

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4502

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on Finance; February

24, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §5B-2L-1, §5B-2L-2, §5B-2L-3, §5B-2L-4, §5B-2L-5, §5B-2L-6, §5B-2L-7,
3 §5B-2L-8, §5B-2L-9, §5B-2L-10, §5B-2L-11, §5B-2L-12, §5B-2L-13, §5B-2L-14, §5B-2L-
4 15, §5B-2L-16, and §5B-2L-17, all relating to establishing the BUILD WV Act; providing
5 legislative findings and purpose; authorizing rule-making authority; providing for the
6 application of the West Virginia Tax Procedure and Administration Act and West Virginia
7 Tax Crimes and Penalties Act; providing effective and expiration dates; exempting the
8 construction contractors of certified BUILD WV projects from the consumers sales and
9 service tax and use tax; authorizing municipalities to provide exemptions to business and
10 occupation taxes; establishing a property value adjustment tax credit; providing for the
11 determination of amount and application of the property value adjustment tax credit;
12 providing that the property value adjustment tax credit entitlement is retained by eligible
13 taxpayers that have developed project property; providing for credit recapture, interest,
14 penalties, additions to tax, and statute of limitations; providing for certified BUILD WV
15 districts and the procedure for designation; granting authority to the Department of
16 Economic Development to administer BUILD WV; providing for the application and
17 procedures for BUILD WV projects; and requiring agreements between the Department of
18 Economic Development and BUILD WV project participants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2L. BUILD WV ACT.

PART I. GENERAL

§5B-2L-1. Short title.

1 This article shall be known as the BUILD WV Act.

§5B-2L-2. Legislative findings and purpose.

1 (a) The Legislature hereby finds that reasonably priced residential housing for graduate,
2 post-graduate and professional job holders, technical workers, and entrepreneurs for targeted

3 businesses in key geographical regions of this state is an essential component of West Virginia's
4 comprehensive economic development. Highly meritorious measures have been undertaken
5 under both federal law and state law for the construction of low-income housing, direct loan
6 support, rent assistance, supportive housing for elderly citizens and citizens with disabilities,
7 public housing programs, business location incentives and incentives for capital formation, and
8 entrepreneurial innovation in economically depressed areas. The Legislature finds that key
9 geographic areas of this state are on the verge of a burgeoning expansion for economic
10 development, accompanied by unprecedented technical innovation, creation of expansive new
11 businesses in unexplored commercial and industrial markets, with individual opportunities for
12 employment, entrepreneurship, personal success, and personal development for the people of
13 West Virginia.

14 (b) The Legislature finds that a significant constraint upon this expansion is the lack of
15 housing for graduate, post-graduate, professional, and technical personnel whose participation is
16 vital to the economic success of West Virginia, and to the economic, cultural, and social
17 betterment of West Virginia. Support for low-income housing and the other assistance,
18 enumerated above, has the firm support of the Legislature. However, support for middle income
19 housing and middle market housing needs in these key geographic areas is lacking. Such support
20 is crucial for expansion of technical, industrial, and commercial markets expected for West
21 Virginia.

22 (c) Therefore, the Legislature hereby establishes the BUILD WV Act, with the intent to
23 remove this constraint and provide the stimuli and incentives necessary for these developments
24 to go forward.

§5B-2L-3. Definitions.

1 (a) General. — When used in this article, or in the administration of this article, terms
2 defined in this section have the meanings ascribed to them by this section unless a different
3 meaning is clearly required by the context in which the term is used.

4 (b) Terms defined. — As used in this article, unless the context clearly indicates otherwise:

5 (1) “Agreement” means a BUILD WV project agreement entered into pursuant to this
6 article, between the Department of Economic Development and an approved company or group
7 of multiple party project participants with respect to a project.

8 (2) “Approved company” means any eligible company approved by the Department of
9 Economic Development pursuant to this article seeking to undertake a project. The Department
10 of Economic Development may certify multiple party projects comprised of more than one
11 approved company, as provided in this article. “Approved company” means and includes an
12 approved multiple party project participant.

13 (3) “Approved costs” means costs included, as stated herein, and not excluded pursuant
14 to the provisions of this definition, or this article, or any other provision of this code.

15 (A) Included costs:

16 (i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders,
17 suppliers, delivery persons, and material persons in connection with the acquisition, construction,
18 equipping, or installation of a project;

19 (ii) The costs of acquiring real property or rights in real property and any costs incidental
20 thereto;

21 (iii) The cost of contract bonds and of insurance of all kinds that may be required or
22 necessary during the course of the acquisition, construction, equipping, or installation of a project
23 which is not paid by the vendor, supplier, delivery person, contractor, or otherwise provided;

24 (iv) All costs of architectural and engineering services, including, but not limited to:
25 estimates, plans and specifications, preliminary investigations and supervision of construction,
26 installation, as well as for the performance of all the duties required by or consequent to the
27 acquisition, construction, equipping, or installation of a project;

28 (v) All costs required to be paid under the terms of any contract for the acquisition,
29 construction, equipping, or installation of a project;

30 (vi) All costs required for the installation of utilities, including, but not limited to: water,
31 sewer, sewer treatment, gas, electricity, communications, and off-site construction of utility
32 extensions to the boundaries of the real estate on which the facilities are located, all of which are
33 to be used to improve the economic situation of the approved company or group of multiple party
34 project participants in a manner that allows the approved company or group of multiple party
35 project participants to attract persons; and

36 (vii) All other costs comparable with those described in this subdivision.

