

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5304

FISCAL
NOTE

By Delegates Hornby, Fehrenbacher, Cannon, W.
Clark, Young, Chiarelli, Holstein, Hornbuckle, Lewis,
Thorne, and Hite

[Introduced January 29, 2024; Referred to the
Committee on Economic Development and Tourism
then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-13NN-1, §11-13NN-2, §11-13NN-3, §11-13NN-4 and §11-13NN-5, all
 3 relating to creating the Small Business Payroll Tax Credit, a three-year program
 4 establishing a tax credit for defined payroll taxes paid on up to 10,400 employee hours at a
 5 statutorily designated wage rate for businesses with 15 or fewer employees; allowing
 6 business growth to up to 25 employees but capping the credit at 10,400 employee hours
 7 and eliminating the credit for businesses of 26 employees or greater; establishing a start
 8 date and end date; listing the amounts of credits which may be claimed in each year of the
 9 program; and requiring the Department of Economic Development to track the progress of
 10 this program and present a report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13NN. SMALL BUSINESS PAYROLL TAX CREDIT

§11-13NN-1. Establishing a Small Business Payroll Tax Credit.

1 (a) Any business formed on or after July 1, 2024, and employing 15 or fewer employees
 2 shall be eligible for the Small Business Payroll Tax Credit.

3 (b) The business must be newly-formed and cannot be a business that has existed in West
 4 Virginia at any period between 2014 and 2024: *Provided*, That an existing business which
 5 transfers independent contractors to employee status shall be eligible for the Small Business
 6 Payroll Tax Credit if the total employee payroll of the business is 15 or fewer employees.

7 (c) For the purposes of application of the Small Business Payroll Tax Credit set forth in this
 8 article, the words “portion of the payroll tax assessed against the employer for that employee’s
 9 wages or salary” shall mean the following combined state taxes paid by the employer on employee
 10 payroll:

11 (1) A flat rate of 2.73% on all payroll that is paid for by the employer; and

12 (2) A flat rate of 5% on the first \$9,000 in wages for unemployment insurance paid for each
 13 employee, or \$420 per employee, up to a maximum of 15 actual employees, in a calendar year

14 that is paid for by the employer.

§11-13NN-2. Tax credit rates up to employee hour cap, exclusive of overtime.

1 (a) Over the three years of this program, the following schedule shall apply for tax credits
2 for a business that is eligible for this program:

3 (1) Up to the first 10,400 employee hours, at \$26.45 per hour, of the qualifying business,
4 exclusive of overtime, the first year of this program, shall qualify the business for a tax credit equal
5 to 100 percent of each component of the portion of the payroll tax assessed against the employer
6 for first 10,400 employee hours in the first year of this program;

7 (2) Up to the first 10,400 employee hours, at \$26.45 per hour, of the qualifying business,
8 exclusive of overtime, the second year of this program, shall qualify the business for a tax credit
9 equal to 66.6 percent of each component of the portion of the payroll tax assessed against the
10 employer for first 10,400 employee hours in the second year of this program;

11 (3) Up to the first 10,400 employee hours, at \$26.45 per hour, of the qualifying business,
12 exclusive of overtime, the third year of this program, shall qualify the business for a tax credit equal
13 to 33.3 percent of each component of the portion of the payroll tax assessed against the employer
14 for first 10,400 employee hours in the third year of this program;

15 (b) Qualified small businesses may claim the credit for an applicable number of employees
16 as follows:

17 (1) Small business with one to fifteen employees may claim employee hours as set forth in
18 §11-13NN-2(a)(1) through (a)(3) of this code.

19 (2) Small business with fifteen to twenty-five employees may claim employee hours as set
20 forth in §11-13NN-2(a)(1) through (a)(3) of this code.

21 (3) Small business with greater than twenty-five employees may no longer claim employee
22 hours as set forth in §11-13NN-2(a)(1) through (a)(2) of this code.

23 (c) This Small Business Payroll Tax credit is to be calculated according to new business
24 registration during the effective date range of the program, and not the dates of the hiring of the

25 employees, except as set forth in §11-13NN-1(b) of this code; and

26 (d) In the event that an employee leaves his or her position and is replaced, the new
27 employee steps into the shoes of the employee he or she replaced, and the business's tax credit
28 can be up to the amount of the portion of the payroll tax that the employer pays for employee
29 hours, not including overtime.

§11-13NN-3. Application of Small Business Payroll Tax Credit.

