

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4652

FISCAL
NOTE

BY DELEGATES LINVILLE, HOWELL, BARRETT, HARDY,
MAYNARD, PAYNTER, HAMRICK, STORCH, FOSTER,
SYPOLT, AND BARNHART

[Introduced February 11, 2022; Referred to the Select
Committee on Tourism and Economic Diversification
then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §11-13MM-1, §11-13MM-2, §11-13MM-3, §11-13MM-4, §11-13MM-5, §11-
3 13MM-6, §11-13MM-7, §11-13MM-8, §11-13MM-9, and §11-13MM-10, all relating to the
4 Proficient Customer Service Communications Act; providing for a short title; providing
5 legislative findings and purpose; creating definitions; establishing the Proficient Customer
6 Service Communications tax credit; providing for restrictions on investment; providing for
7 a penalty; providing for disclosure of tax credits; providing for tax credit review and
8 accountability; creating rules; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13MM. PROFICIENT CUSTOMER SERVICE COMMUNICATIONS ACT.

§11-13MM-1. Short Title.

1 This article may be cited as the “Proficient Customer Service Communications Act” or the
2 “Proficient Customer Service Communications Tax Credit.”

§11-13MM-2. Legislative finding and purpose.

1 The Legislature finds the encouragement of investment of call centers into both rural and
2 urban parts of West Virginia, rather than in other parts of the country, or in countries like India or
3 China, is in the public interest, and promotes economic growth and development for the people
4 of this state. To better encourage call centers to choose to build their facilities in this state, and
5 thereby increase employment and economic development for all areas of West Virginia, there is
6 hereby provided a Proficient Customer Service Communications tax credit in the form of a
7 permanent Class 2 taxation rate.

§11-13MM-3. Definitions.

1 As used in this article, the following terms have the meanings ascribed to them in this
2 section, unless the context in which the term is used clearly requires another meaning or a specific
3 different definition is provided:

4 (a) “Call center” is defined as an office set up to handle a large volume of phone calls,

5 especially for taking orders and providing customer service.

6 (b) "Development site" for the purpose of this section is designated as property or land to
7 be developed/improved for the call center.

8 (c) "Person" includes any natural person, corporation, limited liability company, or
9 partnership.

10 (d) "Qualified investment" means an investment into the development of property into a
11 development site location for the purpose of developing a call center as otherwise defined in this
12 section. Any investment by a company into a call center to be developed, built, and maintained in
13 West Virginia shall be awarded a permanent tax credit for the equivalent amount of the West
14 Virginia payroll tax that the call center pays, and the call center shall be taxed as a Class 2
15 property. Additionally, call centers shall receive a salvage value tax credit for machinery and
16 equipment that have been fully depreciated and are no longer used as part of the production
17 process.

18 (e) "State tax rate" is the division of taxation into four classes by the state constitution,
19 defined as the following:

20 Class 1: Intangible personal property and certain personal property employed exclusively
21 in agriculture. [No property is currently taxed in this classification.]

22 Class 2: Owner-occupied residential property used exclusively for residential purposes
23 and all farmland used for agricultural purposes by its owner or bona fide tenant.

24 Class 3: All real and personal property situated outside a municipality that is not taxed in
25 Class 1 or Class 2.

26 Class 4: All property situated inside a municipality that is not taxed in Class 1 or Class 2.

27 (f) "Tax credit" means the Proficient Customer Service Communications tax credit
28 authorized by this article.

29 (g) "Taxable year" means the tax year of the eligible taxpayer.

§11-13MM-4. Proficient Customer Service Communication tax credit.

1 (a) Credit allowed. – There shall be allowed to every business that invests in a new call
2 center in a development site of West Virginia a tax credit for the taxable year in which the
3 investment was made. Any investment in a call center at a development site shall be awarded
4 this permanent tax credit, and such investment shall be taxed as a Class 2 property. Furthermore,
5 call centers shall receive a salvage value tax credit for machinery and equipment that have been
6 fully depreciated and are no longer used as part of the production process.

7 (b) West Virginia payroll tax that is collected by the call center shall be offset by a tax credit
8 from the state for the equivalent amount of tax that the call center would have otherwise had to
9 pay.

10 (c) No more than \$1 million of the tax credits allowed under this section shall be allocated
11 by the economic development authority during any fiscal year. The economic development
12 authority shall allocate the tax credits in the order the applications therefor are received.

13 (d) Business franchise tax. – The tax credit is first applied to reduce the taxes imposed
14 upon the eligible taxpayer by §11-23-1 et seq. of this code for the taxable year (determined after
15 application of the credits against tax provided in section 17 of said article, but before application
16 of any other allowable credits against tax).

17 (e) Corporation net income taxes. – After application of subsection (c) of this section, any
18 unused tax credit is next applied to reduce the taxes imposed upon the eligible taxpayer by §11-
19 24-1 et seq. of this code for the taxable year (determined before application of allowable credits
20 against tax).

21 (f) If the eligible taxpayer is a limited liability company, an electing small business
22 corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as
23 amended), or a partnership, any unused tax credit remaining after application of subsections (c)
24 and (d) of this section is allowed as a tax credit against the taxes imposed by §11-24-1 et seq. of
25 this code on owners of the eligible taxpayer.

26 (1) Electing small business corporations (as defined above in subsection (e)), limited

27 liability companies, and partnerships shall allocate the tax credit allowed by this article among
28 their members in the same manner as profits and losses are allocated for the taxable year.

