

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 596

BY SENATORS GAUNCH AND BOSO

[Introduced February 19, 2018; Referred
to the Committee on Economic Development; and then to
the Committee on Finance]

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, §11-28-3, §11-28-4, §11-28-5, §11-28-6, and §11-28-7,
 3 all relating to establishing the West Virginia Community Investment Tax Credit Program;
 4 providing definitions; setting forth criteria for the tax credit against corporate net income
 5 tax liability; providing for a carry forward of the tax credit in certain defined circumstances;
 6 specifying limitations and disqualification criteria; providing for change in form of business;
 7 providing for recapture tax; and authorizing promulgation of rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 28. WEST VIRGINIA COMMUNITY INVESTMENT TAX CREDIT PROGRAM.

§11-28-1. Short title.

1 This article may be cited as the West Virginia Community Investment Tax Credit Program.

§11-28-2. Definitions.

1 For the purposes of this article:

2 (a) "Equity Investment" means money or other capital exchanged for an ownership interest
 3 in a firm which is not returned in ordinary and normal business operations, but which is recovered
 4 when the owner sells the ownership interest to other investors, or when the assets of the firm are
 5 liquidated, and proceeds distributed to owners after the firm's obligations are satisfied.

6 (b) "Financial institution" means a bank, a savings and loan association, a trust company
 7 or a credit union chartered pursuant to any state or federal law, a regulated consumer lender
 8 licensed under §46A-4-1 et seq. of this code, a mortgage lender broker or servicer licensed under
 9 §31-17-1 et seq. of this code, a money service business licensed under §32A-2-1 et seq. of this
 10 code or other institutions which are by law under the jurisdiction and supervision of the
 11 Commissioner of Banking.

12 (c) "Primary term" means:

13 (1) Primary term, loans.

14 (A) In the case of a loan structured as payable on a date certain, "primary term" means

15 the time period commencing on the date of closing of a loan, and ending on the due date certain
16 for repayment of the loan, or

17 (B) In the case of loan repayments structured as installment payments, ending on the due
18 date of the final loan payment.

19 (C) Extensions of time, loan modifications enlarging the time for repayment, and loan
20 forgiveness shall not be counted in the determination of the primary term of a loan under the
21 provisions of this article. Loans having repayment arrangements, installment payment
22 agreements, and similar loan payment terms and timing provisions intended to enable a taxpayer
23 to obtain entitlement to the credit authorized under this article, and otherwise having no significant
24 economic substance, may be treated as void, and disqualified for purposes of the tax credit
25 entitlements authorized under this article. Loans having an indefinite or unspecified term or period,
26 do not qualify for purposes of this article as qualified loans, or qualified low rate loans for purposes
27 of this article.

28 (2) Primary term, equity investments.

29 (A) In the case of an equity investment, “primary term” means the time period commencing
30 on date of the making or tender of an equity investment, and ending on a date certain for
31 liquidation, termination, retrieval, withdrawal, repayment, transfer or conversion of the equity
32 investment, or

33 (B) In the case of an equity investment, structured so as to cause the liquidation,
34 termination, retrieval, withdrawal, repayment, transfer or conversion of the equity investment to
35 occur in the form of periodic installment payments, “primary term” means the time period
36 commencing on date of the making or tender of an equity investment, and ending on the due date
37 of the final installment payment. For purposes of this definition the term “conversion” means
38 conversion of an equity investment into a debt obligation, or into preferred stock or any class of
39 stock having periodic mandated payment of dividends associated with the class of stock or a
40 claim on firm assets and earnings higher than claims attributable to common stock.

41 (C) Extensions of time, contractual modifications enlarging the time for liquidation,
42 termination, retrieval, withdrawal, repayment, transfer or conversion of the equity investment shall
43 not be counted in the determination of the primary term of an equity investment under the
44 provisions of this article. Equity investments made under or pursuant to formal or informal
45 agreements or arrangements for liquidation, termination, retrieval, withdrawal, repayment,
46 transfer, conversion or repayment arrangements, or installment payment agreements, and similar
47 payment terms and timing provisions intended to enable a taxpayer to obtain entitlement to the
48 credit authorized under this article, and otherwise having no significant economic substance, may
49 be treated as void, and disqualified for purposes of the tax credit entitlements authorized under
50 this article.

51 (d) "Qualified loan" means a loan that is made at an interest rate that is at least two
52 percentage points below the prime rate, as published by the Wall Street Journal and in effect on
53 the date of the loan closing, made for a primary term of one or more years, that does not qualify
54 as a qualified low-rate loan. Early termination, repayment, transfer or conversion of a loan prior
55 to the end of the primary term disqualifies a loan for purposes of this article: *Provided, That*
56 forgiveness of a loan for no consideration shall not cause disqualification of a loan otherwise
57 qualified for purposes of this definition. For purposes of this definition the term "conversion"
58 means conversion of a loan into an equity interest, including, but not limited to, common stock or
59 preferred stock ownership, or any other ownership interest in the debtor.

