WEST VIRGINIA CODE: §11-13II-4

§11-13II-4. Obtaining tax credit following tax year.

(a) At the end of the approved employer's tax year, the qualified employer may file an application to use the tax credits previously approved by the Development Office. The application shall contain a sworn statement by a duly authorized officer of the qualified employer concerning with respect to the employer's fiscal year:

(1) That the eligible employer remained a qualified employer under the provisions of this article;

(2) The total number of and the gross payroll of the new direct jobs, with salary information provided by new direct job and that each new direct job was filled for at least 48 weeks during the tax year;

(3) That the employer had or maintained a net overall increase in employment statewide for each new direct job and the number of such net overall increase of at least 10 new direct jobs, in the case where an employer has contracts covering multiple locations;

(4) That employees holding the new direct jobs:

(A) Were residents in the State of West Virginia;

(B) Were not previously on the employer's payroll;

(C) Were not previously on the payroll of the employer's parent entity, subsidiary, or affiliate, alter ego, or previously on the payroll of the business whose physical plant and employees were substantially the same as those of the employer;

(D) Did not exist as of the date the employer filed the application for the tax credit;

(E) Were not jobs created as a result of job shifts due to the gain or loss of an in-state contract to supply goods and services;

(F) Were not jobs retained following the acquisition of all, or part of, an in-state business by the employer;

(5) That the employer has offered the health benefits to the eligible employees it employs in new direct jobs; and

(6) That the employer:

(A) Did not default on or otherwise not repay any loan or other obligation involving public funds;

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(B) Has not declared bankruptcy under which an obligation of the employer to pay or repay public funds or moneys was discharged as part of such bankruptcy;

(C) Is not in default on any filing or payment with or to the state or any of its agencies or political subdivisions in which such assessment or judgment is final, not appealable, and remains outstanding.

(b) The division may request such additional information from the employer as may be necessary to determine whether the application is correct and whether the qualified employer is eligible for the annual tax credit for that year, or may request that the qualified employer revise its application.

(c) The tax credits authorized in this article shall be authorized after the qualified employer has filed its application for annual tax credit at the end of the qualified employer's tax year with the Development Office pursuant to this section, and the division has determined from the information submitted along with such application that the employer has fulfilled its obligations in original application.

(d) Upon approval of the application for use of the tax credit, the application shall be forwarded to the Department of Revenue. The eligible employer may then use such tax credit in filing its tax return.

(e) A new high-wage job is not eligible for a credit pursuant to this section for the initial qualifying period unless the eligible employer's total number of employees with threshold jobs on the last day of the initial qualifying period at the location at which the job is performed or based is at least one more than the number of threshold jobs on the day prior to the date the new high-wage job was created. A new high-wage job is not eligible for a credit pursuant to this section for a consecutive qualifying period unless the total number of threshold jobs at a location at which the job is performed or based on the last day of that qualifying period is greater than or equal to the number of threshold jobs at that same location on the last day of the initial qualifying period for the new high-wage job.

(f) If a consecutive qualifying period for a new high-wage job does not meet the wage, occupancy and residency requirements, then the qualifying period is ineligible.

(g) Except as provided in subsection (h) of this section, a new high-wage job is not eligible for a credit pursuant to this section if:

(1) The new high-wage job is created due to a business merger or acquisition or other change in business organization;

(2) The eligible employee was terminated from employment in West Virginia by another employer involved in the business merger or acquisition or other change in business organization with the taxpayer; and

(3) The new high-wage job is performed by:

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(A) The person who performed the job or its functional equivalent prior to the business merger or acquisition or other change in business organization; or

(B) A person replacing the person who performed the job or its functional equivalent prior to a business merger or acquisition or other change in business organization.

(h) A new high-wage job that was created by another employer and for which an application for the high-wage growth business tax credit was received and is under review by the division prior to the time of the business merger or acquisition or other change in business organization shall remain eligible for the high-wage growth business tax credit for the balance of the consecutive qualifying periods. The new employer that results from a business merger or acquisition or other change in business organization may only claim the high-wage growth business tax credit for the balance of the consecutive qualifying periods for which the new high-wage job is otherwise eligible.

(i) A new high-wage job is not eligible for a credit pursuant to this section if the job is created due to an eligible employer entering into a contract or becoming a subcontractor to a contract with a governmental entity that replaces one or more entities performing functionally equivalent services for the governmental entity unless the job is a new high-wage job that was not being performed by an employee of the replaced entity.

