WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3096

FISCAL NOTE

By Delegates Howell, Clark, Westfall, Hornby,

Crouse, Dittman, Petitto, Heckert and Skaff

[Introduced January 26, 2023; Referred to the

Committee on Economic Development and Tourism

then Finance]

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

Be it enacted by the Legislature of West Virginia:

ARTICLE 13MM. DISTRIBUTION CENTER TAX CREDIT.

§11-13MM-1. Short Title.

This article may be cited as the "Distribution Center Tax Credit."

§11-13MM-2. Legislative findings and purpose.

This West Virginia Legislature finds that, whereas, according to the 2020 census, the total population contained within the state of West Virginia and counties of adjacent states within 50 miles of West Virginia’s border totals 17,828,209 persons, it is manifestly in the public interest of the State of West Virginia to incentivize the placement of distribution centers within West Virginia.

The West Virginia Legislature further finds that:

The encouragement of investment of commercial distribution and manufacturing centers into both rural and urban parts of West Virginia, rather than simply alongside interstates and major highways, is in the public interest, and promotes economic growth and development for the people of this state. Presently, many distribution centers choose to build facilities adjacent to interstates as a matter of convenience for their day-to-day operations. Purchases of certain tangible personal property in qualified warehouse and distribution centers may already be exempt from the consumer sales and service tax. However, to better encourage both small and large distribution centers to choose to build their facilities in this state, and thereby increase employment and economic development for all areas of West Virginia, there is hereby provided a Distribution Center tax credit equal to the difference between their annual real property taxes paid if the development site had been taxed as Class 2 property.

§11-13MM-3. Definitions.

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

(1) "Development site" for the purpose of this section is designated as property or land to be developed/improved for the distribution center. For small distribution centers, this land must be located at least ten miles from the nearest West Virginia institute or major highway in West Virginia.

(2) "Large distribution center" means a specialized warehouse that serves as a hub to strategically produce and/or store finished and packaged goods for retail sale, streamline the picking and packing process, and ship goods out to another location or final destination, and existing in a space that is 501,000 square feet or larger. Large distribution centers are not subject to the distance required for purposes of this tax credit.

(3) "Person" includes any natural person, corporation, limited liability company, or partnership.

(4) "Qualified investment" means an investment into the development or expansion of property into a development site location for the purpose of developing or expanding a distribution center as otherwise defined in this section. Any investment by a company into a distribution center to be developed or expanded, built, and maintained in West Virginia shall receive a tax credit equal to the difference between their annual real property taxes paid on the development site, and the amount they would have paid if the development site had been taxed as Class 2 property. Additionally, distribution centers shall receive a salvage value tax credit for machinery and equipment that have been fully depreciated and are no longer used as part of the production

process.

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

Class 1: Intangible personal property and certain personal property employed exclusively in agriculture.

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

Class 3: All real and personal property situated outside a municipality that is not taxed in Class 1 or Class 2.

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

(6) "Small distribution center" means a specialized warehouse that serves as a hub to strategically store finished and packaged goods for retail sale, streamline the picking and packing process, and ship goods out to another location or final destination, and existing in a space between 50,000 square feet and 500,000 square feet. Additionally, for purposes of this tax credit, small distribution centers must be located at least 10 miles or further from the nearest interstate or major highway in West Virginia.

(7) "Tax credit" means the Distribution or Manufacturing Center tax credit authorized by this article.

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

§11-13MM-4. Distribution Center tax credit.

(a) Credit allowed. – There shall be allowed to every business that invests in a new, or expansion of an existing, distribution center in a development site of West Virginia a tax credit for the taxable year in which the investment was made. Any investment in a distribution center at a development site shall be awarded this permanent tax credit. Furthermore, distribution or manufacturing centers shall receive a salvage value tax credit for machinery and equipment that have been fully depreciated and are no longer used as part of the production process. Distribution centers shall also receive a tax credit equal to the difference between their annual real property taxes paid on the development site and the amount they would have paid if the development cite had been taxed as Class 2 property. There are no restrictions on where distribution centers may be built, so long as they otherwise satisfy the requirements of their definitions in §11-13MM-3 of this code. Small distribution centers must satisfy the requirements of their definitions in §11-13MM-3 of this code regarding square footage and required distance from a West Virginia interstate. There are no restrictions on where large distribution centers may be built, so long as they otherwise satisfy the requirements of their definition in §11-13MM-3 of this code.

(b) No more than $1 million of the tax credits allowed under this section shall be allocated by the West Virginia Department of Economic Development during any fiscal year. The West Virginia Department of Economic Development shall allocate the tax credits in the order the applications therefor are received.

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

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

(e) If the eligible taxpayer is a limited liability company, an electing small business corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended), or a partnership, any unused tax credit remaining after application of subsections (c) and (d) of this section is allowed as a tax credit against the taxes imposed by §11-24-1 *et seq.* of this code on owners of the eligible taxpayer.

(1) Electing small business corporations (as defined above in subsection (e)), limited

liability companies, and partnerships shall allocate the tax credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

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

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

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

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

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

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

(1) Filed with the West Virginia Department of Economic Development a written application for the tax credit;

(2) Filed with the West Virginia Department of Economic Development the research and development program or project certification issued pursuant to §11-13R-6 of this code for the distribution center that will benefit from the investment;

(3) Filed with the West Virginia Department of Economic Development the certificate of

incorporation for the distribution center that will benefit from the investment; and

(4) Received from the West Virginia Department of Economic Development certification of the amount of tax credit to be allocated to the eligible taxpayer.

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

(a) No distribution center development, expansion or investment may be made in a distribution center development company that is the alter ego of the eligible taxpayer.

(b)The eligible taxpayer shall maintain its distribution or manufacturing center development, expansion or investment for a minimum period of 10 years or the life of the loan: *Provided*, That an eligible taxpayer receiving repayment or return of a distribution, expansion or manufacturing center development or investment (exclusive of interest, dividends or other earnings on the investment) may within three calendar months from the date of repayment or return reinvest the repaid or returned amount of the initial investment in another qualifying distribution center development company for a period of time of at least five years during which time the distribution center tax credit set forth in this article shall remain in effect.

§11-13MM-6. Penalty.

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

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

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

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

(a) Beginning on February 1, 2024, and on February 1 every third year thereafter, the Tax Commissioner shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the tax credit allowed under this article during the most recent three-year period for which information is available: *Provided,* That the requirement to file the credit review and accountability report terminates June 30, 2030, unless the termination of entitlement to the tax credit as stated in section 10 of this article terminates. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

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

(2) The net number, type, and duration of new jobs created by all distribution or manufacturing centers in which taxpayers claiming the credit made investment in and the wages and benefits paid by such companies;

(3) The cost of the tax credit;

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

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

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

§11-13MM-9. Rules.

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

§11-13MM-10. Effective date.

The provisions of this article will be treated as effective as of July 1, 2023, and apply only to qualified investment/improvement made on or after that date.

NOTE: The purpose of this bill is to establish the Distribution Center Tax Credit. The bill provides a short title; states legislative findings and purpose; sets forth definitions; establishes the distribution center tax credit; provides for restrictions on investment; includes a penalty; provides for the disclosure of tax credit; allows for tax credit review and accountability; authorizes the promulgation of rules; and sets forth 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.