37 (B) Excluded costs. — The term “approved costs” does not include:

38 (i) Any portion of the cost required to be paid for the acquisition, construction, equipping,
39 or installation of a project that is financed with governmental incentives, grants or bonds, other
40 than the exemptions and tax credits allowable under this article. “Approved costs” does not
41 include any portion of the cost or for which the approved company or group of multiple party
42 project participants elects to qualify for other economic development incentive tax credits
43 authorized under West Virginia law. The exclusion of certain costs of a project under this
44 paragraph does not automatically disqualify the remainder of the costs of the project;

45 (ii) Any portion of the cost of property or space that is covered by a rehabilitated building
46 tax credit under the provisions of §11-21-8a, §11-21-8b, §11-21-8c, §11-21-8d, §11-21-8e, §11-
47 21-8f, or §11-21-8g of this code or §11-24-23a, §11-24-23b, §11-24-23c, §11-24-23d, §11-24-
48 23e, §11-24-23f, or §11-24-23g of this code;

49 (iii) Any portion of the cost of property or space that is used, in whole or in part, as a
50 residential timeshare, commercial timeshare, or as part of any similar arrangement; or

51 (iv) Any portion of the cost of property or space that is excluded from certification by the
52 Department of Economic Development by rule or administrative notice.

53 (4) “Certified BUILD WV district” or “certified district” means a geographic district
54 designated pursuant to this article as an area in which a proposed BUILD WV residential housing
55 project may be approved for certification.

56 (5) “Certified BUILD WV project” or “project” means BUILD WV project that has received
57 the certification of the Department of Economic Development in accordance with this article, and
58 for which certification remains current and in effect. A BUILD WV project shall be for the
59 construction of residential housing, including new construction or the rehabilitation of existing
60 unoccupied structures.

61 (6) “Common areas” means, but is not limited to, lawns, roads, streets, alleys, sidewalks,
62 parks, waterways, driveways, stairways, hallways, lobbies, corridors, sidewalks, parking lots,
63 parking garages, community swimming pools, community laundry facilities, elevators, roofs,
64 maintenance buildings, maintenance facilities, stairways, lobbies, corridors, and other property
65 available for common use by all tenants and groups of tenants and their invitees. Common areas
66 of a certified BUILD WV project are included as certified project property.

67 (7) “Corporation” or “C corporation” means a corporation that is taxed separately from its
68 owners for federal income tax purposes under subchapter C of the Internal Revenue Code and
69 includes a limited liability company, partnership, or other entity that is treated as a corporation for
70 federal income tax purposes.

71 (8) “Department of Economic Development” means the West Virginia Department of
72 Economic Development established under the provisions of §5B-2-1 et seq. of this code.

73 (9) “Eligible company” means any corporation, limited liability company, partnership,
74 limited liability partnership, sole proprietorship, business trust, joint venture, or any other entity
75 operating or intending to operate a certified project, whether owned or leased, within the state
76 that meets the standards required by the Department of Economic Development for certification
77 under this article. An eligible company may operate, or intend to operate, directly or indirectly
78 through a lessee. The Department of Economic Development may certify multiple party projects
79 comprised of more than one eligible company, as provided in this article.

80 (10) “Eligible taxpayer” —

81 (A) For purposes of the property value adjustment tax credit, “eligible taxpayer” means
82 any approved company:

83 (i) That has made qualified investment in certified BUILD WV project property or any group
84 of multiple party project participants that has made qualified investment in certified BUILD WV
85 project property; or

86 (ii) That is subject to the taxes imposed under §11-21-1 et seq. or §11-24-1 et seq. of this
87 code, or the owners, interest holders, partners, S Corporation shareholders, or other owners of
88 an approved company, that receive flow-through income from the approved company, that are
89 subject to the taxes imposed under §11-21-1 et seq. or §11-24-1 et seq. of this code.

90 (B) “Eligible taxpayer” also means and includes those members of an affiliated group of
91 taxpayers engaged in a unitary business with an approved company or group of multiple party
92 project participants, in which one or more members of the affiliated group is a person subject to
93 the tax imposed under §11-24-1 et seq. of this code: *Provided*, That application of the property
94 value adjustment tax credit against the tax imposed under §11-24-1 et seq. of this code is subject
95 to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single
96 entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Credit
97 may apply solely against that single entity’s proportionate share of taxable income. No tax credit
98 earned by one member of the affiliated group, may be used, in whole or in part, by any other
99 member of the affiliated group.

