

# WEST VIRGINIA CODE: §11-13C-7A

## §11-13C-7a. Small business credit.

(a) "Small business" defined. -- For purposes of this section, the term "small business" means a business which has an annual payroll of \$1,500,000 or less, or annual gross sales of not more than \$5,000,000: Provided, That beginning January 1, 1989, and each January 1 thereafter, the Tax Commissioner shall prescribe amounts which shall apply in lieu of the above amounts during that calendar year. These amounts shall be prescribed by increasing the amount of each by the cost-of-living adjustment for such calendar year. The requirements for annual payroll and annual gross receipts, once met by a given taxpayer in that taxable year when qualified investment is first placed in service or use shall 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. However, the median compensation requirements applicable to any small business, except a small business entitled to a certified project credit, shall be determined when qualified investment is first placed in service or use; and subsequently redetermined inflation adjusted amounts for median compensation for each year shall be the requirements applicable to that small business for each year throughout the ten-year credit period and any further carryover or other extended credit period for the original credit to which the requirements relate.

(1) Cost-of-living adjustment. -- For purposes of subsection (a), the cost-of-living adjustment for any calendar year is the percentage (if any) by which:

(A) The consumer price index for the preceding calendar year exceeds;

(B) The consumer price index for the calendar year 1987.

(2) Consumer price index for any calendar year. -- For purposes of subdivision (1), the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on the thirty-first day of August of such calendar year.

(3) Consumer price index. -- For purposes of subdivision (2), the term "Federal Consumer Price Index" means the last consumer price index for all urban consumers published by the United States department of labor.

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

(b) Amount of credit allowed.

(1) Credit allowed. -- An eligible small business taxpayer shall be 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 ten new jobs. The amount of this credit shall be determined as provided in this section.

(2) Amount of credit. -- The amount of credit allowable under this section is determined by dividing the amount of the eligible small business taxpayer's "qualified investment" (determined under section six) in "property purchased for business expansion" (as defined in section three) by ten. The amount of qualified investment so apportioned to each year of the ten-year credit period shall be the annual measure against which taxpayer's annual new jobs percentage (determined under subsection (d)) is applied. The product of this calculation establishes the maximum amount of credit allowable each year for ten consecutive years under this section due to the qualified investment.

(3) Application of credit. -- The annual credit allowance must 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 ten-year credit period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is 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 section five.

(c) New jobs. -- The term "new jobs" has the meaning ascribed to it in subdivision (14), subsection (b), section three of this article: Provided, That the median compensation of such new jobs shall not be less than \$11,000 per year and that beginning January 1, 1989, and each January 1 thereafter, the Tax Commissioner shall adjust the median annual compensation specified in this subsection by increasing the amount thereof by the annual cost-of-living adjustment determined under subsection (a).

(1) The term "new employee" shall have the meaning ascribed to it in subdivision (13), subsection (b), section three of this article: Provided, That such term shall 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 ten 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 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 that is directly attributable to taxpayer's qualified investment.
- (1) If at least ten 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 shall be thirty percent: Provided, That for each new job over ten, up to forty such additional new jobs, the applicable new jobs percentage shall be increased by adding thereto one half of one percent, with the maximum new jobs percentage not to exceed fifty percent.
- (2) During each of the remaining nine years of the ten-year credit period, the annual new jobs percentage shall be based on the average number of new jobs that were 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, 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 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 ten-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 or electing small business corporation, the amount of credit allocated to the partners or shareholders, as the case may be;
- (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 such property was not disposed of prior to expiration of its useful life, as determined under section six;
- (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 subdivision (1), subsection (c) of this section) and are paid an average annual compensation equal to or greater than the minimum average annual compensation required by this section.

(f) Small business project. -- A small business may apply to the Tax Commissioner under section four-b for certification of subdivision (1), subsection (a), section four-b project if that project will create at least ten new jobs.

(g) Regulations. -- The Tax Commissioner shall prescribe such regulations as he or she may deem necessary in order to determine the amount of credit allowed under this section to a taxpayer; to verify taxpayer's continued entitlement to claim such credit; and to verify proper application of the credit allowed. The Tax Commissioner may, by regulation, require a taxpayer intending to claim credit under this section to file with the Tax 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.

(h) Effective date.

(1) The credit provided in this section shall be allowed for qualified investment property purchased or leased after June 30, 1987.

(2) The amendments to this section, enacted in the year 1998, shall be retroactive to tax years beginning on or after January 1, 1995.