

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **Senate Bill 79**

BY SENATORS STOLLINGS, JEFFRIES, LINDSAY, CAPUTO,

BEACH, AND WOELFEL

[Introduced January 12, 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 section,  
 2 designated §11-13Q-10b, relating to authorizing a tax credit for business entities that  
 3 invest in certain fresh food retailers located in underserved communities and similar areas.

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

**ARTICLE 13Q. ECONOMIC OPPORTUNITY TAX CREDIT.**

**§11-13Q-10b. Credit for fresh food retailer.**

1 (a) Definitions. -- For the purposes of this section:

2 “Convenience store” means a store which is principally devoted to providing the public  
 3 with a convenient location to purchase consumable products quickly and in which the area open  
 4 to the public is less than 5,000 square feet.

5 “Fresh food retailer” means a retail establishment, whether organized for profit or not for  
 6 profit, which is principally devoted to the sale of meat, seafood, fresh fruits and vegetables, dairy  
 7 products, dry groceries, and household products or which derives a substantial amount of its  
 8 gross revenue from the sale of such products. The term includes a grocery store.

9 “Grocery store” means a store which is principally devoted to the sale of food for human  
 10 consumption off the premises or which derives a substantial amount of its gross revenue from the  
 11 sale of food for human consumption off the premises, regardless of whether the store is also  
 12 devoted to or derives gross revenue from the sale of nonfood items. The term does not include:

13 (1) A convenience store; and

14 (2) A store at which the sale of food for human consumption off the premises is incidental  
 15 to the principal purpose of the store.

16 “Qualified fresh food retailer” means a business that is:

17 (1) A fresh food retailer;

18 (2) A business described in section 45D(d)(2) of the Internal Revenue Code of 1986, 26  
 19 U.S.C. § 45D(d)(2), and 26 C.F.R § 1.45D-1(d)(4); and

20 (3) Located in:

- 21 (A) An underserved community;
- 22 (B) A severely distressed census tract, as defined in NRS 231A.240; or
- 23 (C) A census tract that is contiguous to a census tract described in paragraph (A) or (B).
- 24 “Severely distressed census tract” means a census tract that, in the immediately preceding
- 25 census, had:
- 26 (A) More than 30 percent of households with a household income below the federally
- 27 designated level signifying poverty;
- 28 (B) A median household income of less than 60 percent of the median household income
- 29 in this state; or
- 30 (C) A rate of unemployment that was equal to or greater than 150 percent of the national
- 31 average.
- 32 “Underserved community” means a census tract determined to be an area with low
- 33 supermarket access by either the United States Department of Agriculture as identified in the
- 34 Food Access Research Atlas or through a methodology that has been adopted for use by another
- 35 governmental or philanthropic healthy food initiative.
- 36 (b) Amount of credit allowed. --
- 37 (1) Credit allowed. -- An eligible fresh food retailer is allowed a credit against the portion
- 38 of taxes imposed by this state that are attributable to and the direct consequence of the eligible
- 39 fresh food retailer’s qualified investment in a new or expanded business in this state: *Provided,*
- 40 That for the purposes of this section and notwithstanding the provisions of §11-13Q-3 of this code,
- 41 a qualified investment does not require the creation of new jobs. The amount of this credit is
- 42 determined as provided in subdivision (2) of this subsection.
- 43 (2) Amount of credit. -- The annual amount of credit allowable under this subsection is
- 44 determined by dividing the amount of the eligible fresh food retailer’s “qualified investment” as
- 45 determined under §11-13Q-8 of this code in “property purchased for business expansion” as
- 46 defined in §11-13Q-3 of this code by 10.

47 (3) Application of credit. -- The annual credit allowance must be taken beginning with the  
48 taxable year in which the taxpayer places the qualified investment into service or use in this state,  
49 unless the taxpayer elects to delay the beginning of the 10-year credit period until the next  
50 succeeding taxable year. This election is made in the annual income tax return filed under this  
51 chapter by the taxpayer for the taxable year in which the qualified investment is first placed in  
52 service or use. Once made, this election is not revocable. The annual credit allowance shall be  
53 taken and applied in the manner prescribed in §11-13Q-7 of this code.

54 (c) Rules. -- The commissioner may propose such rules for legislative approval in  
55 accordance with §29A-3-1 et seq. as he or she determines necessary in order to determine the  
56 amount of credit allowed under this section to a taxpayer; to verify a taxpayer's continued  
57 entitlement to claim the credit; and to verify proper application of the credit allowed.

58 (d) The commissioner may require a taxpayer, intending to claim credit under this section,  
59 to file with the commissioner a notice of intent to claim this credit before the taxpayer begins  
60 reducing his or her monthly or quarterly installment payments of estimated tax for the credit  
61 provided in this section.

NOTE: The purpose of this bill is to authorize a tax credit for certain business entities that invest in certain fresh food retailers located in underserved communities and similar areas.

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