1 (a) There shall be allowed to each qualified Small Business Payroll employer taxpayer a
2 qualified tax credit for the amount of the portion of the payroll tax that the employer paid by the and
3 remitted to the federal government as set forth in §§11-13NN-1(c) and 11-13NN-2 of this code,
4 which may be taken by the taxpayer as an offset tax credit from the state for the equivalent amount
5 of income tax that the qualified Small Business Payroll employer taxpayer would have had to pay,
6 as designated to the State Tax Division of Taxation.

7 (b) The total amount of Small Business Payroll Tax credit which may be claimed by an
8 eligible employer shall be capped annually in the following manner:

9 (1) In the first tax year of claiming the credit, an eligible business may claim in credit up to
10 an amount equal to a maximum of \$14,260: *Provided*, That the employer may only claim the
11 portion of the payroll tax assessed against the employer for that employee's wages or salary on
12 the number of actual employee hours paid if less than 10,400 and that the \$420 per employee up
13 to 15 employees may only be applied to the actual number of employees if less than 15;

14 (2) In the second tax year of claiming the credit, an eligible business may claim in credit up
15 to an amount equal to a maximum of \$9,112: *Provided*, That the employer may only claim 66% of
16 the portion of the payroll tax assessed against the employer for that employee's wages or salary
17 on the number of actual employee hours paid if less than 10,400 and 66% of the \$420 per
18 employee up to 15 employees may only be applied to the actual number of employees if less than
19 15;

20 (3) In the third tax year of claiming the credit, an eligible business may claim in credit up to

21 an amount equal to a maximum of \$4,563: *Provided*, That the employer may only claim 33% of the
 22 portion of the payroll tax assessed against the employer for that employee's wages or salary on
 23 the number of actual employee hours paid if less than 10,400 and 33% of the \$420 per employee
 24 up to 15 employees may only be applied to the actual number of employees if less than 15.

25 (c) The Small Business Payroll employer taxpayer qualified tax credit may be taken by the
 26 individual taxpayer, or the corporate taxpayer, of the qualified Small Business Payroll employer
 27 taxpayer, as applicable.

28 (d) If the eligible taxpayer is a limited liability company, an electing small business
 29 corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as
 30 amended), or a partnership, any unused Small Business Payroll tax credit remaining after
 31 application of the tax credit to corporate net income taxes, is allowed as a tax credit against the
 32 taxes imposed by §11-21-1 *et seq.* of this code on owners of the eligible taxpayer.

33 (e) Electing small business corporations, limited liability companies, and partnerships shall
 34 allocate the tax credit allowed by this article among their members in the same manner as profits
 35 and losses are allocated for the taxable year.

36 (f) Unused Small Business Payroll tax credit carry forward. -- If the Small Business Payroll
 37 tax credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated
 38 in this section for that taxable year, the eligible taxpayer or owners of eligible taxpayers described
 39 in this section may apply the excess as a tax credit against those taxes, in the order and manner
 40 stated in this section, for succeeding taxable years until the earlier of the following:

- 41 (1) The full amount of the excess tax credit is used; or
- 42 (2) The expiration of the tenth taxable year after the taxable year in which the Small
- 43 Business Payroll employer taxpayer first qualified for the Small Business Payroll tax credit.

§11-13NN-4. Effective date and date program ends.

1 This program shall begin on July 1, 2024, and end on December 31, 2027. It shall apply to
 2 the tax years beginning January 1, 2025, January 1, 2026, and January 1, 2027.

§11-13NN-5.

Report.

1 The progress of this program shall be tracked by the Department of Economic
2 Development over the three-year trial period of this program, and shall report the metrics of this
3 program to the Joint Committee on Government and Finance at the interim session of January
4 2027. The information to be tracked includes:

- 5 (a) The number of businesses using this program;
- 6 (b) The number of new small businesses registered from the start of this program;
- 7 (c) The number of employees hired by these businesses over the course of the three-year
8 period;
- 9 (d) The number of independent contractors hired as employees by these businesses over
10 the course of the three-year period; and
- 11 (e) The profits reported by the businesses.

NOTE: The purpose of this bill is to create the Small Business Payroll Tax Credit, a three-year program establishing a tax credit for defined payroll taxes paid on up to 10,400 employee hours at a statutorily designated wage rate for new businesses with 15 or fewer employees, allowing for growth to 25 employees but capping the credit at 10,400 employee hours and eliminating the credit for businesses of 26 employees or greater; establishing a start date and end date; listing the amounts of credits which may be claimed in each year of the program; and requiring the Department of Economic Development to track the progress of this program and present a report.

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