

WEST VIRGINIA LEGISLATURE
2017 FIRST EXTRAORDINARY SESSION

Introduced

Senate Bill 1019

**FISCAL
NOTE**

BY SENATORS JEFFRIES, OJEDA, UNGER, BEACH,

FACEMIRE, PREZIOSO, MILLER AND ROMANO

[Introduced June 16, 2017; Referred to the Committee
on Finance]

1 A BILL to amend and reenact §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as
 2 amended; and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating
 3 to tax credits for rehabilitated building investment; increasing amount of credit allowed
 4 against personal and corporation net income taxes for qualified building rehabilitation
 5 expenditures made after specified date; establishing limitations on carryback,
 6 carryforward and allowable amount of credit for qualified building rehabilitation
 7 expenditures; providing that tax credit for qualified building rehabilitation expenditures will
 8 not be available to taxpayers in arrears of payment of certain taxes; and providing the Tax
 9 Commissioner with rule-making authority related to changes in credit for qualified building
 10 rehabilitation expenditures.

Be it enacted by the Legislature of West Virginia:

1 That §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted; and that §11-24-23a and §11-24-23e of said code be amended and
 3 reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:

2 *Certified historic structures.* -- For certified historic structures, the credit is equal to ten
 3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
 4 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after
 5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
 6 rehabilitation expenditure: *Provided, however,* That the credit authorized by this section for
 7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax
 8 liabilities prior to the tax year beginning January 1, 2019: *Provided further,* That the taxpayer may
 9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by
 10 the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property

11 containing the certified historic tax structure when the applicant begins to claim the credit and
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall
13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
14 that provide what information must accompany any claim for the tax credit for the determination
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified
17 historic tax structure. The Tax Commissioner may also propose rules for legislative approval in
18 accordance with the provisions of article three, chapter twenty-nine-a of this code for the
19 administration of this tax credit and to provide any necessary mechanism to recover credits
20 claimed by taxpayers who become delinquent in the payment of property taxes on the property
21 containing the historic structure or become in arrears in the payment of any tax administered by
22 the Tax Division. This credit is available for both residential and nonresidential buildings located
23 in this state, that are reviewed by the West Virginia Division of Culture and History and designated
24 by the national park service, United States department of the interior as "certified historic
25 structures," and further defined as a "qualified rehabilitated building," as defined under §47(c)(1),
26 Title 26 of the United States Code, as amended.

27 The credit authorized pursuant to this section may not exceed the greater of \$3.75 million
28 for the portion of a certified rehabilitation as defined in 26 U.S.C. §47(c)(2)(C) placed in service in
29 the state in the taxable year, or \$3.75 million for each building that is a component of a certified
30 historic structure for which a credit is claimed under this section.

§11-21-8e. ~~Carryback~~ Credit carryback, carryforward.

1 (a) Any unused portion of the credit for qualified rehabilitated buildings investment
2 authorized by section eight-a of this article which may not be taken in the taxable year to which
3 the credit applies qualifies for carryback and carryforward treatment subject to the identical
4 general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That
5 the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for

6 the taxable year: Provided, however, That for tax years beginning on and after January 1, 2019,
 7 any unused portion of the credit authorized by section eight-a of this article may not be carried
 8 back to any prior taxable year: Provided further, That for tax years beginning on and after January
 9 1, 2019, any unused portion of the credit authorized by section eight-a of this article may be
 10 carried over to each of the next five tax years following the unused credit year until used or
 11 forfeited due to lapse of time.

12 (b) Effective for taxable years beginning on and after January 1, 2001, credits granted to
 13 an electing small business corporation (S corporation), limited partnership, general partnership,
 14 limited liability company or multiple owners of property shall be passed through to the
 15 shareholders, partners, members or owners, either pro rata or pursuant to an agreement among
 16 the shareholders, partners, members or owners documenting an alternative distribution method.
 17 The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter
 18 twenty-nine-a of this code that provide the method of reporting the alternative method of
 19 distribution authorized by this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:
 2 *Certified historic structures.* -- For certified historic structures, the credit is equal to ten
 3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
 4 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after
 5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
 6 rehabilitation expenditure: Provided, however, That the credit authorized by this section for
 7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax
 8 liabilities prior to the tax year beginning January 1, 2019: Provided further, That the taxpayer may
 9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by
 10 the Tax Division or if the taxpayer is delinquent in the payment of property taxes on the property

11 containing the certified historic tax structure when the applicant begins to claim the credit and
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall
13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
14 that provide what information must accompany any claim for the tax credit for the determination
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified
17 historic tax structure. The Tax Commissioner may also propose rules for legislative approval in
18 accordance with the provisions of article three, chapter twenty-nine-a of this code for the
19 administration of this tax credit and to provide any necessary mechanism to recover credits
20 claimed by taxpayers who become delinquent in the payment of property taxes on the property
21 containing the historic structure or become in arrears in the payment of any tax administered by
22 the Tax Division. This credit is available for both residential and nonresidential buildings located
23 in this state that are reviewed by the West Virginia Division of Culture and History and designated
24 by the national park service, United States department of the interior as "certified historic building",
25 and further defined as a "qualified rehabilitated building", as defined under §47(c)(1), Title 26, of
26 the United States Code, as amended.

27 The credit authorized pursuant to this section may not exceed the greater of \$3.75 million
28 for the portion of a certified rehabilitation as defined in 26 U.S.C. §47(c)(2)(C) placed in service in
29 the state in the taxable year, or \$3.75 million for each building that is a component of a certified
30 historic structure for which a credit is claimed under this section.

§11-24-23e. ~~Carryback~~ Credit carryback, carryforward.

1 Any unused portion of the credit for qualified rehabilitated buildings investment authorized
2 by section twenty-three-a of this article which may not be taken in the taxable year to which the
3 credit applies shall qualify for carryback and carryforward treatment subject to the identical
4 general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That
5 the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for

6 the taxable year: Provided, however, That for tax years beginning on and after January 1, 2019,
7 any unused portion of the credit authorized by section twenty-three-a of this article may not be
8 carried back to any prior taxable year: Provided further, That for tax years beginning on and after
9 January 1, 2019, any unused portion of the credit authorized by section twenty-three-a of this
10 article may be carried over to each of the next five tax years following the unused credit year until
11 used or forfeited due to lapse of time.

NOTE: The purpose of this bill is to increase the historic rehabilitation tax credit to encourage growth and development of historic structures in West Virginia.

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