

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4655

FISCAL
NOTE

BY DELEGATES HOWELL, CRISS, PINSON, MARTIN,
HOUSEHOLDER, HAMRICK, WAMSLEY, LINVILLE, PHILLIPS,
ZATEZALO, AND STORCH

[Introduced February 11, 2022; Referred to the Select
Committee on Tourism and Economic Diversification
then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §11-13LL-1, §11-13LL-2, §11-13LL-3, §11-13LL-4, §11-13LL-5, §11-13LL-6,
 3 §11-13LL-7, §11-13LL-8, §11-13LL-9, and §11-13LL-10, all relating to the Commercial
 4 Opportunity Zone Tax Credit Act; providing for a short title; providing legislative findings
 5 and purpose; creating definitions; establishing the Commercial Opportunity Zone tax
 6 credit; providing for restrictions on investment; providing for a penalty; providing for
 7 disclosure of tax credits; providing for tax credit review and accountability; creating rules;
 8 and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13LL. COMMERCIAL OPPORTUNITY ZONE TAX CREDIT.

§11-13LL-1. Short Title

1 This article may be cited as the “Commercial Opportunity Zone Tax Credit.”

§11-13LL-2. Legislative finding and purpose.

1 The Legislature finds the encouragement of investment into commercial development of
 2 businesses in this state is in the public interest and promotes economic growth and development
 3 for the people of this state. With major businesses announcing their intended opening in West
 4 Virginia, attracting secondary commercial businesses located along border states is in the best
 5 interest of the growing economy in West Virginia, and attracting these businesses will revitalize
 6 areas of the state that will necessarily come along with new industrial development. In order to
 7 encourage investment in business development in this state and thereby increase employment
 8 and economic development, there is hereby provided a Commercial Opportunity Zone tax credit.

§11-13LL-3. Definitions.

1 As used in this article, the following terms have the meanings ascribed to them in this
 2 section, unless the context in which the term is used clearly requires another meaning or a specific
 3 different definition is provided:

4 (1) “Commercial Opportunity Zones” are designated as 100 acres of property or land to

5 be developed/improved per 1,000 people, or a portion thereof. The land may be used for the
6 purpose of commercial development/improvement in that designated area of acreage per county.
7 For example, 2600 acres shall have the equivalent amount of 26,000 people to be defined as a
8 Commercial Opportunity Zone. Any investment of an amount equivalent to or over \$250,000 for
9 a period of 10 years - or, for the life of the financing of the development project – shall hereafter
10 be taxed as a Class 2 property. Only the above listed \$250,000 or more improvement qualifies
11 for the Class 2 rate. Sales tax that is collected by the establishment after development shall be
12 offset by a tax credit from the state for the equivalent amount of personal income tax that
13 establishment would have had to pay for that development needs, as designated by the Secretary
14 of Commerce.

15 (2) “Eligible taxpayer” means a person that has received certification from the economic
16 development authority that a portion of the Commercial Opportunity Zone tax credit has been
17 allocated to it, that is subject to the tax otherwise imposed by this chapter, and that has made a
18 qualified investment into a Commercial Opportunity Zone for the purpose of bringing businesses
19 into a Commercial Opportunity Zone.

20 (3) “Person” includes any natural person, corporation, limited liability company, or
21 partnership.

22 (4) “Qualified investment” means an investment into the development of property in a
23 Commercial Opportunity Zone as otherwise defined in this section.

24 (5) “State tax rate” is the division of taxation into four classes by the state constitution,
25 defined as the following:

26 Class 1: Intangible personal property and certain personal property employed exclusively
27 in agriculture. [No property is currently taxed in this classification.]

28 Class 2: Owner-occupied residential property used exclusively for residential purposes
29 and all farmland used for agricultural purposes by its owner or bona fide tenant.

30 Class 3: All real and personal property situated outside a municipality that is not taxed in

31 Class 1 or Class 2.

32 Class 4: All property situated inside a municipality that is not taxed in Class 1 or Class 2.

33 (6) "Tax credit" means the Commercial Opportunity Zone tax credit authorized by this
34 article.

35 (7) "Taxable year" means the tax year of the eligible taxpayer.

