WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Originating

Senate Bill 300

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[Originating in the Committee on Finance;

Reported on January 16, 2018]

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 credits

3   for businesses locating on post-coal mine sites; defining terms; setting eligibility

4   requirements for tax credit; establishing amount of tax credit allowed; establishing how the

5   credit may be applied; and providing rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. POST-COAL MINE SITE BUSINESS CREDIT.

§11-28-1. Definitions.

1   For purposes of this article:

2   "Post-coal mine site" means property that has remained undeveloped for business

3   purposes, subsequent to coal mining operations on the property within the bonded area of the

4   last issued coal mine permit.

5   "Principal place of business" means the physical location from which the entity's direction,

6   control, and coordination of the operations of the business are primarily exercised, with

7   consideration given, but not limited to:

8   (A) The physical location at which the primary executive and administrative headquarters

9   of the entity is located; and

10   (B) 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, 2019, a business entity will be allowed

2   a credit against certain taxes imposed by this chapter, as described in §11-28-3 of this code, if

3   the 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 employs a minimum of 10 full-time (32 hours a week or more) employees;

7   and

8   (3) The entity's principal place of business is located on a post-coal mine site within this

9   state.

§11-28-3. Application of credit.

1   (a) *Amount of credit.* — For those tax years beginning on or after January 1, 2019, an

2   eligible business entity will be allowed a tax credit in the amount of 50 percent of that entity's

3   capital expenditures (as defined in Section 263 of the United States Internal Revenue Code of

4   1986, as amended) at the post-coal mine site for the first five taxable years during which the

5   entity's principle place of business is located on the post-coal mine site within this state: *Provided*,

6   That the dollar amount of the credit claimed by an eligible business entity may not exceed the

7   amount of 50 percent of the entity's state income tax for a single year.

8   (b) *Application of annual credit allowance.* — The credit created by this article is allowed

9   as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) and (2)

10 of this subsection, and in that order.

11 (1) *Corporation net income taxes.* — Any credit is first applied to reduce the taxes imposed

12 by §11-24-1 *et seq.* of this code for the taxable year.

13 (2) *Personal income taxes.* — After application of subdivision (1) of this subsection, any

14 unused credit is next applied as follows:

15 (A) If the person making the qualified investment is an electing small business corporation

16 (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended),

17 a partnership or a limited liability company that is treated as a partnership for federal income tax

18 purposes, then any unused credit (after application of subdivision (1) of this subsection) is allowed

19 as a credit against the taxes imposed by §11-21-1 *et seq.* of this code on the income from

20 business or other activity subject to tax under §11-23-1 *et seq.* of this code.

21 (B) Electing small business corporations, limited liability companies, partnerships, and

22 other unincorporated organizations shall allocate the credit allowed by this article among its

23 members in the same manner as profits and losses are allocated for the taxable year.

24   (3) A credit is not allowed under this section against any employer withholding taxes

25   imposed by §11-21-1 *et seq.* of this code.

26   (c) *Unused credit.* — A carryback to a prior taxable year is not allowed for the amount of

27   any unused portion of any annual credit allowance. If the amount of the credit exceeds the

28   taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be

29   carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1

30   *et seq.* or §11-24-1 *et seq.* of this code to each of the next five taxable years following the year of

31   creation of the tax credit unless sooner used.

32   (d) *Eligibility requirements.* — Those businesses that benefit from other state economic

33   development programs or incentives that result in a reduction of their income tax liability due shall

34   not be eligible for this tax credit.

35   (e) *Rule-making authority.* — The State Tax Department shall propose rules for

36   promulgation for adoption by the Legislature in accordance with §29A-3-1 *et seq.* of this code in

37   regards to forms and regulations in regards to this tax credit by December 31, 2018.

The purpose of this bill is to create five-year tax credits for businesses locating on post coal mine sites. The bill defines terms. The bill sets eligibility requirements for the tax credit. The bill establishes amount of tax credit allowed. The bill establishes how the credit may be applied. The bill provides rule-making ability.

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