

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4760

FISCAL
NOTE

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PACK, ESPINOSA, MAYNOR, WAMSLEY, HANNA, AND

LONGANACRE

[Introduced February 15, 2022; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §11-21-71 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §11-24-44, all relating to
3 providing a tax credit against the state corporate net income tax to for-profit corporations
4 or a tax credit against payroll withholdings for nonprofit corporations for expenditures
5 related to the establishment and operation of employer-provided child-care facilities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-71. Requirement of withholding tax from wages.

1 (a) *General.* -- Every employer maintaining an office or transacting business within this
2 state and making payment of any wage taxable under this article to a resident or nonresident
3 individual shall deduct and withhold from such wages for each payroll period a tax computed in
4 such manner as to result, so far as practicable, in withholding from the employee's wages during
5 each calendar year an amount substantially equivalent to the tax reasonably estimated to be due
6 under this article resulting from the inclusion in the employee's West Virginia adjusted gross
7 income of wages received during such calendar year. The method of determining the amount to
8 be withheld shall be prescribed by the Tax Commissioner, with due regard to the West Virginia
9 withholding exemption of the employee and any low income exclusion allowed to such employee
10 under section 10 of this article and asserted in good faith by the employee. This section shall not
11 apply to payments by the United States for service in the Armed Forces of the United States:
12 *Provided,* That the Tax Commissioner may execute an agreement with the secretary of the
13 treasury, as provided in 5 U.S.C. §5517, for the mandatory withholding of tax under this section
14 on pay to members of the National Guard while participating in exercises or performing duty under
15 32 U.S.C. §502, and on pay to members of the ready reserve while participating in scheduled
16 drills or training periods or serving on active duty for training under 10 U.S.C. §270(a).

17 (b) *Withholding exemptions.* -- For purposes of this section:

18 (1) An employee shall be entitled to the same number of West Virginia withholding

19 exemptions as the number of withholding exemptions to which he or she is entitled for federal
20 income tax withholding purposes. An employer may rely upon the number of federal withholding
21 exemptions claimed by the employee, except where the employee claims a higher number of
22 West Virginia withholding exemptions.

23 (2) With respect to any taxable year beginning after December 31, 1986, the amount of
24 each West Virginia exemption shall be \$2,000 whether the individual is a resident or nonresident.

25 (c) *Exception for certain nonresidents.* -- If the income tax law of another state of the United
26 States or of the District of Columbia results in its residents being allowed a credit under section
27 forty sufficient to offset all taxes required by this article to be withheld from wages of an employee,
28 the Tax Commissioner may by regulation relieve the employers of such employees from
29 withholding requirements of this article with respect to such employees.

30 (d) *Effective date.* -- The provisions of this section, as amended in the year 1996, shall
31 apply to all taxable years or portions thereof beginning after June 30, 1996.

32 (e) Tax Credit Against Withholdings for Non-Profit Corporations Providing Employee Child
33 Care – The tax credit provided for in §11-24-44 of this code may be taken against withholdings
34 required by this section by nonprofit corporations organized under Internal Revenue Code
35 §501(c)(3) or §501(c)(6) and who are exempt from the corporate net income pursuant to §11-24-
36 5 of this code. All of the provisions and limitations of §11-24-44 of this code apply to any credit
37 claimed under this subsection.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-44. Tax credit for employers providing child care for employees.

1 (a) Definitions -- As used in this code section, the term:

2 (1) "Commissioner" or "Tax Commissioner" are used interchangeably herein and mean
3 the Tax Commissioner of the State of West Virginia, or his or her delegate;

4 (2) "Cost of operation" means reasonable direct operational costs incurred by an employer
5 as a result of providing employer provided or employer sponsored child care facilities: *Provided,*

6 That the term cost of operation shall exclude the cost of any property that is qualified child care
7 property.

8 (3) "Department" or "Tax Department" means the West Virginia State Tax Department.

9 (4) "Employer" means any employer upon whom an income tax is imposed by this article
10 or any employer organized as a nonprofit corporation under Internal Revenue Code §501(c)(3) or
11 §501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5 of this code.

12 (5) "Employer provided" refers to child care offered on the premises of the employer.

13 (6) "Employer sponsored" refers to a contractual arrangement with a child care facility that
14 is paid for by the employer.

