

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3247

By Delegate Pushkin

[Introduced March 07, 2025; referred to the
Committee on Energy and Public Works then
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-24-11c, relating to providing a tax credit for obtaining certain certifications
3 by the United States Green Building Council Leadership in Energy and Environmental
4 Design green building rating system or the Green Globes Building Initiative green building
5 rating standard; setting forth the amount of the credit; establishing who may take the credit;
6 establishing the amount of the credit; establishing the criteria for taking the credit;
7 providing rule-making authority; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

**§11-24-11c. Credit for becoming certified by the Leadership in Energy and Environmental
Design Green Building Rating System or Green Globes Building Rating Standard.**

1 (a) General. -- A credit is allowed against the tax liability of an eligible taxpayer for the cost
2 of making renovations and improvements to a building to become certified by the United States
3 Green Building Council Leadership in Energy and Environmental Design green building rating
4 system or the Green Globes Building Initiative green building rating standard.

5 (b) Definitions. -- For purposes of this section, the term:

6 "Cost to become certified by the United States Green Building Council Leadership in
7 Energy and Environmental Design Green Building Rating System or the Green Globes Building
8 Initiative green building rating standard" means the reasonable and necessary sums of money
9 spent by the taxpayer in making renovations and improvements to its building in receiving that
10 certification.

11 "Eligible taxpayer" means the owner of a building being used for commercial purposes.

12 "Owner" means the person who is possessed of the freehold, whether in fee or for life. A
13 person seized or entitled in fee subject to a mortgage or trust takes possession, after which the
14 mortgagee or trustee is considered the owner. A person who has an equitable estate or freehold,
15 or is a purchaser of a freehold estate who is in possession before transfer of legal title is also

16 considered the owner.

17 (c) Amount of credit. -- The amount of the credit available to any eligible taxpayer is equal
18 to its cost in making renovations and improvements to its building to become certified by the
19 United States Green Building Council Leadership in Energy and Environmental Design Green
20 Building Rating System or the Green Globes Building Initiative green building rating standard, less
21 any reimbursement of the cost which the taxpayer has received through any other means.

22 (d) When credit may be taken. -- An eligible taxpayer may claim a credit allowed under this
23 section on its annual return for the taxable year in which it receives certification.

24 (e) Application of credit. --

25 (1) Corporation net income taxes. -- The credit is first applied to reduce the taxes imposed
26 by this article for the taxable year.

27 (2) Business franchise tax. -- After application of §11-24-11c (3)(1), any unused credit is
28 next applied to reduce the taxes imposed by §11-23-1 et seq. for the taxable year, determined
29 before application of allowable credits against tax.

30 (3) If the eligible taxpayer is a limited liability company, small business corporation, or a
31 partnership, then any unused credit after application of §11-24-11c (e)(1) and §11-24-11c (e)(2) is
32 allowed as a credit against the taxes imposed by this article on owners of the eligible taxpayer on
33 the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of
34 the tax imposed by §11-24-1 et seq. that are imposed on income directly derived by the owner from
35 the eligible taxpayer are subject to offset by this credit.

36 (A) Small business corporations, limited liability companies, partnerships, and other
37 unincorporated organizations shall allocate the credit allowed by this article among their members
38 in the same manner as profits and losses are allocated for the taxable year.

39 (B) No credit is allowed under this article against any withholding tax imposed by, or
40 payable under, §11-21-1 et seq.

41 (4) Personal income tax taxes. -- After application of subdivisions §11-24-11c (e)(1), §11-

24-11c (e)(2), and §11-24-11c (e)(3), any unused credit is next applied to reduce the taxes imposed by article §11-21-1 *et seq.* for the taxable year determined before application of allowable credits against tax of the eligible taxpayer.

(5) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit after application of §11-24-11c (e)(1), §11-24-11c (e)(2), §11-24-11c (e)(3), and §11-24-11c (e)(4) is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-21-1 *et seq.* that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(A) Small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(B) No credit is allowed under this article against any withholding tax imposed by, or payable under, §11-21-1 *et seq.*

(f) *Unused credit carry forward.* -- Any unused credit may be carried over to each of the next three taxable years following the unused credit year until used or forfeited due to lapse of time.

