

**WEST VIRGINIA LEGISLATURE**

**2019 FIRST EXTRAORDINARY SESSION**

**Introduced**

**House Bill 113**

BY DELEGATES HANSHAW (MR. SPEAKER) AND MILEY

BY REQUEST OF THE EXECUTIVE

[Introduced May 20, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §11-21-12k; and to amend said code by adding thereto a new section,  
 3 designated §11-24-6b, all relating generally to establishing tax incentive for new business  
 4 activity in qualified opportunity zones; establishing eligibility requirements; defining terms;  
 5 specifying duration of tax benefit; providing rulemaking authority; providing for termination  
 6 of program; and specifying effective dates.

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

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-12k. Decreasing modification reducing federal adjusted gross income for the net income of Qualified Opportunity Zone Businesses; effective date.**

1 (a) General. -- In addition to the amounts authorized to be subtracted from federal adjusted  
 2 gross income pursuant to §11-21-12(c) of this code, a modification reducing federal adjusted  
 3 gross income is hereby authorized for taxable years beginning on and after January 1, 2019:

4 (1) For individuals: in an amount equal to and limited to that portion of net income included  
 5 in federal adjusted gross income by a taxpayer in the taxable year that is directly derived from a  
 6 qualified opportunity zone business located in a qualified opportunity zone which is located in  
 7 West Virginia;

8 (2) For partners or members of limited liability companies that are treated as partnerships  
 9 for federal income tax purposes, and other pass-through entities: in an amount equal to and  
 10 limited to that portion of the distributive share of the partner or member that is attributable to the  
 11 flow through income directly derived from the qualified opportunity zone business located in West  
 12 Virginia. A similar rule applies to shareholders in corporations taxed under subchapter S of the  
 13 Internal Revenue Code.

14 (b) Eligibility. -- To be entitled to modification provided for in subsection (a) of this section,  
 15 the qualified opportunity zone business must be a newly registered business in West Virginia  
 16 registered on or after January 1, 2019 and before January 1, 2024. Limited liability companies

17 that are treated as corporations for purposes of the federal income tax and West Virginia  
18 corporation net income tax and which otherwise qualify in accordance with the requirements and  
19 limitations of this section may qualify for the modification authorized under this section.

20 (c) *Duration.* -- The modification provided for in subsection (a) of this section shall apply  
21 with respect to a taxpayer for a 10-year period beginning with the first full taxable year during  
22 which the qualified opportunity zone business first qualifies as a qualified opportunity zone  
23 business, or the first year in which the qualified opportunity zone business reports net income:  
24 *Provided,* That the qualified opportunity zone business first qualifies as such on or after January  
25 1, 2019.

26 (d) The following definitions apply to this section:

27 (1) "Internal Revenue Code" means the Internal Revenue Code of the United States as  
28 defined in §11-21-9 or §11-24-3 of this code.

29 (2) "Newly registered business" means a business that is formed on or after January 1,  
30 2019 and before January 1, 2024, that is first required to obtain a business registration certificate  
31 under §11-12-1 *et seq.* of this code from the Tax Commissioner on or after January 1, 2019 and  
32 before January 1, 2024, and which is not the reorganization of a business that existed prior to  
33 January 1, 2019.

34 (3) "Reorganization of an existing business" includes, but is not limited to, a change in the  
35 name of a business, a change in the form of doing business such as, but not limited to, a  
36 proprietorship that reorganizes as a partnership or other business entity, a subsidiary that  
37 becomes a stand-alone business entity, a division of an existing business that becomes a  
38 separate business and any other similar type of business reorganization. For purposes of this  
39 definition any entity or organization that is determined by the Tax Commissioner to be an alter  
40 ego, nominee or instrumentality of an existing or previously existing business, as determined in  
41 accordance with the criteria specified in §11-12-5 of this code is a business resulting from  
42 reorganization of an existing business.

43 (4) "Qualified Opportunity Zone Business" means Qualified Opportunity Zone Business as  
 44 that term is defined in Section §1400Z-2 of the Internal Revenue Code.

45 (5) "Qualified Opportunity Zone" means Qualified Opportunity Zone as that term is defined  
 46 in Section 1400Z-1 of the Internal Revenue Code.

47 (e) Rules. -- The Tax Commissioner may propose legislative rules, or promulgate  
 48 interpretive or procedural rules, as the commissioner deems necessary to carry out the provisions  
 49 of this section and to provide guidelines and requirements to ensure uniform administrative  
 50 practices statewide to affect the intent of this section. All rules shall be promulgated in accordance  
 51 with the provisions of §29A-3-1 et seq. of this code.

