

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4350

FISCAL  
NOTE

BY DELEGATES G. WARD, CONLEY, MCGEEHAN, HAYNES,  
PHILLIPS, FAST, STEELE, LOVEJOY, MARTIN, MAZZOCCHI,  
AND LONGANACRE

[Introduced January 24, 2022; Referred to the  
Committee on Workforce Development then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §11-13MM-1, §11-13MM-2, §11-13MM-3, §11-13MM-4, §11-13MM-5, §11-  
 3 13MM-6, §11-13MM-7, §11-13MM-8, and §11-13MM-9, all relating generally to creating a  
 4 tax credit for a small manufacturing, mining or industrial business with less than 100  
 5 employees or that grosses less than \$5 million a year, if a new labor and capital intensive  
 6 heavy industry expands or develops in the State of West Virginia; is provided certain tax  
 7 incentives and draws employees within the boundaries of the State of West Virginia from  
 8 existing small manufacturing, mining or industrial businesses; and providing that these  
 9 small businesses that are affected are entitled to a tax credit per employee lost equivalent  
 10 to the employee's or employees' one year base salary.

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

**ARTICLE 13MM. WEST VIRGINIA TAX CREDIT FOR CERTAIN SMALL  
 MANUFACTURING, MINING, OR INDUSTRIAL BUSINESSES.**

**§11-13MM-1. Definitions.**

1 (a) General. - When used in this article, or in the administration of this article, terms defined  
 2 in subsection (b) of this section have the meanings ascribed to them by this section unless a  
 3 different meaning is clearly required by the context in which the term is used.

4 (b) Terms defined. –

5 “Affiliate” means and includes all persons, as defined in this section, which are affiliates of  
 6 each other when either directly or indirectly:

7 (1) One person controls or has the power to control the other; or

8 (2) A third party or third parties control or have the power to control two persons, the two  
 9 being affiliates. In determining whether concerns are independently owned and operated and  
 10 whether an affiliation exists, consideration shall be given to all appropriate factors, including  
 11 common ownership, common management, and contractual relationships.

12 “Commissioner” or “Tax Commissioner” means the Tax Commissioner of the State of  
13 West Virginia or the Tax Commissioner’s delegate.

14 “Corporation” means any corporation, joint-stock company or association and any  
15 business conducted by a trustee or trustees wherein interest or ownership is evidenced by a  
16 certificate of interest or ownership or similar written instrument.

17 “Delegate”, when used in reference to the Tax Commissioner, means any officer or  
18 employee of the Tax Division of the Department of Revenue duly authorized by the Tax  
19 Commissioner directly, or indirectly by one or more redelegations of authority, to perform the  
20 functions mentioned or described in this article.

21 “Eligible taxpayer” means an eligible small manufacturing, mining, or industrial business  
22 with less than 100 employees or grosses less than \$5 million a year in West Virginia.

23 “Eligible manufacturing business” means a small manufacturing, mining, or industrial  
24 business with less than 100 employees or that grosses less than \$5 million a year, primarily  
25 engaged in this state, that loses employees within the State of West Virginia to, and as the result  
26 of, a new labor industry expansion or development in the State of West Virginia.

27 “Natural person” or “individual” means a human being.

28 “New labor industry” means a new labor and capital-intensive heavy industry that expands  
29 or develops industry in the State of West Virginia and is provided certain tax incentives for the  
30 expansion or development, based upon certain investment and employment thresholds.

31 “Partnership” and “partner” means and includes a syndicate, group, pool, joint venture, or  
32 other unincorporated organization through or by means of which any business, financial operation  
33 or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship.

34 The term “partner” includes a member in a syndicate, group, pool, joint venture or organization.

35 “Person” means and includes any natural person, corporation, limited liability company or  
36 partnership.

