
WEST VIRGINIA CODE CHAPTER 11
ARTICLE 13P

WV Legislature

§11-13P-1. Legislative finding and purpose.

The Legislature finds that the retention of physicians practicing in this state is in the public interest and promotes the general welfare of the people of this state. The Legislature further finds that the promotion of stable and affordable medical malpractice liability insurance premium rates will induce retention of physicians practicing in this state.

In order to effectively decrease the cost of medical liability insurance premiums paid in this state on physicians' services, there is hereby provided a tax credit for certain medical liability insurance premiums paid.

§11-13P-2. Definitions.

(a) General. - When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

(b) Terms defined. -

(1) "Adjusted annual medical liability premium" means statewide average of medical liability insurance premiums by specialty and subspecialty groups directly paid by eligible taxpayers in those specialty and subspecialty groups during the taxable year to cover physicians' services performed during the year reduced by the sum of \$10,000.

(2) "Eligible taxpayer" means any person subject to tax under section sixteen, article twenty-seven of this chapter or a physician who is a partner, member, shareholder or employee of an eligible taxpayer.

(3) "Person" means and includes any natural person, corporation, limited liability company, trust or partnership.

(4) "Physicians' services" means health care providers services taxable under section sixteen, article twenty-seven of this chapter performed in this state by physicians licensed by the state Board of Medicine or the state board of osteopathic medicine.

(5) "Statewide average medical liability insurance premiums" are the average of premiums for each specialty and sub-specialty group as determined by the state Insurance Commission.

§11-13P-3. Eligibility for tax credits; creation of the credit.

There shall be allowed to every eligible taxpayer a credit against the tax payable under section sixteen, article twenty-seven of this chapter. The amount of this credit shall be determined and applied as provided in this article.

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§11-13P-4. Amount of credit allowed.

The amount of annual credit allowable under this article to an eligible taxpayer shall be equal to ten percent of the adjusted annual medical liability insurance premium for the taxpayer's specialty or subspecialty group or ten percent of the taxpayer's actual annual medical liability insurance premium, whichever is less: Provided, That no credit shall be allowed for any medical liability insurance premium paid on behalf of an eligible taxpayer employed by the state, its agencies or subdivisions or an eligible taxpayer organization pursuant to coverage provided under article twelve, chapter twenty-nine of this code.

§11-13P-5. Excess credit forfeited.

If after application of the credit against tax under this article, any credit remains for the taxable year, the amount remaining and not used is forfeited. Unused credit may not be carried back to any prior taxable year and shall not carry forward to any subsequent taxable year.

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§11-13P-6. Application of credit; schedules; estimated taxes.

(a) The credit allowed under this article shall be applied against the tax payable under section sixteen, article twenty-seven of this chapter.

(b) To assert this credit against tax, the eligible taxpayer shall prepare and file with its annual tax return filed under article twenty-seven of this chapter, and for information purposes, a schedule showing the amount paid for medical liability coverage for the taxable year, the amount of credit allowed under this article, the taxes against which the credit is being applied and other information that the Tax Commissioner may require. This annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

(c) An eligible taxpayer may consider the amount of credit allowed under this article when determining the eligible taxpayer's liability under article twenty-seven of this chapter for periodic payments of estimated tax for the taxable year, in accordance with the procedures and requirements prescribed by the Tax Commissioner. The annual total tax liability and total tax credit allowed under this article are subject to adjustment and reconciliation pursuant to the filing of the annual schedule required by subsection (b) of this section.

§11-13P-7. Computation and application of credit.

(a) Credit resulting from premiums directly paid by persons who pay the tax imposed by section sixteen, article twenty-seven of this chapter. - The annual credit allowable under this article for eligible taxpayers other than payors described in subsection (b) of this section, shall be applied as a credit against the eligible taxpayer's state tax liability determined under section sixteen, article twenty-seven of this chapter, determined after application of all other allowable credits and exemptions.

(b) Credit for premiums directly paid by partners, members or shareholders of partnerships, limited liability companies, or corporations for or on behalf of such organizations; application of credit. -

(1) Qualification for credit.

(A) For purposes of this section the term "eligible taxpayer organization" means a partnership, limited liability company, or corporation that is an eligible taxpayer.

(B) For purposes of this section the term "payor" means a natural person who is a partner, member, shareholder or owner, in whole or in part, of an eligible taxpayer organization and who pays medical liability insurance premiums for or on behalf of the eligible taxpayer organization.

(C) Medical liability insurance premiums paid by a payor (as defined in this section) qualify for tax credit under this article, provided that such payments are made to insure against medical liabilities arising out of or resulting from physicians' services provided by a physician while practicing in service to or under the organizational identity of an eligible taxpayer organization or as an employee of such eligible taxpayer organization where such insurance covers the medical liability of:

(i) the eligible taxpayer organization, or

(ii) one or more physicians practicing in service to or under the organizational identity of the eligible taxpayer organization or as an employee of the eligible taxpayer organization, or

(iii) any combination thereof.

(2) Application of credit by the payor against health care provider tax on physician's services. - The annual credit allowable shall be applied to reduce the tax liability directly payable by the payor under section sixteen, article twenty-seven of this chapter, determined after application of all other allowable credits and exemptions.

(3) Application of credit by the eligible taxpayer organization against health care provider tax on physician's services. - After application of this credit as provided in subdivision (2) of this subsection, remaining annual credit shall then be applied to reduce the tax liability directly payable by the eligible taxpayer organization under section sixteen, article twenty-

seven of this chapter, determined after application of all other allowable credits and exemptions.

(4) Apportionment among multiple eligible taxpayer organizations. - Where a payor described in subdivision (1) of this subsection pays medical liability insurance premiums for and provides services to or under the organizational identity of two or more eligible taxpayer organizations described in this section or as an employee of two or more such eligible taxpayer organizations, the tax credit shall, for purposes of subdivision (3) of this subsection, be allocated among such eligible taxpayer organizations in proportion to the medical liability insurance premiums paid directly by the payor during the taxable year to cover physicians' services during such year for, or on behalf of, each eligible taxpayer organization. In no event may the total credit claimed by all eligible taxpayers and eligible taxpayer organizations exceed the credit which would be allowable if the payor had paid all such medical liability insurance premiums for or on behalf of one eligible taxpayer organization, and if all physician's services had been performed for, or under the organizational identity of, or by employees of, one eligible taxpayer organization.

§11-13P-8. Legislative rules.

The Tax Commissioner shall propose for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code such rules as may be necessary to carry out the purposes of this article.

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§11-13P-9. Construction of article; burden of proof.

The provisions of this article shall be reasonably construed. The burden of proof is on the person claiming the credit allowed by this article to establish by clear and convincing evidence that the person is entitled to the amount of credit asserted for the taxable year.

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§11-13P-10. Effective date.

This article shall be effective for taxable years beginning after December 31, 2001:
Providing, That the assertion of the credit by an eligible taxpayer shall not be allowed prior to July 1, 2002.

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§11-13P-11. Termination of tax credit.

No credit shall be allowed under this article for any taxable year ending after December 31, 2004.

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