

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

**Introduced**

### **House Bill 2375**

**FISCAL  
NOTE**

BY DELEGATES MOORE, HILL, MARTIN, DEAN, PAYNTER,

UPSON AND ATKINSON

[Introduced February 13, 2017; Referred

to the Committee on Small Business,

Entrepreneurship and Economic Development then

Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-  
 3 13DD-6 and §11-13DD-7; and to amend and reenact §11-21-8 of said code; and to amend  
 4 and reenact §11-24-4 of said code; and to amend said code by adding thereto a new  
 5 section, designated §11-24-5a, all relating to establishing a Small Business Empowerment  
 6 and Economic Expansion Program providing tax relief to newly-established small  
 7 businesses; defining terms; creating a credit against state business taxes for property  
 8 taxes paid for tangible personal property of a small business; describing a procedure for  
 9 use of the credit; limiting the duration of the credit; requiring reports to the Legislature;  
 10 reducing the effective personal and corporate income tax rates for income derived from  
 11 eligible small businesses; from providing for the termination of the program after ten years;  
 12 and eliminating language relating to an expired severance tax credit.

*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 §11-13DD-1, §11-13DD-2, §11-13DD-3, §11-13DD-4, §11-13DD-5, §11-  
 3 13DD-6 and §11-13DD-7; that §11-21-8 of said code be amended and reenacted; that §11-24-4  
 4 of said code be amended and reenacted; and that said code be amended by adding thereto a  
 5 new section, designated §11-24-5a, all to read as follows:

**CHAPTER 11. TAXATION.**

**ARTICLE 13DD. SMALL BUSINESS EMPOWERMENT AND ECONOMIC EXPANISON**

**PROGRAM.**

**§11-13DD-1. Short title.**

1 This article may be cited as the "Small Business Empowerment and Economic Expansion  
 2 Program."

**§11-13DD-2. Definitions.**

1 For the purposes of this article and for the use of specific income tax credits authorized in  
2 articles twenty-one and twenty-four of this chapter, the term “newly-established small business”  
3 means an entity engaging in business activity in West Virginia:

4 (1) That employs no more than two hundred fifty employees, of which at least fifty percent  
5 are residents of West Virginia;

6 (2) That does not earn more than \$15 million in annual gross receipts;

7 (3) That first obtained a West Virginia business registration certificate less than ten years  
8 prior to using the tax credits available under this article and articles twenty-one and twenty-four  
9 of this chapter, for a “newly-established small business”; and

10 (4) That has not used or applied the credits provided by this article for more than four prior  
11 tax years.

12 An “eligible taxpayer” is any taxpayer who is required under West Virginia law to pay  
13 property taxes for tangible personal property owned or leased by a newly-established small  
14 business.

**§11-13DD-3. Allowance of credit based upon personal property of business.**

1 (a) Credit allowed. -- Eligible taxpayers are allowed a credit against the portion of taxes  
2 imposed by this state that are equivalent to the amount of property tax paid during the tax year  
3 for the tangible personal property – including, but not limited to, the equipment, durable goods  
4 and inventory - of the newly-established small business. The amount of this credit is applied as  
5 provided in this article.

6 (b) Duration of credit allowances. – An eligible taxpayer may claim a credit under the  
7 provisions of this article for a maximum of five taxable years for a relevant newly-established small  
8 business.

9 (c) Multiple investments. -- An eligible taxpayer may claim a credit for multiple businesses  
10 if each business is a newly-established small business and is unique from all previous or existing  
11 businesses organized or administered by the same individual, employees, partners, board

12 members or associates.

13 (d) Restriction. – A business that has previously utilized this program and is still in  
14 continuous operation shall be prohibited from applying any tax credit otherwise allowed  
15 hereunder.

**§11-13DD-4. Application of annual credit allowance.**

1 (a) Application of current year annual credit allowance. -- The amount determined under  
2 section seven of this article is allowed as a credit against that portion of the taxpayer's state tax  
3 liability which is attributable to and the direct result of the taxpayer's tax liability for the newly-  
4 established small business, and applied as provided in subsections (b) and (c) of this section, and  
5 in that order.

