

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 63

SENATORS BEACH, ROMANO, AND FACEMIRE, *original*

sponsors

[Originating in the Committee on Agriculture and
Rural Development; reported on February 13, 2020]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-29-1 and §11-29-2, all relating to creating five-year tax credits for eligible
3 taxpayers primarily engaged in industrial hemp manufacturing; defining terms; setting
4 forth requirements for application of credit for tax years beginning on or after January 1,
5 2021; and authorizing rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29. INDUSTRIAL HEMP DEVELOPMENT TAX CREDIT.

§11-29-1. Definitions.

1 For purposes of this article:

2 “Eligible taxpayer” means a person subject to any of the taxes imposed by §11-21-1 et
3 seq. or §11-24-1 et seq., of this code, or any combination of those articles, who is primarily
4 engaged in industrial hemp manufacturing.

5 “Industrial hemp” means all parts and varieties of the plant Cannabis sativa L. and any
6 part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids,
7 isomers, acids, salts, and salts of isomers, whether growing or not, with no greater than 0.3%
8 tetrahydrocannabinol, or the THC concentration for hemp defined in 7 U.S.C. § 5940, whichever
9 is greater.

10 “Industrial hemp manufacturing” means any business activity that uses industrial hemp
11 grown by persons licensed by the Commissioner of Agriculture pursuant to §19-12E-1 et seq. of
12 this code, and that is classified as having a sector identifier, consisting of the first two digits of the
13 six-digit North American Industry Classification System code number, of 31, 32, or 33: *Provided,*
14 That this term does not include manufacturing cannabidiol (CBD) products.

§11-29-2. Application of credit.

1 (a) Amount of credit. — For those tax years beginning on or after January 1, 2021, an
2 eligible taxpayer is allowed a tax credit in the amount of 50 percent of the eligible taxpayer’s

3 capital expenditures (as defined in 26 U.S.C. § 263) for the first five taxable years. The dollar
4 amount of the credit claimed by an eligible taxpayer may not exceed the amount of 50 percent of
5 the eligible taxpayer's state income tax liability for a single year.

6 (b) Application of annual credit allowance. — The credit created under this article shall
7 reduce the corporate net income tax imposed under §11-24-1 et seq. of this code and the personal
8 income tax imposed under §11-21-1 et seq. of this code, in that order, subject to the following
9 conditions and limitations:

10 (1) Corporation net income taxes. — The credit shall first be applied to reduce the
11 corporation net income tax imposed under §11-24-1 et seq. of this code (determined before
12 application of any other allowable credits against tax).

13 (2) Personal income taxes. — After application of subdivision (1) of this subsection, any
14 unused credit shall be next applied as follows:

15 (A) If the person making the qualified investment is an electing small business corporation
16 (as defined in 26 U.S.C. § 1361), a partnership, or a limited liability company that is treated as a
17 partnership for federal income tax purposes, then any unused credit is allowed as a credit against
18 the taxes imposed by §11-21-1 et seq. of this code.

19 (B) Electing small business corporations, limited liability companies, partnerships, and
20 other unincorporated organizations shall allocate the credit allowed by this article among its
21 members in the same manner as profits and losses are allocated for the taxable year.

22 (3) A credit is not allowed under this section against any employer withholding taxes
23 imposed by §11-21-1 et seq. of this code.

24 (c) Unused credit. — A carryback to a prior taxable year is not allowed for the amount of
25 any unused portion of any annual credit allowance. If the amount of the credit exceeds the
26 taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be
27 carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1
28 et seq. or §11-24-1 et seq. of this code to each of the next five taxable years following the year of

29 creation of the tax credit unless sooner used.

30 (d) A tax credit is subject to recapture, elimination, or reduction if it is determined by the
31 Commissioner that a taxpayer was not entitled to the credit, in whole or in part, in the tax year in
32 which it was claimed by the taxpayer. The amount of credit that flows through to equity owners of
33 a pass-through entity may be recaptured or recovered from either the taxpayer or the equity
34 owners in the discretion of the Commissioner.

35 (e) Those businesses that benefit from other state economic development programs or
36 incentives that result in a reduction of their income tax liability due are not eligible for this tax
37 credit.

38 (f) The Commissioner may propose rules for promulgation by the Legislature in
39 accordance with §29A-3-1 et seq. of this code necessary to implement the provisions of this
40 article.

NOTE: The purpose of this bill is to create a five-year tax credit for persons primarily engaged in industrial hemp manufacturing.

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