100 (11) “Final approval” or “certification” means the action taken by the Secretary of the
101 Department of Economic Development to certify a BUILD WV project.

102 (12) “Flow-through entity,” “conduit entity,” or “pass through entity” means an S
103 corporation, partnership, limited partnership, limited liability partnership, or limited liability
104 company. The term “Flow-through entity,” “conduit entity,” or “pass through entity” includes a
105 publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code
106 that has equity securities registered with the securities and exchange commission under section

107 12 of title I of the securities exchange act of 1934, 15 USC 78l: *Provided*, That, a partnership,
108 limited liability company, or other entity or organization that is treated as a C corporation for federal
109 income tax purposes shall be subject to income allocation, apportionment, and taxation under
110 §5B-24-1 *et seq.* of this code.

111 (13) “Infrastructure” means, and is limited to, the real and tangible personal property
112 located in a project that is directly used in, and necessary for, providing broadband internet
113 access, electricity, water, natural gas, sewer service, sewage treatment service, rubbish disposal,
114 and other utility services for residential units within a certified BUILD WV project. An electrical
115 charging facility for charging electrical motor vehicles, or electrical hybrid motor vehicles of
116 certified BUILD WV project residents may be treated as an infrastructure component of a certified
117 BUILD WV project: *Provided*, That in no case shall any property or space that is used, in whole
118 or in part, as a gasoline filling station or other motor vehicle fueling station constitute certified
119 project property, or any part thereof.

120 (14) “Natural person” or “individual” means a human being.

121 (15) “Partner” includes a partner in a partnership, and a member in a syndicate, group,
122 pool, joint venture, or organization.

123 (16) “Partnership” means and includes a syndicate, group, pool, joint venture, or other
124 unincorporated organization through or by means of which any business, financial operation, or
125 venture is carried on and which is not a trust or estate, a corporation, or a sole proprietorship.

126 (17) “Person” means and includes any natural person, corporation, limited liability
127 company, flow-through entity, or partnership.

128 (18) “Taxpayer” means any person subject to the taxes imposed under §11-21-1 *et seq.*
129 or §11-24-1 *et seq.* of this code.

130 (19) “Tax year” or “taxable year” means the tax year of the taxpayer for federal income tax
131 purposes.

132 (20) "Timeshare" means an agreement or arrangement in which two or more parties share
133 the ownership of, or right to use, property (e.g. an apartment or condominium) that authorizes
134 occupation by each party, typically for periods of less than a year. "Timeshare" includes a deeded
135 contract providing such an arrangement and a fractional ownership agreement or arrangement.
136 "Timeshare" means and includes property that the subject of any such agreement or arrangement.
137 (21) "Unitary business" means a unitary business as defined in §11-24-3a of this code.

§5B-2L-4. Rule-making.

1 (a) In order to effectuate the purposes of this article, the Tax Commissioner may
2 promulgate procedural rules, interpretive rules and legislative rules, including emergency rules,
3 or any combination thereof in accordance with §29A-3-1 et seq. of this code.

4 (b) In order to effectuate the purposes of this article, the Department of Economic
5 Development or any agency, division, or subdivision thereof, may promulgate procedural rules,
6 interpretive rules, and legislative rules, including emergency rules, or any combination thereof in
7 accordance with §29A-3-1 et seq. of this code.

§5B-2L-5. Application of the West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act.

1 The provisions of this article are subject to the West Virginia Tax Procedure and
2 Administration Act, set forth in §11-10-1 et seq. of this code, and the West Virginia Tax Crimes
3 and Penalties Act, set forth in §11-9-1 et seq. of this code, as if the provisions thereof were set
4 forth *in extenso* in this article.

§5B-2L-6. Effective date and expiration date.

1 (a) Any property value adjustment tax credit authorized by this article shall be effective for
2 corporate net income tax years and personal income tax years beginning on and after January 1,
3 2023.

4 (b) Effective January 1, 2033, the provisions of this article shall expire and have no further
5 force or effect: *Provided*, That any tax exemption or property value adjustment tax credit

6 authorized pursuant to this article prior to January 1, 2033, shall continue to be valid and eligible
7 for redemption pursuant to procedures provided herein.

PART II. SALES AND USE TAX EXEMPTION FOR PURCHASES OF TANGIBLE PERSONAL
PROPERTY AND SERVICES DIRECTLY USED IN CONSTRUCTION, REPAIR, MAINTENANCE AND
REFURBISHMENT OF CERTIFIED BUILD WV HOUSING.

§5B-2L-7. Consumers sales and service tax and use tax exemption for construction
contractors.