52 (f) Effective date; expiration of modification, preservation of entitlement. -- The  
 53 modification authorized by this section becomes effective and is authorized for taxable years  
 54 beginning on and after January 1, 2019: Provided, That unless sooner terminated by law, the  
 55 modification authorized by this section will terminate for taxable years beginning on and after  
 56 January 1, 2024, and no new entitlement to the modification is authorized thereafter; Provided  
 57 however, That those taxpayers shall retain that entitlement for the remainder of the 10-year  
 58 application period over which the original entitlement applies, if the Taxpayer otherwise remains  
 59 in compliance with the requirements of this section.

## **ARTICLE 24. CORPORATION NET INCOME TAX.**

### **§11-24-6b. Decreasing modification reducing federal taxable income for the income of Qualified Opportunity Zone Businesses; effective date.**

1 (a) General. -- In addition to the amounts authorized to be subtracted from federal taxable  
 2 income pursuant to §11-24-6(c) of this code, there shall be subtracted from federal taxable  
 3 income, an amount equal to net income included in federal taxable income by a corporate  
 4 taxpayer in a taxable year that is ordinary income derived from a qualified opportunity zone  
 5 business located in a qualified opportunity zone located in West Virginia.

6 (b) Eligibility. -- To be entitled to modification provided for in subsection (a), the qualified

7 opportunity zone business must be a newly registered business in West Virginia registered on or  
8 after January 1, 2019 and before January 1, 2024. Limited liability companies that are treated as  
9 corporations for purposes of the federal income tax and West Virginia corporation net income tax  
10 and which otherwise qualify in accordance with the requirements and limitations of this section  
11 may qualify for the modification authorized under this section.

12 (c) *Duration.* -- The modification provided for in subsection (a) of this section shall apply  
13 with respect to a taxpayer during the 10-year period beginning with the first full taxable year during  
14 which the qualified opportunity zone business first qualifies as a qualified opportunity zone  
15 business, or the first year in which the qualified opportunity zone business reports net income:  
16 *Provided,* That the qualified opportunity zone business first qualifies as such on or after January  
17 1, 2019.

18 (d) The following definitions apply to this section:

19 (1) "Newly registered business" means a business that is formed on or after January 1,  
20 2019 and before January 1, 2024, that is first required to obtain a business registration certificate  
21 under §11-12-1 *et seq.* of this code from the Tax Commissioner on or after January 1, 2019 and  
22 before January 1, 2024, and which is not the reorganization of a business that existed prior to  
23 January 1, 2019.

24 (2) "Reorganization of an existing business" includes, but is not limited to, a change in the  
25 name of a business, a change in the form of doing business such as, but not limited to, a  
26 proprietorship that reorganizes as a partnership or other business entity, a subsidiary that  
27 becomes a stand-alone business entity, a division of an existing business that becomes a  
28 separate business and any other similar type of business reorganization. For purposes of this  
29 definition any entity or organization that is determined by the Tax Commissioner to be an alter  
30 ego, nominee or instrumentality of an existing or previously existing business, as determined in  
31 accordance with the criteria specified in §11-12-5 of this code is a business resulting from  
32 reorganization of an existing business.

33 (3) "Qualified Opportunity Zone Business" means Qualified Opportunity Zone Business as  
34 that term is defined in Section 1400Z-2 of the Internal Revenue Code.

35 (4) "Qualified Opportunity Zone" means Qualified Opportunity Zone as that term is defined  
36 in Section 1400Z-1 of the Internal Revenue Code.

37 (e) Rules. -- The Tax Commissioner may propose legislative rules, or promulgate  
38 interpretive or procedural rules, as the commissioner deems necessary to carry out the provisions  
39 of this section and to provide guidelines and requirements to ensure uniform administrative  
40 practices statewide to affect the intent of this section. All rules shall be promulgated in accordance  
41 with the provisions of §29A-3-1 et seq. of this code.

42 (f) Effective date; expiration of modification, preservation of entitlement. -- The  
43 modification authorized by this section becomes effective and is authorized for taxable years  
44 beginning on and after January 1, 2019: Provided, That unless sooner terminated by law, the  
45 modification authorized by this section will terminate for taxable years beginning on and after  
46 January 1, 2024, and no new entitlement to the modification is authorized thereafter; Provided  
47 however, That those taxpayers shall retain that entitlement for the remainder of the 10-year  
48 application period over which the original entitlement applies, if the Taxpayer otherwise  
49 remains in compliance with the requirements of this section.

NOTE: The purpose of this bill is to create a decreasing modification for personal income tax and corporation net income tax for income derived from businesses activity in qualified opportunity zones in West Virginia.

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