

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2893

**FISCAL
NOTE**

BY DELEGATE RILEY

[Introduced March 03, 2021; Referred to the
Committee on Small Business, Entrepreneurship and
Economic Development then Finance]

1 A BILL to amend and reenact §11-13Q-5 and §11-13Q-10 of the Code of West Virginia, 1931, as
 2 amended, relating to modifying the Economic Opportunity Tax Credit allowed for locating
 3 corporate headquarters in this state and the credit for small business.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.

§11-13Q-5. Credit allowed for locating corporate headquarters in this state.

1 (a) *Credit allowed.* -- A corporation that presently has its corporate headquarters located
 2 outside this state that relocates its corporate headquarters in this state and employs, on a full-
 3 time basis, at its new corporate headquarters location, at least ~~fifteen~~ five people, who are
 4 domiciled in this state, is allowed credit under this article, the amount of which is determined as
 5 provided in subsection (b) of this section. The restrictions set forth in §11-13Q-19 (a) of this code
 6 do not apply to the credit for corporate headquarters relocations allowed under this section.

7 (b) *Determination of credit.* -- The amount of credit allowed by subsection (a) of this article
 8 is determined, at the election of the taxpayer:

9 (1) By multiplying the taxpayer's adjusted qualified investment by its new jobs percentage
 10 (as determined under section nine of this article); or

11 (2) By multiplying the taxpayer's adjusted qualified investment by ~~ten~~ 20 percent.

12 (c) *Corporate headquarters relocations after December 31, 2002.* -- For purposes of
 13 corporate headquarters relocations occurring on or after January 1, ~~2003~~ 2021, and
 14 notwithstanding any other provision of this article to the contrary:

15 (1) New jobs created in this state by relocation of a corporate headquarters may include
 16 jobs created in this state within 12 months before or after the month in which the qualified
 17 investment in the corporate headquarters relocation is placed into service or use in this state by:

18 (A) Relocation or transfer of employees of the corporation or employees of a related
 19 corporation or related person from an out-of-state location to the relocated corporate
 20 headquarters in this state, who: (i) Are or become employees of the corporation within 12 months

21 before or after the month in which the qualified investment in the corporate headquarters is placed
22 into service or use in this state; and (ii) whose regular place of work is in the corporate
23 headquarters; or

24 (B) New employees of the corporation whose regular place of work is in the corporate
25 headquarters.

26 (2) Multiple year projects certified under §11-13Q-6 of this code may be allowed for
27 corporate headquarters relocations under this section.

28 (d) *Application of credit.* -- The credit allowed by this section is applied in the manner
29 prescribed in section seven of this article: *Provided*, That the amount of corporation net income
30 taxes against which the credit allowed by this section may be applied is the sum of the corporation
31 net income tax due on adjusted federal taxable income allocated to this state under section seven
32 of this article, plus that portion of the corporation net income tax due on adjusted federal taxable
33 income apportioned to this state under section seven of this article, that is further apportioned to
34 the qualified investment using the payroll factor provided in §11-13Q-7(1)(h) of this code or an
35 alternative means of apportionment as prescribed by the commissioner under section seven of
36 this article. For all other purposes, the credit allowed by this section is treated as credit allowed
37 by section four of this article.

38 (e) *Definitions.* -- For purposes of this section:

39 (1) *Adjusted qualified investment.* -- The term “adjusted qualified investment” means the
40 taxpayer’s qualified investment in the corporate headquarters as determined under section eight
41 of this article and rules of the commissioner, plus the cost of the reasonable and necessary
42 expenses it incurred to relocate its corporate headquarters at a location in this state from its prior
43 location outside this state.

44 (2) *Corporate headquarters.* -- The term “corporate headquarters” means the place at
45 which the corporation has its commercial domicile and from which the business of the corporation
46 is primarily conducted.

47 (3) *Reasonable and necessary expenses incurred to relocate corporate headquarters.* --
48 The phrase “reasonable and necessary expenses incurred to relocate corporate headquarters”
49 means only those expenses incurred and paid by the corporation, to unrelated third parties, to
50 move its corporate headquarters and its corporate headquarters employees to this state that are,
51 upon application by the corporation, determined by the commissioner to have been both
52 reasonable and necessary to effectuate the move.

53 (4) *The corporation.* -- For purposes of this section, the term “the corporation” means the
54 corporation for which the corporate headquarters is relocated.

§11-13Q-10. Credit for small business.

1 (a) *Small business defined.* -- For purposes of this section, the term “small business”
2 means a business which has annual gross receipts of not more than \$7 million (including the
3 gross receipts of any affiliates in its controlled group): *Provided*, That beginning January 1, 2004,
4 and on January 1 of each year thereafter, the commissioner shall prescribe an amount that shall
5 apply in lieu of the \$7 million amount during that calendar year. This amount is prescribed by
6 increasing the \$7 million amount by the cost-of-living adjustment for that calendar year. The
7 requirements for annual gross receipts, once met by a given taxpayer in that taxable year when
8 qualified investment is first placed in service or use, may not again be applied to that same
9 taxpayer in subsequent years to defeat the small business credit to which the taxpayer gained
10 entitlement in that year.

11 (1) *Cost-of-living adjustment.* -- For purposes of subsection (a), the cost-of-living
12 adjustment for any calendar year is the percentage (if any) by which the consumer price index for
13 the preceding calendar year exceeds the consumer price index for the calendar year 2002.

