

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### House Bill 4558

FISCAL  
NOTE

BY DELEGATES CAPITO, QUEEN, BARRETT, RILEY,

LINVILLE AND HOTT

[Introduced February 07, 2022; Referred 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 §11-13MM-1 of said code, relating to creating a tax credit for the production of  
3 Esports events; defining terms; establishing qualifications for, and the amount of, the  
4 production credit; establishing that a pass through entity is a taxpayer; requiring certain  
5 information to claim the tax credit on return; requiring a refund of credit amount if it is  
6 greater than the tax imposed; providing a limitation on the amount of credit production  
7 company may receive; establish the department's reporting requirements; and mandating  
8 sunset of credit.

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

**ARTICLE 13MM. ESPORTS EVENT PRODUCTION TAX CREDIT.**

**§11-13MM-1. Credit for certain qualifying expenses of a production company.**

1 (a) Definitions. – The following definitions apply in this section:

2 (1) “Esports event” means a scheduled form of multiplayer video game competition,  
3 particularly between professional players, individually or as teams, organized by an amateur,  
4 collegiate, or professional organization, institution, or association for live or tape-delayed  
5 broadcast. An Esports event does not include a live sporting event.

6 (2) “Highly compensated individual” means an individual who directly or indirectly receives  
7 compensation in excess of \$1 million for personal services with respect to a single production. An  
8 individual receives compensation indirectly when a production company pays a personal service  
9 company or an employee leasing company that pays the individual.

10 (3) “Live sporting event” means a scheduled sporting competition, game, or race that is  
11 not originated by a production company, but originated solely by an amateur, collegiate, or  
12 professional organization, institution, or association for live or tape-delayed television or satellite  
13 broadcast. A live sporting event does not include commercial advertising, an episodic television  
14 series, a television pilot, a music video, a motion picture, or a documentary production in which  
15 sporting events are presented through archived historical footage or similar footage taken at least

16 30 days before it is used.

17 (4) "Production" means an Esports event.

18 (5) "Production company" means a person who is engaged in the business of making  
19 original motion picture, television, or radio images of an esports event for theatrical, commercial,  
20 advertising, or educational purposes.

21 (6) "Qualifying expenses" means the sum of the following amounts spent in this state by  
22 a production company in connection with a production, less the amount paid in excess of \$1  
23 million to a highly compensated individual.

24 (A) Goods and services leased or purchased. For goods with a purchase price of \$25,000  
25 or more, the amount included in qualifying expenses is the purchase price less the fair market  
26 value of the good at the time the production is completed.

27 (B) Compensation and wages on which withholding payments are remitted to the  
28 Department of Revenue.

29 (C) The cost of production-related insurance coverage obtained on the production.  
30 Expenses for insurance coverage purchased from a related member are not qualifying expenses.

31 (D) Employee fringe contributions, including health, pension, and welfare contributions.

32 (E) Per diems, stipends, and living allowances paid for work being performed in this state.

33 (7) "Related member" has the meaning ascribed in §11-24-3a of this code.

34 (8) "Video game" means a game that employs electronics to create an interactive system  
35 between one or more players and a user interface or input device to generate visual feedback on  
36 a video display device for the player or players.

37 (b) Credit. – A taxpayer that is a production company and has qualifying expenses of at  
38 least \$250,000 with respect to a production is allowed a credit against the taxes imposed by this  
39 section equal to 25 percent of the production company's qualifying expenses. For the purposes  
40 of this section, in the case of an episodic Esports event television series, an entire season of  
41 episodes is one production. The credit is computed based on all of the taxpayer's qualifying

42 expenses incurred with respect to the production, not just the qualifying expenses incurred during  
43 the taxable year.

44 (c) Pass-Through Entity. – Notwithstanding any other provision of this code, a pass-  
45 through entity that qualifies for a credit provided in this section does not distribute the credit among  
46 any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming a  
47 credit allowed by this section. If a return filed by a pass-through entity indicates that the entity is  
48 paying tax on behalf of the owners of the entity, a credit allowed under this section does not affect  
49 the entity's payment of tax on behalf of its owners.

50 (d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for the  
51 taxable year in which the production activities are completed. The return must state the name of  
52 the production, a description of the production, and a detailed accounting of the qualifying  
53 expenses with respect to which a credit is claimed. The qualifying expenses are subject to audit  
54 by the secretary before the credit is allowed.

55 (e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax  
56 imposed by this chapter for the taxable year reduced by the sum of all credits allowable, the  
57 secretary must refund the excess to the taxpayer. The refundable excess is governed by the  
58 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this  
59 chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable  
60 credits are subtracted before refundable credits.

61 (f) Limitations. – The amount of credit allowed under this section with respect to a  
62 production that is a feature film may not exceed 20 million. No credit is allowed under this section  
63 for any production that satisfies one of the following conditions:

64 (1) It is political advertising.

65 (2) It is a television production of a news program or live sporting event.

66 (3) It contains material that is obscene, as defined in §61-8A-1 of this code.

67 (4) It is a radio production.

68 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and  
69 make available for inspection any information or records required by the Secretary of Revenue.  
70 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit.

71 (h) Report. – The department must include in a required economic incentive report the  
72 following information itemized by taxpayer:

73 (1) The location of sites used in a production for which a credit was taken.

74 (2) The qualifying expenses for which a credit was taken, classified by whether the  
75 expenses were for goods, services, or compensation paid by the production company.

76 (3) The number of people employed in the state with respect to credits taken.

77 (4) The total cost to the general fund of the credits taken.

78 (i) Sunset. – This section is repealed for qualifying expenses occurring on or after January  
79 1, 2025.

NOTE: The purpose of this bill is to provide a tax credit to production companies who produce Esports events within the state.

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