

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 656

BY SENATORS TAKUBO, BOLEY, HAMILTON, NELSON,

PHILLIPS, STOLLINGS, SWOPE, SYPOLT, TRUMP,

WOODRUM, JEFFRIES, LINDSAY, BALDWIN, PLYMALE, AND

WELD

[Passed March 12, 2022; in effect 90 days from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-21-97; and to amend said code by adding thereto a new section,
3 designated §11-24-44, all relating to providing a tax credit against the state corporate net
4 income tax and the state personal income tax for expenditures related to the establishment
5 and operation of employer-provided or sponsored child-care facilities; defining terms;
6 providing for rulemaking; setting the amount of the credit; providing for limitation of the
7 credit; providing for transferrable credit available to non-profit corporations; and providing
8 for a recapture process.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-97. Tax credit for employers providing child care for employees.

1 (a) *Definitions.* — As used in this section, the term:

2 (1) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean
3 the Tax Commissioner of the State of West Virginia, or his or her delegate;

4 (2) “Cost of operation” means reasonable direct operational costs incurred by an employer
5 as a result of providing employer provided or employer sponsored child-care facilities: *Provided,*
6 That the term cost of operation shall exclude the cost of any property that is qualified child-care
7 property.

8 (3) “Department” or “Tax Department” means the West Virginia State Tax Department.

9 (4) “Employer” means any employer upon whom an income tax is imposed by this article.

10 (5) “Employer provided” refers to child care offered on the premises of the employer.

11 (6) “Premises of the employer” refers to any location within the State of West Virginia and
12 located on the workplace premises of the employer providing the child care or one of the
13 employers providing the child care in the event that the child care property is owned jointly or
14 severally by the taxpayer and one or more unaffiliated employers: *Provided,* That if such
15 workplace premises are impracticable or otherwise unsuitable for the on-site location of such

16 child-care facility, as determined by the commissioner, such facility may be located within a
17 reasonable distance of the premises of the employer.

18 (7) "Qualified child-care property" means all real property, other than land, and tangible
19 personal property purchased or acquired on or after July 1, 2022, or which property is first placed
20 in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement,
21 or operation of an employer provided child-care facility, but only if:

22 (A) The children who use the facility are primarily children of employees of:

23 (i) The taxpayer and other employers in the event that the child-care property is owned
24 jointly or severally by the taxpayer and one or more employers; or

25 (ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning
26 of section 1504(a) of the Internal Revenue Code; and

27 (B) The taxpayer has not previously claimed any tax credit for the cost of operation for
28 such qualified child-care property placed in service prior to taxable years beginning on or after
29 January 1, 2022.

30 Qualified child-care property includes, but is not limited to, amounts expended on building,
31 improvements, and building improvements and furniture, fixtures, and equipment directly related
32 to the operation of child-care property as defined in this section.

33 (8) "Recapture amount" means, with respect to property as to which a recapture event has
34 occurred, an amount equal to the applicable recapture percentage of the aggregate credits
35 claimed under subsection (d) of this section for all taxable years preceding the recapture year,
36 whether or not such credits were used.

37 (9) "Recapture event" means any disposition of qualified child-care property by the
38 taxpayer, or any other event or circumstance under which property ceases to be qualified child-
39 care property with respect to the taxpayer, except for:

40 (A) Any transfer by reason of death;

41 (B) Any transfer between spouses or incident to divorce;

42 (C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

43 (D) Any change in the form of conducting the taxpayer's trade or business so long as the
44 property is retained in such trade or business as qualified child-care property and the taxpayer
45 retains a substantial interest in such trade or business; or

46 (E) Any accident or casualty.

47 (10) "Recapture percentage" refers to the applicable percentage set forth in the following
48 table:

49 If the recapture event occurs within-The recapture percentage is:

50 Five full years after the qualified child-care property is
51 placed in service100

52 The sixth full year after the qualified child-care property is
53 placed in service90

54 The seventh full year after the qualified child-care property
55 is placed in service80

56 The eighth full year after the qualified child-care property is
57 placed in service70

58 The ninth full year after the qualified child-care property is
59 placed in service60

60 The tenth full year after the qualified child-care property is
61 placed in service50

62 The eleventh full year after the qualified child-care property
63 is placed in service40

64 The twelfth full year after the qualified child-care property
65 is placed in service30

66 The thirteenth full year after the qualified child-care
67 property is placed in service20

68 The fourteenth full year after the qualified child-care
69 property is placed in service10
70 Any period after the close of the fourteenth full year after
71 the qualified child-care property is placed in service0

72 (11) “Recapture year” means the taxable year in which a recapture event occurs with
73 respect to qualified child-care property.

