WEST VIRGINIA CODE: §5B-2E-7B

§5B-2E-7b. Credit against taxes.

(a) General. – When a qualified professional services destination facility is located at or adjacent to an existing historic resort hotel with at least five hundred rooms and the qualified professional services destination facility eligible for credit under this section is primarily engaged in furnishing services that are not subject to the tax imposed by article fifteen, chapter eleven of this code, then in lieu of the credits that otherwise would be allowable under section seven or seven-a of this article, the eligible company that complies with the requirements of this section may claim the credit provided in this section: Provided, That the maximum amount of credit allowable under this section is equal to twenty-five percent of the eligible company's qualified investment, as defined in this section.

(b) Definitions. – The following words and phrases when used in this section have the meanings given to them in this subsection unless the context in which used clearly indicates that a different meaning was intended by the Legislature.

(1) “Agreement” means an agreement entered into under subsection (g) of this section.

(2) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(3) “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 2015.

(4) “Consumer price index” for any calendar year means the average of the federal consumer price index as of the close of the twelve-month period ending on August 31 of that calendar year.

(5) “Eligible company” for purposes of this section means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating a qualified professional services destination facility, whether owned or leased, within the state that: (A) creates at least one hundred twenty-five new jobs in this state within thirty-six months after the date the qualified investment is placed into service or use, and maintains those jobs for the entire ten year life of the tax credit specified in this section, (B) makes available to its full-time employees health insurance coverage and pays at least fifty percent of the premium for the health insurance, (C) generates, within thirty-six months after the date the qualified investment is placed into service or use, not less than $10 million of gross receipts upon which the taxes imposed under article twenty-seven, chapter eleven of this code are paid, and (D) meets the standards, limitations and requirements of this section and of the development office. An eligible company may operate or intend to operate directly or indirectly through a lessee or

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a contract operator.

(6) “Federal consumer price index” means the most recent consumer price index as of August 31 each year for all urban consumers published by the United States Department of Labor.

(7) “Health insurance benefits” means employer-provided coverage for medical expenses of the employee or the employee and his or her family under a group accident or health plan, or employer contributions to an Archer medical savings account, as defined in Section 220 of the Internal Revenue Code of 1986, as amended, or to a health savings account, as defined in Section 223 of the Internal Revenue Code, of the employee when the employer's contribution to any such account is not less than fifty percent of the maximum amount permitted for the year as employer-provided coverage under Section 220 or 223 of the Internal Revenue Code, whichever section is applicable.

(8) “Historic resort hotel” means a resort hotel registered with the United States Department of the Interior on the effective date of this amendment as a national historic landmark in its National Registry of Historic Places having not fewer than five hundred guest rooms.

(9) “New employee” means a person residing and domiciled in this state hired by the taxpayer to fill a position or a job in this state which previously did not exist in the taxpayer's business enterprise in this state prior to the date the application was filed under subsection (c) of this section. In no event may the number of new employees exceed the total net increase in the employer's employment in this state: Provided, That the Tax Commissioner may require that the net increase in the taxpayer's employment in this state be determined and certified for the taxpayer's controlled group as defined in article twenty-four of this chapter. In addition, a person is a “new employee” only if the person's duties are on a regular, full-time and permanent basis:

(A) “Full-time employment” means employment for at least eighty hours per month at a wage not less than the amount specified in subdivision (1), subsection (d) of this section; and

(B) “Permanent employment” does not include employment that is temporary or seasonal and therefore the wages, salaries and other compensation paid to the temporary or seasonal employees will not be considered for purposes of this section even if the compensation paid to the temporary or seasonal employee equals or exceeds the amount specified in paragraph (A) of this subdivision.

(10) “New job” means a job which did not exist in the business of the taxpayer in this state prior to filing the application for benefits under this section, and which is filled by a new employee.

(11) “Professional services” means only those services provided directly by: a physician licensed to practice in this State, a surgeon licensed to practice in this State, a dentist

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licensed to practice in this State, a podiatrist licensed to practice in this State, an osteopathic physician licensed to practice in this State, a psychologist licensed to practice in this State, an optometrist licensed to practice in this State, a registered nurse licensed to practice in this State, a physician assistant licensed to practice in this State, a licensed practical nurse licensed to practice in this State, a dental hygienist licensed to practice in this State, a social worker licensed to practice in this State, or any other health care professional licensed to practice in this State;

(12) "Qualified investment" means one-hundred percent of the cost of property purchased or leased for the construction and equipping of a qualified professional services destination facility which is placed in service or use in this State by an eligible company.

(A) The cost of property purchased for a qualified professional services destination facility is determined under the following rules:

(i) Cost does not include the value of property given in trade or exchange for the property purchased for business expansion.

