

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 29

SENATORS BLAIR, PLYMALE, STOLLINGS, BOSO,

JEFFRIES, AND SWOPE, *original sponsors*

[Originating in the Committee on Finance; Reported

on February 14]

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 10-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 “Business entity” or “person” means an individual, firm, sole proprietorship, partnership,
3 corporation, association, or other entity entitled to a post-coal mine site business credit.

4 “Coal mining operation” means the business of developing, producing, preparing, or
5 loading bituminous coal, subbituminous coal, anthracite, or lignite.

6 “Post-coal mine site” means property that has remained undeveloped for business
7 purposes, subsequent to coal mining operations on the property within the bonded area of the
8 last issued coal mine permit.

9 “Principal place of business” means the physical location from which the entity’s direction,
10 control, and coordination of the operations of the business are primarily exercised, with
11 consideration given, but not limited to:

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

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

15 “Undeveloped for business purposes” means land has been previously used for coal
16 mining operations and has not been built or developed for use for other activities in the commercial
17 or manufacturing sectors of the economy.

§11-28-2. Eligibility for credit.

1 For those tax years beginning on or after January 1, 2020, 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 as defined in this code that also has a principal
6 place of business in the state;

7 (2) The entity employs at the post-coal mine site a minimum of 10 full-time (32 hours a
8 week or more) employees; and

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

§11-28-3. Application of credit.

1 (a) Amount of credit. — For those tax years beginning on or after January 1, 2020, 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 principal place of business is located on the post-coal mine site within this state. The dollar
6 amount of the credit claimed by an eligible business entity may not exceed the amount of 50
7 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 §11-28-3(b)(1) of this code, any unused
14 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 §11-28-3(b)(1) of this code) is allowed as
19 a credit against the taxes imposed by §11-21-1 et seq. of this code on the income from business
20 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 allowable credit exceeds
28 the 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 for each of the next 10 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 Division shall promulgate emergency rules
36 pursuant to the provisions of §29A-3-15 of this code. These rules shall include, at a minimum,
37 forms for use in claiming the credit authorized in this article, administration of the credit authorized
38 in this article, and any other matter seen necessary by the State Tax Division for the administration
39 of this article.

NOTE: 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.