WEST VIRGINIA LEGISLATURE

**FISCAL NOTE**

2023 REGULAR SESSION

Introduced

House Bill 3089

By Delegate Young

[Introduced January 26, 2023; Referred to the Committee on Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13MM-1, all relating to providing tax credits for employer provided and employer sponsored child care facilities; defining terms; setting amount of credit; establishing terms for the credit; requiring certain actions when a recapture event occurs; and providing rulemaking.

Be it enacted by the Legislature of West Virginia:

Article 13MM. Employer Child care tax credit.

§11-13MM-1. Employer provided and employer sponsored child care facility tax credits.

(a) As used in this code section, the term:

(1) "Cost of operation" means reasonable direct operational costs incurred by an employer as a result of employer provided or employer sponsored child care facilities: *Provided*, That the term cost of operation shall exclude the cost of any property that is qualified child care property;

(2) "Employer" means any employer upon whom an income tax is imposed by this chapter;

(3) "Employer provided" refers to child care offered on the premises of the employer;

(4) "Employer sponsored" refers to a contractual arrangement with a child care facility that is paid for by the employer;

(5) "Premises of the employer" refers to any location within the state and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer and one or more employers: *Provided, T*hat if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such child care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer;

(6) "Qualified child care property" means all real property and tangible personal property purchased or acquired for use exclusively in the construction, expansion, improvement, or operation of an employer provided child care facility, but only if:

(A) The facility is licensed or commissioned as a day care facility pursuant to §49-2B-1 *et seq.* of this code;

(B) At least 95 percent of the children who use the facility are children of employees of:

(i) The taxpayer and other employers in the event that the child care property is owned jointly or severally by the taxpayer and one or more employers; or

(ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning of Section 1504(a) of the Internal Revenue Code; and

(C) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child care property placed in service prior to taxable years beginning on or after January 1, 2023.

Qualified child care property includes, but is not limited to, amounts expended on land acquisition and improvements, buildings and building improvements, and furniture, fixtures, and equipment;

(7) "Recapture amount" means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits claimed under subsection (d) of this code section for all taxable years preceding the recapture year, whether or not such credits were used;

(8) "Recapture event" refers to any disposition of qualified child care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer's trade or business so long as the property is retained in such trade or business as qualified child care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(9) "Recapture percentage" refers to the applicable percentage set forth in the following table:

If the recapture event occurs within -- percentage is:

Five full years after the qualified child care property is placed in

service..................................................................100

The sixth full year after the qualified child care property is placed in

service......................................................................90

The seventh full year after the qualified child care property is placed in

service......................................................................80

The eighth full year after the qualified child care property is placed in

service......................................................................70

The ninth full year after the qualified child care property is placed in

service......................................................................60

The tenth full year after the qualified child care property is placed in

service......................................................................50

The eleventh full year after the qualified child care property is placed in

service......................................................................40

The twelfth full year after the qualified child care property is placed in

service......................................................................30

The thirteenth full year after the qualified child care property is placed

in service...................................................................20

The fourteenth full year after the qualified child care property is placed

in service...................................................................10

Any period after the close of the fourteenth full year after the qualified

child care property is placed in service......................................0

(10) "Recapture year" means the taxable year in which a recapture event occurs with respect to qualified child care property.

(b) A tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. The amount of the tax credit shall be equal to 75 percent of the cost of operation to the employer less any amounts paid for by employees during a taxable year.

(c) The tax credit allowed under subsection (b) of this code section shall be subject to the following conditions and limitations:

(1) Such credit shall not exceed 50 percent of the amount of the taxpayer’s income tax liability for the taxable year as computed without regard to any other credits;

(2) Any such credit claimed but not used in any taxable year may be carried forward for five years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of the child care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this section.

(d) In addition to the tax credit provided under subsection (b) of this section, a taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child care property and for each of the ensuing nine taxable years following such taxable year. The aggregate amount of the credit shall equal 100 percent of the cost of all qualified child care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 10 percent per year over a period of 10 taxable years.

(e) The tax credit allowable under subsection (d) of this section shall be subject to the following conditions and limitations:

(1) Any such credit claimed in any taxable year but not used in such taxable year may be carried forward for three years from the close of such taxable year. The sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding taxpayer;

(2) In no event shall the amount of any such tax credit, including any carryover of such credit from a prior taxable year, exceed 50 percent of the taxpayer's income tax liability as determined without regard to any other credits; and

(3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a schedule to the taxpayer's income tax return setting forth the following information with respect to such tax credit:

(A) A description of the child care facility;

(B) The amount of qualified child care property acquired during the taxable year and the cost of such property;

(C) The amount of tax credit claimed for the taxable year;

(D) The amount of qualified child care property acquired in prior taxable years and the cost of such property;

(E) Any tax credit utilized by the taxpayer in prior taxable years;

(F) The amount of tax credit carried over from prior years;

(G) The amount of tax credit utilized by the taxpayer in the current taxable year;

(H) The amount of tax credit to be carried forward to subsequent tax years; and

(I) A description of any recapture event occurring during the taxable year, a calculation of the resulting reduction in tax credits allowable for the recapture year and future taxable years, and a calculation of the resulting increase in tax for the recapture year.

(f) If a recapture event occurs with respect to qualified child care property:

(1) The credit otherwise allowable under subsection (d) of this section with respect to such property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

(2) All credits previously claimed with respect to such property under subsection (d) of this section shall be recaptured as follows:

(A) Any carryover attributable to such credits under paragraph (1) of subsection (e) of this code section shall be reduced, but not below zero, by the recapture amount;

(B) The tax credit otherwise allowable under subsection (d) of this section for the recapture year, if any, as reduced under paragraph (1) of this subsection, shall be further reduced, but not below zero, by the excess of the recapture amount over the amount taken into account under subparagraph (A) of this paragraph; and

(C) The tax imposed under this article for the recapture year shall be increased by the excess of the recapture amount over the amounts taken into account under subparagraphs (A) and (B) of this paragraph, as applicable.

(g) The commissioner shall propose rules for legislative approval pursuant to the provisions of §29A-3-1 *et seq.* of this code to effectuate the purposes of this section.

NOTE: The purpose of this bill is to provide tax credits for employer provided and employer sponsored child care facilities; define terms; set amount of credit; establish terms for the credit; require certain actions when a recapture event occurs; and provide rulemaking.

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