1 (a) Notwithstanding the provisions of §11-15-1 et seq., §11-15A-1 et seq., and §11-15-8d
2 of this code or any other provision of this code, purchases of building materials, tangible personal
3 property, and services by a construction contractor or construction subcontractor directly used in
4 construction of a certified BUILD WV project property certified pursuant to the provisions of this
5 article are exempt from the taxes imposed by §11-15-1 et seq. and §11-15A-1 et seq. of this code.

6 (b) Purchases of services, materials, and tangible personal property for repairs,
7 maintenance, and refurbishment of certified BUILD WV project property are exempt from the
8 taxes imposed by §11-15-1 et seq. and §11-15A-1 et seq. of this code.

9 (c) The exemptions authorized under this section also apply to exempt purchases
10 enumerated herein from the municipal consumers sales and service tax and use tax and special
11 district excise tax: *Provided*, That exemptions authorized under this section do not apply to
12 purchases subject to a special district excise tax that was imposed and effective under §7-22-12
13 or §8-38-12 of this code, as applicable, prior to the effective date of this section.

14 (d) The exemptions authorized under this section are limited to purchases of building
15 materials and tangible personal property directly incorporated into certified project residential
16 buildings and structures, common areas, and infrastructure during construction, repair,
17 maintenance, and refurbishment of certified BUILD WV project property; including common areas,
18 infrastructure, and services directly used in construction, repair, maintenance, and refurbishment

19 of certified BUILD WV project property: *Provided*, That the following purchases are not exempt
20 under the provisions of this section:

21 (1) Purchases of gasoline and special fuel or any other fuel or means of power for a motor
22 vehicle or any other machine, apparatus, or engine; or

23 (2) Purchases subject to the consumers sales and service tax and use tax under the
24 provisions of §11-15-3c of this code.

PART III. AUTHORIZATION FOR MUNICIPAL BUSINESS AND OCCUPATION TAX EXEMPTION

§5B-2L-8. Municipal authority to exempt business and occupation tax.

1 Notwithstanding any other provision of this code, a municipality that imposes the municipal
2 business and occupation tax pursuant to the provisions of §8-13-5 of this code, may authorize by
3 ordinance, a municipal business and occupation tax exemption for gross income from rents,
4 royalties, fees, or other remuneration derived by a lessor or landlord from the furnishing, leasing,
5 or renting of any certified BUILD WV project property to a lessee or occupant.

PART IV. BUILD WV PROPERTY VALUE ADJUSTMENT CREDIT.

§5B-2L-9. Eligibility for property value adjustment tax credit.

1 There shall be allowed to every eligible taxpayer a property value adjustment tax credit
2 against the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, as determined
3 under this article.

§5B-2L-10. Amount of property value adjustment tax credit allowed.

1 (a) *Amount of credit.*

2 (1) The amount of total property value adjustment tax credit allowed to an eligible taxpayer
3 is the final product of the mathematical steps specified in paragraphs (A), (B) and (C) of this
4 subdivision.

5 (A) Approved costs, as certified by the Department of Economic Development multiplied
6 by 60 percent.

7 (B) The product of the multiplication set forth in paragraph (A) of this subdivision, multiplied
8 by the statewide average class III property tax rate of this state for the tax year in which
9 construction of project property is completed, as certified by the Department of Economic
10 Development.

11 (C) The product of the multiplication set forth in paragraph (B) of this subdivision, multiplied
12 by 10.

13 (b) Annual credit — The property value adjustment tax credit shall be applied annually as
14 specified in this article in the amount of one-tenth thereof per year for a period of 10 consecutive
15 years beginning in the tax year in which construction of project property is completed, as certified
16 by the Department of Economic Development. The property value adjustment tax credit shall not
17 be carried back to any preceding tax year, nor carried forward to any succeeding tax year.
18 However, the refundable property value adjustment tax credit may be applied in accordance with
19 the provisions of this article. The property value adjustment tax credit shall not be transferable.
20 Any amount of annual property value adjustment tax credit not used during the personal income
21 tax or corporation net income tax taxable year, as applicable, (1) as a direct offset of income tax,
22 plus (2) any refundable credit applied, as allowed under this article, is forfeited.

§5B-2L-11. Application of annual credit allowance.

1 (a) Application of annual property value adjustment tax credit against personal income tax
2 or corporate net income tax. — The amount of the property value adjustment tax credit shall be
3 taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by
4 §11-21-1 et seq. or §11-24-1 et seq. of this code, as applicable, to offset tax liabilities imposed on
5 net income for each taxable year, beginning in the eligible taxpayer's tax year in which
6 construction of project property is completed, as certified by the Department of Economic
7 Development, and ending at the end of the eligible taxpayer's 10th taxable year subsequent to
8 the tax year in which construction of project property is completed, as certified by the Department
9 of Economic Development.

10 (1) Personal income tax. – The amount of the annual property value adjustment tax credit
11 shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed
12 by §11-21-1 et seq. of this code.

