity subject to tax under article twenty-three of this chapter.

20 (B) Electing small business corporations, limited liability companies, partnerships and
21 other unincorporated organizations shall allocate the credit allowed by this article among its
22 members in the same manner as profits and losses are allocated for the taxable year.

23 (3) A credit is not allowed under this section against any employer withholding taxes
24 imposed by article twenty-one of this chapter.

25 (c) *Unused credit.* — If any credit remains after application of subsection (b) of this section,
26 that amount is forfeited. A carryback to a prior taxable year is not allowed for the amount of any
27 unused portion of any annual credit allowance.

NOTE: The purpose of this bill is to create a tax credit for new businesses locating on post-mine sites for the first five years after locating to the site; to define terms; to set eligibility requirements for the credit; to establish the amount of tax credit allowed; and to establish how the credit may be applied.

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