

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 656

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[Originating in the Committee on Finance; reported on
February 25, 2022]

1 A BILL to amend and reenact §11-21-71 of the Code of West Virginia, 1931, as amended; 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, limited liability
5 corporations, sole proprietorships, partnerships, and limited partnerships for expenditures
6 related to the establishment and operation of employer-provided or sponsored child-care
7 facilities; defining terms; providing for rulemaking; setting the amount of the credit;
8 providing for limitation of the credit; and providing for a recapture process.

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
26 United States or of the District of Columbia results in its residents being allowed a credit under
27 section forty sufficient to offset all taxes required by this article to be withheld from wages of an
28 employee, the Tax Commissioner may by regulation relieve the employers of such employees
29 from 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 pursuant to 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 pursuant to this subsection.

38 (f) Tax credit against withholdings for limited liability company employee child care. —The
39 tax credit provided for in §11-24-44 of this code may be taken against withholdings required by
40 this section by members of a limited liability companies organized pursuant to §31-1-101 et. seq.

41 of this code. All of the provisions and limitations of §11-24-44 of this code apply to any credit
42 claimed pursuant to this subsection.

43 (g) Tax credit against withholdings for sole proprietorship employee child care. —The tax
44 credit provided for in §11-24-44 of this code may be taken against withholdings required by this
45 section by an owner of a sole proprietorship who has filed a business registration certificate with
46 the state tax department as required by §11-12-2 of this code. All of the provisions and limitations
47 of §11-24-44 of this code apply to any credit claimed pursuant to this subsection.

48 (h) Tax credit against withholdings for partnership employee child care. — The tax credit
49 provided for in §11-24-44 of this code may be taken against withholdings required by this section
50 by an members of a partnership organized pursuant to §47B-1-1 et seq. of this code. All of the
51 provisions and limitations of §11-24-44 of this code apply to any credit claimed pursuant to this
52 subsection.

53 (i) Tax credit against withholdings for limited partnership employee child care. — The tax
54 credit provided for in §11-24-44 of this code may be taken against withholdings required by this
55 section by an members of a limited partnership organized pursuant to §47-9-1 et seq. of this code.
56 All of the provisions and limitations of §11-24-44 of this code apply to any credit claimed pursuant
57 to 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 section, the term:

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

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 pursuant to Internal Revenue Code
11 §501(c)(3) or §501(c)(6) that is exempt from the tax imposed by this article pursuant to §11-24-5
12 of this code.

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

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

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

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

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

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

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

33 Qualified child-care property includes, but is not limited to, amounts expended on land
34 acquisition, building, improvements, and building improvements and furniture, fixtures, and
35 equipment directly related to the operation of child care property as defined in this section.

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

40 (9) "Recapture event" means any disposition of qualified child-care property by the
41 taxpayer, or any other event or circumstance pursuant to which property ceases to be qualified
42 child-care property with respect to the taxpayer, except for:

43 (A) Any transfer by reason of death;

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

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

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

49 (E) Any accident or casualty.

50 (10) "Recapture percentage" means the applicable percentage set forth in the following
51 table:

52 If the recapture event occurs within _____ The recapture percentage is:

53 Five full years after the qualified child-care property is

54 placed in service 100

55 The sixth full year after the qualified child-care property is

56 placed in service..... 90

57 The seventh full year after the qualified child-care property

58 is placed in service 80

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

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

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

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

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

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

71 The 14th full year after the qualified child-care
72 property is placed in service 0

73 Any period after the close of the 14th full year after
74 the qualified child-care property is placed in service..... 0

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

77 (b) Credit for capital investment in child-care property. — A taxpayer shall be allowed a
78 credit against the tax imposed pursuant to this article for the taxable year in which the taxpayer
79 first places in service qualified child-care property and for each of the ensuing four taxable years
80 following such taxable year. The aggregate amount of the credit shall equal 100 percent of the
81 cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in
82 service during a taxable year, and such credit may be claimed at a rate of 20 percent per year
83 over a period of five taxable years. In the case of a qualified child-care property jointly owned by

84 two or more unaffiliated employers, each employer's credit is limited to that employer's respective
85 investment in the qualified child-care property.

86 (c) Limitations on capital investment credit. — The tax credit allowable pursuant to
87 subsection (b) of this section shall be subject to the following conditions and limitations:

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

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

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

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

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

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

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

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

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

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

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

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

112 (d) Recapture of credit. — If a recapture event occurs with respect to qualified child care
113 property:

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

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

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

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

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

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

133 (f) Limitations on credit for operating costs. — The tax credit allowed pursuant to
134 subsection (g) of this section shall be subject to the following conditions and limitations:

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

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

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

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

148 (h) Rules. — The Tax Commissioner may promulgate such interpretive, legislative, and
149 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose
150 of this section and to implement the intent of the Legislature. The Tax Commissioner may
151 promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code.