

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2064

By Delegates Howell and Brooks

[Originating in the Committee on Economic
Development and Tourism; Reported February 20,
2023]

1 A BILL to amend and reenact §8A-7-3 of the Code of West Virginia, 1931, as amended, and to add
2 thereto a new article, designated §11-13PP-1, §11-13PP-2, §11-13PP-3, §11-13PP-4, §11-
3 13PP-5, §11-13PP-6, §11-13PP-7, §11-13PP-8, §11-13PP-9, and §11-13PP-10, all
4 relating to the Tourism and Commercial Opportunity Zone Tax and Tax Credit Act;
5 providing for a short title; providing legislative findings and purpose; creating a new
6 species and class of property directed by law; creating definitions; establishing the Tourism
7 and Commercial Opportunity Zone tax and tax credit; providing for restrictions on
8 investment; providing for a penalty; providing for disclosure of tax credits; providing for tax
9 and tax credit review and accountability; creating rules; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 7. ZONING ORDINANCE.

§8A-7-3. Zoning — Generally.

1 (a) A zoning ordinance may cover a county's entire jurisdiction or parts of its jurisdiction. ;
2 Provided, That any Tourism and Commercial Opportunity Zone created pursuant to the authority of
3 §11-13PP-1 et seq. if the Code of West Virginia shall take precedence over and supersede any
4 local or county land use ordinance in conflict with such Tourism and Commercial Opportunity
5 Zone.

6 (b) The different zones created in a zoning ordinance by a governing body do not have to
7 cover or include the same territory, and may overlap.

8 (c) Overlay districts and special design districts may have specific additional development
9 standards for each permitted, accessory and conditional use.

10 (d) Each zone will be subject to the same rules, regulations, standards and designations
11 throughout the zone, unless specific provisions are made by the governing body in the zoning
12 ordinance. (e) Essential utilities and equipment are a permitted use in any zoning district.

13 (f) Several areas of a municipality or county may be classified in a zone even though the
14 areas are not contiguous.

15 (g) The boundaries of each zone and the designated classifications must be shown on a
16 zoning district map. The boundaries may only be changed after appropriate public hearing and
17 zoning district map changes are adopted by the governing body.

18 (h) A governing body shall certify the original zoning district map. Subsequent versions of
19 the zoning district map shall be certified and clearly identified with an effective date.

20 (i) All certified zoning district maps must be filed with the clerk of the applicable governing
21 body, the applicable planning commission and the office of the clerk of the applicable county
22 commission.

CHAPTER 11. TAXATION.

ARTICLE 13PP. TOURISM AND COMMERCIAL OPPORTUNITY ZONE TAX AND TAX

CREDIT.

§11-13PP-1. Short Title.

1 This article may be cited as the "Tourism and Commercial Opportunity Zone Tax and Tax
2 Credit."

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

1 The Legislature finds the encouragement of investment into commercial development of
2 businesses in this state is in the public interest and promotes economic growth and development
3 for the people of this state. With major businesses announcing their intended opening in West
4 Virginia, attracting secondary commercial businesses located along border states is in the best
5 interest of the growing economy in West Virginia, and attracting these businesses will revitalize
6 areas of the state that will necessarily come along with new industrial development. In order to
7 encourage investment in business development in this state and thereby increase employment

7 and economic development, and aggregate tax revenue from economic growth there is hereby
8 provided a Tourism and Commercial Opportunity Zone tax and tax credit.

§11-13PP-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 (1) "Tourism and Commercial Opportunity Zones" are those locations designated by a
5 selection panel of the Secretaries of Economic Development, Tourism and Commerce or their
6 designees, with consultation to county or municipal authorities, upon which designation, the area
7 designated and any Qualified investment within it shall become a separate species and class of
8 property subject to taxation in proportion to its value as set forth in this article. The acreage of such
9 zones shall be created as product of 30 acres of property or land to be developed/improved per
10 1,000 people, or a portion thereof. The land may be used for the purpose of commercial
11 development/improvement in that designated area of acreage per county. For example, an area
12 containing 26,000 people shall have the equivalent amount of 780 acres to be defined as a
13 Tourism and Commercial Opportunity Zone. Acreage may be subdivided into non-contiguous
14 subsets of acreage in order to facilitate develop if such acreage subdivisions are approved by the
15 selection panel of the Secretaries of Economic Development, Tourism and Commerce or their
16 designees.

