

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 38**

BY SENATORS STOLLINGS, OJEDA, JEFFRIES AND BEACH

[Originating in the Committee on Economic  
Development; reported on March 17, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §11-28-1, §11-28-2 and §11-28-3, all relating to creating five-year tax credit  
3 for businesses locating on post coal mining sites; defining terms; setting eligibility  
4 requirements for credit; establishing amount of tax credit allowed; establishing how credit  
5 may be applied; and providing rulemaking ability.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 article, designated §11-28-1, §11-28-2 and §11-28-3, all to read as follows:

**ARTICLE 28. POST COAL MINING SITE BUSINESS CREDIT.**

**§11-28-1. Definitions.**

1 (a) "Post coal mining site" means property that has remained undeveloped for business  
2 purposes, subsequent to mining operations on the property subject to the area of the original  
3 mining permit.

4 (b) "Principal place of business" means the physical location from which the entity's  
5 direction, control, and coordination of the operations of the business as a whole are primarily  
6 exercised, with consideration given, but not limited to:

7 (1) The physical location at which the primary executive and administrative headquarters  
8 of the entity is located; and

9 (2) From which the management of overall operations of the entity is directed.

**§11-28-2. Eligibility for credit.**

1 For those tax years beginning on or after January 1, 2018, a business entity will be allowed  
2 a credit against certain taxes imposed by this chapter, as described in section three of this article,  
3 if the business entity meets the following requirements:

4 (1) The entity is a corporation, small business corporation, limited liability company,  
5 partnership or unincorporated business entity with a principal place of business in the state;

6 (2) The entity employs a minimum of ten full-time (thirty-two hours a week or more)

7 employees; and

8 (3) The entity's principal place of business is located on a post-mine site within this state.

**§11-28-3. Application of credit.**

1 (a) Amount of credit. — For those tax years beginning on or after January 1, 2018, an  
2 eligible business entity will be allowed a tax credit in the amount of fifty percent of that entity's  
3 capital expenditures (as defined in Section 263 of the United States Internal Revenue Code of  
4 1986, as amended) at the post surface mine site, for the first five taxable years during which the  
5 entity's principle place of business is located on the post coal mining site within this state:  
6 Provided, That the dollar amount of the credit claimed by an eligible business entity may not  
7 exceed the amount of fifty percent of the entity's state income tax for a single year.

8 (b) Application of annual credit allowance. — The credit created by this article is allowed  
9 as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) through  
10 (2), inclusive, of this subsection, and in that order.

11 (1) Corporation net income taxes. — After application of subdivision (1) of this subsection,  
12 any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter  
13 for the taxable year.

14 (2) Personal income taxes. —

15 (A) If the person making the qualified investment is an electing small business corporation  
16 (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended),  
17 a partnership, a limited liability company that is treated as a partnership for federal income tax  
18 purposes, then any unused credit (after application of subdivisions (1) and (2) of this subsection)  
19 is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the  
20 income from business or other activity subject to tax under article twenty-three of this chapter.

21 (B) Electing small business corporations, limited liability companies, partnerships and  
22 other unincorporated organizations shall allocate the credit allowed by this article among its  
23 members in the same manner as profits and losses are allocated for the taxable year.

24 (3) A credit is not allowed under this section against any employer withholding taxes  
25 imposed by article twenty-one of this chapter.

26 (c) Unused credit. — A carryback to a prior taxable year is not allowed for the amount of  
27 any unused portion of any annual credit allowance. If the amount of the credit exceeds the  
28 taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be  
29 carried over and applied as a credit against the tax liability of the taxpayer pursuant to article  
30 twenty-one or twenty-four of this chapter to each of the next five taxable years following the year  
31 of creation of the tax credit unless sooner used.

32 (d) Eligibility requirements. — Those businesses that benefit from other state economic  
33 development programs or incentives that result in a reduction of their income tax liability due shall  
34 not be eligible for this tax credit.

35 (e) Rule-making authority. — The State Tax Department shall purpose rules for  
36 promulgation for adoption by the Legislature in accordance with the provisions of article three,  
37 chapter twenty-nine-a of this code in regards to forms and regulations in regards to this tax credit  
38 by December 31, 2017.

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