

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2533

FISCAL
NOTE

BY DELEGATES PUSHKIN AND HANSEN

[Introduced February 15, 2021; Referred to the
Committee on Government Organization then
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §11-24-11c, relating to providing a tax credit for obtaining certain certifications
 3 by the United States Green Building Council Leadership in Energy and Environmental
 4 Design green building rating system or the Green Globes Building Initiative green building
 5 rating standard; setting forth the amount of the credit; establishing who may take the credit;
 6 establishing the amount of the credit; establishing the criteria for taking the credit;
 7 providing rule-making authority; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11c. Credit for becoming certified by the Leadership in Energy and Environmental Design Green Building Rating System or Green Globes Building Rating Standard.

1 (a) General. -- A credit is allowed against the tax liability of an eligible taxpayer for the cost
 2 of making renovations and improvements to a building to become certified by the United States
 3 Green Building Council Leadership in Energy and Environmental Design green building rating
 4 system or the Green Globes Building Initiative green building rating standard.

5 (b) Definitions. -- For purposes of this section, the term:

6 (1) "Cost to become certified by the United States Green Building Council Leadership in
 7 Energy and Environmental Design Green Building Rating System or the Green Globes Building
 8 Initiative green building rating standard" means the reasonable and necessary sums of money
 9 spent by the taxpayer in making renovations and improvements to its building in receiving that
 10 certification.

11 (2) "Eligible taxpayer" means the owner of a building being used for commercial purposes.

12 (3) "Owner" means the person who is possessed of the freehold, whether in fee or for life.
 13 A person seized or entitled in fee subject to a mortgage or trust takes possession, after which the
 14 mortgagee or trustee is considered the owner. A person who has an equitable estate or freehold,
 15 or is a purchaser of a freehold estate who is in possession before transfer of legal title is also

16 considered the owner.

17 (c) Amount of credit. -- The amount of the credit available to any eligible taxpayer is equal
18 to its cost in making renovations and improvements to its building to become certified by the
19 United States Green Building Council Leadership in Energy and Environmental Design Green
20 Building Rating System or the Green Globes Building Initiative green building rating standard,
21 less any reimbursement of the cost which the taxpayer has received through any other means.

22 (d) When credit may be taken. -- An eligible taxpayer may claim a credit allowed under
23 this section on its annual return for the taxable year in which it receives certification.

24 (e) Application of credit. --

25 (1) Corporation net income taxes. -- The credit is first applied to reduce the taxes imposed
26 by this article for the taxable year.

27 (2) Business franchise tax. -- After application of §11-24-11c(3)(1) of this code, any
28 unused credit is next applied to reduce the taxes imposed by §11-23-1 et seq. of this code for the
29 taxable year, determined before application of allowable credits against tax.

30 (3) If the eligible taxpayer is a limited liability company, small business corporation or a
31 partnership, then any unused credit after application of §11-24-11c(e)(1) and §11-24-11c(e)(2) of
32 this code is allowed as a credit against the taxes imposed by this article on owners of the eligible
33 taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only
34 those portions of the tax imposed by §11-24-1 et seq. of this code that are imposed on income
35 directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

36 (A) Small business corporations, limited liability companies, partnerships and other
37 unincorporated organizations shall allocate the credit allowed by this article among their members
38 in the same manner as profits and losses are allocated for the taxable year.

39 (B) No credit is allowed under this article against any withholding tax imposed by, or
40 payable under, §11-21-1 et seq. of this code.

41 (4) Personal income tax taxes. -- After application of subdivisions §11-24-11c(e)(1), §11-

42 24-11c(e)(2), and §11-24-11c(e)(3) of this code, any unused credit is next applied to reduce the
43 taxes imposed by article §11-21-1 et seq. of this code for the taxable year determined before
44 application of allowable credits against tax of the eligible taxpayer.

45 (5) If the eligible taxpayer is a limited liability company, small business corporation or a
46 partnership, then any unused credit after application of §11-24-11c(e)(1), §11-24-11c(e)(2), §11-
47 24-11c(e)(3), and §11-24-11c(e)(4) of this code is allowed as a credit against the taxes imposed
48 by §11-21-1 et seq. of this code on owners of the eligible taxpayer on the conduit income directly
49 derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-
50 21-1 et seq. of this code that are imposed on income directly derived by the owner from the eligible
51 taxpayer are subject to offset by this credit.

52 (A) Small business corporations, limited liability companies, partnerships and other
53 unincorporated organizations shall allocate the credit allowed by this article among their members
54 in the same manner as profits and losses are allocated for the taxable year.

55 (B) No credit is allowed under this article against any withholding tax imposed by, or
56 payable under, §11-21-1 et seq. of this code.