15 (7) "Premises of the employer" refers to any location within the state of West Virginia and
16 located on the workplace premises of the employer providing the child care or one of the
17 employers providing the child care in the event that the child care property is owned jointly or
18 severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such
19 workplace premises are impracticable or otherwise unsuitable for the on-site location of such child
20 care facility, as determined by the commissioner, such facility may be located within a reasonable
21 distance of the premises of the employer.

22 (8) "Qualified child care property" means all real property and tangible personal property
23 purchased or acquired on or after July 1, 2022, or which property is first placed in service on or
24 after July 1, 2022, for use exclusively in the construction, expansion, improvement, or operation
25 of an employer provided child care facility, but only if:

26 (A) The children who use the facility are primarily children of employees of:

27 (i) The taxpayer and other employers in the event that the child care property is owned
28 jointly or severally by the taxpayer and one or more employers; or

29 (ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning
30 of section 1504(a) of the Internal Revenue Code; and

31 (B) The taxpayer has not previously claimed any tax credit for the cost of operation for

32 such qualified child care property placed in service prior to taxable years beginning on or after
33 January 1, 2022.

34 Qualified child care property includes, but is not limited to, amounts expended on land
35 acquisition, improvements, buildings, and building improvements and furniture, fixtures, and
36 equipment.

37 (9) "Recapture amount" means, with respect to property as to which a recapture event has
38 occurred, an amount equal to the applicable recapture percentage of the aggregate credits
39 claimed under subsection (d) of this code section for all taxable years preceding the recapture
40 year, whether or not such credits were used.

41 (10) "Recapture event" refers to any disposition of qualified child care property by the
42 taxpayer, or any other event or circumstance under which property ceases to be qualified child
43 care property with respect to the taxpayer, except for:

- 44 (A) Any transfer by reason of death;
- 45 (B) Any transfer between spouses or incident to divorce;
- 46 (C) Any transaction to which section 381(a) of the Internal Revenue Code applies;
- 47 (D) Any change in the form of conducting the taxpayer's trade or business so long as the
48 property is retained in such trade or business as qualified child care property and the taxpayer
49 retains a substantial interest in such trade or business; or
- 50 (E) Any accident or casualty.

51 (11) "Recapture percentage" refers to the applicable percentage set forth in the following
52 table:

<u>If the recapture event occurs within-</u>	<u>The recapture percentage is:</u>
<u>Five full years after the qualified child care property is</u>	
<u>placed in service</u>	<u>100</u>
<u>The sixth full year after the qualified child care property is</u>	
<u>placed in service.....</u>	<u>90</u>

58 The seventh full year after the qualified child care property
59 is placed in service 80
60 The eighth full year after the qualified child care property is
61 placed in service 70
62 The ninth full year after the qualified child care property is
63 placed in service 60
64 The tenth full year after the qualified child care property is
65 placed in service..... 50
66 The eleventh full year after the qualified child care property
67 is placed in service 40
68 The twelfth full year after the qualified child care property
69 is placed in service 30
70 The thirteenth full year after the qualified child care
71 property is placed in service 20
72 The fourteenth full year after the qualified child care
73 property is placed in service 1 0
74 Any period after the close of the fourteenth full year after
75 the qualified child care property is placed in service. 0

76 (12) "Recapture year" means the taxable year in which a recapture event occurs with
77 respect to qualified child care property.

78 (b) Credit for Capital Investment in Child Care Property -- A taxpayer shall be allowed a
79 credit against the tax imposed under this article for the taxable year in which the taxpayer first
80 places in service qualified child care property and for each of the ensuing four taxable years
81 following such taxable year. The aggregate amount of the credit shall equal 100 percent of the
82 cost of all qualified child care property purchased or acquired by the taxpayer and first placed in
83 service during a taxable year, and such credit may be claimed at a rate of 20 percent per year

84 over a period of five taxable years. In the case of a qualified child care property jointly owned by
85 two or more unaffiliated employers, each employer's credit is limited to that employer's respective
86 investment in the qualified child care property.

