

# WEST VIRGINIA CODE: §11-13Q-10

## §11-13Q-10. Credit for small business.

(a) Small business defined. — For purposes of this section, the term “small business” means a business which has annual gross receipts of not more than \$7 million (including the gross receipts of any affiliates in its controlled group): *Provided*, That beginning January 1, 2004, and on January 1 of each year thereafter, the commissioner shall prescribe an amount that shall apply in lieu of the \$7 million amount during that calendar year. This amount is prescribed by increasing the \$7 million amount by the cost-of-living adjustment for that calendar year. The requirements for annual gross receipts, once met by a given taxpayer in that taxable year when qualified investment is first placed in service or use, may not again be applied to that same taxpayer in subsequent years to defeat the small business credit to which the taxpayer gained entitlement in that year.

(1) Cost-of-living adjustment. — For purposes of subsection (a) of this section, the cost-of-living adjustment for any calendar year is the percentage (if any) by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 2002.

(2) Consumer price index for any calendar year. — For purposes of subdivision (1) of this subsection, the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the 12-month period ending on August 31 of that calendar year.

(3) Consumer price index. — For purposes of subdivision (2) of this subsection, the term “Federal Consumer Price Index” means the most recent consumer price index for all urban consumers published by the United States department of labor.

(4) Rounding. — If any increase under subdivision (1) of this subsection is not a multiple of \$50, the increase shall be rounded to the next lowest multiple of \$50.

(b) Amount of credit allowed. —

(1) Credit allowed. — An eligible small business taxpayer is allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible small business taxpayer’s qualified investment in a new or expanded business in this state which results in the creation of at least 10 new jobs within 12 months after placing qualified investment into service. The amount of this credit is determined as provided in subdivision (2) of this subsection.

(2) Amount of credit. — The annual amount of credit allowable under this subsection is determined by dividing the amount of the eligible small business taxpayer’s “qualified investment” (determined under §11-13Q-8. of this code) in “property purchased for business

expansion" (as defined in §11-13Q-3 of this code) by 10. The amount of qualified investment so apportioned to each year of the 10-year credit period is the annual measure against which a taxpayer's annual new jobs percentage (determined under subsection (d) of this section) is applied. The product of this calculation establishes the maximum amount of credit allowable each year for 10 consecutive years under this section due to the qualified investment.

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

(c) New jobs. — The term "new jobs" has the meaning ascribed to it in §11-13Q-3 of this code.

(1) The term "new employee" has the meaning ascribed to it in §11-13Q-3 of this code: *Provided*, That this term does not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns 10 percent or more of the business with such ownership interest to be determined under rules set forth in subsection (b), section 267 of said Internal Revenue Code; or

(B) Worked for the taxpayer during the six-month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date taxpayer's qualified investment is placed in service or use.

(2) When a job is attributable. — An employee's position is directly attributable to the qualified investment if:

(A) The employee's service is performed or his or her base of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction, renovation, expansion, or acquisition of the business facility and the making of the qualified investment; and

(C) But for the qualified investment, the position would not have existed.

(d) New jobs percentage. — The annual new jobs percentage is based on the number of new jobs created in this state by the taxpayer directly attributable to taxpayer's qualified investment.

(1) If at least 10 new jobs are created and filled during the taxable year in which the

qualified investment is placed in service or use, the applicable new jobs percentage is 10 percent.

(2) During each of the remaining nine years of the 10-year credit period, the annual new jobs percentage is based on the average number of new jobs filled during that taxable year: *Provided*, That for purposes of estimating the new jobs percentage that will be applicable for each subsequent credit year, the taxpayer shall use the new jobs percentage allowable for the taxable year immediately prior thereto, and in the annual income tax return filed under this chapter for the then current tax year, the taxpayer shall redetermine his or her allowable new jobs percentage for that year based on the average number of new employees employed in new jobs during that year (determined on a monthly basis) created as the direct result of the taxpayer's qualified investment.

(e) Certification of new jobs. — With the annual income tax return filed under this chapter for each taxable year during the 10-year credit period, the taxpayer shall certify:

(1) The new jobs percentage for that taxable year;

(2) The amount of the credit allowance for that year;

(3) If the business is a partnership, limited liability company or electing small business corporation, the amount of credit allocated to the partners, members, or shareholders, as the case may be for that year;

(4) That qualified investment property continue to be used in the business, or if any of it was disposed of during the year the date of disposition and that the property was not disposed of prior to expiration of its useful life, as determined under §11-13Q-8 of this code; and

(5) That the new jobs created by the qualified investment continue to exist and are filled by persons who meet the definition of new employee (as defined in this section).

(f) Small business project. — A small business may apply to the commissioner under §11-13Q-6 of this code for certification as a project if that project will create at least 10 new jobs.

(g) Rules. — The commissioner may prescribe such rules as he or she determines necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the credit allowed.

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

(i) Termination of Credit — No credit is allowable under this section to any taxpayer for

investment placed in service or use in any tax year beginning on or after January 1, 2022. Taxpayers that have gained lawful entitlement to the credit allowable under this section pursuant to qualified investment placed in service or use prior to January 1, 2022, shall retain that entitlement and apply the credit in due course pursuant to the requirements and limitations of this article.