§11-13LL-4. Commercial Opportunity Zone tax credit.

1 (a) Credit allowed. -- There shall be allowed to each eligible taxpayer in a Commercial
2 Opportunity Zone that creates or maintains a business development in West Virginia a tax credit
3 for the taxable year in which the investment was made. Any investment of an improvement
4 amount over \$250,000 for a period of 10 years or longer - or, for the life of the financing of the
5 project - shall be taxed as a Class 2 property.

6 (b) Sales tax that is collected by the establishment shall be offset by a tax credit from the
7 state for the equivalent amount of personal income tax that establishment would have had to pay.

8 (c) No more than \$1 million of the tax credits allowed under this section shall be allocated
9 by the economic development authority during any fiscal year. The economic development
10 authority shall allocate the tax credits in the order the applications therefor are received.

11 (d) Business franchise tax. -- The tax credit is first applied to reduce the taxes imposed
12 upon the eligible taxpayer by §11-23-1 et seq. of this code for the taxable year (determined after
13 application of the credits against tax provided in section seventeen of said article, but before
14 application of any other allowable credits against tax).

15 (e) Corporation net income taxes. -- After application of subsection (c) of this section, any
16 unused tax credit is next applied to reduce the taxes imposed upon the eligible taxpayer by §11-
17 24-1 et seq. of this code for the taxable year (determined before application of allowable credits
18 against tax).

19 (f) If the eligible taxpayer is a limited liability company, an electing small business
20 corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as

21 amended), or a partnership, any unused tax credit remaining after application of subsections (c)
22 and (d) of this section is allowed as a tax credit against the taxes imposed by §11-24-1 et seq. of
23 this code on owners of the eligible taxpayer.

24 (1) Electing small business corporations (as defined above in subsection (e)), limited
25 liability companies, and partnerships shall allocate the tax credit allowed by this article among
26 their members in the same manner as profits and losses are allocated for the taxable year.

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

29 (g) Personal income tax taxes. -- After application of subsections (c), (d) and (e) of this
30 section, any unused tax credit is next applied to reduce the taxes imposed by §11-21-1 et seq. of
31 this code for the taxable year (determined before application of allowable credits against tax) of
32 the eligible taxpayer.

33 (h) If the eligible taxpayer is a limited liability company, an electing small business
34 corporation (as defined in subsection (e) of this section) or a partnership, any unused tax credit
35 remaining after application of subsections (c), (d), (e) and (f) of this section is allowed as a tax
36 credit against the taxes imposed by §11-21-1 et seq. of this code on owners of the eligible
37 taxpayer.

38 (1) Electing small business corporations (as defined in subsection (e) of this section),
39 limited liability companies, and partnerships shall allocate the tax credit allowed by this article
40 among their members in the same manner as profits and losses are allocated for the taxable year.

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

43 (i) The total amount of tax credit that may be used in any taxable year by any eligible
44 taxpayer in combination with the owners of the eligible taxpayer under subsections (e) and (g) of
45 this section may not exceed \$50,000. The total amount of qualified investment that a Commercial
46 Zone Investment company may accept from all eligible taxpayers in any taxable year is \$1 million.

47 (j) Unused credit carry forward. -- If the tax credit allowed under this article in any taxable
48 year exceeds the sum of the taxes enumerated in subsections (c), (d), (e), (f) and (g) of this
49 section for that taxable year, the eligible taxpayer and owners of eligible taxpayers described in
50 subsections (e) and (g) of this section may apply the excess as a tax credit against those taxes,
51 in the order and manner stated in this section, for succeeding taxable years until the earlier of the
52 following:

53 (1) The full amount of the excess tax credit is used; or

54 (2) The expiration of the fourth taxable year after the taxable year in which the investment
55 was made. The tax credit remaining thereafter is forfeited.

56 (k) No tax credit is allowed or may be applied under this article until the taxpayer seeking
57 to claim the tax credit has:

58 (1) Filed with the economic development authority a written application for the tax credit;

59 (2) Filed with the economic development authority the research and development program
60 or project certification issued pursuant to §11-13R-6 of this code for the Commercial Opportunity
61 Zone company that will benefit from the investment;

62 (3) Filed with the economic development authority the certificate of incorporation for the
63 Commercial Opportunity Zone company that will benefit from the investment; and

64 (4) Received from the economic development authority certification of the amount of tax
65 credit to be allocated to the eligible taxpayer.

