

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3399

FISCAL
NOTE

By Delegates Howell, Martin, Young, and Miller

[By Request]

[Introduced February 13, 2023; Referred to the
Committee on Finance]

1 A BILL to amend and reenact §11-21-97 of the Code of West Virginia, 1931, as amended, and to
 2 amend and reenact §11-24-44 of said code, all relating to increasing tax credit for
 3 employers providing child care for employees.

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 the
 3 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 of
26 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 such
28 qualified child-care property placed in service prior to taxable years beginning on or after January
29 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~~ 100 percent of the
78 cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in
79 service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over
80 a 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 cost
101 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, and
108 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 the
123 excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A)
124 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 be
 128 equal to ~~50~~ 100 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 five
 136 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 of
 138 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 of
 143 this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate
 144 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 the
 3 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 or
10 any employer organized as a nonprofit corporation under Internal Revenue Code § 501(c)(3) or §
11 501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5 of this code.

12 (5) "Employer provided" refers to child care offered on the premises of the employer.

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

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

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

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

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

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

31 1, 2022.

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

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

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

- 42 (A) Any transfer by reason of death;
- 43 (B) Any transfer between spouses or incident to divorce;
- 44 (C) Any transaction to which Section 381(a) of the Internal Revenue Code applies;
- 45 (D) Any change in the form of conducting the taxpayer's trade or business so long as the
46 property is retained in such trade or business as qualified child-care property and the taxpayer
47 retains a substantial interest in such trade or business; or
- 48 (E) Any accident or casualty.

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

51	If the recapture event occurs within-	The recapture percentage is:
52	Five full years after the qualified child-care property is	
53	placed in service	100
54	The sixth full year after the qualified child-care property is	
55	placed in service	90
56	The seventh full year after the qualified child-care property	

57 is placed in service80

58 The eighth full year after the qualified child-care property is

59 placed in service70

60 The ninth full year after the qualified child-care property is

61 placed in service60

62 The tenth full year after the qualified child-care property is

63 placed in service50

64 The eleventh full year after the qualified child-care property

65 is placed in service40

66 The twelfth full year after the qualified child-care property

67 is placed in service30

68 The thirteenth full year after the qualified child-care

69 property is placed in service20

70 The fourteenth full year after the qualified child-care

71 property is placed in service10

72 Any period after the close of the fourteenth full year after

73 the qualified child-care property is placed in service0

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

75 respect to qualified child-care property.

76 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a

77 credit against the tax imposed under this article for the taxable year in which the taxpayer first

78 places in service qualified child-care property and for each of the ensuing four taxable years

79 following such taxable year. The aggregate amount of the credit shall equal ~~50~~ 100 percent of the

80 cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in

81 service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over

82 a period of five taxable years. In the case of a qualified child-care property jointly owned by two or

83 more unaffiliated employers, each employer's credit is limited to that employer's respective
84 investment in the qualified child-care property.

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

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

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

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

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

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

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

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

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

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

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

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

108 (I) A description of any recapture event occurring during the taxable year, a calculation of

109 the resulting reduction in tax credits allowable for the recapture year and future taxable years, and
110 a calculation of the resulting increase in tax for the recapture year.

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

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

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

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

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

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

127 (e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b)
128 of this section, a tax credit against the tax imposed under this article shall be granted to an
129 employer who provides or sponsors child care for employees. The amount of the tax credit shall be
130 equal to ~~50~~ 100 percent of the cost of operation to the employer less any amounts paid for by
131 employees during a taxable year.

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

134 (1) Such credit shall when combined with the credit allowed under subsection (b) of this

135 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the
136 taxable year as determined without regard to any other credits;

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

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

143 (g) *Transferrable credit available to non-profit corporations.* — In the case of non-profit
144 corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt
145 from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated
146 under the provisions of this section shall be available as a transferrable credit that may be
147 transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this
148 article. Pursuant to rules promulgated by the Tax Department, a non-profit corporation applicant
149 shall provide a schedule to the Tax Department with all information required under §11-24-44(c)(3)
150 of this code. The Tax Department shall within 90 days certify the amount of transferrable credit
151 available to be transferred, sold, or assigned to another taxpayer. Any transferee, purchaser, or
152 assignee of non-profit corporation credits certified to a non-profit corporation under this section
153 takes the transferred, purchased, or assigned credits subject to any limitations placed on the
154 amount of credit taken in a given year by §11-24-44(b), §11-24-44(c), §11-24-44(e), and §11-24-
155 44(f) of this code.

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

NOTE: The purpose of this bill is to increase the tax credit for employers providing child

care for employees.

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