87 (c) *Limitations on Capital Investment Credit* -- The tax credit allowable under subsection
88 (b) of this code section shall be subject to the following conditions and limitations:

89 (1) Any such credit claimed in any taxable year but not used in such taxable year may be
90 carried forward for three years from the close of such taxable year. The sale, merger, acquisition,
91 or bankruptcy of any taxpayer shall not create new eligibility for the credit in any succeeding
92 taxpayer;

93 (2) In no event shall the amount of any such tax credit allowed under subsection (b), when
94 combined with any such tax credit allowed under subsection (g), including any carryover of such
95 credits from a prior taxable year, exceed 50 percent of the taxpayer's income tax liability as
96 determined without regard to any other credits; and

97 (3) For every year in which a taxpayer claims such credit, the taxpayer shall attach a
98 schedule to the taxpayer's West Virginia income tax return setting forth the following information
99 with respect to such tax credit:

100 (A) A description of the child care facility;

101 (B) The amount of qualified child care property acquired during the taxable year and the
102 cost of such property;

103 (C) The amount of tax credit claimed for the taxable year;

104 (D) The amount of qualified child care property acquired in prior taxable years and the
105 cost of such property;

106 (E) Any tax credit utilized by the taxpayer in prior taxable years;

107 (F) The amount of tax credit carried over from prior years;

108 (G) The amount of tax credit utilized by the taxpayer in the current taxable year;

109 (H) The amount of tax credit to be carried forward to subsequent tax years; and

110 (l) A description of any recapture event occurring during the taxable year, a calculation of
111 the resulting reduction in tax credits allowable for the recapture year and future taxable years,
112 and a calculation of the resulting increase in tax for the recapture year.

113 (d) Recapture of Credit -- If a recapture event occurs with respect to qualified child care
114 property:

115 (1) The credit otherwise allowable under subsection (b) of this code section with respect to
116 such property for the recapture year and all subsequent taxable years shall be reduced by the
117 applicable recapture percentage; and

118 (2) All credits previously claimed with respect to such property under subsection (b) of this
119 code section shall be recaptured as follows:

120 (A) Any carryover attributable to such credits under paragraph (1) of subsection (c) of this
121 code section shall be reduced, but not below zero, by the recapture amount;

122 (B) The tax credit otherwise allowable under subsection (b) of this code section for the
123 recapture year, if any, as reduced under paragraph (1) of this subsection, shall be further reduced,
124 but not below zero, by the excess of the recapture amount over the amount taken into account
125 under subparagraph (A) of this paragraph; and

126 (C) The tax imposed under this article for the recapture year shall be increased by the
127 excess of the recapture amount over the amounts taken into account under subparagraphs (A)
128 and (B) of this paragraph, as applicable.

129 (e) Credit for Operating Costs -- In addition to the tax credit provided under subsection
130 (b) of this code section, a tax credit against the tax imposed under this article shall be granted to
131 an employer who provides or sponsors child care for employees. The amount of the tax credit
132 shall be equal to 100 percent of the cost of operation to the employer less any amounts paid for
133 by employees during a taxable year.

134 (f) Limitations on Credit for Operating Costs -- The tax credit allowed under subsection (g)
135 of this code section shall be subject to the following conditions and limitations:

136 (1) Such credit shall when combined with the credit allowed under subsection (b) shall
137 not exceed 50 percent of the amount of the taxpayer's income tax liability for the taxable year as
138 computed without regard to any other credits;

139 (2) Any such credit claimed but not used in any taxable year may be carried forward for
140 five years from the close of the taxable year in which the cost of operation was incurred; and

141 (3) The employer shall certify to the department the names of the employees, the name
142 of the child care provider, and such other information as may be required by the department to
143 ensure that credits are granted only to employers who provide or sponsor approved child care
144 pursuant to this code section.

145 (g) Credit Applied to Non-Profit Corporations – In the case of nonprofit corporations
146 organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt from tax
147 under this article pursuant to §11-24-5 of the code, the credit shall be taken against employee
148 payroll withholdings made pursuant to §11-21-71 of the code.

149 (h) Rules --The Tax Commissioner may promulgate such interpretive, legislative and
150 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose
151 of this section and to implement the intent of the Legislature. The Tax Commissioner may
152 promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2023.
153 All rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

NOTE: The purpose of this bill is to provide a tax credit to for-profit and nonprofit corporations to encourage the establishment of child-care facilities for the benefit of their employees. The credit for for-profit corporations would be taken against the corporate net income tax. The credit for nonprofit corporations would apply to payroll withholdings and would allow the nonprofit to recoup costs associated with employer-provided child care by keeping a certain percentage of employee personal income tax withholdings that would otherwise be remitted to the State Tax Department.

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