6 (b) Business and occupation taxes. -- That portion of the allowable credit allowed under  
7 the provisions of this article must first be applied to reduce the taxes imposed or payable under  
8 article thirteen of this chapter for the taxable year (determined before application of allowable  
9 credits against tax and the annual exemption).

10 (c) Business franchise tax. -- After application of subsection (c) of this section, any unused  
11 allowable credit is next applied to reduce the taxes imposed by article twenty-three of this chapter  
12 for the taxable year (determined after application of the credits against tax provided in section  
13 seventeen of article twenty-three of this chapter, but before application of any other allowable  
14 credits against tax).

15 (d) Unused credit. -- If any credit remains after application of subsection (c) of this section,  
16 the amount thereof is forfeited. No rollover to a subsequent taxable year and no carryback to a  
17 prior taxable year is allowed for the amount of any unused portion of any credit allowance under  
18 the provisions of this article.

**§11-13DD-5. Forfeiture of unused tax credits; redetermination of credit allowed.**

1 (a) Disposition of property or cessation of use. -- If during any taxable year, property with  
2 respect to which a tax credit has been allowed under this article:

3 (1) Is disposed of prior to the end of its useful life, determined in accordance with federal  
4 law; or

5 (2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end  
6 of its useful life, as determined under section eight of this article, then the unused portion of the  
7 credit allowed for the property is forfeited for the taxable year and all ensuing years.

8 (b) Cessation of operation of business facility. -- If during any taxable year the taxpayer  
9 ceases operation of a business facility in this state for which credit was allowed under this article,  
10 before expiration of the useful life of property with respect to which tax credit has been allowed  
11 under this article, then the unused portion of the allowed credit is forfeited for the taxable year  
12 and for all ensuing years.

#### **§11-13DD-6. Reports to the Legislature.**

1 The Tax Commissioner shall report to the Legislature by January 1, 2020, regarding the  
2 use of this tax credit and shall make a follow-up report to the Legislature by January 1, 2028. The  
3 Tax Commissioner shall direct copies of these reports to the Joint Committee on Government and  
4 Finance and the House and Senate Finance Committees.

#### **§11-13DD-7. Termination of small business program.**

1 Unless reauthorized by the West Virginia Legislature, the provisions of this article shall  
2 expire at midnight on December 31, 2028.

### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-8. Credits against tax.**

1 (a) Business and occupation tax credit.--A credit shall be allowed against the tax imposed  
2 by section three of this article equal to the amount of the liability of the taxpayer for the taxable  
3 year for any tax imposed under article thirteen, chapter eleven of this code: *Provided*, That the  
4 amount of such business and occupation tax credit shall not exceed the portion of the tax imposed  
5 by this article which is attributable to the West Virginia taxable income derived by the taxpayer for  
6 the taxable year from the business or occupation with respect to which said tax under article

7 thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income  
8 from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the  
9 Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate,  
10 trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the  
11 credit provided ~~for~~ by this section, in an amount proportionate to the income of such partnership,  
12 estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

13 For purposes of this section, the tax imposed under article thirteen, chapter eleven of this  
14 code shall be the amount of the liability of the taxpayer for such tax under said article thirteen  
15 computed without reduction for the tax credit for industrial expansion or revitalization allowed for  
16 such year.