(ii) If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(iii) The cost of real property acquired by written lease for a primary term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed ten years.

(iv) The cost of tangible personal property acquired by written lease for a primary term of not less than four years.

(v) In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(vi) The cost of property used by the taxpayer out-of-state and then brought into this State, is determined based on the remaining useful life of the property at the time it is placed in service or use in this State, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this State. In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this State for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the remaining period of the primary term of the lease, not to exceed ten years, or the remaining useful life of the property, determined as aforesaid, whichever is less.

(c) Credit against taxes. – The credit allowed by this section shall be equal to twenty-five percent of the eligible company's qualified investment in the qualified professional services destination facility and shall be taken and applied as provided in this subsection (c).

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Notwithstanding any other provision of this article to the contrary, no taxpayer or group of taxpayers may gain entitlement to more than $37.5 million total aggregate tax credit under this section and no taxpayer, or group of taxpayers, in the aggregate may apply more than $2.5 million of annual credit in any tax year under this section, either in the form of a refund or directly against a tax liability or in any combination thereof. This limitation applies to initial tax credit attributable to qualified investment in a qualified professional services destination facility, and to qualified investment in a follow-up project expansion, so that credit attributable additively and in the aggregate to both may not be applied to exceed $2.5 million annual credit in any tax year.

(1) Application of credit. – The amount of credit allowable under this subsection shall be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible company places the qualified professional services destination facility, or part thereof, in service or use in this state, unless the eligible company elected to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be made in the annual income tax return filed under chapter eleven of this code for the taxable year in which the qualified professional services destination facility is first placed into service or use by the taxpayer. Once made, the election may not be revoked. The annual credit allowance is taken in the manner prescribed in subdivision (3) of this subsection (c): Provided, That if any credit remains after the initial ten year credit application period, the amount of remaining credit is carried forward to each ensuing tax year until used or until the expiration of the fifth taxable year subsequent to the end of the initial ten year credit application period. If any unused credit remains after expiration of the fifth taxable year subsequent to the end of the initial ten year credit application period, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

(2) Placed in service or use. – For purposes of the credit allowed by this subsection (c), qualified investment or qualified investment property is considered placed in service or use in the earlier of the following taxable years:

(A) The taxable year in which, under the eligible company's depreciation practice, the period for depreciation with respect to the property begins; or

(B) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(3) Application of annual credit allowance.

(A) In general.- The aggregate annual credit allowance for the current taxable year is an amount equal to the one-tenth part allowed under subdivision (1) of this subsection for qualified investment placed into service or use.

(B) Application of current year annual credit allowance. – The amount determined under this subsection (c) is allowed as a credit against one hundred percent of the eligible company's

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state tax liabilities applied as provided in paragraphs (C) and (D) of this subdivision (3), and in that order:

(C) Corporation net income taxes. - The amount of allowable tax credit for the year determined under paragraph (A) of this subdivision (3) shall first be applied to reduce the taxes imposed by article twenty-four, chapter eleven of this code, for the taxable year determined before application of allowable credits against tax.

(D) Personal income taxes. –

(i) If the eligible company is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended, a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit after application of paragraph (C) of this subdivision (3) is allowed as a credit against the taxes imposed by article twenty-one, chapter eleven of this code on the members, owners, partners or interest holders in the eligible company.

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

(E) No credit is allowed under this subdivision (3) against any employer withholding taxes imposed by article twenty-one, chapter eleven of this code.

(F) The tax credits allowed under articles thirteen-j, thirteen-q, thirteen-s, thirteen-r, thirteen-w, and thirteen-aa of this code may not be applied to offset any tax against which the tax credit allowed under this article is allowed or authorized. No person, entity, company, or eligible company authorized or entitled to any tax credit allowed under this section or any member of the unitary group or any member of the controlled group of which the taxpayer is a member, may gain entitlement to any other economic development tax credit or economic development tax incentive which relates to the investment or activity upon which the credit authorized under this section is based.

(G) (i) In order to effectuate the purposes of this subdivision (3), the Tax Commissioner may propose for promulgation rules, including emergency rules, in accordance with article three, chapter twenty-nine-a of this code.

(ii) The Tax Commissioner may apply any amount of the tax credit otherwise available to a Taxpayer under this article, to pay any delinquent West Virginia state tax liability of the taxpayer, and interest and penalties as applicable.

(iii) Any amount of the tax credit otherwise available to a taxpayer under this article may be applied by the applicable administering agency to pay any outstanding obligation to a Workers' Compensation Fund, as defined in article two-c of chapter twenty-three of this

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code, or any outstanding obligation under the West Virginia Unemployment Compensation Act.