§11-13LL-5. Restrictions on investment.

1 (a) No Commercial Opportunity Zone development or investment may be made in a
2 Commercial Opportunity Zone development company that is the alter ego of the eligible taxpayer.

3 (b) The eligible taxpayer shall maintain its Commercial Opportunity Zone development or
4 investment for a minimum period of 10 years or the life of the loan: *Provided*, That an eligible
5 taxpayer receiving repayment or return of a Commercial Opportunity Zone development or
6 investment (exclusive of interest, dividends or other earnings on the investment) shall within three

7 calendar months from the date of repayment or return reinvest the repaid or returned amount of
8 the initial investment in another Commercial Opportunity Zone development company for a period
9 of time at least equal to the remainder of the initial five-year term.

§11-13LL-6. Penalty.

1 An eligible taxpayer that fails to maintain a Commercial Opportunity Zone development
2 investment for the required period of time stated in section five of this article shall pay to the State
3 Tax Commissioner a penalty equal to all of the tax credits asserted under this article by the eligible
4 taxpayer with interest, calculated at the rate set forth in §11-10-17a of this code, from the date
5 the tax credits were certified as allocated to the eligible taxpayer. The Tax Commissioner shall
6 give notice to the eligible taxpayer of any penalties imposed under this section. The penalty shall
7 be assessed and collected in the same manner as tax. The Tax Commissioner shall deposit any
8 amounts received under this subsection in the General Revenue Fund.

§11-13LL-7. Disclosure of tax credits.

1 Notwithstanding any provision in this code to the contrary, the Tax Commissioner shall
2 annually publish in the state register the name and address of every eligible taxpayer and the
3 amount of any tax credit asserted under this article.

§11-13LL-8. Tax credit review and accountability.

1 (a) Beginning on February 1, 2024, and on February 1 every third year thereafter, the Tax
2 Commissioner shall submit to the Governor, the President of the Senate and the Speaker of the
3 House of Delegates a tax credit review and accountability report evaluating the cost effectiveness
4 of the tax credit allowed under this article during the most recent three-year period for which
5 information is available: *Provided*, That the requirement to file the credit review and accountability
6 report terminates June 30, 2030, unless the termination of entitlement to the tax credit as stated
7 in section ten of this article terminates. The criteria to be evaluated includes, but is not limited to,
8 for each year of the three-year period:

9 (1) The numbers of eligible taxpayers claiming the tax credit;

10 (2) The net number, type, and duration of new jobs created by all Commercial Opportunity
 11 Zone companies in which taxpayers claiming the credit made investment in and the wages and
 12 benefits paid by such companies;

13 (3) The cost of the tax credit;

14 (4) The cost of the tax credit per new job created; and

15 (5) Comparison of employment trends for the industry and for taxpayers within the industry
 16 that claim the tax credit.

17 (b) Eligible taxpayers claiming the tax credit shall provide any information required by the
 18 Tax Commissioner for the purpose of preparing the report: *Provided*, That such information shall
 19 be subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this
 20 code.

§11-13LL-9. Rules.

1 The State Tax Department and the economic development authority may promulgate rules
 2 in accordance with §29A-3-1 *et seq.* of this code to carry out the policy and purposes of this
 3 article, to provide any necessary clarification of the provisions of this article and to efficiently
 4 provide for the general administration of this article.

§11-13LL-10. Effective date.

1 The provisions of this article will become effective on July 1, 2022, and apply only to
 2 qualified investment/improvement made on or after that date.

NOTE: The purpose of this bill is to establish the Commercial Opportunity Zone Tax Credit Act. The bill provides for a short title. The bill provides for legislative findings and purpose. The bill creates definitions. The bill establishes the Commercial Opportunity Zone tax credit. The bill provides for restrictions on investment. The bill provides for a penalty. The bill provides for the disclosure of tax credit. The bill provides for tax credit review and accountability. The bill creates rules. Finally, the bill provides for an effective date.

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