74 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a
75 credit against the tax imposed under this article for the taxable year in which the taxpayer first
76 places in service qualified child-care property and for each of the ensuing four taxable years
77 following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost
78 of all qualified child-care property purchased or acquired by the taxpayer and first placed in service
79 during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a
80 period of five taxable years. In the case of a qualified child-care property jointly owned by two or
81 more unaffiliated employers, each employer’s credit is limited to that employer’s respective
82 investment in the qualified child-care property.

83 (c) *Limitations on Capital Investment Credit.* — The tax credit allowable under subsection
84 (b) of this section shall be subject to the following conditions and limitations:

85 (1) Any such credit claimed in any taxable year but not used in such taxable year may be
86 carried forward for three years from the close of such taxable year. The sale, merger, acquisition,
87 or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding
88 taxpayer;

89 (2) In no event shall the amount of any such tax credit allowed under subsection (b) of this
90 section, when combined with any such tax credit allowed under subsection (e) of this section,
91 including any carryover of such credits from a prior taxable year, exceed 100 percent of the
92 taxpayer’s income tax liability as determined without regard to any other credits; and

93 (3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a
94 schedule to the taxpayer's West Virginia income tax return setting forth the following information
95 with respect to such tax credit:

96 (A) A description of the child-care facility;

97 (B) The amount of qualified child-care property acquired during the taxable year and the
98 cost of such property;

99 (C) The amount of tax credit claimed for the taxable year;

100 (D) The amount of qualified child-care property acquired in prior taxable years and the
101 cost of such property;

102 (E) Any tax credit utilized by the taxpayer in prior taxable years;

103 (F) The amount of tax credit carried over from prior years;

104 (G) The amount of tax credit utilized by the taxpayer in the current taxable year;

105 (H) The amount of tax credit to be carried forward to subsequent tax years; and

106 (I) A description of any recapture event occurring during the taxable year, a calculation of
107 the resulting reduction in tax credits allowable for the recapture year and future taxable years,
108 and a calculation of the resulting increase in tax for the recapture year.

109 (d) *Recapture of credit.* — If a recapture event occurs with respect to qualified child-care
110 property:

111 (1) The credit otherwise allowable under subsection (b) of this section with respect to such
112 property for the recapture year and all subsequent taxable years shall be reduced by the
113 applicable recapture percentage; and

114 (2) All credits previously claimed with respect to such property under subsection (b) of this
115 section shall be recaptured as follows:

116 (A) Any carryover attributable to such credits pursuant to subdivision (1), subsection (c) of
117 this section shall be reduced, but not below zero, by the recapture amount;

118 (B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the
119 recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further
120 reduced, but not below zero, by the excess of the recapture amount over the amount taken into
121 account pursuant to paragraph (A) of this subdivision; and

122 (C) The tax imposed pursuant to this article for the recapture year shall be increased by
123 the excess of the recapture amount over the amounts taken into account pursuant to paragraphs
124 (A) and (B) of this subdivision, as applicable.

125 (e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b)
126 of this section, a tax credit against the tax imposed under this article shall be granted to an
127 employer who provides or sponsors child care for employees. The amount of the tax credit shall
128 be equal to 50 percent of the cost of operation to the employer less any amounts paid for by
129 employees during a taxable year.

130 (f) *Limitations on credit for operating costs.*— The tax credit allowed under subsection (e)
131 of this section shall be subject to the following conditions and limitations:

132 (1) Such credit shall when combined with the credit allowed under subsection (b) of this
133 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the
134 taxable year as determined without regard to any other credits;

135 (2) Any such credit claimed but not used in any taxable year may be carried forward for
136 five years from the close of the taxable year in which the cost of operation was incurred; and

137 (3) The employer shall certify to the department the names of the employees, the name
138 of the child-care provider, and such other information as may be required by the department to
139 ensure that credits are granted only to employers who provide or sponsor approved child care
140 pursuant to this section.

141 (g) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and
142 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose

143 of this section and to implement the intent of the Legislature. The Tax Commissioner may
144 promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-44. Tax credit for employers providing child care for employees.

