

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2605

**FISCAL
NOTE**

By Delegates Fehrenbacher, Crouse, Hall, Barnhart,
Heckert, Holstein, G. Howell, Moore, Dittman, and
Drennan

[Introduced February 19, 2025; referred to the
Committee on Finance]

1 A BILL to amend and reenact §11-21-97 of the Code of West Virginia, 1931, as amended, and to
2 amend and reenact §11-24-44 of said code, all relating to increasing tax credit for
3 employers providing child care for employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-97. 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 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 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 (5) "Employer provided" refers to child care offered on the premises of the employer.

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

18 (7) "Qualified child-care property" means all real property, other than land, and tangible
19 personal property purchased or acquired on or after July 1, 2022, or which property is first placed
20 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 building, improvements, and building improvements and furniture, fixtures, and equipment directly related to the operation of child-care property as defined in this section.

(8) "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 section for all taxable years preceding the recapture year, whether or not such credits were used.

(9) "Recapture event" means 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.

(10) "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 service100

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

placed in service90

The seventh full year after the qualified child-care property

is placed in service80

The eighth full year after the qualified child-care property is

placed in service70

The ninth full year after the qualified child-care property is

placed in service60

The tenth full year after the qualified child-care property is

placed in service50

The eleventh full year after the qualified child-care property

is placed in service40

The twelfth full year after the qualified child-care property

is placed in service30

The thirteenth full year after the qualified child-care

property is placed in service20

The fourteenth full year after the qualified child-care

property is placed in service10

Any period after the close of the fourteenth full year after

the qualified child-care property is placed in service0

(11) "Recapture year" means the taxable year in which a recapture event occurs with

73 respect to qualified child-care property.

74 (b) *Credit for capital investment in child-care property.* — A taxpayer shall be allowed a
75 credit against the tax imposed under this article for the taxable year in which the taxpayer first
76 places in service qualified child-care property and for each of the ensuing four taxable years
77 following such taxable year. The aggregate amount of the credit shall equal ~~50~~ 100 percent of the
78 cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in
79 service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over
80 a period of five taxable years. In the case of a qualified child-care property jointly owned by two or
81 more unaffiliated employers, each employer's credit is limited to that employer's respective
82 investment in the qualified child-care property.

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

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

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

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

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

97 (B) The amount of qualified child-care property acquired during the taxable year and the
98 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 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 section shall be recaptured as follows:

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

(B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the recapture year, if any, as reduced pursuant to subdivision (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 pursuant to paragraph (A) of this subdivision; and

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

(e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b) of this 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 ~~50~~ 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 (e) of this section shall be subject to the following conditions and limitations:

(1) Such credit shall when combined with the credit allowed under subsection (b) of this section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the taxable year as determined 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 section.

(g) *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 pursuant to the provisions of §29A-3-15 of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.

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

(a) *Definition.* — As used in this 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

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.

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

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

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

27 (ii) A corporation that is a member of the taxpayer's "affiliated group" within the meaning of
28 Section 1504(a) of the Internal Revenue Code; and

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

31 1, 2022.

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

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

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

42 (A) Any transfer by reason of death;

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

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

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

48 (E) Any accident or casualty.

49 (10) "Recapture percentage" refers to the applicable percentage set forth in the following
50 table:

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

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

53 placed in service100

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

55 placed in service90

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

57	is placed in service	80
58	The eighth full year after the qualified child-care property is	
59	placed in service	70
60	The ninth full year after the qualified child-care property is	
61	placed in service	60
62	The 10th full year after the qualified child-care property is	
63	placed in service	50
64	The 11th full year after the qualified child-care property	
65	is placed in service	40
66	The 12th full year after the qualified child-care property	
67	is placed in service	30
68	The 13th full year after the qualified child-care	
69	property is placed in service	20
70	The 14th full year after the qualified child-care	
71	property is placed in service	10
72	Any period after the close of the 14th full year after	
73	the qualified child-care property is placed in service	0
74	(11) "Recapture year" means the taxable year in which a recapture event occurs with	
75	respect to qualified child-care property.	
76	(b) <i>Credit for capital investment in child-care property.</i> — A taxpayer shall be allowed a	
77	credit against the tax imposed under this article for the taxable year in which the taxpayer first	
78	places in service qualified child-care property and for each of the ensuing four taxable years	
79	following such taxable year. The aggregate amount of the credit shall equal 50 <u>100</u> percent of the	
80	cost of all qualified child-care property purchased or acquired by the taxpayer and first placed in	
81	service during a taxable year, and such credit may be claimed at a rate of 20 percent per year over	
82	a period of five taxable years. In the case of a qualified child-care property jointly owned by two or	

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

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

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

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

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

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

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

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

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

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

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

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

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

108 (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 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 section shall be recaptured as follows:

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

(B) The tax credit otherwise allowable pursuant to subsection (b) of this section for the recapture year, if any, as reduced pursuant to subdivision (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 pursuant to paragraph (A) of this subdivision; and

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

(e) *Credit for operating costs.* — In addition to the tax credit provided under subsection (b) of this 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 ~~50~~ 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 (e) of this section shall be subject to the following conditions and limitations:

(1) Such credit shall when combined with the credit allowed under subsection (b) of this

section shall not exceed 100 percent of the amount of the taxpayer's income tax liability for the taxable year as determined 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 section.

(g) *Transferrable credit available to non-profit corporations.* — In the case of non-profit 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 this code, a credit in the amount calculated under the provisions of this section shall be available as a transferrable credit that may be transferred, sold, or assigned to any other taxpayer to be applied against the tax owed under this article. Pursuant to rules promulgated by the Tax Department, a non-profit corporation applicant shall provide a schedule to the Tax Department with all information required under §11-24-44(c)(3) of this code. The Tax Department shall within 90 days certify the amount of transferrable credit available to be transferred, sold, or assigned to another taxpayer. Any transferee, purchaser, or assignee of non-profit corporation credits certified to a non-profit corporation under this section takes the transferred, purchased, or assigned credits subject to any limitations placed on the amount of credit taken in a given year by §11-24-44(b), §11-24-44(c), §11-24-44(e), and §11-24-44(f) of this 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 pursuant to the provisions of §29A-3-15 of this code.

NOTE: The purpose of this bill is to increase the tax credit for employers providing child care for employees.

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