13 (2) Corporation net income tax. – The amount of the annual property value adjustment tax
14 credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year
15 imposed by §11-24-1 et seq. of this code. Application of the property value adjustment tax credit
16 against the tax imposed under §11-24-1 et seq. of this code is subject to the provisions of §11-
17 24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the
18 affiliated group of taxpayers, that earned entitlement to the credit. Credit may apply solely against
19 that single entity’s proportionate share of taxable income. No tax credit earned by one member of
20 the affiliated group, may be used, in whole or in part, by any other member of the affiliated group.

21 (3) Refundable portion of annual property value adjustment tax credit. –

22 (A) If annual property value adjustment tax credit allowed under this article exceeds the
23 amount of personal income tax or corporation net income tax, as applicable, subject to offset
24 under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the
25 excess amount as a refundable tax credit, not to exceed \$100,000 per project.

26 (B) The \$100,000 property value adjustment tax credit refundable credit limitation applies
27 on a per project basis, so that:

28 (i) If there is a single eligible taxpayer that has developed property comprising a certified
29 BUILD WV project that is entitled to a refundable portion of the tax credit, then the \$100,000
30 refundable credit limitation applies to that single taxpayer; or

31 (ii) If there are multiple eligible taxpayers that have developed of property comprising a
32 certified BUILD WV project that are entitled to a refundable portion of the tax credit, then the
33 \$100,000 refundable credit limitation applies to, and is shared among, those multiple eligible
34 taxpayers in such proportion as the Department of Economic Development may approve, and in

35 no case shall the aggregate amount of refundable tax credit taken by all such multiple eligible
36 taxpayers in total exceed \$100,000 for the tax year.

37 (C) Application of the property value adjustment tax credit, as a refundable credit against
38 the tax imposed under §11-24-1 et seq. of this code is subject to the provisions of §11-24-13a(g)
39 and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated
40 group of taxpayers, that earned entitlement to the credit. Only that single entity shall be entitled
41 to claim excess credit for the taxable year, if applicable, as refundable credit. Credit may apply
42 solely against that single entity's proportionate share of taxable income. No tax credit earned by
43 one member of the affiliated group, may be used, in whole or in part, by any other member of the
44 affiliated group. Any property value adjustment tax credit remaining after application of this
45 subdivision for the taxable year is forfeited.

46 (b) Pass-through entities. –

47 (1) The annual property value adjustment tax credit allowed under this article for the year
48 shall flow through to the equity owners of the pass-through entity in the same manner
49 as distributive share of income flows through to the equity owners.

50 (2) Personal income tax — application of annual property value adjustment tax credit
51 against personal income tax on income from pass-through entities. – The property value
52 adjustment tax credit authorized by this article may be applied against the tax imposed under §11-
53 21-1 et seq. of this code, on flow-through income of an individual partner, owner, interest holder
54 or S Corporation shareholder, which is directly and solely derived from and limited to the net
55 income of the flow-through entity that is an eligible taxpayer that has developed certified project
56 property. If annual property value adjustment tax credit allowed under this article exceeds the
57 amount of personal income tax of a particular owner, interest holder, partner or S Corporation
58 shareholder or other owner of a flow-through entity that is an approved company, subject to offset
59 by the property value adjustment tax credit under this article in any taxable year, the particular
60 owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through

61 entity may claim, for that taxable year, the excess amount as a refundable tax credit. The
62 \$100,000 limitation is determined at the flow-through entity level and applies as the total
63 aggregate limit on all refundable credit available to all partners, owners, interest holders, or S
64 Corporation shareholders that receive a distributive share of flow through income from the flow-
65 through entity. The refundable credit amount shall be divided and distributed among the individual
66 partners, owners, interest holders, or S Corporation shareholders, in the same manner and in the
67 same proportions as the distributive share of income flows through to the equity owners: *Provided,*
68 That in the case of multiple approved companies that have developed project property, the
69 \$100,000 limitation applies on a per project basis, as specified herein.

70 (3) *Corporation net income tax* — application of annual property value adjustment tax
71 credit against corporation net income tax on income from pass-through entities. – The property
72 value adjustment tax credit authorized by this article may be applied against the tax imposed
73 under §11-24-1 *et seq.* of this code, on flow-through income of a C corporation that is a partner,
74 owner, interest holder, or S Corporation shareholder, which is directly and solely derived from and
75 limited to the net income of the flow-through entity that is the eligible taxpayer that developed
76 certified project property. If annual property value adjustment tax credit allowed under this article
77 exceeds the amount of corporation net income tax of a particular owner, interest holder, partner,
78 S Corporation shareholder, or other owner of a flow-through entity that is an approved company,
79 subject to offset by the property value adjustment tax credit under this article in any taxable year,
80 the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the
81 flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit.
82 The \$100,000 limitation is determined at the flow-through entity level and applies as the total
83 aggregate limit on all refundable credit available to all partners, owners, interest holders or S
84 Corporation shareholders that receive a distributive share of flow-through income from the flow-
85 through entity. The refundable credit amount shall be divided and distributed among the partners,
86 owners, interest holders or S Corporation shareholders, in the same manner and in the same

87 proportions as the distributive share of income flows through to the equity owners: *Provided*, That
88 in the case of multiple eligible taxpayers that have developed project property, the \$100,000
89 limitation applies on a per project basis, as specified herein.