1 (a) *Definition.* — As used in this section, the term:

2 (1) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean
3 the Tax Commissioner of the State of West Virginia, or his or her delegate;

4 (2) “Cost of operation” means reasonable direct operational costs incurred by an employer
5 as a result of providing employer provided or employer sponsored child-care facilities; provided,
6 however, that the term cost of operation shall exclude the cost of any property that is qualified
7 child-care property.

8 (3) “Department” or “Tax Department” means the West Virginia State Tax Department.

9 (4) “Employer” means any employer upon whom an income tax is imposed by this article
10 or any employer organized as a nonprofit corporation under Internal Revenue Code § 501(c)(3)
11 or § 501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5 of this
12 code.

13 (5) “Employer provided” refers to child care offered on the premises of the employer.

14 (6) “Premises of the employer” refers to any location within the State of West Virginia and
15 located on the workplace premises of the employer providing the child care or one of the
16 employers providing the child care in the event that the child-care property is owned jointly or
17 severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such
18 workplace premises are impracticable or otherwise unsuitable for the on-site location of such
19 child-care facility, as determined by the commissioner, such facility may be located within a
20 reasonable distance of the premises of the employer.

21 (7) “Qualified child-care property” means all real property, other than land, and tangible
22 personal property purchased or acquired on or after July 1, 2022, or which property is first placed

23 in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement,
24 or operation of an employer provided child-care facility, but only if:

25 (A) The children who use the facility are primarily children of employees of:

26 (i) The taxpayer and other employers in the event that the child-care property is owned
27 jointly or severally by the taxpayer and one or more employers; or

28 (ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning
29 of Section 1504(a) of the Internal Revenue Code; and

30 (B) The taxpayer has not previously claimed any tax credit for the cost of operation for
31 such qualified child-care property placed in service prior to taxable years beginning on or after
32 January 1, 2022.

33 Qualified child-care property includes, but is not limited to, amounts expended on building,
34 improvements, and building improvements and furniture, fixtures, and equipment directly related
35 to the operation of child-care property as defined in this section.

36 (8) "Recapture amount" means, with respect to property as to which a recapture event has
37 occurred, an amount equal to the applicable recapture percentage of the aggregate credits
38 claimed under subsection (d) of this section for all taxable years preceding the recapture year,
39 whether or not such credits were used.

40 (9) "Recapture event" refers to any disposition of qualified child-care property by the
41 taxpayer, or any other event or circumstance under which property ceases to be qualified child-
42 care property with respect to the taxpayer, except for:

43 (A) Any transfer by reason of death;

44 (B) Any transfer between spouses or incident to divorce;

45 (C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;

46 (D) Any change in the form of conducting the taxpayer's trade or business so long as the
47 property is retained in such trade or business as qualified child-care property and the taxpayer
48 retains a substantial interest in such trade or business; or

49 (E) Any accident or casualty.

50 (10) "Recapture percentage" refers to the applicable percentage set forth in the following
51 table:

52 If the recapture event occurs within-The recapture percentage is:

53 Five full years after the qualified child-care property is
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57 The seventh full year after the qualified child-care property
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59 The eighth full year after the qualified child-care property is
60 placed in service70

61 The ninth full year after the qualified child-care property is
62 placed in service60

63 The tenth full year after the qualified child-care property is
64 placed in service50

65 The eleventh full year after the qualified child-care property
66 is placed in service40

67 The twelfth full year after the qualified child-care property
68 is placed in service30

69 The thirteenth full year after the qualified child-care
70 property is placed in service20

71 The fourteenth full year after the qualified child-care
72 property is placed in service10

73 Any period after the close of the fourteenth full year after
74 the qualified child-care property is placed in service0

75 (11) "Recapture year" means the taxable year in which a recapture event occurs with
76 respect to qualified child-care property.

77 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a
78 credit against the tax imposed under this article for the taxable year in which the taxpayer first
79 places in service qualified child-care property and for each of the ensuing four taxable years
80 following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost
81 of all qualified child-care property purchased or acquired by the taxpayer and first placed in service
82 during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a
83 period of five taxable years. In the case of a qualified child-care property jointly owned by two or
84 more unaffiliated employers, each employer's credit is limited to that employer's respective
85 investment in the qualified child-care property.

