

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

ENGROSSED

House Bill 113

BY DELEGATES HANSHAW (MR. SPEAKER) AND MILEY

(BY REQUEST OF THE EXECUTIVE)

[Introduced May 20, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-21-12k; and to amend said code by adding thereto a new section,
3 designated §11-24-6b, all relating generally to establishing tax incentive for new business
4 activity in qualified opportunity zones; establishing eligibility requirements; defining terms;
5 specifying duration of tax benefit; providing rulemaking authority; providing for termination
6 of program; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

**§11-21-12k. Decreasing modification reducing federal adjusted gross income for the net
income of Qualified Opportunity Zone Businesses; effective date.**

1 (a) General. — In addition to the amounts authorized to be subtracted from federal
2 adjusted gross income pursuant to §11-21-12(c) of this code, a modification reducing federal
3 adjusted gross income is hereby authorized for taxable years beginning on and after January 1,
4 2019:

5 (1) For individuals: in an amount equal to and limited to that portion of net income included
6 in federal adjusted gross income by a taxpayer in the taxable year that is directly derived from a
7 qualified opportunity zone business located in a qualified opportunity zone which is located in
8 West Virginia;

9 (2) For partners or members of limited liability companies that are treated as partnerships
10 for federal income tax purposes, and other pass-through entities: in an amount equal to and
11 limited to that portion of the distributive share of the partner or member that is attributable to the
12 flow through income directly derived from the qualified opportunity zone business located in West
13 Virginia. A similar rule applies to shareholders in corporations taxed under subchapter S of the
14 Internal Revenue Code.

15 (b) Eligibility. — To be entitled to modification provided for in subsection (a) of this section,
16 the qualified opportunity zone business must be a newly registered business in West Virginia

17 registered on or after January 1, 2019 and before January 1, 2024. Limited liability companies
18 that are treated as corporations for purposes of the federal income tax and West Virginia
19 corporation net income tax and which otherwise qualify in accordance with the requirements and
20 limitations of this section may qualify for the modification authorized under this section.

21 (c) *Duration.* — The modification provided for in subsection (a) of this section shall apply
22 with respect to a taxpayer for a 10-year period beginning with the first full taxable year during
23 which the qualified opportunity zone business first qualifies as a qualified opportunity zone
24 business, or the first year in which the qualified opportunity zone business reports net income:
25 *Provided, That the qualified opportunity zone business first qualifies as such on or after January*
26 *1, 2019.*

27 (d) The following definitions apply to this section:

28 (1) “Internal Revenue Code” means the Internal Revenue Code of the United States as
29 defined in §11-21-9 or §11-24-3 of this code.

30 (2) “Newly registered business” means a business that is formed on or after January 1,
31 2019 and before January 1, 2024, that is first required to obtain a business registration certificate
32 under §11-12-1 *et seq.* of this code from the Tax Commissioner on or after January 1, 2019 and
33 before January 1, 2024, and which is not the reorganization of a business that existed prior to
34 January 1, 2019.

35 (3) “Reorganization of an existing business” includes, but is not limited to, a change in the
36 name of a business, a change in the form of doing business such as, but not limited to, a
37 proprietorship that reorganizes as a partnership or other business entity, a subsidiary that
38 becomes a stand-alone business entity, a division of an existing business that becomes a
39 separate business and any other similar type of business reorganization. For purposes of this
40 definition any entity or organization that is determined by the Tax Commissioner to be an alter
41 ego, nominee or instrumentality of an existing or previously existing business, as determined in

42 accordance with the criteria specified in §11-12-5 of this code is a business resulting from
43 reorganization of an existing business.

44 (4) “Qualified Opportunity Zone Business” means Qualified Opportunity Zone Business as
45 that term is defined in Section §1400Z-2 of the Internal Revenue Code.

46 (5) “Qualified Opportunity Zone” means Qualified Opportunity Zone as that term is defined
47 in Section 1400Z-1 of the Internal Revenue Code.

48 (e) Rules. — The Tax Commissioner may propose legislative rules, or promulgate
49 interpretive or procedural rules, as the commissioner deems necessary to carry out the provisions
50 of this section and to provide guidelines and requirements to ensure uniform administrative
51 practices statewide to effect the intent of this section. All rules shall be promulgated in accordance
52 with the provisions of §29A-3-1 et seq. of this code.