90 (c) The property value adjustment tax credit shall not apply against the *ad valorem*
91 property tax. The property value adjustment tax credit shall not apply against any withholding tax
92 or payroll tax of any taxpayer or employer.

93 (d) *Annual schedule*. – For purposes of asserting the property value adjustment tax credit
94 allowed under this article against tax, the taxpayer must prepare and file an annual schedule
95 showing the amount of tax paid for the taxable year and the amount of credit allowed under this
96 article, and such other information as the Tax Commissioner may require. The annual schedule
97 shall set forth the information and be in the form prescribed by the Tax Commissioner.

§5B-2L-12. Property value adjustment tax credit entitlement is retained by eligible taxpayers that have developed project property, transfer of credit to transferees of project property is prohibited.

1 (a) *Transfer or sale of assets*. –

2 (1) Where there has been a sale or transfer of the certified BUILD WV project assets from
3 an eligible taxpayer to any other person or entity, the eligible taxpayer retains entitlement to the
4 property value adjustment tax credit. Credit entitlement shall not be transferred to the transferee
5 of project property.

6 (b) *Stock purchases*. – Where a corporation which is an eligible taxpayer entitled to the
7 property value adjustment tax credit under this article is purchased through a stock purchase by
8 a new owner, where such corporation remains a legal entity so as to retain its corporate identity,
9 the entitlement of that corporation to the property value adjustment tax credit allowed under this
10 article will not be affected by the ownership change: *Provided*, That the corporation otherwise
11 remains in compliance with the requirements of this article for entitlement to the property value
12 adjustment tax credit.

13 (c) Mergers. –

14 (1) Where a corporation or other entity that is an eligible taxpayer entitled to the property
15 value adjustment tax credit under this article is merged with another corporation or entity, the
16 surviving corporation or entity is entitled to the property value adjustment tax credit to which the
17 predecessor eligible taxpayer was originally entitled: *Provided*, That the surviving corporation or
18 entity otherwise complies with the provisions of this article.

19 (2) The amount of property value adjustment tax credit available in any taxable year during
20 which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the
21 successor eligible taxpayer based on the number of days during the taxable year that each owned
22 the transferred certified BUILD WV project business assets.

23 (d) No provision of this section or of this article may be construed to allow sales,
24 assignment, or other transfers of the property value adjustment tax credit allowed under this
25 article. The property value adjustment tax credit allowed under this article can be redesignated
26 as useable by a taxpayer or entity other than the original entity entitled to the credit, only in
27 circumstances where there is a valid successorship as described under this section.

§5B-2L-13. Credit recapture; interest; penalties; additions to tax; statute of limitations.

1 (a) If it appears upon audit or otherwise that any person or entity has taken the property
2 value adjustment tax credit against tax and was not entitled to take the credit, then the credit
3 improperly taken shall be recaptured. Amended returns shall be filed for any tax year for which
4 the credit was improperly taken. Any additional taxes due under §11-21-1 *et seq.* or §11-24-1 *et*
5 *seq.*, or any other provision of this code shall be remitted with the amended return or returns filed
6 with the Tax Commissioner, along with interest, as provided in §11-10-1 *et seq.* of this code and
7 such other penalties and additions to tax as may be applicable pursuant to the provisions of §11-
8 10-1 *et seq.* of this code.

9 (b) Notwithstanding the provisions of §11-10-1 et seq. of this code to the contrary,
10 penalties and additions to tax imposed under that article may be waived at the discretion of the
11 Tax Commissioner: *Provided*, That interest is not subject to waiver.

12 (c) Notwithstanding the provisions of §11-10-1 et seq. of this code to the contrary, the
13 statute of limitations for the issuance of an assessment of tax by the Tax Commissioner is five
14 years from the date of filing of any tax return on which the property value adjustment tax credit
15 was taken or five years from the date of payment of any tax liability calculated pursuant to the
16 assertion of the property value adjustment tax credit allowed under this article, or five years from
17 the date of payment of any refundable tax credit calculated pursuant to the assertion of the
18 property value adjustment tax credit allowed under this article, whichever is later.

PART V. BUILD WV PROJECT AND DISTRICT CERTIFICATION.

§5B-2L-14. Designation of a certified district.

1 (a) A certified BUILD WV district may be designated upon the agreement, in writing, of the
2 following officials: the Secretary of the Department of Economic Development, the Secretary of
3 the Department of Tourism, and the Secretary of the Department of Commerce.