14 (2) *Consumer price index for any calendar year.* -- For purposes of subdivision (1) of this
15 subsection, the consumer price index for any calendar year is the average of the federal consumer
16 price index as of the close of the 12-month period ending on ~~the thirty-first day of August~~ 31 of
17 that calendar year.

18 (3) *Consumer price index.* -- For purposes of subdivision (2) above, the term “Federal
19 Consumer Price Index” means the most recent consumer price index for all urban consumers
20 published by the United States department of labor.

21 (4) *Rounding.* -- If any increase under subdivision (1) above is not a multiple of \$50, the
22 increase shall be rounded to the next lowest multiple of \$50.

23 (b) *Amount of credit allowed.* --

24 (1) *Credit allowed.* -- An eligible small business taxpayer is allowed a credit against the
25 portion of taxes imposed by this state that are attributable to and the direct consequence of the
26 eligible small business taxpayer’s qualified investment in a new or expanded business in this state
27 which results in the creation of at least ~~ten~~ five new jobs within 12 months after placing qualified
28 investment into service. The amount of this credit is determined as provided in subdivision (2) of
29 this subsection.

30 (2) *Amount of credit.* -- The annual amount of credit allowable under this subsection is
31 determined by dividing the amount of the eligible small business taxpayer’s “qualified investment”
32 (determined under section eight of this article) in “property purchased for business expansion” (as
33 defined in section three of this article) by 10. The amount of qualified investment so apportioned
34 to each year of the 10-year credit period is the annual measure against which taxpayer’s annual
35 new jobs percentage (determined under subsection (d) of this section,) is applied. The product of
36 this calculation establishes the maximum amount of credit allowable each year for 10 consecutive
37 years under this section due to the qualified investment.

38 (3) *Application of credit.* -- The annual credit allowance must be taken beginning with the
39 taxable year in which the taxpayer places the qualified investment into service or use in this state,
40 unless the taxpayer elects to delay the beginning of the 10-year credit period until the next
41 succeeding taxable year. This election is made in the annual income tax return filed under this
42 chapter by the taxpayer for the taxable year in which the qualified investment is first placed in
43 service or use. Once made, this election cannot be revoked. The annual credit allowance shall be

44 taken and applied in the manner prescribed in section seven of this article.

45 (c) *New jobs.* -- The term "new jobs" has the meaning ascribed to it in section three of this
46 article.

47 (1) The term "new employee" has the meaning ascribed to it in section three of this article:
48 *Provided*, That this term does not include employees filling new jobs who:

49 (A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue
50 Code of 1986, or a person who owns 10 percent or more of the business with such ownership
51 interest to be determined under rules set forth in subsection (b), section 267 of said Internal
52 Revenue Code; or

53 (B) Worked for the taxpayer during the six-month period ending on the date the taxpayer's
54 qualified investment is placed in service or use and is rehired by the taxpayer during the six-month
55 period beginning on the date taxpayer's qualified investment is placed in service or use.

56 (2) *When a job is attributable.* -- An employee's position is directly attributable to the
57 qualified investment if:

58 (A) The employee's service is performed or his or her base of operations is at the new or
59 expanded business facility;

60 (B) The position did not exist prior to the construction, renovation, expansion, or
61 acquisition of the business facility and the making of the qualified investment; and

62 (C) But for the qualified investment, the position would not have existed.

63 (d) *New jobs percentage.* -- The annual new jobs percentage is based on the number of
64 new jobs created in this state by the taxpayer directly attributable to taxpayer's qualified
65 investment.

66 (1) If at least 10 new jobs are created and filled during the taxable year in which the
67 qualified investment is placed in service or use, the applicable new jobs percentage is 10 percent.

68 (2) During each of the remaining nine years of the 10-year credit period, the annual new
69 jobs percentage is based on the average number of new jobs filled during that taxable year:

70 *Provided*, That for purposes of estimating the new jobs percentage that will be applicable for each
71 subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable
72 year immediately prior thereto, and in the annual income tax return filed under this chapter for the
73 then current tax year, the taxpayer shall redetermine his or her allowable new jobs percentage for
74 that year based on the average number of new employees employed in new jobs during that year
75 (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

76 (e) *Certification of new jobs.* -- With the annual income tax return filed under this chapter
77 for each taxable year during the 10-year credit period, the taxpayer shall certify:

78 (1) The new jobs percentage for that taxable year;

79 (2) The amount of the credit allowance for that year;

80 (3) If the business is a partnership, limited liability company or electing small business
81 corporation, the amount of credit allocated to the partners, members, or shareholders, as the case
82 may be for that year;

83 (4) That qualified investment property continue to be used in the business, or if any of it
84 was disposed of during the year the date of disposition and that the property was not disposed of
85 prior to expiration of its useful life, as determined under section eight of this article; and

86 (5) That the new jobs created by the qualified investment continue to exist and are filled
87 by persons who meet the definition of new employee (as defined in this section).

88 (f) *Small business project.* -- A small business may apply to the commissioner under
89 section six of this article for certification as a project if that project will create at least 10 new jobs.

90 (g) *Rules.* -- The commissioner may prescribe such rules as he or she determines
91 necessary in order to determine the amount of credit allowed under this section to a taxpayer; to
92 verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the
93 credit allowed.

94 (h) The commissioner may require a taxpayer intending to claim credit under this section
95 to file with the commissioner a notice of intent to claim this credit, before the taxpayer begins

- 96 reducing his or her monthly or quarterly installment payments of estimated tax for the credit
- 97 provided in this section.

NOTE: The purpose of this bill is to modify the Economic Opportunity Tax Credit allowed for locating corporate headquarters in this state and the credit for small business.

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