17 ~~(b) Severance tax credit.—On and after July 1, 1987, a credit shall be allowed against the~~  
18 ~~tax imposed by section three of this article equal to the amount of the liability of the taxpayer for~~  
19 ~~the taxable year for any tax imposed under article thirteen-a, chapter eleven of this code:~~  
20 ~~Provided, That the amount of such severance tax credit shall not exceed the portion of the tax~~  
21 ~~imposed by this article which is attributable to the West Virginia taxable income derived by the~~  
22 ~~taxpayer for the taxable year from the activities with respect to which said tax under article~~  
23 ~~thirteen-a was imposed. In case the West Virginia taxable income of a taxpayer includes income~~  
24 ~~from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the~~  
25 ~~Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate,~~  
26 ~~trust or corporation under said article thirteen-a shall be allowed to the taxpayer, in computing the~~  
27 ~~credit provided for by this section, in an amount proportionate to the income of such partnership,~~  
28 ~~estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income~~

29 ~~(c) Expiration of credit.—The credit authorized in subsection (b) of this section shall expire~~  
30 ~~and not be authorized or allowed for any taxable year beginning on or after October 1, 1990~~

31 (b) Tax credit for newly-established small businesses.— In each of the first five years of  
32 operation of a newly-established small business as defined in section two, article thirteen-DD of

33 this chapter, a credit shall be allowed against the tax imposed by section three of this article to  
34 result in an effective rate of tax of one percent per annum on the portion of West Virginia taxable  
35 income attributable to income derived from a newly-established small business. In case the West  
36 Virginia portion of taxable income of the newly-established small business is income from a  
37 partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal  
38 Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or  
39 corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit  
40 provided by this section, in an amount proportionate to the income of such partnership, estate,  
41 trust or corporation, which is included in the taxpayer's West Virginia taxable income.

42 The credit authorized in this section shall expire and not be authorized or allowed for any  
43 taxable year beginning after December 31, 2028.

## **ARTICLE 24. CORPORATION NET INCOME TAX.**

### **§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.**

1 *Primary tax.* -- (1) In the case of taxable periods beginning after June 30, 1967, and ending  
2 prior to January 1, 1983, a tax is hereby imposed for each taxable year at the rate of six percent  
3 per annum on the West Virginia taxable income of every domestic or foreign corporation engaging  
4 in business in this state or deriving income from property, activity or other sources in this state,  
5 except corporations exempt under section five.

6 (2) In the case of taxable periods beginning on or after January 1, 1983, and ending prior  
7 to July 1, 1987, a tax is hereby imposed for each taxable year on the West Virginia taxable income  
8 of every domestic or foreign corporation engaging in business in this state or deriving income  
9 from property, activity or other sources in this state, except corporations exempt under section  
10 five of this article, and any banks, banking associations or corporations, trust companies, building  
11 and loan associations and savings and loan associations, at the rates which follow:

12 (A) On taxable income not in excess of \$50,000, the rate of six percent; and

13 (B) On taxable income in excess of \$50,000, the rate of seven percent.

14           (3) In the case of taxable periods beginning on or after July 1, 1987, a tax is hereby  
15 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
16 corporation engaging in business in this state or deriving income from property, activity or other  
17 sources in this state, except corporations exempt under section five of this article, at the rate of  
18 nine and three-quarters percent. Beginning July 1, 1988, and on each July 1 thereafter for four  
19 successive calendar years, the rate shall be reduced by fifteen one hundredths of one percent  
20 per year, with such rate to be nine percent on and after July 1, 1992.

21           (4) In the case of taxable periods beginning on or after January 1, 2007, a tax is hereby  
22 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
23 corporation engaging in business in this state or deriving income from property, activity or other  
24 sources in this state, except corporations exempt under section five of this article, at the rate of  
25 eight and three-quarters percent.

26           (5) In the case of taxable periods beginning on or after January 1, 2009, a tax is hereby  
27 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
28 corporation engaging in business in this state or deriving income from property, activity or other  
29 sources in this state, except corporations exempt under section five of this article, at the rate of  
30 eight and one-half percent.