(iv) Any amount of the tax credit otherwise available to a taxpayer under this article, may be applied by the applicable administering agency to pay any delinquent or unpaid assessment, fee, fine, civil penalty or monetary imposition imposed by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

(H) Unused credit, refundable credit. – If any annual credit remains after application of preceding paragraphs of this subdivision (3), the amount thereof shall be refunded annually to the eligible company, and distributed in accordance with the credit distribution specified in this subdivision (3): Provided, That the amount thereof may not exceed the limitation on annual tax credit or the limitation on total aggregate tax credit specified in this section.

(I) Forfeiture of credit. - If any credit remains after expiration of the fifth taxable year subsequent to the end of the initial ten year credit application period, such credit is forfeited, and may not be used to offset any West Virginia tax liability.

(d) Compensation of employees filling new jobs.

(1) The new jobs and new employee criteria which count toward qualification of a taxpayer as an eligible company for purposes of the tax credit allowed by this section shall be subject to the following limitations and requirements. A job counts toward qualification of a taxpayer as an eligible company if the job is a new job, as defined in this section, held by a new employee, as defined in this section, and the new job:

(A) Pays a median wage of at least $37,000 annually. Beginning January 1, 2015, and on January 1 of each year thereafter, the Tax Commissioner shall prescribe an amount that shall apply in lieu of the $37,000 amount for new jobs filled during that calendar year. This amount is prescribed by increasing the $37,000 figure by the cost-of-living adjustment for that calendar year. If any increase under this subdivision is not a multiple of $50, the increase shall be rounded to the next lowest multiple of $50;

(B) Provides health insurance. The employer may, in addition, offer benefits including child care, retirement and other benefits; and

(C) Is a full-time, permanent position, as those terms are defined in this section.

(D) Jobs that pay less than the statewide average nonfarm payroll wage, as determined annually by the West Virginia Bureau of Employment Programs, or that pay that salary, but do not also provide health benefits in addition to the salary, do not count toward qualification of a taxpayer as an eligible company under this section. Jobs that are less than full-time, permanent positions do not count toward qualification of a taxpayer as an eligible

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company under this section.

(E) The employer having obtained qualification as an eligible company under this section for the year in which the new job is filled is not required to raise wages of the employees currently employed in the new jobs upon which the initial qualification as an eligible company under this section was based by reason of the cost-of-living adjustment for new jobs filled in subsequent years provided the employer continues to provide healthcare.

(e) Application and review.

(1) Application. - An eligible company that meets the requirements of this section may apply to the Development Office for entitlement to the tax credit authorized under this section. The application shall be on a form prescribed by the Development Office and shall include all of the following:

(A) The name and address of the applicant;

(B) Documentation that the applicant is a eligible company;

(C) Documentation that the applicant meets the requirements of this section;

(D) Documentation that the applicant does not owe any delinquent taxes or any other amounts to the federal government, this state or any political subdivision of this state;

(E) An affidavit that the applicant has not filed for or publicly announced its intention to file for bankruptcy protection and that the company will not seek bankruptcy protection within the next six calendar months following the date of the application;

(F) A waiver of confidentiality under section five-d, article ten, chapter eleven of this code for information provided in the application; and

(G) Any other information required by the Development Office.

(f) Credit allowable.

(1) Certified multiple year projects.

(A) In general. - A multiple year qualified professional services destination facility project certified by the West Virginia Development Office is eligible for the credit allowable by this article. A project eligible for certification under this section is one where the qualified investment under this article creates at least the required minimum number of new jobs but the qualified investment is placed in service or use over a period of up to three successive tax years: Provided, That the qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer's application for project certification and approved by the West Virginia

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Development Office, and the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years.

(B) Application for certification. - The application for certification of a project under this section shall be filed with and approved by the West Virginia Development Office prior to any credit being claimed or allowed for the project's qualified investment and new jobs created as a direct result of the qualified investment. This application shall be approved in writing and contain the information as the West Virginia Development Office may require to determine whether the project should be certified as eligible for credit under this article.

(C) Review. - Within thirty days of receipt of a complete application, the Development Office, in conjunction with the Tax Division of the Department of Revenue, shall review the application and determine if the applicant is an eligible company and that the requirements of this section have been met. Applications not approved within the thirty days specified in this subdivision are hereby deemed denied.

(D) Approval. - The Development Office may approve or deny the application. Upon approval of an application, the Development Office shall notify the applicant in writing and enter into an agreement with the eligible company for benefits under this section.

(2) Certified follow-up project expansions.

(A) An eligible company that intends to undertake a follow-up project expansion, may apply to the West Virginia Development Office for certification of a single, one-time, follow-up project expansion, and entitlement to an additional tax credit under this section in an amount which is the lesser of twenty-five percent of qualified investment in the follow-up project expansion or $12.5 million. No taxpayer, or group of taxpayers, in the aggregate may apply more than $2.5 million of annual credit in any tax year under this section, either in the form of a refund or directly against a tax liability or in any combination thereof. This limitation applies to initial tax credit attributable to qualified investment in a qualified professional services destination facility, and to qualified investment in a follow-up project expansion, so that credit attributable additively and in the aggregate to both may not be applied to exceed $2.5 million annual credit in any tax year.