53 (f) Effective date; expiration of modification, preservation of entitlement. — The
54 modification authorized by this section becomes effective and is authorized for taxable years
55 beginning on and after January 1, 2019: Provided, That unless sooner terminated by law, the
56 modification authorized by this section will terminate for taxable years beginning on and after
57 January 1, 2024, and no new entitlement to the modification is authorized thereafter; Provided
58 however, That those taxpayers shall retain that entitlement for the remainder of the 10-year
59 application period over which the original entitlement applies, if the Taxpayer otherwise remains
60 in compliance with the requirements of this section.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6b. Decreasing modification reducing federal taxable income for the income of **Qualified Opportunity Zone Businesses; effective date.**

1 (a) General. — In addition to the amounts authorized to be subtracted from federal taxable
2 income pursuant to §11-24-6(c) of this code, there shall be subtracted from federal taxable
3 income, an amount equal to net income included in federal taxable income by a corporate

4 taxpayer in a taxable year that is ordinary income derived from a qualified opportunity zone
5 business located in a qualified opportunity zone located in West Virginia.

6 (b) Eligibility. — To be entitled to modification provided for in subsection (a), the qualified
7 opportunity zone business must be a newly registered business in West Virginia registered on or
8 after January 1, 2019 and before January 1, 2024. Limited liability companies that are treated as
9 corporations for purposes of the federal income tax and West Virginia corporation net income tax
10 and which otherwise qualify in accordance with the requirements and limitations of this section
11 may qualify for the modification authorized under this section.

12 (c) Duration. — The modification provided for in subsection (a) of this section shall apply
13 with respect to a taxpayer during the 10-year period beginning with the first full taxable year during
14 which the qualified opportunity zone business first qualifies as a qualified opportunity zone
15 business, or the first year in which the qualified opportunity zone business reports net income:
16 Provided, That the qualified opportunity zone business first qualifies as such on or after January
17 1, 2019.

18 (d) The following definitions apply to this section:

19 (1) “Newly registered business” means a business that is formed on or after January 1,
20 2019 and before January 1, 2024, that is first required to obtain a business registration certificate
21 under §11-12-1 et seq. of this code from the Tax Commissioner on or after January 1, 2019 and
22 before January 1, 2024, and which is not the reorganization of a business that existed prior to
23 January 1, 2019.

24 (2) “Reorganization of an existing business” includes, but is not limited to, a change in the
25 name of a business, a change in the form of doing business such as, but not limited to, a
26 proprietorship that reorganizes as a partnership or other business entity, a subsidiary that
27 becomes a stand-alone business entity, a division of an existing business that becomes a
28 separate business and any other similar type of business reorganization. For purposes of this
29 definition any entity or organization that is determined by the Tax Commissioner to be an alter

30 ego, nominee or instrumentality of an existing or previously existing business, as determined in
31 accordance with the criteria specified in §11-12-5 of this code is a business resulting from
32 reorganization of an existing business.

33 (3) “Qualified Opportunity Zone Business” means Qualified Opportunity Zone Business as
34 that term is defined in Section 1400Z-2 of the Internal Revenue Code.

35 (4) “Qualified Opportunity Zone” means Qualified Opportunity Zone as that term is defined
36 in Section 1400Z-1 of the Internal Revenue Code.

37 (e) Rules. — The Tax Commissioner may propose legislative rules, or promulgate
38 interpretive or procedural rules, as the commissioner deems necessary to carry out the provisions
39 of this section and to provide guidelines and requirements to ensure uniform administrative
40 practices statewide to effect the intent of this section. All rules shall be promulgated in accordance
41 with the provisions of §29A-3-1 et seq. of this code.

42 (f) Effective date; expiration of modification, preservation of entitlement. — The
43 modification authorized by this section becomes effective and is authorized for taxable years
44 beginning on and after January 1, 2019: *Provided*, That unless sooner terminated by law, the
45 modification authorized by this section will terminate for taxable years beginning on and after
46 January 1, 2024, and no new entitlement to the modification is authorized thereafter; *Provided*
47 *however*, That those taxpayers shall retain that entitlement for the remainder of the 10-year
48 application period over which the original entitlement applies, if the Taxpayer otherwise
49 remains in compliance with the requirements of this section.

NOTE: The purpose of this bill is to create a decreasing modification for personal income tax and corporation net income tax for income derived from businesses activity in qualified opportunity zones in West Virginia.

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