60 (e) "Qualified long-term investment" means an equity investment made for a primary term
61 of more than five years. Early liquidation, termination, retrieval, withdrawal, repayment, transfer
62 or conversion of an equity investment prior to the end of the primary term disqualifies an equity
63 investment for purposes of this article. For purposes of this definition the term "conversion" means
64 conversion of an equity investment into a debt obligation, or into preferred stock or any class of
65 stock having periodic mandated payment of dividends associated with the class of stock or a
66 claim on firm assets and earnings higher than claims attributable to common stock.

67 (f) "Qualified low-rate loan" means a loan that is made at an interest rate that is at least
68 four percentage points below the prime rate, as published by the Wall Street Journal and in effect
69 on the date of the loan closing, made for a primary term of one or more years. Early termination,
70 repayment, transfer or conversion of a loan prior to the end of the primary term disqualifies a loan
71 for purposes of this article: *Provided*, That forgiveness of a loan for no consideration shall not
72 cause disqualification of a loan otherwise qualified for purposes of this definition. For purposes
73 of this definition the term "conversion" means conversion of a loan into an equity interest,
74 including, but not limited to, common stock or preferred stock ownership, or any other ownership
75 interest in the debtor.

§11-28-3. Community investment tax credit.

1 (a) There shall be allowed, for any financial institution, a credit against the corporate net
2 income tax, set forth in §11-24-1 *et seq.* of this code, an amount equal to five percent of the
3 principal amount of a qualified loan or qualified long-term investment made to a community
4 development financial institution that is certified by the United States department of the treasury's
5 community development financial institutions fund; or

6 (b) There shall be allowed, for any financial institution, a credit against the corporate net
7 income tax, set forth in §11-24-1 *et seq.* of this code, an amount equal to 10 percent of a grant,
8 contribution, or the principal amount of a qualified low-rate loan made to a community
9 development financial institution that is certified by the United States department of the Treasury's
10 Community Development Financial Institutions Fund.

11 (c) The tax credit authorized by this article for one member of a combined group may not
12 be used, in whole or in part, by another member of the combined group nor applied, in whole or
13 in part, against tax attributable to total income of the combined group, except the separately
14 determined income of the group member so entitled. No part of the credit authorized by this article
15 may be carried back to a prior tax year, nor transferred to any other person or entity.

§11-28-4. Carry forward.

1 Any unused credit allowed under §11-28-3(f)(1) of this code may be carried forward for 15
2 years after the tax year in which the credit originated. Any unused credit allowed under §11-28-
3 3(f)(2) of this code may not be carried forward beyond the tax year in which the credit originated.

§ 11-28-5. Recapture of credit; recapture tax imposed.

1 (a) Recapture tax imposed.

2 Any person, or entity that asserts a tax credit pursuant to the provisions of this article, and
3 fails to fulfill the requirements of this article, or causes a disqualification of any loan, investment,
4 grant, contribution, or principal amount, shall pay the recapture tax imposed by this section. The
5 amount of tax due under this section is an amount equal to the amount of credit claimed under
6 this article for all tax years for which the person or entity has asserted the tax credit.

7 (b) Payment of recapture tax, limitations.

8 The recapture tax is imposed under the terms of this section for the tax year in which the
9 conditions for imposition of recapture tax apply in accordance with subsection (a) of this section.
10 The statute of limitations specified under the West Virginia Tax Procedure and Administration Act
11 relating to those tax years for which tax credit was asserted shall not apply to bar imposition or
12 collection of the recapture tax.

13 (c) The amount of tax recaptured under this section is due and payable on the day the
14 person's annual return is due under §11-24-1 et seq. of this code, for the tax year in which the
15 conditions for imposition of recapture tax apply in accordance with subsection (a) of this section.

§11-28-6. Change in form of business.

1 (a) A taxpayer that has lawfully gained entitlement to the tax credit authorized under this
2 article shall not be disqualified from asserting the tax credit against tax, in accordance with this
3 article, by reason of a change in name of the business, or change in the form of conducting
4 business, as long as the taxpayer, or the renamed or reformed business derived from the original
5 predecessor taxpayer business, continues to be a subject to the tax imposed under §11-24-1 et
6 seq. of this code, and as long as the qualified loan, or qualified long-term investment, or qualified

7 low-rate loan giving rise to the tax credit is retained by the successor business.

8 (b) In the case of mergers, acquisitions, corporate split-ups, and similar changes, whereby
9 the original predecessor taxpayer business retains its corporate identity either under the original
10 name or as a renamed or reformed business derived from the original predecessor taxpayer
11 business that has lawfully gained entitlement to the tax credit authorized under this article, shall
12 not be disqualified from asserting the tax credit against tax, in accordance with this article, as long
13 as the qualified loan, or qualified long-term investment, or qualified low-rate loan giving rise to the
14 tax credit is retained by the successor business, and as long as the successor business:

15 (1) Continues to do business in this state;

16 (2) Continues to be subject to the tax imposed under §11-24-1 et seq. of this code; and

17 (3) Retains a controlling interest in the successor business.

§11-28-7. Rules.

1 In accordance with the provisions of §29A-3-1 et seq. of this code, the Tax Commissioner
2 may promulgate such rules as may be useful or necessary to carry out the purposes of this article
3 and to implement the intent of the Legislature.

NOTE: The purpose of this bill is to establish the West Virginia Community Investment 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.