17 (2) "Eligible taxpayer" means a person that has received certification from the Department
18 of Economic Development that a portion of the Tourism and Commercial Opportunity Zone tax and
19 tax credit has been allocated to it, that is subject to the tax otherwise imposed by this chapter, and
20 that has made a qualified investment into a Tourism and Commercial Opportunity Zone for the
21 purpose of bringing businesses into a Tourism and Commercial Opportunity Zone.

22 (3) "Person" includes any natural person, corporation, limited liability company, or
23 partnership.

24 (4) "Qualified investment" means an investment to develop within a Tourism and
25 Commercial Opportunity Zone of an amount equivalent to or greater than \$250,000 for a period of
26 10 years - or, for the life of the financing of the development project, whichever is longer.

27 (5) "State tax rate" is the division of taxation into four classes by the state constitution,
28 defined as the following:

29 Class 1: Intangible personal property and certain personal property employed exclusively
30 in agriculture.

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

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

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

36 (6) "Tourism and Commercial Opportunity Zone Tax " means the Tourism and Commercial
37 Opportunity Zone tax authorized by this article. Any Qualified investment within any Tourism and
38 Commercial Opportunity Zone shall be taxed in proportion to its value at a rate equivalent with the
39 state Class 2 property rate for the period set forth in this article.

40 (7) "Tourism and Commercial Opportunity Zone Tax credit" means the sales tax that is
41 collected by the Qualified investment establishment and remitted to the state after development
42 which shall qualify as an offset tax credit from the state for the equivalent amount of income tax
43 that the Qualified investment establishment would have had to pay for that development, as
44 designated to the Department of Taxation by the Secretary of Economic Development.

45 (8) "Taxable year" means the tax year of the eligible taxpayer.

§11-13PP-4. Tourism and Commercial Opportunity Zone tax and tax credit.

1 (a) *Separate Species and Class Tax allowed.* — There shall be allowed to each eligible
2 taxpayer in a Tourism and Commercial Opportunity Zone that creates or maintains a Qualified
3 investment as business development in West Virginia a tax rate for the taxable year in which the

4 investment was made and for a period of 10 years or for the life of the financing of the project,
5 whichever is longer, - shall be taxed in proportion to its value at a rate equivalent of the state Class
6 2 property rate for the period set forth in this article: *Provided*, That for existing Class 3 or 4
7 property within any Tourism and Commercial Opportunity Zone, only new expansion or addition
8 investments meeting the \$250,000 or greater threshold shall qualify for the new tax rate, and any
9 existing footprint and assessment of Class 3 or 4 property within any Tourism and Commercial
10 Opportunity Zone shall continue to be assessed at the Class 4 rate. The purpose of this proviso is
11 to ensure that existing county or municipal tax revenues are not adversely impacted.

12 (b) *Sales tax credit allowed.* — There shall be allowed to each eligible taxpayer in a
13 Tourism and Commercial Opportunity Zone that creates or maintains a Qualified investment as
14 business development in West Virginia a qualified tax credit for amount of the sales tax that is
15 collected by the Qualified investment establishment and remitted to the state after development
16 which may be taken by the taxpayer as an offset tax credit from the state for the equivalent amount
17 of income tax that the Qualified investment establishment would have had to pay for that
18 development, as designated to the Department of Taxation by the Secretary of Economic
19 Development.

20 (c) No more than \$1 million of the sales tax credits allowed under this section shall be
21 allocated by the Secretary of the Department of Economic Development during any fiscal year.
22 The Department of Economic Development shall allocate the tax credits in the order the
23 applications therefor are received.

24 (d) The sales tax credit may be taken by the individual taxpayer, or the corporate taxpayer,
25 of the Qualified investment, as applicable.