(B) The requirements, limitations and qualifications applicable to qualified professional services destination facility projects under this section apply to follow-up project expansions, except for those requirements, limitations and qualifications expressly specified in this subdivision (2).

(C) Requirements for certification of a follow-up project expansion are as follows:

(i) The eligible company, pursuant to certification and authorization for entitlement to tax credit under subsection (1) of this section (f), has placed qualified investment of not less than $80 million into service in a qualified professional services destination facility within an

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initial period of not more than three tax years;

(ii) The eligible company intends to place additional qualified investment in service or use in the previously certified qualified professional services destination facility project, or an expansion or extension thereof. In no case shall a follow-up project expansion be certified if the follow-up project expansion property is not contiguous to, or within not more than one mile of, the initial qualified professional services destination facility;

(iii) The eligible company proposes to place the qualified investment in the follow-up project expansion in service or use in the fourth tax year subsequent to the tax year in which qualified investment was first placed into service or use in the initial qualified professional services destination facility project, or under a multiple year project certification, in the fourth, fifth and sixth tax year subsequent to the tax year in which qualified investment was first placed into service or use in the initial qualified professional services destination facility project;

(iv) The follow-up project expansion must create and maintain at least twenty-five net new jobs held by new employees, in addition to the new jobs created by the initial qualified professional services destination facility project. The loss of any West Virginia job at the eligible company will be subtracted from the count of new jobs attributable to the follow-up project expansion;

(v) The West Virginia Development Office shall not issue more than one certification for any follow-up project expansion; and

(vi) The West Virginia Development Office shall not issue certification of a follow-up project expansion unless the applicant provides convincing evidence to show that the follow-up project expansion will result in jobs creation specified in this subdivision, that such jobs will remain and be maintained in West Virginia for at least ten years subsequent to the placement of qualified investment into service or use in the follow-up project expansion, that the follow-up project expansion will not operate to the detriment of other West Virginia businesses or to the detriment of the economy, public welfare or moral character of West Virginia or its people.

(g) Agreement.

(1) The agreement between the eligible company and the Development Office shall be entered into before any benefits may be provided under this section.

(2) The agreement shall do all of the following:

(A) Specify the terms and conditions the eligible company must comply with in order to receive benefits under this section, other than those terms, limitations and conditions specified and mandated by statute or regulation; and

(B) Require the Development Office to certify all of the following to the Tax Division of the

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Department of Revenue each taxable year an agreement under this section is in effect:

(i) That the eligible company is eligible to receive benefits under this section;

(ii) The number of new jobs created by the company during each taxable year;

(iii) The amount of gross wages, as determined for purposes of Form W2, as filed with the Internal Revenue Service, being paid to each individual employed in a new job;

(iv) The amount of an eligible company's qualified investment;

(v) The maximum amount of credit allowable to the eligible company under this section; and

(vi) Any other information deemed necessary by the Development Office.

(h) Filing and contents.

(1) Filing. – On or before the due date of the income tax return for each tax year in which the agreement is in effect, an eligible company shall file with the Tax Division of the Department of Revenue a form prescribed by the Tax Commissioner.

(2) Contents. - The form specified under subdivision (1) of this subsection (h) shall request the following information:

(A) The name and Employer Identification Number of the eligible company;

(B) The effective date of the agreement;

(C) The reporting period end date;

(D) Information relating to each individual employed in a new job as required by the Tax Commissioner;

(E) Aggregate gross receipts for the tax period and gross receipts on which tax has been paid under article twenty-seven, chapter eleven of this code for the tax period; and

(F) Any other information required by the Tax Commissioner.

(3) Taking of credit. - The taxpayer, participant or participants claiming the credit for qualified investments in a certified project shall annually file with their income tax returns filed under chapter eleven of this code:

(A) Certification that the taxpayer's or participant's qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(B) Certification that the new jobs created by the project's qualified investment continue to

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exist and are filled by persons who are residents of this State; and

(C) Any other information the Tax Commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project's qualified investment.

(4) Confidentiality.- The contents of the completed form shall be subject to the confidentiality rules set forth in section five-d, article ten, chapter eleven of this code: Provided, That notwithstanding the provisions of section five-d, article ten, chapter eleven of this code, or any other provision of this code, tax returns, tax return information and such other information as may be necessary to administer the tax credits and programs authorized and specified by this article and in this section may be exchanged between the Tax Commissioner and the West Virginia Development Office without restriction.

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