

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 646

**FISCAL
NOTE**

By Senator Deeds

[Introduced January 28, 2026; referred
to the Committee on Economic Development; and
then to the Committee on Finance]

1 A BILL to amend and reenact §11-21-97 and §11-24-44 of the Code of West Virginia, 1931, as
2 amended, relating to modifying certain requirements for eligibility for West Virginia's
3 employer-provided or sponsored child care tax credit program; maximizing the utility and
4 accessibility of West Virginia's child care tax credit for employers; clarifying that employer-
5 sponsored child care includes licensed third-party providers receiving financial
6 contributions from one or more employers, regardless of location or employee usage
7 ratios; eliminating the requirement that centers primarily serve the children of a sponsoring
8 employer's workforce; and lengthening the carry-forward period for unused tax credits.

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

child-care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer within an area reasonably accessible to the employer's workforce.

(7) "Employer-sponsored" refers to licensed child care services provided by a third party whose facility or operational costs are financially supported by one or more employers through direct payments, contracts, or subsidies. Employer-sponsored child care may be located anywhere within the State of West Virginia and shall not be subject to proximity or employee usage thresholds.

~~(7)~~ (8) "Qualified child-care property" means all real property, other than land, and tangible personal property purchased, or acquired or financial sponsorship by an employer on or after July 1, 2022, or which property is first placed in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation of an employer provided or employer sponsored child-care facility, but only if:

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

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

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

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child-care property placed in service prior to taxable years beginning on or after January 1, 2022.

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

~~(8)~~ (9) "Recapture amount" means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits

claimed under subsection (d) of this section for all taxable years preceding the recapture year, whether or not such credits were used.

~~(9)~~ (10) "Recapture event" means any disposition of qualified child-care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child-care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

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

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

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

(E) Any accident or casualty.

~~(40)~~ (11) "Recapture percentage" refers to the applicable percentage set forth in the following table:

If the recapture event occurs within-The recapture percentage is:

Five full years after the qualified child-care property is

placed in service100

The sixth full year after the qualified child-care property is

placed in service90

The seventh full year after the qualified child-care property

is placed in service80

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

placed in service70

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

placed in service60

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

68	placed in service	50
69	The eleventh full year after the qualified child-care property	
70	is placed in service	40
71	The twelfth full year after the qualified child-care property	
72	is placed in service	30
73	The thirteenth full year after the qualified child-care	
74	property is placed in service	20
75	The fourteenth full year after the qualified child-care	
76	property is placed in service	10
77	Any period after the close of the fourteenth full year after	
78	the qualified child-care property is placed in service	0

79 ~~(11)~~ (12) "Recapture year" means the taxable year in which a recapture event occurs with
80 respect to qualified child-care property.

81 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a
82 credit against the tax imposed under this article for the taxable year in which the taxpayer first
83 places in service qualified child-care property or places funds towards an employer-sponsored
84 child care facility and for each of the ensuing four taxable years following such taxable year. The
85 aggregate amount of the credit shall equal ~~50~~ 100 percent of the cost of all qualified child-care
86 property purchased or acquired by the taxpayer and first placed in service during a taxable year,
87 and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years.
88 In the case of a qualified child-care property jointly owned or sponsored by two or more unaffiliated
89 employers, each employer's credit is limited to that employer's respective investment in the
90 qualified child-care property.

91 (c) *Limitations on Capital Investment Credit.* — The tax credit allowable under subsection
92 (b) of this section shall be subject to the following conditions and limitations:

93 (1) Any such credit claimed in any taxable year but not used in such taxable year may be

94 carried forward for ~~three~~ 20 years from the close of such taxable year. The sale, merger,
95 acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any
96 succeeding taxpayer;

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

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

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

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

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

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

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

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

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

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

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

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

119 (1) The credit otherwise allowable under subsection (b) of this section with respect to such

property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

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

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

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

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

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

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

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

(2) Any such credit claimed but not used in any taxable year may be carried forward for ~~five~~ 20 years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of

the child-care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this section.