26 (1) If the eligible taxpayer is a limited liability company, an electing small business
27 corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as
28 amended), or a partnership, any unused sales tax credit remaining after application of the tax

29 credit to corporate net income taxes, is allowed as a tax credit against the taxes imposed by §11-
30 21-1 et seq. of this code on owners of the eligible taxpayer.

31 (2) Electing small business corporations (as defined above), limited liability companies,
32 and partnerships shall allocate the tax credit allowed by this article among their members in the
33 same manner as profits and losses are allocated for the taxable year.

34 (e) Unused credit carry forward. — If the sales tax credit allowed under this article in any
35 taxable year exceeds the sum of the taxes enumerated in this section for that taxable year, the
36 eligible taxpayer or owners of eligible taxpayers described in this section may apply the excess as
37 a tax credit against those taxes, in the order and manner stated in this section, for succeeding
38 taxable years until the earlier of the following:

39 (1) The full amount of the excess tax credit is used; or

40 (2) The expiration of the tenth taxable year after the taxable year in which the investment
41 was made. The tax credit remaining thereafter is forfeited.

42 (f) No tax credit is allowed or may be applied under this article until the taxpayer seeking to
43 claim the tax credit has:

44 (1) Filed with the Department of Economic Development a written application for the tax
45 credit;

46 (2) Filed with the Department of Economic Development the research and development
47 program or project certification issued pursuant to §11-13R-6 of this code for the Tourism and
48 Commercial Opportunity Zone company that will benefit from the investment;

49 (3) Filed with the Department of Economic Development the certificate of incorporation for
50 the Tourism and Commercial Opportunity Zone company that will benefit from the investment; and

51 (4) Received from the Department of Economic Development a written certification of the
52 amount of tax credit to be allocated to the eligible taxpayer.

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

1 (a) No Tourism and Commercial Opportunity Zone development or Qualified investment
2 may be made in a TIF district.

3 (b) No Tourism and Commercial Opportunity Zone development or investment may be
4 made in a Tourism and Commercial Opportunity Zone development company that is the alter ego
5 of the eligible taxpayer.

6 (c) The eligible taxpayer shall maintain its Tourism and Commercial Opportunity Zone
7 development or investment for a minimum period of 10 years or the life of the loan: *Provided, That*
8 an eligible taxpayer receiving repayment or return of a Tourism and Commercial Opportunity Zone
9 development or investment (exclusive of interest, dividends or other earnings on the investment)
10 shall, within three calendar months from the date of repayment or return, reinvest the repaid or
11 returned amount of the initial investment in another Tourism and Commercial Opportunity Zone
12 development company for a period of time at least equal to the remainder of the initial 10 year term
13 and continue to be taxed and claim the tax credits as set forth in this article up to the amount of the
14 reinvestment for the remainder of the ten year period or life of the loan.

§11-13PP-6. Penalty.

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

§11-13PP-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.

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

1 (a) Beginning on February 1, 2025, 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 and tax credit allowed under this article during the most recent three-year period for
5 which information is available: *Provided*, That the requirement to file the credit review and
6 accountability report terminates June 30, 2031, unless the termination of entitlement to the tax
7 credit as stated in section ten of this article terminates. The criteria to be evaluated includes, but is
8 not limited to, 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 Tourism and Commercial
11 Opportunity Zone companies in which taxpayers claiming the credit made investment in and the
12 wages and benefits paid by such 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 code.

§11-13PP-9. Rules.

1 The State Tax Department and the Department of Economic Development may
2 promulgate rules in accordance with §29A-3-1 et seq. of this code to carry out the policy and

3 purposes of this article, to provide any necessary clarification of the provisions of this article and to
4 efficiently provide for the general administration of this article.

§11-13PP-10. Effective date.

1 The provisions of this article will become effective on July 1, 2023, and apply only to
2 qualified investment/improvement made on or after that date.

NOTE: The purpose of this bill is to establish the Tourism and Commercial Opportunity Zone Tax and Tax Credit Act in order to encourage investment in business development in this state and thereby increase employment and economic development, with concomitant increased aggregate tax revenue arising from economic growth.

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