37 “Related entity”, “related person”, “entity related to” or “person related to” means:

38 (1) An individual, corporation, partnership, affiliate, association or trust or any combination  
 39 or group thereof controlled by the taxpayer;

40 (2) An individual, corporation, partnership, affiliate, association or trust or any combination  
 41 or group thereof that is in control of the taxpayer;

42 (3) An individual, corporation, partnership, affiliate, association or trust or any combination  
 43 or group thereof controlled by an individual, corporation, partnership, affiliate, association or trust  
 44 or any combination or group thereof that is in control of the taxpayer; or

45 (4) A member of the same controlled group as the taxpayer.

46 For purposes of this article, “control”, with respect to a corporation, means ownership,  
 47 directly or indirectly, of stock possessing 50 percent or more of the total combined voting power  
 48 of all classes of the stock of the corporation which entitles its owner to vote. “Control”, with respect  
 49 to a trust, means ownership, directly or indirectly, of 50 percent or more of the beneficial interest  
 50 in the principal or income of the trust. The ownership of stock in a corporation, of a capital or  
 51 profits interest in a partnership or association or of a beneficial interest in a trust shall be  
 52 determined in accordance with the rules for constructive ownership of stock provided in Section  
 53 267(c) of the United States Internal Revenue Code, as amended: *Provided*, That paragraph (3),  
 54 Section 267(c) of the United States Internal Revenue Code does not apply.

55 “Tax year” or “taxable year” means the tax year of the taxpayer for federal income tax  
 56 purposes.

57 “Taxpayer” means an eligible taxpayer as defined in this section.

**§11-13MM-2. Eligibility for tax credits; creation of the credit.**

1 There is allowed to every eligible taxpayer a credit against the taxes under §11-13-1 *et*  
 2 *seq.*, §11-23-1 *et seq.*, and §11-24-1 *et seq.* of this code, as determined under this article.

**§11-13MM-3. Amount of credit allowed.**

1 *Credit allowed.* — Eligible taxpayers are allowed a credit against the tax imposed under  
 2 §11-13-1 *et seq.*, §11-23-1 *et seq.*, and §11-24-1 *et seq.* of this code. The amount of credit allowed

3 to the eligible taxpayer is the amount per employee lost, to the new labor industry, equivalent to  
4 the employee's or employees' one year base salary. This credit is effective during the first two  
5 years of the heavy industry operations.

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

1 (a) Application of credit. —The amount of credit allowed shall first be taken against the tax  
2 liabilities of the eligible taxpayer for the current taxable year imposed by article §11-13-1 et seq.  
3 of this code, then §11-23-1 et seq. of this code, and then any unused credit may be applied against  
4 taxes owed under §11-24-1 et seq. of this code.

5 (b) Any credit remaining after application of the credit against the tax liabilities specified in  
6 subsection (a) of this section for the current taxable year may be carried forward and claimed  
7 against the taxes imposed under §11-13-1 et seq., §11-23-1 et seq., and §11-24-1 et seq. of this  
8 code in the next five succeeding taxable years. Carried forward credit remaining after five years  
9 is forfeited. The credit allowed under this article shall be applied after application of all other  
10 applicable tax credits allowed for the taxable year against the taxes imposed by §11-13-1 et seq.,  
11 §11-23-1 et seq., and §11-24-1 et seq. of this code.

12 (c) For purposes of asserting the credit against tax, the taxpayer shall prepare and file an  
13 annual schedule showing the amount of tax paid by the eligible taxpayer for the taxable year, the  
14 amount of credit allowed under this article, and proof required by the Tax Commissioner that it  
15 used the natural resources in its manufacturing process or electric generation process in West  
16 Virginia. The annual schedule shall set forth the information and be in the form prescribed by the  
17 Tax Commissioner.

**§11-13MM-5. Availability of credit to successors.**

1 Where there has been a transfer or sale of the business assets of an eligible taxpayer to  
2 a successor which, subsequent to the transfer, constitutes an eligible taxpayer as defined in this  
3 article, and which successor continues to operate the business in this state, and remains subject  
4 to the taxes prescribed under §11-13-1 et seq., §11-23-1 et seq., and §11-24-1 et seq. of this

5 code, then the successor eligible taxpayer is entitled to the credit allowed under this article:  
6 Provided, That the successor taxpayer otherwise remains in compliance with the requirements of  
7 this article for entitlement to the credit.

