

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3089**

**FISCAL  
NOTE**

By Delegate Young

[Introduced January 26, 2023; Referred to the  
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §11-13MM-1, all relating to providing tax credits for employer provided and  
3 employer sponsored child care facilities; defining terms; setting amount of credit;  
4 establishing terms for the credit; requiring certain actions when a recapture event occurs;  
5 and providing rulemaking.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 13MM. EMPLOYER CHILD CARE TAX CREDIT.**

### **§11-13MM-1. Employer provided and employer sponsored child care facility tax credits.**

1 (a) As used in this code section, the term:

2 (1) "Cost of operation" means reasonable direct operational costs incurred by an employer  
3 as a result of employer provided or employer sponsored child care facilities: *Provided*, That the  
4 term cost of operation shall exclude the cost of any property that is qualified child care property;

5 (2) "Employer" means any employer upon whom an income tax is imposed by this chapter;

6 (3) "Employer provided" refers to child care offered on the premises of the employer;

7 (4) "Employer sponsored" refers to a contractual arrangement with a child care facility that  
8 is paid for by the employer;

9 (5) "Premises of the employer" refers to any location within the state and located on the  
10 workplace premises of the employer providing the child care or one of the employers providing the  
11 child care in the event that the child care property is owned jointly or severally by the taxpayer and  
12 one or more employers: *Provided*, That if such workplace premises are impracticable or otherwise  
13 unsuitable for the on-site location of such child care facility, as determined by the commissioner,  
14 such facility may be located within a reasonable distance of the premises of the employer;

15 (6) "Qualified child care property" means all real property and tangible personal property  
16 purchased or acquired for use exclusively in the construction, expansion, improvement, or  
17 operation of an employer provided child care facility, but only if:

18 (A) The facility is licensed or commissioned as a day care facility pursuant to §49-2B-1 et

19 seq. of this code;

20 (B) At least 95 percent of the children who use the facility are children of employees of:

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

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

25 (C) The taxpayer has not previously claimed any tax credit for the cost of operation for such  
26 qualified child care property placed in service prior to taxable years beginning on or after January  
27 1, 2023.

28 Qualified child care property includes, but is not limited to, amounts expended on land  
29 acquisition and improvements, buildings and building improvements, and furniture, fixtures, and  
30 equipment;

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

35 (8) "Recapture event" refers to any disposition of qualified child care property by the  
36 taxpayer, or any other event or circumstance under which property ceases to be qualified child  
37 care property with respect to the taxpayer, except for:

38 (A) Any transfer by reason of death;

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

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

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

44 (E) Any accident or casualty.

(9) "Recapture percentage" refers to the applicable percentage set forth in the following table:

If the recapture event occurs within -- percentage is:

Five full years after the qualified child care property is placed in service.....100

The sixth full year after the qualified child care property is placed in service.....90

The seventh full year after the qualified child care property is placed in service.....80

The eighth full year after the qualified child care property is placed in service.....70

The ninth full year after the qualified child care property is placed in service.....60

The tenth full year after the qualified child care property is placed in service.....50

The eleventh full year after the qualified child care property is placed in service.....40

The twelfth full year after the qualified child care property is placed in service.....30

The thirteenth full year after the qualified child care property is placed in service.....20

The fourteenth full year after the qualified child care property is placed in service.....10

Any period after the close of the fourteenth full year after the qualified child care property is placed in service.....0

(10) "Recapture year" means the taxable year in which a recapture event occurs with

71 respect to qualified child care property.

72 (b) A tax credit against the tax imposed under this article shall be granted to an employer  
73 who provides or sponsors child care for employees. The amount of the tax credit shall be equal to  
74 75 percent of the cost of operation to the employer less any amounts paid for by employees during  
75 a taxable year.

76 (c) The tax credit allowed under subsection (b) of this code section shall be subject to the  
77 following conditions and limitations:

78 (1) Such credit shall not exceed 50 percent of the amount of the taxpayer's income tax  
79 liability for the taxable year as computed without regard to any other credits;

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

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

86 (d) In addition to the tax credit provided under subsection (b) of this section, a taxpayer  
87 shall be allowed a credit against the tax imposed under this article for the taxable year in which the  
88 taxpayer first places in service qualified child care property and for each of the ensuing nine  
89 taxable years following such taxable year. The aggregate amount of the credit shall equal 100  
90 percent of the cost of all qualified child care property purchased or acquired by the taxpayer and  
91 first placed in service during a taxable year, and such credit may be claimed at a rate of 10 percent  
92 per year over a period of 10 taxable years.

93 (e) The tax credit allowable under subsection (d) of this section shall be subject to the  
94 following conditions and limitations:

95 (1) Any such credit claimed in any taxable year but not used in such taxable year may be  
96 carried forward for three years from the close of such taxable year. The sale, merger, acquisition,

97 or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding  
98 taxpayer;

99 (2) In no event shall the amount of any such tax credit, including any carryover of such  
100 credit from a prior taxable year, exceed 50 percent of the taxpayer's income tax liability as  
101 determined without regard to any other credits; and

102 (3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a  
103 schedule to the taxpayer's income tax return setting forth the following information with respect to  
104 such tax credit:

105 (A) A description of the child care facility;

106 (B) The amount of qualified child care property acquired during the taxable year and the  
107 cost of such property;

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

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

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

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

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

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

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

118 (f) If a recapture event occurs with respect to qualified child care property:

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

122 (2) All credits previously claimed with respect to such property under subsection (d) of this

123 section shall be recaptured as follows:

124 (A) Any carryover attributable to such credits under paragraph (1) of subsection (e) of this  
125 code section shall be reduced, but not below zero, by the recapture amount;

126 (B) The tax credit otherwise allowable under subsection (d) of this section for the recapture  
127 year, if any, as reduced under paragraph (1) of this subsection, shall be further reduced, but not  
128 below zero, by the excess of the recapture amount over the amount taken into account under  
129 subparagraph (A) of this paragraph; and

130 (C) The tax imposed under this article for the recapture year shall be increased by the  
131 excess of the recapture amount over the amounts taken into account under subparagraphs (A)  
132 and (B) of this paragraph, as applicable.

133 (g) The commissioner shall propose rules for legislative approval pursuant to the  
134 provisions of §29A-3-1 et seq. of this code to effectuate the purposes of this section.

NOTE: The purpose of this bill is to provide tax credits for employer provided and employer sponsored child care facilities; define terms; set amount of credit; establish terms for the credit; require certain actions when a recapture event occurs; and provide rulemaking.

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