WEST VIRGINIA CODE: §11-21-12L

§11-21-12l. Decreasing modification reducing federal adjusted gross income for the net income of Qualified Opportunity Zone Businesses; effective date.

(a) General. — In addition to the amounts authorized to be subtracted from federal adjusted gross income pursuant to §11-21-12(c) of this code, a modification reducing federal adjusted gross income is hereby authorized for taxable years beginning on and after January 1, 2019:

(1) For individuals: in an amount equal to and limited to that portion of net income included in federal adjusted gross income by a taxpayer in the taxable year that is directly derived from a qualified opportunity zone business located in a qualified opportunity zone which is located in West Virginia;

(2) For partners or members of limited liability companies that are treated as partnerships for federal income tax purposes, and other pass-through entities: in an amount equal to and limited to that portion of the distributive share of the partner or member that is attributable to the flow through income directly derived from the qualified opportunity zone business located in West Virginia. A similar rule applies to shareholders in corporations taxed under subchapter S of the Internal Revenue Code.

(b) Eligibility. — To be entitled to modification provided for in subsection (a) of this section, the qualified opportunity zone business must be a newly registered business in West Virginia registered on or after January 1, 2019 and before January 1, 2024. Limited liability companies that are treated as corporations for purposes of the federal income tax and West Virginia corporation net income tax and which otherwise qualify in accordance with the requirements and limitations of this section may qualify for the modification authorized under this section.

(c) Duration. — The modification provided for in subsection (a) of this section shall apply with respect to a taxpayer for a 10-year period beginning with the first full taxable year during which the qualified opportunity zone business first qualifies as a qualified opportunity zone business, or the first year in which the qualified opportunity zone business reports net income: Provided, That the qualified opportunity zone business first qualifies as such on or after January 1, 2019.

(d) The following definitions apply to this section:

(1) "Internal Revenue Code" means the Internal Revenue Code of the United States as defined in §11-21-9 or §11-24-3 of this code.

(2) "Newly registered business" means a business that is formed on or after January 1, 2019 and before January 1, 2024, that is first required to obtain a business registration certificate under §11-12-1 et seq. of this code from the Tax Commissioner on or after January 1, 2019

WV Legislature

and before January 1, 2024, and which is not the reorganization of a business that existed prior to January 1, 2019.

(3) "Reorganization of an existing business" includes, but is not limited to, a change in the name of a business, a change in the form of doing business such as, but not limited to, a proprietorship that reorganizes as a partnership or other business entity, a subsidiary that becomes a stand-alone business entity, a division of an existing business that becomes a separate business and any other similar type of business reorganization. For purposes of this definition any entity or organization that is determined by the Tax Commissioner to be an alter ego, nominee or instrumentality of an existing or previously existing business, as determined in accordance with the criteria specified in §11-12-5 of this code is a business resulting from reorganization of an existing business.

(4) "Qualified Opportunity Zone Business" means Qualified Opportunity Zone Business as that term is defined in Section §1400Z-2 of the Internal Revenue Code.

(5) "Qualified Opportunity Zone" means Qualified Opportunity Zone as that term is defined in Section 1400Z-1 of the Internal Revenue Code.

(e) Rules. — The Tax Commissioner may propose legislative rules, or promulgate interpretive or procedural rules, as the commissioner deems necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section. All rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

(f) Effective date; expiration of modification, preservation of entitlement. — The modification authorized by this section becomes effective and is authorized for taxable years beginning on and after January 1, 2019: Provided, That unless sooner terminated by law, the modification authorized by this section will terminate for taxable years beginning on and after January 1, 2024, and no new entitlement to the modification is authorized thereafter; Provided however, That those taxpayers shall retain that entitlement for the remainder of the 10-year application period over which the original entitlement applies, if the Taxpayer otherwise remains in compliance with the requirements of this section.

WV Legislature