86 (c) *Limitations on capital investment credit.* — The tax credit allowable under subsection
87 (b) of this section shall be subject to the following conditions and limitations:

88 (1) Any such credit claimed in any taxable year but not used in such taxable year may be
89 carried forward for three years from the close of such taxable year. The sale, merger, acquisition,
90 or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding
91 taxpayer;

92 (2) In no event shall the amount of any such tax credit allowed under subsection (b) of this
93 section, when combined with any such tax credit allowed under subsection (e) of this section,
94 including any carryover of such credits from a prior taxable year, exceed 100 percent of the
95 taxpayer's income tax liability as determined without regard to any other credits; and

96 (3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a
97 schedule to the taxpayer's West Virginia income tax return setting forth the following information
98 with respect to such tax credit:

99 (A) A description of the child-care facility;

100 (B) The amount of qualified child-care property acquired during the taxable year and the
101 cost of such property;

102 (C) The amount of tax credit claimed for the taxable year;

103 (D) The amount of qualified child-care property acquired in prior taxable years and the
104 cost of such property;

105 (E) Any tax credit utilized by the taxpayer in prior taxable years;

106 (F) The amount of tax credit carried over from prior years;

107 (G) The amount of tax credit utilized by the taxpayer in the current taxable year;

108 (H) The amount of tax credit to be carried forward to subsequent tax years; and

109 (I) A description of any recapture event occurring during the taxable year, a calculation of
110 the resulting reduction in tax credits allowable for the recapture year and future taxable years,
111 and a calculation of the resulting increase in tax for the recapture year.

112 (d) *Recapture of credit.* — If a recapture event occurs with respect to qualified child-care
113 property:

114 (1) The credit otherwise allowable under subsection (b) of this section with respect to such
115 property for the recapture year and all subsequent taxable years shall be reduced by the
116 applicable recapture percentage; and

117 (2) All credits previously claimed with respect to such property under subsection (b) of this
118 section shall be recaptured as follows:

119 (A) Any carryover attributable to such credits pursuant to subdivision (1) of subsection (c)
120 of this section shall be reduced, but not below zero, by the recapture amount;

121 (B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the
122 recapture year, if any, as reduced pursuant to subdivision (1) of this subsection, shall be further
123 reduced, but not below zero, by the excess of the recapture amount over the amount taken into
124 account pursuant to paragraph (A) of this subdivision; and

125 (C) The tax imposed pursuant to this article for the recapture year shall be increased by
126 the excess of the recapture amount over the amounts taken into account pursuant to paragraphs
127 (A) and (B) of this subdivision, as applicable.

128 (e) *Credit for operating costs.* — In addition to the tax credit provided under subsection
129 (b) of this section, a tax credit against the tax imposed under this article shall be granted to an
130 employer who provides or sponsors child care for employees. The amount of the tax credit shall
131 be equal to 50 percent of the cost of operation to the employer less any amounts paid for by
132 employees during a taxable year.

133 (f) *Limitations on credit for operating costs.* — The tax credit allowed under subsection (e)
134 of this section shall be subject to the following conditions and limitations:

135 (1) Such credit shall when combined with the credit allowed under subsection (b) of this
136 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the
137 taxable year as determined without regard to any other credits;

138 (2) Any such credit claimed but not used in any taxable year may be carried forward for
139 five years from the close of the taxable year in which the cost of operation was incurred; and

140 (3) The employer shall certify to the department the names of the employees, the name
141 of the child-care provider, and such other information as may be required by the department to
142 ensure that credits are granted only to employers who provide or sponsor approved child care
143 pursuant to this section.

144 (g) *Transferrable credit available to non-profit corporations.* — In the case of non-profit
145 corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt
146 from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated
147 under the provisions of this section shall be available as a transferrable credit that may be
148 transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this
149 article. Pursuant to rules promulgated by the Tax Department, a non-profit corporation applicant
150 shall provide a schedule to the Tax Department with all information required under §11-24-

151 44(c)(3) of this code. The Tax Department shall within 90 days certify the amount of transferrable
152 credit available to be transferred, sold, or assigned to another taxpayer. Any transferee,
153 purchaser, or assignee of non-profit corporation credits certified to a non-profit corporation under
154 this section takes the transferred, purchased, or assigned credits subject to any limitations placed
155 on the amount of credit taken in a given year by §11-24-44(b), §11-24-44(c), §11-24-44(e), and
156 §11-24-44(f) of this code.

157 (h) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and
158 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose
159 of this section and to implement the intent of the Legislature. The Tax Commissioner may
160 promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2022.

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Governor