29 (2) No tax credit is allowed under this article against any withholding tax imposed by, or
30 payable under §11-21-1 et seq. of this code.

31 (g) Personal income tax taxes. – After application of subsections (c), (d) and (e) of this
32 section, any unused tax credit is next applied to reduce the taxes imposed by §11-21-1 et seq. of
33 this code for the taxable year (determined before application of allowable credits against tax) of
34 the eligible taxpayer.

35 (h) If the eligible taxpayer is a limited liability company, an electing small business
36 corporation (as defined in subsection (e) of this section) or a partnership, any unused tax credit
37 remaining after application of subsections (c), (d), (e) and (f) of this section is allowed as a tax
38 credit against the taxes imposed by §11-21-1 et seq. of this code on owners of the eligible
39 taxpayer.

40 (1) Electing small business corporations (as defined in subsection (e) of this section),
41 limited liability companies, and partnerships shall allocate the tax credit allowed by this article
42 among their members in the same manner as profits and losses are allocated for the taxable year.

43 (2) No tax credit is allowed under this article against any withholding tax imposed by, or
44 payable under §11-21-1 et seq. of this code.

45 (i) No tax credit is allowed or may be applied under this article until the taxpayer seeking
46 to claim the tax credit has:

47 (1) Filed with the economic development authority a written application for the tax credit;

48 (2) Filed with the economic development authority the research and development program
49 or project certification issued pursuant to §11-13R-6 of this code for the call center that will benefit
50 from the investment;

51 (3) Filed with the economic development authority the certificate of incorporation for the
52 call center that will benefit from the investment; and

53 (4) Received from the economic development authority certification of the amount of tax
54 credit to be allocated to the eligible taxpayer.

§11-13MM-5. Restrictions on investment.

1 (a) No call center development or investment may be made in a call center development
2 company that is the alter ego of the eligible taxpayer.

3 (b) The eligible taxpayer shall maintain its call center development or investment for a
4 minimum period of 10 years or the life of the loan: *Provided*, That an eligible taxpayer receiving
5 repayment or return of a call center development or investment (exclusive of interest, dividends
6 or other earnings on the investment) shall within three calendar months from the date of
7 repayment or return reinvest the repaid or returned amount of the initial investment in another call
8 center development company for a period of time at least equal to the remainder of the initial five-
9 year term.

§11-13MM-6. Penalty.

1 An eligible taxpayer that fails to maintain a call center development investment for the
2 required period of time stated in section five of this article shall pay to the State Tax Commissioner
3 a penalty equal to all of the tax credits asserted under this article by the eligible taxpayer with
4 interest, calculated at the rate set forth in §11-10-17a of this code, from the date the tax credits
5 were certified as allocated to the eligible taxpayer. The Tax Commissioner shall give notice to the
6 eligible taxpayer of any penalties imposed under this section. The penalty shall be assessed and
7 collected in the same manner as tax. The Tax Commissioner shall deposit any amounts received
8 under this subsection in the General Revenue Fund.

§11-13MM-7. Disclosure of tax credits.

1 Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall
2 annually publish in the state register the name and address of every eligible taxpayer and the
3 amount of any tax credit asserted under this article.

§11-13MM-8. Tax credit review and accountability.

1 (a) Beginning on February 1, 2024, and on February 1 every third year thereafter, the Tax
2 Commissioner shall submit to the Governor, the President of the Senate and the Speaker of the
3 House of Delegates a tax credit review and accountability report evaluating the cost effectiveness
4 of the tax credit allowed under this article during the most recent three-year period for which
5 information is available: *Provided*, That the requirement to file the credit review and accountability
6 report terminates June 30, 2030, unless the termination of entitlement to the tax credit as stated
7 in section 10 of this article terminates. The criteria to be evaluated includes, but is not limited to,
8 for each year of the three-year period:

9 (1) The numbers of eligible taxpayers claiming the tax credit;

10 (2) The net number, type, and duration of new jobs created by all call centers in which
11 taxpayers claiming the credit made investment in and the wages and benefits paid by such
12 companies;

13 (3) The cost of the tax credit;

14 (4) The cost of the tax credit per new job created; and

15 (5) Comparison of employment trends for the industry and for taxpayers within the industry
16 that claim the tax credit.

17 (b) Eligible taxpayers claiming the tax credit shall provide any information required by the
18 Tax Commissioner for the purpose of preparing the report: *Provided*, That such information shall
19 be subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this
20 code.

§11-13MM-9. Rules.

1 The State Tax Department and the economic development authority may promulgate rules
2 in accordance with §29A-3-1 *et seq.* of this code to carry out the policy and purposes of this article,
3 to provide any necessary clarification of the provisions of this article and to efficiently provide for
4 the general administration of this article.

§11-13MM-10. Effective date.

- 1 The provisions of this article will become effective on July 1, 2022 and apply only to
2 qualified investment/improvement made on or after that date.

NOTE: The purpose of this bill is to establish the Proficient Customer Service Communications Act and associated tax credit. The bill provides for a short title. The bill provides for legislative findings and purpose. The bill creates definitions. The bill establishes the call center tax credit. The bill provides for restrictions on investment. The bill provides for a penalty. The bill provides for the disclosure of tax credit. The bill provides for tax credit review and accountability. The bill creates rules. Finally, the bill provides for an effective date.

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