

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### Senate Bill 44

FISCAL  
NOTE

BY SENATOR CLINE

[Introduced January 8, 2020; referred  
to the Committee on the Workforce; 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 section,  
 2 designated §11-24-10a, relating to establishing a tax credit for eligible taxpayers for  
 3 employing eligible individuals in recovery from a substance use disorder; setting a \$2,000  
 4 cap per year credit for each individual; establishing requirements; requiring rulemaking;  
 5 and defining terms.

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

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

### **§11-24-10a. The recovery tax credit program.**

1 (a) A credit shall be allowed under the provisions of this section against the primary tax  
 2 liability of the taxpayer under this article to eligible taxpayers for employing eligible individuals in  
 3 recovery from a substance use disorder in part-time and full-time positions in the state.

4 (b) For the purposes of this section:

5 “Eligible individual” means an individual with a substance use disorder who is in a state of  
 6 wellness where there is an abatement of signs and symptoms that characterize active addiction  
 7 and has demonstrated to the eligible taxpayer’s satisfaction, pursuant to rules established by the  
 8 commissioner, that he or she has completed a course of treatment or is currently in receipt of  
 9 treatment for such substance use disorder. A relapse in an individual’s state of wellness does not  
 10 make the individual ineligible, so long as such individual shows a continued commitment to  
 11 recovery that aligns with an individual’s relapse prevention plan, discharge plan, and/or recovery.

12 “Eligible taxpayer” means a taxpayer who:

13 (A) Is subject to tax liability under this article;

14 (B) Has received a certificate of tax credit from the commissioner after the commissioner  
 15 has determined that the taxpayer has:

16 (i) Provided a recovery supportive environment for their employees evidenced by a formal  
 17 working relationship with a local recovery or treatment provider certified by the commissioner to  
 18 provide support for employers including any necessary assistance in the hiring process of eligible

19 individuals in recovery from a substance use disorder and training for employers or supervisors;  
20 and

21 (ii) Fulfilled the eligibility criteria set forth in this section and by the commissioner to  
22 participate in the recovery tax credit program established in this section; and

23 (C) Employs an eligible individual beginning January 1, 2021.

24 “Substance use disorder” means recurrent use of alcohol and/or legal or illegal drugs  
25 causing clinical and functionally significant impairment to the individual’s physical and mental  
26 health, or the welfare of others. Unless otherwise provided, the term substance use disorder  
27 includes alcoholism, alcohol abuse, drug abuse, substance abuse, substance dependence,  
28 chemical abuse, and/or chemical dependence.

29 “Substance use disorder program” or “substance abuse program” means any public or  
30 private person, corporation, partnership, agency, either profit or nonprofit, or state or municipal  
31 government that provides substance use disorder services, in either a residential or ambulatory  
32 setting, to persons in need of services for the prevention of, or treatment and recovery from a  
33 substance use disorder. Any person or entity providing the services as a minor part of a general  
34 health or counseling unit subject to rules promulgated by the commissioner and other appropriate  
35 agencies may not be considered a substance use disorder program.

36 (c) Application and approval process. -- (1) To participate in the program established by  
37 this section, a taxpayer must, in a form prescribed by the commissioner, apply annually to the  
38 office by January 15 to claim credit based on eligible individuals employed during the preceding  
39 calendar year. As part of the application, the taxpayer must:

40 (A) Agree to allow the commissioner to share the tax information with the West Virginia  
41 Department of Public Health. However, any information shared because of this agreement is  
42 exempt from disclosure under the Freedom of Information Act, §29B-1-1 et seq. of this code;

43 (B) Allow the commissioner and his or her agents access to limited and specific information  
44 necessary to monitor compliance with program eligibility requirements. That information is

45 confidential and only used for the stated purpose of this section; and

46 (C) Demonstrate that the taxpayer has satisfied program eligibility requirements and  
47 provided all the information necessary, including the number of hours worked by any eligible  
48 individual, for the commissioner to compute an actual amount of credit allowed.

49 (2) (A) After reviewing the application and finding it sufficient, the commissioner shall issue  
50 a certificate of tax credit by March 31. The certificate shall include, but not be limited to, the name  
51 and employer identification number of the taxpayer, the amount of credit that the taxpayer may  
52 claim, and any other information the commissioner determines is necessary.

53 (B) In determining the amount of credit that any taxpayer may claim, the commissioner  
54 shall review all claims submitted for credit by eligible taxpayers and, to the extent that the total  
55 amount claimed by taxpayers exceeds the amount allocated for the program in that calendar year,  
56 shall issue credits on a pro-rata basis corresponding to each claimant's share of the total claimed  
57 amount.

58 (d) Eligibility. -- An eligible taxpayer is entitled to a tax credit equal to the product of \$1  
59 and the number of hours worked by each eligible individual during such eligible individual's period  
60 of employment. The credit is not allowed unless the eligible individual has worked in state for a  
61 minimum of 500 hours for the eligible taxpayer, and the credit cannot exceed \$2,000 per eligible  
62 individual employed by an eligible taxpayer in the state. The eligible taxpayer may claim a credit  
63 for each eligible employee starting on the day the employee is hired and ends on December 31  
64 of the immediately succeeding calendar year or the last day of the employee's employment by  
65 the eligible taxpayer, whichever comes first. If an employee has worked in excess of 500 hours  
66 between the date of hiring and December 31 of that year, an employer can elect to compute and  
67 claim a credit for the employee in that year based on the hours worked by December 31.  
68 Alternatively, the employer may elect to include the individual in the computation of the credit in  
69 the year immediately succeeding the year in which the employee was hired. If so, the credit shall  
70 be computed based on all hours worked by that eligible individual from the date of hire to the

71 earlier of the last day of employment or December 31 of the succeeding year. However, in no  
72 event may an employee generate credit for hours worked in excess of 2,000 hours. An employer  
73 may claim credit only once with respect to any eligible individual and may not aggregate hours of  
74 two or more employees to reach the minimum number of hours.

75 (e) Duties of the commissioner. -- The commissioner shall annually create a report about  
76 the program including, but not limited to, the number of eligible taxpayers then participating in the  
77 program, unique identifying information for each eligible taxpayer, the number of eligible  
78 individuals employed by each eligible taxpayer, unique identifying information for each eligible  
79 individual employed by the eligible taxpayers, the number of hours worked by the eligible  
80 individuals, the total dollar amount of claims for credit, and the dollar amount of credit granted to  
81 each eligible taxpayer.

82 (f) Eligible taxpayer's taxable year. -- If the certified employer's taxable year is a calendar  
83 year, the employer shall be entitled to claim the credit for the calendar year return for which the  
84 certificate of tax credit was issued. If the eligible taxpayer's taxable year is a fiscal year, the  
85 taxpayer may claim the credit as on the return for the fiscal year that includes the last day of the  
86 calendar year covered by the certificate of tax credit.

87 (g) The commissioner shall propose rules for legislative approval in accordance with §29A-  
88 3-1 et seq. of this code to implement this section.

NOTE: The purpose of this bill is to establish a tax credit for eligible taxpayers for employing eligible individuals in recovery from a substance use disorder. The bill sets a \$2,000 cap per year credit for each individual. The bill establishes requirements. The bill defines terms. The bill requires rule-making.

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