WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 656

BY SENATORS TAKUBO, BOLEY, HAMILTON, NELSON,

PHILLIPS, STOLLINGS, SWOPE, SYPOLT, TRUMP,

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[Introduced February 16, 2022; referred

to the Committee on Finance]

A BILL to amend and reenact §11-21-71 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-24-44, all relating to providing a tax credit against the state corporate net income tax to for-profit corporations or a tax credit against payroll withholdings for nonprofit corporations for expenditures 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.

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

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

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

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

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

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

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

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

ARTICLE 24. CORPORATION NET INCOME TAX.

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

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

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

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

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

(3) “Department” or “Tax Department” means the West Virginia State Tax Department.

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

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

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

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

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

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

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

(ii) A corporation that is a member of the taxpayer’s “affiliated group” within the meaning of section 1504(a) of the Internal Revenue Code; and

(B) The taxpayer has not previously claimed any tax credit for the cost of operation for such qualified child care property placed in service prior to taxable years beginning on or after January 1, 2022.

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

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

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

(A) Any transfer by reason of death;

(B) Any transfer between spouses or incident to divorce;

(C) Any transaction to which section 381(a) of the Internal Revenue Code applies;

(D) Any change in the form of conducting the taxpayer’s trade or business so long as the property is retained in such trade or business as qualified child care property and the taxpayer retains a substantial interest in such trade or business; or

(E) Any accident or casualty.

(11) “Recapture percentage” refers to the applicable percentage set forth in the following table:

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

The seventh full year after the qualified child care property is placed in service 80

The eighth full year after the qualified child care property is placed in service 70

The ninth full year after the qualified child care property is placed in service 60

The tenth full year after the qualified child care property is placed in service........ 50

The eleventh full year after the qualified child care property is placed in service 40

The twelfth full year after the qualified child care property is placed in service 30

The thirteenth full year after the qualified child care property is placed in service 20

The fourteenth full year after the qualified child care property is placed in service 1 0

Any period after the close of the fourteenth full year after the qualified child care property is placed in service. 0

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

(b) *Credit for Capital Investment in Child Care Property* -- A taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child care property and for each of the ensuing four taxable years following such taxable year. The aggregate amount of the credit shall equal 100 percent of the cost of all qualified child care property purchased or acquired by the taxpayer and first placed in service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a period of five taxable years. In the case of a qualified child care property jointly owned by two or more unaffiliated employers, each employer's credit is limited to that employer's respective investment in the qualified child care property.

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

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

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

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

(A) A description of the child care facility;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) *Rules* --The Tax Commissioner may promulgate such interpretive, legislative and procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2023. 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.