

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### House Bill 3227

FISCAL  
NOTE

By Delegates Clark, Howell, Kirby, McGeehan,  
Ferrell, Storch, Cannon, Fehrenbacher, Hornby, W.  
Hall, and Petitto

[Introduced February 02, 2023; 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 and reenact §11-24-44 of said code, all relating to providing a tax credit against the  
3 state corporate net income tax to for-profit corporations or a tax credit against payroll  
4 withholdings for nonprofit corporations for expenditures related to the establishment and  
5 operation of employer-provided childcare 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 be  
8 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 on  
14 pay to members of the National Guard while participating in exercises or performing duty under 32  
15 U.S.C. §502, and on pay to members of the ready reserve while participating in scheduled drills or  
16 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 West  
 22 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 §11-24-5  
 36 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) *Definition.* — As used in this section, the term:

2 (1) “Commissioner” or “Tax Commissioner” are used interchangeably herein and mean the  
 3 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 however, that the term cost of operation shall exclude the cost of any property that is qualified  
7 child-care 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 or  
10 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) "Premises of the employer" refers to any location within the State of West Virginia and  
14 located on the workplace premises of the employer providing the child care or one of the  
15 employers providing the child care in the event that the child-care property is owned jointly or  
16 severally by the taxpayer and one or more unaffiliated employers: *Provided*, That if such  
17 workplace premises are impracticable or otherwise unsuitable for the on-site location of such  
18 child-care facility, as determined by the commissioner, such facility may be located within a  
19 reasonable distance of the premises of the employer or may be contracted for a minimum of 365  
20 days, in order to protect the provider and spaces allowed by Department of Health and Human  
21 Resources ("DHHR") rules, with a licensed provider within a reasonable distance of the premises  
22 of the employer. Provider is permitted to fill uncontracted spaces allowed by DHHR rules by  
23 making them available to the general public.

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

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

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

31 (ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning of

32 Section 1504(a) of the Internal Revenue Code; and

33 (B) The taxpayer has not previously claimed any tax credit for the cost of operation for such  
34 qualified child-care property placed in service prior to taxable years beginning on or after January  
35 1, 2022.

36 (8) Qualified child-care property includes, but is not limited to, amounts expended on  
37 building, improvements, and building improvements and furniture, fixtures, and equipment directly  
38 related to the operation of child-care property as defined in this section.

39 (8) (9) "Recapture amount" means, with respect to property as to which a recapture event  
40 has occurred, an amount equal to the applicable recapture percentage of the aggregate credits  
41 claimed under subsection (d) of this section for all taxable years preceding the recapture year,  
42 whether or not such credits were used.

43 (9) (10) "Recapture event" refers to any disposition of qualified child-care property by the  
44 taxpayer, or any other event or circumstance under which property ceases to be qualified child-  
45 care property with respect to the taxpayer, except for:

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

53 (10) (11) "Recapture percentage" refers to the applicable percentage set forth in the  
54 following table:

55 If the recapture event occurs within-The recapture percentage is:

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

57 placed in service .....100

58 The sixth full year after the qualified child-care property is  
59 placed in service .....90

60 The seventh full year after the qualified child-care property  
61 is placed in service .....80

62 The eighth full year after the qualified child-care property is  
63 placed in service .....70

64 The ninth full year after the qualified child-care property is  
65 placed in service .....60

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

68 The eleventh full year after the qualified child-care property  
69 is placed in service .....40

70 The twelfth full year after the qualified child-care property  
71 is placed in service .....30

72 The thirteenth full year after the qualified child-care  
73 property is placed in service .....20

74 The fourteenth full year after the qualified child-care  
75 property is placed in service .....10

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

78 ~~(11)~~ (12) "Recapture year" means the taxable year in which a recapture event occurs with  
79 respect to qualified child-care property.

80 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a  
81 credit against the tax imposed under this article for the taxable year in which the taxpayer first  
82 places in service qualified child-care property and for each of the ensuing four taxable years  
83 following such taxable year. The aggregate amount of the credit shall equal 50 percent of the cost

84 of all qualified child-care property purchased or acquired by the taxpayer and first placed in service  
85 during a taxable year, and such credit may be claimed at a rate of 20 percent per year over a  
86 period of five taxable years. In the case of a qualified child-care property jointly owned by two or  
87 more unaffiliated employers, each employer's credit is limited to that employer's respective  
88 investment in the qualified child-care property.

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

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

95 (2) In no event shall the amount of any such tax credit allowed under subsection (b) of this  
96 section, when combined with any such tax credit allowed under subsection (e) of this section,  
97 including any carryover of such credits from a prior taxable year, exceed 100 percent of the  
98 taxpayer's income tax liability as determined without regard to any other credits; and

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

102 (A) A description of the child-care facility;

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

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

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

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

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

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

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

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

115 (d) *Recapture of credit.* — If a recapture event occurs with respect to qualified child-care  
116 property:

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

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

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

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

128 (C) The tax imposed pursuant to this article for the recapture year shall be increased by the  
129 excess of the recapture amount over the amounts taken into account pursuant to paragraphs (A)  
130 and (B) of this subdivision, as applicable.

131 (e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b)  
132 of this section, a tax credit against the tax imposed under this article shall be granted to an  
133 employer who provides or sponsors child care for employees. The amount of the tax credit shall be  
134 equal to 50 percent of the cost of operation to the employer less any amounts paid for by  
135 employees during a taxable year.



136 (f) *Limitations on credit for operating costs.* — The tax credit allowed under subsection (e)  
137 of this section shall be subject to the following conditions and limitations:

138 (1) Such credit shall when combined with the credit allowed under subsection (b) of this  
139 section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the  
140 taxable year as determined without regard to any other credits;

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

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

147 (g) *Transferrable credit available to non-profit corporations.* — In the case of non-profit  
148 corporations organized under Internal Revenue Code §501(c)(3) or §501(c)(6), which are exempt  
149 from tax under this article pursuant to §11-24-5 of this code, a credit in the amount calculated  
150 under the provisions of this section shall be available as a transferrable credit that may be  
151 transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this  
152 article. Pursuant to rules promulgated by the Tax Department, a non-profit corporation applicant  
153 shall provide a schedule to the Tax Department with all information required under §11-24-44(c)(3)  
154 of this code. The Tax Department shall within 90 days certify the amount of transferrable credit  
155 available to be transferred, sold, or assigned to another taxpayer. Any transferee, purchaser, or  
156 assignee of non-profit corporation credits certified to a non-profit corporation under this section  
157 takes the transferred, purchased, or assigned credits subject to any limitations placed on the  
158 amount of credit taken in a given year by §11-24-44(b), §11-24-44(c), §11-24-44(e), and §11-24-  
159 44(f) of this code.

160 (h) *Rules.* — The Tax Commissioner may promulgate such interpretive, legislative and  
161 procedural rules as the commissioner deems to be useful or necessary to carry out the purpose of

162 this section and to implement the intent of the Legislature. The Tax Commissioner may promulgate  
163 emergency rules pursuant to the provisions of §29A-3-15 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 childcare 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 childcare 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.