**§11-13MM-6. Credit recapture; interest; penalties; additions to tax; statute of limitations.**

1 (a) If it appears upon audit or otherwise that any person or entity has taken the credit  
2 against tax allowed under this article and was not entitled to take the credit, then the credit  
3 improperly taken under this article shall be recaptured. Amended returns shall be filed for any tax  
4 year for which the credit was improperly taken. Any additional taxes due under this chapter shall  
5 be remitted with the amended return or returns filed with the Tax Commissioner, along with  
6 interest, and other penalties and additions to tax that may be applicable pursuant to the provisions  
7 of §11-10-1 et seq. of this code.

8 (b) Notwithstanding the provisions of §11-10-1 et seq. of this code, penalties and additions  
9 to tax imposed under that article may be waived at the discretion of the Tax Commissioner:  
10 Provided, That interest is not subject to waiver.

11 (c) Notwithstanding the provisions of §11-10-1 et seq. of this code, the statute of limitations  
12 for the issuance of an assessment of tax by the Tax Commissioner is five years from the date of  
13 filing of any tax return on which this credit was taken or five years from the date of payment of  
14 any tax liability calculated pursuant to the assertion of the credit allowed under this article,  
15 whichever is later.

16 (d) For any taxable year during which a transfer, or sale of the business assets of an  
17 eligible taxpayer to a successor eligible taxpayer under this section occurs, or a merger occurs  
18 pursuant to which credit is allowed under this article, the credit allowed under this article shall be  
19 apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based  
20 on the number of days during the taxable year that each taxpayer owned the business assets  
21 transferred.

22 (e) Where a corporation which is an eligible taxpayer entitled to the credit allowed under

23 this article is purchased through a stock purchase by a new owner and remains a legal entity so  
24 as to retain its corporate identity, the entitlement of that corporation to the credit allowed under  
25 this article will not be affected by the ownership change: *Provided*, That the corporation otherwise  
26 remains in compliance with the requirements of this article for entitlement to the credit.

27 (f) Where a corporation or other entity which is an eligible taxpayer entitled to the credit  
28 allowed under this article is merged with another corporation or entity, the surviving corporation  
29 or entity is entitled to the credit to which the predecessor eligible taxpayer was originally entitled:  
30 *Provided*, That the surviving corporation or entity otherwise complies with the provisions of this  
31 article.

32 (g) The amount of credit available in any taxable year during which a merger occurs shall  
33 be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer  
34 based on the number of days during the taxable year that each owned the transferred business  
35 assets.

36 (h) No provision of this section or of this article allows sales or other transfers of the tax  
37 credit allowed under this article. The credit allowed under this article may be transferred only in  
38 circumstances where there is a valid successorship.

**§11-13MM-7. Rulemaking.**

1 The Tax Commissioner shall adopt interpretive and procedural rules and propose  
2 legislative rules for legislative approval he or she considers necessary to carry out the purposes  
3 of this article, all under §29A-3-1 *et seq.* of this code.

**§11-13MM-8. Construction of article; burden of proof.**

1 The provisions of this article shall be strictly construed. The burden of proof is on the  
2 person or entity claiming the credit allowed by this article to establish by clear and convincing  
3 evidence that the person or entity is entitled to the amount of credit asserted for the taxable year.

**§11-13MM-9. Effective date.**

1 The credit allowed under this article is effective for tax years beginning on or after January

2 1, 2022.

NOTE: The purpose of this bill is to create a tax credit for a small manufacturing, mining, or industrial business with less than 100 employees or that grosses less than \$5 million a year. The tax credit is granted if a new labor- and capital-intensive heavy industry expands or develops in the State of West Virginia and draws employees within the boundaries of the State of West Virginia from existing small manufacturing, mining, or industrial businesses. The bill provides that these small businesses that are affected are entitled to a tax credit per employee lost equivalent to the employee's or employees' one year base salary.

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