(j) A new high-wage job is not eligible for a credit pursuant to this section if the eligible employer has more than one business location in the state from which it conducts business and the requirements of subsection (e) of this section are satisfied solely by moving the job from one business location of the eligible employer in this state to another business location of the eligible employer in the state.

(k) With respect to each annual application for a high-wage growth business tax credit, the employer shall certify and include:

(1) The responsibilities and amount of wages paid to each eligible employee in a new high-wage job during the qualifying period;

(2) The number of weeks each position was occupied during the qualifying period;

(3) Which qualifying period the application pertains to for each eligible employee;

(4) The total number of employees employed by the employer at the job location on the day prior to the qualifying period and on the last day of the qualifying period;

(5) The total number of threshold jobs performed or based at the eligible employer’s location on the day prior to the qualifying period and on the last day of the qualifying period;

(6) For an eligible employer that has more than one business location in the state from which it conducts business, the total number of threshold jobs performed or based at each business location of the eligible employer in the state on the day prior to the qualifying period and on

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the last day of the qualifying period;

(7) Whether the eligible employer has ceased business operations at any of its business locations in this state; and

(8) Whether the application is precluded by subsection (o) of this section.

(l) Any person who willfully submits a false, incorrect, or fraudulent certification required pursuant this section shall be subject to all applicable penalties under §11-9-1 *et seq.* and §11-10-1 *et seq.* of this code, except that the amount on which the penalty is based shall be the total amount of credit requested on the application for approval.

(m) Except as provided in subsection (o) of this section, an approved high-wage growth business tax credit shall be claimed against the taxpayer's taxes imposed by §11-23-1 *et seq.*, §11-24-1 *et seq.*, and §11-21-1 *et seq.* of this code, in that order, as specified in this subsection:

(1) *Business franchise tax.* — The credit is first applied to reduce the taxes imposed by §11-23-1 *et seq.* of this code for the taxable year, determined after application of the credits against tax provided in §11-23-17 of this code, but before application of any other allowable credits against tax.

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

(A) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit after application of subdivisions (1) and (2) of this subsection is allowed as a credit against the taxes imposed by §11-24-1 *et seq.* of this code on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-24-1 *et seq.* of this code that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) Small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this section among their members in the same manner as profits and losses are allocated for the taxable year.

(3) *Personal income tax taxes*. — After application of subdivisions (1) and (2) of this subsection, any unused 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.

(4) If the eligible taxpayer is a limited liability company, small business corporation, or a partnership, then any unused credit after application of subdivisions (1), (2), and (3) of this subsection is allowed as a credit against the taxes imposed by §11-21-1 *et seq.* of this code

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on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by §11-21-1 *et seq.* of this code that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(5) Small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this section among their members in the same manner as profits and losses are allocated for the taxable year.

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

(7) *Unused credit carry forward.* –– Except to the extent excess credit is refunded as provided in subdivision (8) of this subsection, if the credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subdivisions (1), (2), and (3) of this subsection for that taxable year, the eligible taxpayer and owners of eligible taxpayers described in subdivisions (4) and (5) of this subsection may apply the excess as a credit against those taxes, in the order and manner stated in this section, for succeeding taxable years until the earlier of the following:

(A) The full amount of the excess credit is used; or

(B) The expiration of the 10th taxable year after the taxable year in which the annual salaries for the new direct job was paid or incurred. Any credit remaining thereafter is forfeited.

(8) If the credit allowed under this section in any taxable year exceeds the sum of taxes enumerated in subdivisions (1), (2), (3), (4), and (5) of this subsection for that taxable year, the eligible taxpayer and owners of the eligible taxpayers described in subdivisions (4) and (5) of this subsection may claim for that year the excess amount as a refundable credit, not to exceed $100,000 per taxpayer, including owners and the controlled group, if applicable.

(9) Tax credits provided under this section may not be transferred, sold, or assigned by filing a notarized endorsement thereof with the division that names the transferee, the amount of tax credit transferred, and the value received for the credit, as well as any other information reasonably requested by the division.

(n) If the taxpayer ceases business operations in this state while an application for credit approval is pending or after an application for credit has been approved for any qualifying period for a new high-wage job, the division may not grant an additional high-wage growth business tax credit to that taxpayer except as provided in subsection (m) of this section and shall extinguish any amount of credit approved for that taxpayer that has not already been claimed against the taxpayer’s modified combined tax liability.

(o) A taxpayer that has received a high-wage growth business tax credit may not submit a

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new application for the credit for a minimum of two calendar years from the closing date of the last qualifying period for which the taxpayer received the credit if the taxpayer lost eligibility to claim the credit from a previous application pursuant to subsection (m) of this section.

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