4 (b) A certified district shall be designated by the identification of a municipality, attraction,
5 landmark, or other point of interest. The certified district may extend, as determined by the
6 designation, up to 20 square miles from that municipality, attraction, landmark, or other point of
7 interest.

8 (c) The following criteria shall be considered when determining whether to designate a
9 certified district:

10 (1) The housing and employment needs within the certified district;

11 (2) Whether the certified district will have a significant and positive economic impact on
12 the state;

13 (3) Whether there is substantial and credible evidence that designating the certified district
14 will result in one or more certified projects likely to be started and completed in a timely fashion;

15 (4) Whether the certified district will, directly or indirectly, improve the opportunities in the
16 area where the project will be located for the successful establishment or expansion of other
17 commercial businesses;

18 (5) Whether the certified district will, directly or indirectly, assist in the creation of additional
19 employment opportunities in the area or assist in the filling of currently available jobs;

20 (6) Whether the certified district helps to diversify the local economy;

21 (7) Whether the certified district is consistent with the goals of this article; and

22 (8) Any other relevant and reasonable criteria determined by the designating officials.

23 (d) In no case may more than 12 BUILD WV districts exist at any one time in this state.

24 (e) A certified district may be decertified at any time upon agreement, in writing, of the
25 designated officials provided for in subsection (a). In no case may any BUILD WV district be
26 certified for any time period longer than 10 calendar years, unless redesignated in the same
27 manner as provided for designation.

28 (f) In no case may a proposed BUILD WV project be certified in any geographic area that
29 is not a certified BUILD WV district.

30 (g) The designation made pursuant to this section as to the designation of a certified
31 district, refusal to designate a certified district, decertification, or revocation of certification of a
32 BUILD WV district is final.

§5B-2L-15. Project administration and certification.

1 (a) The Department of Economic Development has the following powers and duties
2 necessary to carry out the purposes of this article, including, but not limited to:

3 (1) To issue approval of and certify all applications for projects and enter into agreements
4 pertaining to certified BUILD WV projects with approved companies;

5 (2) To employ fiscal consultants, attorneys, appraisers, and other agents as the Secretary
6 of the Department of Economic Development finds necessary or convenient for the preparation
7 and administration of agreements and documents necessary or incidental to any project;

8 (3) To impose and collect fees and charges in connection with any transaction;

9 (4) To impose and collect from the applicant a nonrefundable application fee in the amount
10 of \$5,000 to be paid to the Department of Economic Development when the application is filed;

11 (5) To issue approval of and certify all certified BUILD WV project residential housing units;
12 and

13 (6) To decertify, refuse to certify or revoke certification of any proposed or certified BUILD
14 WV project, upon a finding that any person or entity involved therein, or any approved company,
15 or any eligible taxpayer, has failed to comply with the requirements of this article, or upon a finding
16 that residential housing units, common areas or infrastructure of a certified BUILD WV project
17 have been constructed with shoddy workmanship or materials, or that the approved company or
18 eligible taxpayer has failed to maintain or repair certified BUILD WV project property in a manner
19 consistent with accepted standards or standards prescribed by the Department of Economic
20 Development, or that any aspect of the undertaking has been the result of, or involved, fraud,
21 malfeasance, bribery, embezzlement, corruption, intimidation or gross misconduct. Upon
22 revocation, all tax credit authorized under this article shall be null and void and of no further force,
23 or effect. No company, entity, or person shall apply or use any tax credit to offset tax on or after
24 the date of revocation. The Tax Commissioner may apply credit recapture, and tax assessment
25 and collection actions as may be appropriate under the West Virginia Tax Procedure and
26 Administration Act and may seek criminal sanctions, as appropriate, under West Virginia Tax
27 Crimes and Penalties Act.

§5B-2L-16. Project application; evaluation standards; approval of projects.

1 (a) Each eligible company or group of multiple party project participants that seeks
2 certification of a proposed project as a certified BUILD WV project must file a written application
3 for approval and certification of the project with the Department of Economic Development.

4 (b) With respect to each eligible company or group of multiple party project participants
5 making an application to the Department of Economic Development seeking certification of a

6 proposed project as a certified BUILD WV project the Department of Economic Development shall
7 make inquiries and request documentation, including a completed application, from the applicant
8 that shall include the following:

9 (1) A description and location of the proposed project;

10 (2) Capital and other anticipated expenditures for the project and the sources of funding
11 therefor;

12 (3) The anticipated employment, revenues and expenses generated by the project; and

13 (4) Anything else determined necessary by the Department of Economic Development.

