

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5542

FISCAL
NOTE

By Delegates Lucas, W. Hall, Howell, W. Clark, and

DeVault

[Introduced February 09, 2024; Referred 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 §11-6H-8, all relating to authorizing a refundable tax credit applied against
 3 personal income tax or corporation net income tax based upon amount of property tax
 4 timely paid on aircraft; providing for the treatment of credit upon transfer of eligible aircraft;
 5 and providing for the application of tax credits..

Be it enacted by the Legislature of West Virginia:

ARTICLE 6H. VALUATION OF SPECIAL AIRCRAFT PROPERTY.

§11-6H-8. Aircraft property tax adjustment credit.

1 (a) Credit allowed. — There shall be allowed to every eligible taxpayer a credit, as
 2 determined under this section, against the tax imposed under §11-21-1 et seq. of this code, or
 3 against the tax imposed under §11-24-1 et seq. of this code, as applicable.

4 (b) "Eligible taxpayer" defined.—

5 (1) "Eligible taxpayer" – Aircraft — "Eligible taxpayer" means any person who owns an
 6 aircraft, as otherwise defined in §11-6H-2 of this article, or which the ad valorem property tax has
 7 been paid during the corporation net income tax taxable year or the personal income tax taxable
 8 year, as applicable.

9 (2) "Eligible taxpayer" – Pass through entities — "Eligible taxpayer" also means and
 10 includes any owner, interest holder, partner or S corporation shareholder that derives conduit
 11 income from a pass-through entity.

12 (3) "Eligible taxpayer" – Prohibition for aircraft dealers — "Eligible taxpayer" does not mean
 13 or include any aircraft dealer, aircraft dealership, retailer or any business that sells new or used
 14 aircraft at the retail level, other than a lessor of aircraft. In circumstances where any such aircraft
 15 dealer, aircraft dealership, retailer or business that sells new or used aircraft at the retail level is
 16 engaged in both retail sales of aircraft, and leasing of aircraft as lessor, the tax credit authorized by
 17 this article may only be asserted by such business based upon the ad valorem property tax paid on
 18 leased aircraft, and only to the extent that the lessor has passed on, to the lessee, the value of the

19 tax credit asserted by the lessor by causing a decreasing in the amount of rent or lease payment
20 payable by the lessee on the leased aircraft. No credit may be asserted or applied by the business
21 based upon *ad valorem* property tax paid on aircraft retail inventories, not actively leased to
22 lessees. To the extent that aircraft retail inventories may be held as both aircraft retail inventories,
23 and as aircraft potentially subject to lease during the taxable year, *ad valorem* property tax paid on
24 such aircraft is excluded from eligibility for the tax credit authorized by this article.

25 (c) *Amount of credit.* – The amount of credit allowed under this article to the eligible
26 taxpayer is the amount of West Virginia *ad valorem* property tax timely paid during the personal
27 income taxable year or the corporation net income tax taxable year, as applicable, to a county
28 sheriff on the value of aircraft owned by the eligible taxpayer: *Provided*, That in no case shall any
29 credit be allowed under this article for any untimely *ad valorem* property tax paid, or any payment
30 of delinquent *ad valorem* property tax, or payment of "back tax" *ad valorem* property taxes.

31 (d) *Application of credit against personal income tax and corporation net income tax.* –

32 (1) Personal income tax – If the eligible taxpayer is subject to the personal income tax
33 imposed by §11-21-1 *et seq.* of this code, the amount of credit allowed shall be taken against the
34 personal income tax liability of the eligible taxpayer for the current personal income tax taxable
35 year.

36 (2) Corporation net income tax — If the eligible taxpayer is subject to the corporation net
37 income tax imposed by §11-24-1 *et seq.* of this code, the amount of credit allowed shall be taken
38 against the corporation net income tax liability of the eligible taxpayer for the current corporation
39 net income tax taxable year.

40 (e) *Refundable portion of annual credit allowance.* — If annual tax credit allowed under this
41 article exceeds the amount of personal income tax or corporation net income tax, as applicable,
42 subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that
43 taxable year, the excess amount as a refundable tax credit.

44 (f) *Transfer or sale of the aircraft.* —

45 (1) Where there is a sale or transfer of the aircraft from an eligible taxpayer to any other
46 person or entity, the transferor retains entitlement to the tax credit authorized under this article for
47 the timely paid *ad valorem* property tax paid by the transferor in the transferor's personal income
48 tax taxable year or corporation net income tax taxable year, as applicable, on the transferred
49 aircraft.

50 (2) If the transferee meets all requirements for qualification as an eligible taxpayer under
51 this article and meets all requirements for entitlement to the tax credit authorized under this article,
52 then the transferee shall be entitled to the tax credit authorized under this article for the timely paid
53 *ad valorem* property tax paid by the transferee in the transferee's personal income tax taxable year
54 or corporation net income tax taxable year, as applicable on the eligible aircraft.

55 (3) In no case shall the transferor and the transferee take the tax credit authorized under
56 this article for the same taxable year.

57 (g) *Annual schedule*. — The Tax Commissioner shall prescribe and supply all necessary
58 instructions and forms for administration of this section. For purposes of asserting the credit
59 against tax, the taxpayer shall prepare and file an annual schedule showing the amount of
60 personal income tax paid for the taxable year, and the amount of property tax paid on the aircraft
61 for the taxable year, and the amount of credit allowed under this article. The annual schedule shall
62 set forth the information and be in the form prescribed by the Tax Commissioner.

NOTE: The purpose of this bill is to allow for a full rebate for the amount of taxes paid for aircraft.

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