(g) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate 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.

(a) *Definitions.* — As used in this section, the term:

(1) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean the Tax Commissioner of the State of West Virginia, or his or her delegate;

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

(3) "Department" or "Tax Department" means the West Virginia State Tax Department.

(4) "Employer" means any employer upon whom an income tax is imposed by this article or any employer organized as a nonprofit corporation under Internal Revenue Code § 501(c)(3) or § 501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5 of this code.

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

(6) "Premises of the employer" refers to any location within the State of West Virginia and located on the workplace premises of the employer providing the child care or one of the employers providing the child care in the event that the child care property is owned jointly or severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such workplace premises are impracticable or otherwise unsuitable for the on-site location of such

child-care facility, as determined by the commissioner, such facility may be located within a reasonable distance of the premises of the employer within an area reasonably accessible to the employer's workforce.

(7) "Employer-sponsored" refers to licensed child care services provided by a third party whose facility or operational costs are financially supported by one or more employers through direct payments, contracts, or subsidies. Employer-sponsored child care may be located anywhere within the State of West Virginia and shall not be subject to proximity or employee usage thresholds.

~~(7)~~ (8) "Qualified child-care property" means all real property, other than land, and tangible personal property purchased, or acquired or financial sponsorship by an employer on or after July 1, 2022, or which property is first placed in service on or after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation of an employer provided or employer sponsored child-care facility, but only if:

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

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

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

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child-care property placed in service prior to taxable years beginning on or after January 1, 2022.

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

~~(8)~~ (9) "Recapture amount" means, with respect to property as to which a recapture event has occurred, an amount equal to the applicable recapture percentage of the aggregate credits

claimed under subsection (d) of this section for all taxable years preceding the recapture year, whether or not such credits were used.

~~(9)~~ (10) "Recapture event" means any disposition of qualified child-care property by the taxpayer, or any other event or circumstance under which property ceases to be qualified child-care property with respect to the taxpayer, except for:

(A) Any transfer by reason of death;

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

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

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

(E) Any accident or casualty.

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81 ~~(11)~~ (12) "Recapture year" means the taxable year in which a recapture event occurs with
82 respect to qualified child-care property.

83 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a
84 credit against the tax imposed under this article for the taxable year in which the taxpayer first
85 places in service qualified child-care property or places funds towards an employer-sponsored
86 child-care facility and for each of the ensuing four taxable years following such taxable year. The
87 aggregate amount of the credit shall equal ~~50~~ 100 percent of the cost of all qualified child-care
88 property purchased or acquired by the taxpayer and first placed in service during a taxable year,
89 and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years.
90 In the case of a qualified child-care property jointly owned or sponsored by two or more unaffiliated
91 employers, each employer's credit is limited to that employer's respective investment in the
92 qualified child-care property.

93 (c) *Limitations on Capital Investment Credit.* — The tax credit allowable under subsection
94 (b) of this section shall be subject to the 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~~ 20 years from the close of such taxable year. The sale, merger,
97 acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the credit in any
98 succeeding taxpayer;

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

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

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

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

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

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

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

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

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

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

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

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

121 (1) The credit otherwise allowable under subsection (b) of this section with respect to such

property for the recapture year and all subsequent taxable years shall be reduced by the applicable recapture percentage; and

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

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

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

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

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

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

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

(2) Any such credit claimed but not used in any taxable year may be carried forward for ~~five~~ 20 years from the close of the taxable year in which the cost of operation was incurred; and

(3) The employer shall certify to the department the names of the employees, the name of

the child-care provider, and such other information as may be required by the department to ensure that credits are granted only to employers who provide or sponsor approved child care pursuant to this section.

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

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

NOTE: The purpose of this bill is to modify certain requirements for eligibility for West Virginia's Employer-Provided or Sponsored Child Care Tax Credit program.

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