(g) *Application for certification.* -- No credit is allowed or may be applied under this section until the taxpayer seeking to claim the credit has filed a written application with the Tax Commissioner. This application shall be filed, in the form prescribed by the Tax Commissioner, no later than the last day for filing tax returns, determined by including any authorized extension of time for filing the return, required under §11-21-1 *et seq.* or §11-24-1 *et seq.* for the taxable year in which the certification is received, and the taxpayer shall provide all information required by the form.

(1) In the case of owners of eligible taxpayers described in §11-24-11c (e)(3) or §11-24-11c

(e)(5), the application filed under this section by the limited liability company, small business corporation, or partnership owned by the person is considered to be filed on behalf of the owner and no separate filing of the application is required of the owner.

(2) Form of application. -- The application shall be filed in the form as the Tax Commissioner prescribes and shall contain the information the Tax Commissioner requires to determine whether it should be approved, and the taxpayer is eligible for credit under this article.

(3) Requirements for application. -- The application shall require the attachment of a copy of the certification by the United States Green Building Council Leadership in Energy and Environmental Design Green Building Rating System or the Green Globes Building Initiative green building rating standard and other information the Tax Commissioner requires.

(4) Approval. -- The Tax Commissioner may approve applications if it appears to the Tax Commissioner that the applicant has met the requirements of this section and all rules and requirements applicable thereto.

(5) Failure to file. -- The failure to timely file the application for credit under this section shall result in forfeiture of 100 percent of the credit otherwise allowable under this article.

(6) Failure to comply with provisions of section or rules and requirement applicable thereto. If a person has received approval for credit under this section from the Tax Commissioner, but fails to conform to the terms of the approval, no credit is allowed under this section by the eligible taxpayer.

(h) Transfer to successors. --

(1) Mere change in form of business. -- The successor may claim the amount of credit still available with respect to the building transferred, and the transferor business is not required to redetermine the amount of credit allowed in earlier years.

(2) Transfer or sale to successor. -- Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year and the transferor business.

94 (i) Cessation of operation. -- If during any taxable year the taxpayer ceases using the
95 building for commercial purposes, then the unused portion of the allowed credit is forfeited for the
96 taxable year and for all ensuing years.

97 (j) When recapture applies. --

98 (1) Any taxpayer, who fails to maintain certification for the period of time over which tax
99 credits allowed under this section, shall pay the recapture tax imposed by §11-24-11c (k).

100 (2) This subsection does not apply when §11-24-11c (h) applies. However, the successor,
101 or the successors, and the taxpayer, who previously claimed credit under this section, are jointly
102 and severally liable for payment of any recapture tax subsequently imposed under this section.

103 (k) Recapture tax imposed. --

104 If the taxpayer fails to maintain certification required in order to qualify for the credit, the
105 taxpayer shall recapture the amount of credit claimed for the taxable year, and all preceding
106 taxable years. The amount of tax due under this subsection is an amount equal to the amount of
107 credit that is recaptured under this subdivision. The amount of tax recaptured under this
108 subsection is due and payable on the day the taxpayer's annual return against which the credit
109 was applied is due for the taxable year. When the employer is a partnership, limited liability
110 company, or S corporation for federal income tax purposes, the recapture tax shall be paid by
111 those persons who are partners in the partnership, members in the company, or shareholders in
112 the S corporation, in the taxable year in which recapture occurs under this subsection.

113 (l) Rules. -- The commissioner shall promulgate rules considered useful or necessary to
114 carry out the purpose of this section and to implement the intent of the Legislature. Rules shall be
115 proposed for legislative approval in accordance with §29A-3-1 et seq.

116 (m) Effective date. -- The credit authorized pursuant to this section is available for tax
117 years beginning on and after January 1, 2025.

NOTE: The purpose of this bill is to provide a tax credit for obtaining certain certifications by

the United States Green Building Council Leadership in Energy and Environmental Design green building rating system or the Green Globes Building Initiative green building rating standard. The bill sets forth the amount of the credit, who may take the credit, the criteria for taking the credit and the amount of the credit. The bill also provides rule-making authority and defines terms.

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