14 (c) The aggregate sum of approved costs for all projects for any fiscal year shall not
15 exceed \$150 million. Any project application submitted for certification in the fiscal year after the
16 sum of \$150 million has been reached shall not be approved or certified. Notwithstanding any
17 other provision of this code, for any fiscal year, the Secretary of the Department of Economic
18 Development may not approve any single proposed project as a certified BUILD WV project for
19 the fiscal year unless the proposed project has an aggregate sum of approved costs that is at
20 least \$3 million or the proposed project includes at least six residential units or houses.

21 (d) The Secretary of the Department of Economic Development, within 60 days following
22 receipt of an application or receipt of any additional information requested by the Department of
23 Economic Development respecting the application, whichever is later, shall act to grant or not to
24 grant certification of the project, based on the following criteria:

25 (1) The project will have approved costs of at least \$3 million or includes at least six
26 residential units or houses;

27 (2) The project will have a significant and positive economic impact on the state;

28 (3) The quality of the proposed project and how it addresses economic problems in the
29 area in which the project will be located;

30 (4) Whether there is substantial and credible evidence that the project is likely to be started
31 and completed in a timely fashion;

32 (5) Whether the project will, directly or indirectly, improve the opportunities in the area
33 where the project will be located for the successful establishment or expansion of other
34 commercial businesses;

35 (6) Whether the project will, directly or indirectly, assist in the creation of additional
36 employment opportunities in the area where the project will be located;

37 (7) Whether the project helps to diversify the local economy;

38 (8) Whether the project is consistent with the goals of this article;

39 (9) Whether the project is economically and fiscally sound using recognized business
40 standards of finance and accounting; and

41 (10) The ability of the eligible company or group of multiple party project participants to
42 carry out the project.

43 (e) Exclusions.

44 (1) In no case shall any property or space that is used, in whole or in part, as a residential
45 timeshare, commercial timeshare, or as part of any similar arrangement, constitute certified
46 project property, or any part thereof.

47 (2) In no case shall any property or space that is used in whole or in part as an industrial
48 or manufacturing operation, constitute certified project property, or any part thereof.

49 (3) In no case shall any property or space that is used in whole or in part as a warehouse,
50 distribution center, telephone call center, or telemarketing operation, constitute certified project
51 property, or any part thereof.

52 (4) In no case shall any property or space that is used, in whole or in part, as an airport
53 constitute certified project property, or any part thereof.

54 (5) In no case shall any property or space that is used primarily for business activity,
55 business, or other operation or activity excluded from certification by the Department of Economic
56 Development by rule or administrative notice, constitute certified project property, or any part
57 thereof.

58 (f) The Department of Economic Development may establish additional criteria for
59 consideration when evaluating and approving applications for certified BUILD WV housing
60 projects.

61 (g) The decision by the Secretary of the Department of Economic Development as to
62 certification of a proposed project, refusal to certify a proposed project, decertification, or
63 revocation of certification of a project is final.

**§5B-2L-17. Agreement between Department of Economic Development and approved
company or approved group of multiple party project participants.**

1 (a) The Department of Economic Development, upon final approval of an application by
2 the Secretary, may enter into an agreement with any approved company or group of multiple party
3 project participants with respect to a project.

4 (b) The Department of Economic Development may, at the discretion of the Secretary of
5 the Department of Economic Development, approve an application for project certification
6 constituting a single company application or a multiple party project application. The Secretary of
7 the Department of Economic Development may certify a multiple party project, and may enter into
8 an agreement with the principals thereof. For purposes of this article, a multiple party project
9 participant must be an eligible company as defined in this article. The terms and provisions of
10 each agreement shall include, but not be limited to:

11 (1) Total projected approved costs.

12 (2) Within three months of the completion date, the approved company or group of multiple
13 party project participants shall document:

14 (A) The actual cost of the project through a certification of the costs to the Department of
15 Economic Development by an independent certified public accountant acceptable to the
16 Department of Economic Development; and

17 (B) A date certain by which the approved company or group of multiple party project
18 participants shall have completed and opened the certified project for occupancy.

19 (3) Any approved company or group of multiple party project participants, having received
20 final approval may request, and the Department of Economic Development may grant, an
21 extension of time or change to the expected timeline. However, in no event shall the extension
22 exceed three years from the date of certification to the completion date specified in the agreement
23 with the approved company or group of multiple party project participants.

24 (c) Although adjacent properties may be developed and expanded upon by approved
25 companies or others, and certified BUILD WV project property may itself be developed and
26 expanded upon, in such cases, the certified BUILD WV project designation and the tax incentives
27 and benefits of this article shall not apply with relation to such noncertified developments or
28 expansions, except upon the issuance of a subsequent certification by the Department of
29 Economic Development for such development or expansion. In no case may a certified project be
30 augmented, enlarged, extended or expanded, except pursuant to issuance of an additional and
31 separate certification of a new and distinct project. Any augmentation, enlargement, extension or
32 expansion may only be approved and certified pursuant to the submission of a new request for
33 project approval, with full payment of all associated fees, and submission of full documentation
34 as required under this article for a new project.