57 (f) Unused credit carry forward. -- Any unused credit may be carried over to each of the
58 next three taxable years following the unused credit year until used or forfeited due to lapse of
59 time.

60 (g) Application for certification. -- No credit is allowed or may be applied under this section
61 until the taxpayer seeking to claim the credit has filed a written application with the Tax
62 Commissioner. This application shall be filed, in the form prescribed by the Tax Commissioner,
63 no later than the last day for filing tax returns, determined by including any authorized extension
64 of time for filing the return, required under §11-21-1 et seq. or §11-24-1 et seq. of this code for
65 the taxable year in which the certification is received, and the taxpayer shall provide all information
66 required by the form.

67 (1) In the case of owners of eligible taxpayers described in §11-24-11c(e)(3) or §11-24-

68 11c(e)(5) of this code, the application filed under this section by the limited liability company, small
69 business corporation or partnership owned by the person is considered to be filed on behalf of
70 the owner and no separate filing of the application is required of the owner.

71 (2) Form of application. -- The application must be filed in the form as the Tax
72 Commissioner prescribes and shall contain the information as the Tax Commissioner requires to
73 determine whether it should be approved and the taxpayer is eligible for credit under this article.

74 (3) Requirements for application. -- The application shall require the attachment of a copy
75 of the certification by the United States Green Building Council Leadership in Energy and
76 Environmental Design Green Building Rating System or the Green Globes Building Initiative
77 green building rating standard and other information as the Tax Commissioner requires.

78 (4) Approval. -- The Tax Commissioner may approve applications if it appears to the Tax
79 Commissioner that the applicant has met the requirements of this section and all rules and
80 requirements applicable thereto.

81 (5) Failure to file. -- The failure to timely file the application for credit under this section
82 results in forfeiture of 100 percent of the credit otherwise allowable under this article.

83 (6) Failure to comply with provisions of section or rules and requirement applicable thereto.
84 -- If a person has received approval for credit under this section from the Tax Commissioner, but
85 fails to conform to the terms of the approval, no credit is allowed under this section by the eligible
86 taxpayer.

87 (h) Transfer to successors. --

88 (1) Mere change in form of business. -- The successor is allowed to claim the amount of
89 credit still available with respect to the building transferred, and the transferor business is not
90 required to redetermine the amount of credit allowed in earlier years.

91 (2) Transfer or sale to successor. -- Upon transfer or sale, the successor shall acquire the
92 amount of credit that remains available under this article for each subsequent taxable year and
93 the transferor business.

94 (i) Cessation of operation. -- If during any taxable year the taxpayer ceases using the
95 building for commercial purposes, then the unused portion of the allowed credit is forfeited for the
96 taxable year and for all ensuing years.

97 (j) When recapture applies. --

98 (1) Any taxpayer who fails to maintain certification for the period of time over which tax
99 credits allowed under this section the taxpayer shall pay the recapture tax imposed by §11-24-
100 11c(k) of this code.

101 (2) This subsection does not apply when §11-24-11c(h) of this code applies. However, the
102 successor, or the successors, and the taxpayer, who previously claimed credit under this section,
103 are jointly and severally liable for payment of any recapture tax subsequently imposed under this
104 section.

105 (k) Recapture tax imposed. --

106 If the taxpayer fails to maintain certification required in order to qualify for the credit, the
107 taxpayer shall recapture the amount of credit claimed for the taxable year, and all preceding
108 taxable years. The amount of tax due under this subsection is an amount equal to the amount of
109 credit that is recaptured under this subdivision. The amount of tax recaptured under this
110 subsection is due and payable on the day the taxpayer's annual return against which the credit
111 was applied is due for the taxable year. When the employer is a partnership, limited liability
112 company or S corporation for federal income tax purposes, the recapture tax shall be paid by
113 those persons who are partners in the partnership, members in the company, or shareholders in
114 the S corporation, in the taxable year in which recapture occurs under this subsection.

115 (l) Rules. -- The commissioner may promulgate rules considered useful or necessary to
116 carry out the purpose of this section and to implement the intent of the Legislature. Rules shall be
117 proposed for legislative approval in accordance with §29A-3-1 et seq. of this code.

118 (m) Effective date. -- The credit authorized pursuant to this section is available for tax
119 years beginning on and after January 1, 2021.

NOTE: The purpose of this bill is to provide a tax credit for obtaining certain certifications by the United States Green Building Council Leadership in Energy and Environmental Design green building rating system or the Green Globes Building Initiative green building rating standard. The bill sets forth the amount of the credit, who may take the credit, the criteria for taking the credit and the amount of the credit. The bill also provides rule-making authority and defines terms.

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