

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3403

FISCAL
NOTE

By Delegates Howell, Fehrenbacher, Martin, Young,

Criss, Miller, and Storch

[Introduced February 13, 2023; Referred to the
Committee on Economic Development and Tourism
then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §11-21-98; and to amend said code by adding thereto a new section,
 3 designated §11-24-45, 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 operation of
 5 existing employer-provided or sponsored childcare facilities; defining terms; providing for
 6 rulemaking; setting the amount of the credit; providing for limitation of the credit; providing
 7 for transferrable credit available to non-profit corporations; and providing for a recapture
 8 process.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-98. Tax credit for employers with existing childcare facilities.

- 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 childcare facilities: *Provided,*
- 6 That the term cost of operation shall exclude the cost of any property that is qualified childcare
- 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 childcare 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 childcare 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 childcare 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 childcare property" means all real property, other than land, and tangible
19 personal property for use exclusively in the improvement or operation of an employer provided
20 childcare facility, but only if:

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

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

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

26 (B) The taxpayer does not qualify for, or claim, any tax credit for the cost of operation for
27 such qualified childcare property described in § 11-21-97 or § 11-24-44 of this code.

28 Qualified childcare property includes, but is not limited to, amounts expended on
29 improvements, furniture, fixtures, and equipment directly related to the operation of childcare
30 property as defined in this section.

31 (b) Credit for operating existing childcare facility. — A taxpayer who operates an existing
32 childcare facility shall be allowed a credit against the tax imposed under this article. The aggregate
33 amount of the credit shall equal 100 percent of the total amount expended by a taxpayer during a
34 taxable year for the operation of an existing, qualified childcare facility less any amounts paid for
35 by employees during a taxable year. In the case of a qualified childcare property jointly owned by
36 two or more unaffiliated employers, each employer's credit is limited to that employer's respective
37 contribution to the cost of operating the qualified childcare facility.

38 (c) Limitations on Existing Childcare Facility Credit. — The tax credit allowable under
39 subsection (b) of this section shall be subject to the following conditions and limitations:

40 (1) Such credit shall when combined with the credit allowed under subsection (b) of this
41 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the

42 taxable year as determined without regard to any other credits;

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

45 (3) The employer shall certify to the department the names of the employees, the name of
46 the childcare provider, and such other information as may be required by the department to ensure
47 that credits are granted only to employers who provide or sponsor approved childcare pursuant to
48 this section.

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-45. Tax credit for employers with existing childcare facilities.

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 childcare 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 childcare 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 childcare are in the event that the childcare 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 childcare 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 for use exclusively in the improvement or operation of an employer provided
20 childcare facility, but only if:

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

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

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

26 (B) The taxpayer does not qualify for, or claim, any tax credit for the cost of operation for
27 such qualified childcare property described in § 11-21-97 or § 11-24-44 of this code.

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

31 (b) *Credit for operating existing childcare facility.* — A taxpayer who operates an existing
32 childcare facility shall be allowed a credit against the tax imposed under this article. The aggregate
33 amount of the credit shall equal 100 percent of the total amount expended by a taxpayer during a
34 taxable year for the operation of an existing, qualified childcare facility less any amounts paid for
35 by employees during a taxable year. In the case of a qualified childcare property jointly owned by
36 two or more unaffiliated employers, each employer's credit is limited to that employer's respective
37 contribution to the cost of operating the qualified childcare facility.

38 (c) *Limitations on Existing Childcare Facility Credit.* — The tax credit allowable under
39 subsection (b) of this section shall be subject to the following conditions and limitations:

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

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

45 (3) The employer shall certify to the department the names of the employees, the name of
46 the childcare provider, and such other information as may be required by the department to ensure
47 that credits are granted only to employers who provide or sponsor approved childcare pursuant to
48 this section.

49 (d) *Transferrable credit available to non-profit corporations.* — In the case of nonprofit
50 corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt
51 from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated
52 under the provisions of this section shall be available as a transferrable credit that may be
53 transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this
54 article. Pursuant to rules promulgated by the Tax Department, a nonprofit corporation applicant
55 shall provide a schedule to the Tax Department with all information required under §11-24-44(c)(3)
56 of this code. The Tax Department shall within 90 days certify the amount of transferrable credit
57 available to be transferred, sold, or assigned to another taxpayer. Any transferee, purchaser, or
58 assignee of nonprofit corporation credits certified to a nonprofit corporation under this section
59 takes the transferred, purchased, or assigned credits subject to any limitations placed on the
60 amount of credit taken in a given year by §11-24-45(b) and §11-24-45(c) of this code.

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

NOTE: The purpose of this bill is to provide a tax credit against the state corporate net income tax and the state personal income tax for expenditures related to the operation of existing employer-provided or sponsored childcare facilities.

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