31           (6) In the case of taxable periods beginning on or after January 1, 2012, a tax is hereby  
32 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
33 corporation engaging in business in this state or deriving income from property, activity or other  
34 sources in this state, except corporations exempt under section five of this article, at the rate of  
35 seven and three-quarters percent: *Provided*, That the reduction in tax authorized by this  
36 subsection shall be suspended if the combined balance of funds as of June 30, 2011, in the  
37 Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B  
38 established in section twenty, article two, chapter eleven-b of this code does not equal or exceed  
39 ten percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2011:



40 *Provided, however,* That the rate reduction schedule will resume in the calendar year immediately  
41 following any subsequent fiscal year when the combined balance of funds as of June 30 of that  
42 fiscal year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve  
43 Fund - Part B next equals or exceeds ten percent of the General Revenue Fund budgeted for the  
44 immediately succeeding fiscal year.

45 (7) In the case of taxable periods beginning on or after January 1, 2013, a tax is hereby  
46 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
47 corporation engaging in business in this state or deriving income from property, activity or other  
48 sources in this state, except corporations exempt under section five of this article, at the rate of  
49 seven percent: *Provided,* That the reduction in tax authorized by this subsection shall be  
50 suspended for one calendar year subsequent to the occurrence of the suspension of the reduction  
51 in tax authorized by subdivision (6) of this section: *Provided, however,* That the reduction in tax  
52 on the first day of any calendar year authorized by this subsection shall be suspended if the  
53 combined balance of funds as of June 30 of the preceding year in the Revenue Fund Shortfall  
54 Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section  
55 twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the  
56 General Revenue Fund budgeted for the fiscal year commencing July 1, of the preceding year.

57 (8) In the case of taxable periods beginning on or after January 1, 2014, a tax is hereby  
58 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
59 corporation engaging in business in this state or deriving income from property, activity or other  
60 sources in this state, except corporations exempt under section five of this article, at the rate of  
61 six and one-half percent: *Provided,* That the reduction in tax authorized by this subsection shall  
62 be suspended for one calendar year subsequent to the occurrence of the suspension of the  
63 reduction in tax authorized by subdivision (7) of this section: *Provided, however,* That the  
64 reduction in tax on the first day of any calendar year authorized by this subsection shall be  
65 suspended if the combined balance of funds as of June 30 of the preceding year in the Revenue

66 Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established  
67 in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent  
68 of the General Revenue Fund budgeted for the fiscal year commencing July 1, of the preceding  
69 year.

70 (9) In the case of taxable periods beginning on or after January 1, 2014, a tax is hereby  
71 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
72 corporation engaging in business in this state or deriving income from property, activity or other  
73 sources in this state, except corporations exempt under section five of this article and corporations  
74 subject to reduced tax under section five-a of this article, at the rate of six and one-half percent:  
75 Provided, That the reduction in tax authorized by this subsection shall be suspended for one  
76 calendar year subsequent to the occurrence of the suspension of the reduction in tax authorized  
77 by subdivision (7) of this section: Provided, however, That the reduction in tax on the first day of  
78 any calendar year authorized by this subsection shall be suspended if the combined balance of  
79 funds as of June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the  
80 Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter  
81 eleven-b of this code does not equal or exceed ten percent of the General Revenue Fund  
82 budgeted for the fiscal year commencing July 1, of the preceding year.

**§11-24-5a. Corporations subject to reduced tax rate.**

1 Notwithstanding the annual rate of tax imposed under any other provision of this article,  
2 and while the provisions of article thirteen-DD are in effect, the tax for each taxable year on the  
3 West Virginia taxable income of engaging in business in this state or deriving income from  
4 property, activity or other sources in this state and which is a “newly-established small business”  
5 as defined in section two, article thirteen-DD of this chapter, shall be imposed at the rate of one  
6 percent per annum for each of the first five taxable years of the operation of the newly-established  
7 small business.

NOTE: The purpose of this bill is to create a program to provide tax relief to new businesses that hire West Virginia residents as at least fifty percent of their employees. The program allows new, small businesses and business owners to be taxed at an effective rate of one percent on income derived from the business and to receive a credit against business and occupation taxes and business franchise taxes equal to the amount of property tax paid during the tax year for the tangible personal property of the business (equipment, durable goods and business inventory.)

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